

**LANA`I PLANNING COMMISSION
REGULAR MEETING
MAY 18, 2011**

APPROVED 06-15-2011

A. CALL TO ORDER

The regular meeting of the Lana`i Planning Commission (Commission) was called to order by Chair Gerald Rabaino at approximately 6:05 p.m., Wednesday, May 18, 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: To begin for the record, Shelly will be tardy. She's coming a little late. She has something to do. Matt Mano, any news on him, Lei? He's not coming? Okay. And my understanding is Bob Hera is a new member. Is he going to be present? No. Okay. Do we have a quorum? We have a quorum for the record. Okay, the time is 6:06 p.m. Commissioners, you got your distribution and your agenda. Anything to be passed out from the Corporation Counsel side? Okay, on the May 18th, Wednesday, 6:00 p.m., Lanai High School, Item-A, meeting called to order. Item-B, introduction of new member. Robert Hera is not going to be here. I believe he's excused. Correct Leilani? Okay, and (C), election of officers for 2011 to 2012. Commissioners?

B. INTRODUCTION OF NEW MEMBER - ROBERTO HERA

Ms. Alberta de Jetley: Mr. Chair? Since Mr. Hera is not here, could we cancel the orientation workshop no. 1, (G)? Item-G, orientation workshop no. 1.

Mr. Rabaino: To defer the orientation workshop. Okay, any of the Commissioners in favor? There's a motion on the floor.

Mr. John Ornellas: I second.

Mr. Rabaino: Second, okay. I'm going down the line if everybody agrees. Green, you agree? Commissioner Green?

Mr. David Green: Yes.

Mr. Rabaino: Letty?

Ms. Leticia Castillo: Yes.

Mr. Rabaino: Stanley?

Ms. de Jetley: Mr. Chair? My thing was not a motion. I just asked if it were possible. If it is possible if –

Mr. Rabaino: Okay, go ahead Mr. Yoshida.

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Mr. Clayton Yoshida: Yes, thank you Mr. Chair and members of the Commission. We did bring along some resource people tonight to do the orientation workshop who might not normally come to your meetings. We have Kathleen Kern from our Long Range Division. And we also have Jim Buika, our Coastal Resources Planners. I guess one of the Commissioners has request an interest about amending SMA boundaries, and I think Jim was prepared to address that. Well, we did, you know, cancel last month's meeting because we had planned to do the orientation session, but Commissioner Hera couldn't make the April meeting, so we kind of pushed everything into the May meeting. You know, I guess it's the choice of the Commission, but, you know, we do have these resource people here that are ready to address the majority of the members.

Mr. Rabaino: With all the cancellations we've been having, I think we can have the Commissioners vote on this since Alberta brought it up, and have all the opinions of the current Commissioners that is present to have their stated opinion. Any Commissioners wish to speak?

Mr. Green: Yes. Is the purpose the orientation, is that the orientation for a new member, or is it required to do it once a year? The only issue is if the new – there's only one new member and he's not here. Therefore, if it's not required, it probably should happen at a time when the new member is here. But I don't think that prevents going into the issue on SMA shoreline issues, as long as we have the resource here, we can certainly deal with that.

Mr. Yoshida: Well, again, the purpose of the orientation is largely for the new member, but also as kind of a refresher for the current members because sometimes we don't get into certain types of permits during the course of the year, but maybe in the upcoming year, you may be dealing with those types of permits.

Mr. Ornellas: Mr. Chair? The – will the County have to provide –? Will the County be coming back when Mr. Hera is here to give him an orientation?

Mr. Yoshida: Well, this is only part one of the orientation because largely we have also the public hearing on the industrial district bills. We will be coming back, I believe, in July to finish up the orientation session.

Mr. Ornellas: So in July, if Bob is here, you're going to be giving one again for him?

Mr. Yoshida: Well, this will be on other subject matters. Tonight, we're primarily addressing orientation sessions on SMA, Coastal Zone Management, SMA and Shoreline Area Rules, and also the Long Range Division relative to the General Plan and Community Plan updates.

Mr. Ornellas: Okay, I'll make the motion that we defer agenda item-G, orientation workshop number one, we defer it to July. Or, I tell you what, we'll defer it until Bob Hera shows up, and he's the one that this thing is for. So if he's here, then we'll do it. Other than that, I don't want to participate in this orientation.

Mr. Rabaino: Commissioner Stanley?

Mr. Ornellas: Can I get a second? I made a motion.

Mr. Rabaino: Oh, you made a motion?

Mr. Ornellas: Yes.

Mr. Rabaino: Anybody second that motion?

Mr. Stanley Ruidas: Can I make a comment?

Mr. Ornellas: No, second it or it dies.

Mr. Rabaino: I second.

Mr. Ruidas: Okay. I feel that last month's meeting was cancelled because of him. If he never show up on this one, why should we cancel another one? And in respect and courtesy to the County, we should continue this meeting.

Mr. Ornellas: Mr. Chair, can I ask Leilani a question?

Mr. Rabaino: Go right ahead Commissioner.

Mr. Ornellas: Leilani, when did you know that Bob Hera wasn't going to be here? Last night. So you had enough time to contact the necessary people because these guys didn't come over until this afternoon. Am I right or correct?

Mr. Yoshida: Well, that's true, but –

Mr. Ornellas: Okay, so Leilani could have called you and told that Bob Hera wasn't going to be here, and that we're just going to delay one more month until he could be here since this orientation basically is for him.

Mr. Yoshida: Well again it's largely for the new member, but also as a refresher for the current members. And, you know, we are – well, I guess, they can give updates on where we are with the community plan update, your community plan.

Ms. de Jetley: Mr. Chair? Okay, so we have a motion on the floor and a second to it. So we're still in discussion right?

Mr. Rabaino: Correct.

Ms. de Jetley: So, what if I made a motion to amend the – what if I moved to amend it by saying

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that we want to know more about the special management area rules, and the shoreline area rules? I would be very happy to sit through that. But I don't want to go through the ethics and the items – and we can do the Long Range Planning since you're here, but items four to item-10, I think should be deferred until Mr. Hera is here. So would the other Commissioners consider that?

Mr. Rabaino: Commissioner Green, would you consider? I'm going down the line, yeah, Commissioners.

Mr. Green: Yeah, that's kind of what I tried to say earlier, so yes.

Mr. Rabaino: Letty?

Mr. Ornellas: Point of order. Mr. Chair, point of order.

Mr. Rabaino: Go ahead.

Mr. Ornellas: We had – if Alberta wants to do an amendment, then it needs to be seconded, and then discussion on that, and then voted on that, and then we go back to the original motion with the amendment if it passes.

Mr. Rabaino: Okay, anyone second?

Mr. Green: I'll second.

Mr. Rabaino: The motion has been –

Ms. de Jetley: No, I did not make a motion. I was just in the discussion period. So I move to amend the motion that is presently on the floor so we will consider items one, two, three and four, and defer items number five to 10. That is my motion.

Mr. Rabaino: Okay, so you going defer five to 10, and we're going to deliberate on one, two, three, and four, correct, as an amendment to the motion – to John's motion? Okay.

Mr. Green: I second.

Mr. Rabaino: Okay. Green second. And the motion was made by Alberta to amend and defer. I mean keep one, two, and three, and defer five, six, all the way up to nine. And Commissioner David Green is second to the motion. Any other discussion, Commissioners? Okay, we're going to vote, yeah? All those in favor say aye. All those opposed? One oppose. Two oppose and five –. Do I vote? Do I vote Corporate?

Mr. James Giroux: Jerry, in a case like this, you can because there's no – well, right now you need five affirmative votes to take action. I don't think you're getting that.

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It was moved by Commissioner Alberta de Jetley, seconded by Commissioner David Green to amend the motion to consider items one thru four, and defer items five thru 10, on item-G, orientation workshop – MOTION FAILED.

**(Assenting: David Green, Leticia Castillo, Alberta de Jetley
Dissenting: Stanley Ruidas, John Ornellas
Excused: Shelly Barfield, Roberto Hera, Matthew Mano)**

Mr. Rabaino: So there's three right? Three in favor, and two opposed.

Mr. Giroux: So the amendment would die. So you can go back to the main motion.

Mr. Rabaino: So the amendment would die.

Ms. de Jetley: Mr. Chair, I make a motion. I'd like to make a motion that we defer all of the items under item-G, orientation workshop no. 1.

Mr. Ornellas: There's already a motion.

Ms. de Jetley: No.

Mr. Ornellas: Yes.

Mr. Rabaino: So for the record, the amendment is dead due to the vote. We go back to the original that Commissioner Ornellas has presented on the orientation that we delay for July if the new Commissioner, Robert Hera, is present. Correct?

Mr. Fairfax "Pat" Reilly: . . . (inaudible) . . .

Mr. Rabaino: Pat, understood, yeah, but right now, I didn't open it to the public, so stand by.

Mr. Reilly: . . . (inaudible) . . .

Mr. Rabaino: Yeah, yeah. Wait. We still in discussion. Okay, Commissioners? Okay, go ahead, Pat, open to the public. Come to the speaker.

Mr. Reilly: Pat Reilly. 468 Ahakea. I respect the intent of the motion to limit the time which appears to be geared towards Mr. Hera. But my understanding that's not the intent. They've never given an orientation for one person. The orientation is for the whole Planning Commission to be updated on any changes. And if that person is absent during one of those, no, they're not going to do it again. It is up to the sitting members who are here and present, for their fiduciary responsibility, to hear these on a regular basis. And as what's pointed out, there's some very – one, we taxpayers for these people to come over. So every time they come

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over that's another –. They're here. Take advantage while they're here. And unfortunately that's part of the responsibility of the Planning Commission. So I would object to any amendment to the agenda. Get done with it, learn about it, and move on. This is not just for one person. Thank you.

Mr. Rabaino: Thank you. Any other? Ron, you want to testify for public hearing on this item? Mr. McOmber?

Mr. Ron McOmber: Ron McOmber. Lanai resident for 41 years. You know, I don't understand why Bob Hera is not here first of all. I just saw him this morning. He's well and walking around. If this is the start of his tenure on the Planning Commission, this scares me a little bit. But I don't think you should hold – I personally do not think you should hold these workshop because you're going to have to do them again when he comes on board. That's double duty. I mean, might as well forget about it. Do it again if he ever shows up because you're going to have to sit through the whole thing again, so why waste the time? People are sitting out here. I mean, I understand what Pat is saying, but still we have the main purpose, the one person that hasn't had this so far is Mr. Hera. So you can do whatever you want, but that's my opinion. Thank you.

Mr. Rabaino: Winnie? Please come forward. I can read your thoughts. State your name for the record Winnie. Thank you.

Ms. Winnie Basques: Winnie Basques. Good evening Commissioners. It seems to see that like you folks said he didn't come to the last meeting. Okay. Now this is the second meeting. Okay. Why should you folks wait for him if he doesn't show up? Okay, the point is that if he is going to be a new Commissioner on the board, I think he should show his face here and do what is right for the Lana`i Planning Commission. If he does this a third time, I think you should send a letter saying, excuse me, but you didn't show up for the past two meetings and you not here again. Is there a problem with him? If it is, then you have to pick somebody else or nominate somebody else to take the place. Thank you.

Mr. Rabaino: Thank you Winnie. Any Commissioners have any questions for her? None? Okay, thank you. Anyone else in this room care to testify? Okay, public hearing is closed for the record. Okay, calling for the question. So back to item-G, orientation workshop, to be deferred until July as mentioned by and motioned by John, Commissioner John Ornellas. All those in favor? Any opposed? Three opposed. We're in a tie. Go ahead Corporation Counsel.

It was moved by Commissioner John Ornellas, seconded by Commissioner David Green to defer item G, orientation workshop no. 1, to the July Lanai Planning Commission meeting - MOTION FAILED.

**(Assenting: Alberta de Jetley, John Ornellas, Jerry Rabaino
Dissenting: Stanley Ruidas, David Green, Leticia Castillo
Excused: Shelly Barfield, Roberto Hera, Matthew Mano)**

Mr. Giroux: So there was no action on the motion to defer.

Mr. Rabaino: So we had three yes, and three no. So it died again. It's a dead duck. Okay. Can you assist us any further sir, Corporation Counsel?

Mr. Giroux: I think you're stuck with the agenda. It has been posted and it is a legitimate agenda item. My only concern is that, you know, on the legal part is that I was looking over the orientation and I didn't notice the sexual harassment policy. And although the sunshine law would be discussed in item-4, I would like that it to be clear that the sunshine law would be discussed as part of your orientation pursuant to decent decree – a consent decree.

Mr. Rabaino: Okay. John? Commissioner Ornellas?

Mr. Ornellas: Okay, I'd like to make a motion that we move item-G to the end of the meeting. I guess that would be right after the Director's Report. It would be – change (G), the orientation workshop, to (K), orientation workshop.

Mr. Rabaino: So you're making a motion to move the orientation workshop, item-G, and replace it with item-K, at the end of the –

Mr. Ornellas: – the meeting.

Mr. Rabaino: – the Director's Report. Correct?

Mr. Ornellas: Yes.

Mr. Rabaino: And that's your motion correct?

Mr. Ornellas: Uh-huh.

Mr. Rabaino: Okay, anyone second?

Ms. de Jetley: I second that motion.

Mr. Rabaino: Alberta has second. All those in favor say aye. So be it.

Mr. Ruidas: No.

Mr. Rabaino: Okay, one no.

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

VOTED: to move item-G, orientation workshop no. 1, to the end of the

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agenda, following, item-K, Director's Report.
(Assenting: Gerald Rabaino, David Green, John Ornellas, Alberta de Jetley
Abstaining: Leticia Castillo
Dissenting: Stanley Ruidas
Excused: Shelly Barfield, Matthew Mano, Roberto Hera)

Mr. Rabaino: How many yes? One, two –. No, show of hands. We have four. And Letty? You abstain? Okay, and one no. That's five. Okay. So it passed. Thank you. I don't get to vote? Okay, sorry.

Mr. Giroux: No, you can because that would make five.

Mr. Rabaino: Five over there. We get one abstain, one opposed. Commissioner Ruidas opposed. Commissioner Letty abstained. Green, yes. John, yes. Alberta, yes. And I can't vote. I have to vote?

Mr. Giroux: Yeah. When there's a tie, Jerry, you can vote.

Mr. Rabaino: You sure now?

Mr. Giroux: Yeah. And the abstention because there's no conflict of interest would be seen as an affirmative yes.

Mr. Rabaino: Thank you. So I give yes. So the four yes, against one abstain, and one oppose.

Mr. Giroux: So the motion would pass. And you vote yes.

Mr. Rabaino: Yes. So the motion has passed, correct?

Mr. Giroux: Yes.

Mr. Rabaino: Thank you very much.

C. ELECTION OF OFFICERS FOR 2011-2012 YEAR

- 1. Chairperson**
- 2. Vice-Chairperson**
- 3. Lanai Planning Commission Representative on Lanai Water Advisory Committee**

Mr. Rabaino: Now we're back to item-C, election of officers, as stated earlier for the record. Any nominations?

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Ms. Castillo: Mr. Chair, I would like to nominate Stanley Ruidas to be the Chair, the next Chair.

Mr. Rabaino: Any other Commissioners?

Mr. Ornellas: I move that we keep Jerry as the Chair, and Stanley as the Vice-Chair.

Mr. Rabaino: Any other nominations, Commissioners? Okay, so let's take a vote. For those for Stanley to be the next chair, raise of hands please. Letty Castillo. Okay, so we have one vote for Chair. And then the other nomination was for me and Stanley –

Mr. Giroux: Wait Jerry, I don't think –

Mr. Rabaino: Just me for Chair?

Mr. Giroux: Yeah, the nomination was from Mr. Ornellas stating that he wanted to keep status quo – you as Chair, and Stanley as Vice-Chair. Then the nominations, I believe, we closed. So you start with the Chair, if there's any votes for the Chair.

Mr. Rabaino: Any votes for the status quo for the Chair, raise of hand. Wait, leave your hand up. Hello? Okay four yes, and Letty, abstain or no? Okay, the vote is four and one –. Oh, I can vote?

Mr. Ornellas: Vote for yourself.

Mr. Rabaino: Everybody saying the Chair no can vote so, okay, I vote yes.

Mr. Ornellas: Okay, so it's five.

Mr. Rabaino: Okay, that's five and one no, yeah.

Mr. Ornellas: He's the Chair.

Mr. Rabaino: And now we go C-3, correct?

Mr. Ornellas: Wait a minute. I make a motion that we keep Stanley as Vice-Chair.

Ms. de Jetley: I second that motion.

Mr. Rabaino: Anybody else want to nominate? So let it be. All those in favor of status quo, yeah? All those in favor say aye. Okay, overwhelming. So it's been carried. Thank you very much.

After nomination were duly taken and discussion ensued, the following were elected:

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Commissioner Gerald Rabaino as Chairperson, and Commissioner Stanley Ruidas as Vice-Chairperson.

Mr. Rabaino: Now we move to item-3. You happy Stanley? Okay, item-3, Lanai Planning Commissioner Representative on Lana`i Water Advisory Committee.

Ms. de Jetley: Mr. Chair, I have a question. Wasn't that Commission – wasn't that Committee stopped?

Mr. Rabaino: No, this is for the Planning – just over here.

Mr. Ornellas: No.

Mr. Rabaino: No?

Mr. Ornellas: May I? May I? I am the present representative on LWAC, the Lanai Water Advisory Committee. The County, the Water Department Chair, the head of the Water Department for Maui County thinks that he has the authority to disband LWAC. But if he would go back and read the ordinances and the Lanai Community Plan, he does not have that authority to cancel LWAC. So LWAC is still meeting on a monthly basis. Castle & Cooke is presently not a participant and I think the Maui County Water Department will not also be a participant, but we are still meeting and we still are discussing the Lanai Water Use and Development Plan and we will continue to do so. So I would like to continue to be the Lanai Planning Commission representative on the LWAC.

Mr. Rabaino: Okay, Commissioners? Just for the record too, yeah, earlier this year – and correct me if I'm wrong Vice-Chair – that we appointed John Ornellas and Commissioner David Green was going to be the alternative if John couldn't attend. Is that correct Vice-Chair? Okay that's for the record, okay. So as John said that he would wish to remain. And David, would you wish to remain the alternative? Okay. Commissioners, all in motion please?

Ms. de Jetley: I have a question.

Mr. Rabaino: Go ahead Commissioner Alberta.

Ms. de Jetley: It's really confusing because how can we, as the Lanai Planning Commission, elect a representative for a committee that is not recognized by the County and not recognized by the major landowner? So I think it needs to go to Corporation Counsel. I don't think it's an item that we can actually vote on because they're both saying that this committee no longer exists. So maybe it should go to Corporation Counsel to figure it out.

Mr. Giroux: It's on your agenda. As far as in the past that you did have a representative on that committee. Whether that committee remains active or not, at this point, is not determinative of

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whether or not you can assign somebody to monitor, or to go to that meeting, or to represent any points of view. It's just that if that is done, it needs to be done by the majority of the members on the board. It would be like having a neighborhood meeting where if you had a Lana`i neighborhood meeting, and you wanted a representative there, you would assign somebody to go. It's basically like creating an investigative committee that would come back and report what activities they're participating in. And their activity would have to be consistent with the direction given by the board or by the commission.

Mr. Rabaino: Isn't it correct, if my memory serves me well, that when we appointed or when we decided on this, on the LWAC, that the Planning Commissioners, exclude Lisa Kaniho, that we wanted two representatives from the Planning Commission side to attend those meetings? And that's what my memory serves me.

Mr. Ornellas: Mr. Chair? As part of the LWAC committee when they meet, Lana`i Planning Commission has, for the most part, always had a representative on the committee, the LWAC committee. And even though there might be some other issues brought up about the Water Department, and the County of Maui, and Castle & Cooke, they're still meeting, they're still discussing the Lanai Water Use and Development Plan. They're still, as part of the ordinance, they're still part of the monitoring of the plan, monitoring of the water use for this island. And it's very, very important that we continue, this community continues, to have a say about our water.

Mr. Rabaino: Ron, come forward please. The public testimony from Ron McOmber regarding the LWAC.

Mr. McOmber: LWAC is not an item from the County. It's a directive, and the members of the LWAC are directed from the Water Commission. It's a mandate. They're one of the members. And we took the Planning Commission, and we also took other people in the community so we had a broad interpretation of what's going on so it wasn't a hidden agenda. The only reason the Planning Commission has somebody on it –. And also by the way, the County Council representative from our island is also on that. So you have Riki on it, and you have somebody from this body on that. Whether or not the County –. The Company has convinced this new Water Director that we're not active. This is strictly a political ploy, and Ms. Alberta understands that. That's what this is all about. It has nothing to do with anything other than we have set members. This is so you guys can ask your own member, what did the LWAC say? What was the thing they brought up? That's what they are there for, okay? We don't have a hidden agenda. And besides that, this is not a County appointed. This appointed by quorum – the Water Commission. Thank you very much.

Mr. Rabaino: Thank you Ron. Commissioners, any questions for Ron? No? Commissioner Green?

Mr. Green: I'll just make one point that the letter that I've seen from the Commission of the Water Department, it said that – at least what I understood from reading the materials – was

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that the group was sanctioned by the Water Department. And now that the Water Use and Development Plan is completed, that the Water Department doesn't have any resources on Lana`i. They don't have any resources on Maui. And the Director is the only one that can call a meeting, and he doesn't intend to call any official meetings. Not that it's been de-banded, it's just going to continue to operate without the participation of the Water Department.

Mr. Rabaino: Okay, Pat come forward. By the way, it's Pat Reilly, Lanai City.

Mr. Reilly: Pat Reilly. 468 Ahakea Street. In part everybody is right, except if you understand the concept of how this Lana`i Water Advisory Committee was founded, it was founded based on about 1990 when this community asked for the aquifer to be designated as a management aquifer by the Commission on Water Resource Management. Their response was, to this community, your aquifer is very sensitive, but we're not going to take it over as a managed aquifer by the State. However, one of the conditions was to form Lana`i Water Working Group which now has evolved to Lana`i Water Advisory Committee. The letter which I read that Commissioner Green is talking about seems to imply that the Director of the Department of Water Supply would not call any meetings and therefore was disbanding the committee. That's still up for review. Actually the ordinance was confirmed by Maui County Council, so this is my opinion, the Water Director thus cannot unilaterally disband the committee. And secondly, it is still a condition from the State Commission on Water Resource Management. The whole point being is that our water plan is still be before the Council. And so the Lana`i Water Advisory Committee, it's mandate, is to monitor the plan and it's all the way through the Council, and then to determine if the plan is adequately implemented. So you know if the County chooses not to participate, if the Corporation chooses not to participate, it's still the burden of those members, and they were outlined in the condition, that, you know, who from what group on Lana`i would sit on that to monitor the plan in perpetuity. So I would strongly recommend that you at least appoint a representative to that Water Advisory Group until there's a settled judgement and certainly you would want to keep informed on what's happening with the water. Thank you very much.

Mr. Rabaino: Thank you Pat. John? Commissioner John, anything to say?

Mr. Ornellas: The letter that was sent by the Water Board, Maui County Water Department, did state what Mr. Green said, but in investigating on how the LWAC and how the Lana`i Water Use and Development Plan, how this was all to come about, again, and Ron is correct, and Pat's correct, that this was part of a State mandate by the Water Use – Water Management for the State. And then the County went along and they made ordinances that made LWAC an advisory committee to the Water Department. So, for him to do what he did, we feel, the LWAC board committee feels that he has overstepped his bounds. We are presently pursuing – the LWAC is presently pursuing legal definition as far as what can the Director of Maui County Water can do and what he can't do, and tell us exactly what, you know, what the bounds is as far as LWAC. But until that has happens, we should still be part of member of LWAC because they are still meeting, and we're still discussing the Water Use and Development Plan, which Pat is correct. It is to be brought up in front of the Water Committee – Mike Victorino – Water

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Committee probably next month. And they're going to start having hearings on our Water Use and Development plan. So, nothing has been approved yet, so we still want to be part of the process. So that's why I'm asking that I be reappointed to the LWAC committee, representing the Lana`i Planning Commission.

Mr. Rabaino: Go ahead Commissioner Ruidas.

Mr. Ruidas: Chair, I'd like to make a motion.

Mr. Rabaino: Go ahead.

Mr. Ruidas: Motion to continue as our LWAC representative, John Ornellas, and alternate, David Green.

Mr. Rabaino: Okay, the motion on the floor to continue with the LWAC appointees of currently John Ornellas and alternative David Green.

Ms. Castillo: I second to that motion.

Mr. Rabaino: You second that motion? Okay. So motioned by Ruidas to keep the current status of John Ornellas and alternative Commissioner David Green on the LWAC, and has been second by Letty for the record. Okay, all those in favor, say aye.

Planning Commissioners: "Aye."

Mr. Rabaino: Any opposed? None. So, motion carried. Sorry.

Ms. de Jetley: I'm abstaining from this vote. It's not because I don't think that John and David do an excellent job in this committee, I just wanted Corporation Counsel to review it before we consider voting on it, but that's fine. I'm fine with it. I just won't vote on it, that's all. I abstain.

It was moved by Commissioner Stanley Ruidas, seconded by Commissioner Leticia Castillo, then

VOTED: to appoint Commissioner John Ornellas as the LPC representative, and Commissioner David Green as the alternate LPC representative on the LWAC.

(Assenting: Gerald Rabaino, Stanley Ruidas, David Green, Leticia Castillo, John Ornellas

Abstaining: Alberta de Jetley

Excused: Shelly Barfield, Matthew Mano, Roberto Hera)

Mr. Rabaino: So you going abstain? Okay.

Ms. de Jetley: You still have enough to pass it.

Mr. Rabaino: Okay, so we have Alberta abstain, for the record, and everyone else has voted in favor. So that's five against one. Thank you. For the record, right? Corporate, it's okay? Five and one abstain. Make a note for the record. So we'll have those two members for the LWAC from the Planning Commission for the island of Lanai. Okay, let's move on to item-D resolution thanking former member Lisa Kaniho.

D. RESOLUTION THANKING FORMER MEMBER LISA KANIHO

Mr. Yoshida: Thank you Mr. Chairman, members of the Commission. Clayton Yoshida, Administrator, Current Planning Division. With me tonight, I have the Deputy Corporation Counsel, James Giroux; and also your secretary to boards and commissions, Leilani Ramoran; Administrative Planning Officer, Joe Alueta; Coastal Resources Planner, Jim Buika; and Long Range Division Planner, Kathleen Kern.

We have a resolution thanking Lisa Kaniho of the Lana`i Planning Commission, which, I'll read into record:

“Whereas, Lisa Kaniho has served the County of Maui since June 2010 as a member of the Lana`i Planning Commission, and
Whereas, Ms. Kaniho has served with distinction and has performed her duties in the highest professional manner with the Lana`i Planning Commission, and
Whereas, Ms. Kaniho's term of office expired on March 31, 2011,
Now, therefore be it resolved that the Lana`i Planning Commission hereby commends Ms. Kaniho for her dedication and untiring public service to the people of Lana`i, and
Furthermore, be it resolved that the Lana`i Planning Commission expresses their sincere appreciation for Ms. Kaniho's services and extends their best wishes in her future endeavors, and
Furthermore, be it resolved that copies of this resolution be transmitted to the Honorable Alan Arakawa, Mayor of the County of Maui, and the Honorable Danny Mateo, Council Chair of the Maui County Council.”

If you could take a moment to sign the resolution and we can transmit it to Ms. Kaniho.

Mr. Rabaino: Thank you very much. I'll pass it around for signature.

Mr. Yoshida: I guess there's also a congratulatory letter from Mayor Arakawa for Ms. Kaniho's – thanking Ms. Kaniho for her service to the people of the County of Maui especially to the people of Lana`i, as well as a certificate suitable for framing.

Mr. Rabaino: Okay, you guys are going to mail that to her or someone will present that her?

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Mr. Yoshida: Yes, we'll transmit this to Ms. Kaniho.

Mr. Rabaino: Okay, while everybody is giving their signature for the resolution thanking former member Lisa Kaniho, we'll move to item-E, approval of the February 16th meeting minutes. Any of the Commissioners want to add, delete, correct the February 16th meeting minutes? Commissioners? Green? Letty? Stanley? John? Alberta? Any corrections, or accept it as is?

E. APPROVAL OF THE FEBRUARY 16, 2011 MEETING MINUTES

Ms. Castillo: I move that we accept the minutes as circulated.

Mr. Rabaino: Commissioners, all favor?

Mr. Ruidas: Second.

Mr. Rabaino: Sorry, second. It's been moved by – motioned by Letty and second by Stanley Ruidas for the February 16th minutes. Item-F, public hearing. Action to be taken after the public hearing. Item-1, Mr. William Spence, Planning Director, proposing the following bills relating to the Maui County Code –. Oh, I'm sorry, I'm jumping ahead. Okay, calling for the vote. All those in favor say aye.

Planning Commissioners: "Aye."

Mr. Rabaino: Any opposed? The ayes have the favor, and there's no nays for the record for the February 16th minutes. Correct? No dissenting votes, thank you.

It was moved by Commissioner Leticia Castillo, seconded by Commissioner Stanley Ruidas, then unanimously

VOTED: to approve the February 16, 2011 meeting minutes as written.

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

1. MR. WILLIAM SPENCE, Planning Director proposing the following bills relating to the Maui County Code concerning Industrial Districts: (J. Alueta)

- A. A Proposed Bill Amending Chapter 19.24 of the Maui County Code relating to Light Industrial Districts**
- B. A Proposed Bill Amending Chapter 19.26 of the Maui County Code relating to Heavy Industrial Districts**
- C. A Proposed Bill Creating an M-3 Industrial District in the Maui County Code.**

- 1. Public Hearing**
- 2. Action**

Mr. Rabaino: Okay, now we move to item –. I stand corrected by Commissioner Ornellas. So we'll open up to public hearing, action to be taken after the public hearing. Anyone wish to testify from the public?

Mr. Joseph Alueta: Normally, Mr. Chair, we do a small presentation, then you open it up for public hearing, and then you do some discussion, and then you –.

Mr. Rabaino: Okay. Thank you.

Mr. Alueta: So your first item, Mr. Chair, or as most of you know, my name Joe Alueta. I'm your Administrative Planning Officer. We have three bills before you today, and that is dealing with the industrial districts of Maui County. Currently, the County of Maui has two districts called the M-1 Light Industrial, the M-2 Heavy Industrial. As many of you remember, about a year ago, or a couple of years ago, Riki Hokama introduced a bill that would have eliminated much of the stacking or business uses that would have been permitted, that's currently allowed in the M-1 and M-2 district. The problem that the Council saw as well as the Planning Department has seen is that you tend to have a lot of retail or restaurants and non-industrial type uses moving into the M-1 and M-2 district and displacing your pure industrial type uses, thus driving up the rents. And what we've found is that, as a result of that, they would then push these bulk or heavy industrial type of uses primarily those that need dead storage such as base yards for the construction industry out into the marginal agricultural lands and seek some type of special use permit, or in some cases, change in zoning. And it's kind of a sticky slope or a sliding slope ever repeating whereas if they come in for a change in zoning, they get the zoning to industrial. And then as soon as they get industrial, K-Mart, or Costco, or a Target or some high end retailer is going to move in and push those industrial type uses out again and we continue to go down this cycle of having to find more industrial lands.

Although Riki's bill at the time would have resolved that problem, we felt that it would create a huge amount of existing non-conforming uses within the Wailuku-Kahului area. And in areas in Lahaina, where you have – and Kihei – where you have – where the M-1, especially in the M-1 district has pretty much become a sort of a mixed use district, as well as, in the M-2 you have apartments in there. And so the Department's solution was to look at all three – look at two industrial districts, but also propose a third industrial district which we are calling M-3 Restricted Industrial which we would strip out the retail portions uses from the district. Therefore you could not have a pure retail outlet move into this type. And also many of the uses that we find that are noxious uses that would require a County Special Use Permit under the M-2 district would be an allowed use in those districts. So we've kind of try to streamline the process, as well as address the issue of retail areas moving into the industrial areas but not create a non-conformity. So we just felt we'll leave the M-1 and M-2 districts pretty much status quo. The primary amendments dealing with, and I'll go over the first one which is the M-1 district.

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It's pretty much structural, meaning -. As you know, as we're going through the Title 19 updates, we are trying to simplify the Code. Bring down the responsibility to do approvals wherever possible from either - if it's from Council level, bring down that approval down to the Commission. If it's a Commission level, give that authority to the Director. If we can, we try to make it an outright allowed use as we are doing with some of the uses in M-3. As well as trying to make the ordinance a little more user friendly and easier to read, we're using table format as well as creating a stock or standard outline for every zoning category and that is what's the purpose and intent of that district? What are your permitted uses? What uses are considered your accessory uses to the above permitted uses? What are your development standards? Put all of your development standards in one table format because it's easier to understand? What I can build? How big can I build it? How far apart? And then create other - and what are the uses that you consider to be special uses? So this is the same outline that you've seen before in some of my other updates that I've done.

I gave you that quick overview. I'll cover the highlights, I guess, of the M-1 Light Industrial. Again, this is an industrial district which allows for many of the uses that are within the B-1, B-2, and B-3 also allowed on M-1. One of the funny, funny things about when you dig up old ordinances - and you can tell this is an ordinance that's pretty old because the prior Code is -. If you look on Exhibit-1, and I'll pretty much work from Exhibit-1 of my memo report. If you look at it, it says -. If you look after the first general section it says, prior code is 8-1.12, so that tells me it was either - it was probably a code from 1964 or 65 is when it first came about. So it has been around for a long time, and it probably has not been comprehensively amended since that time. That's why the format is very - well, it's an interesting format in which you have a development standard scattered throughout the Code. But one of the most unique things about the M-1 District is when you read what it's allowed uses, you know, it doesn't allow for dwelling units. And all of the uses are listed alphabetically when you look at the original code. But then at the very end, the last item that's an allowed use is apartments, which begins with A. I don't know, I took school. Yes, I did go to St. Anthony's and we did learn the alphabet, and we always believed that A started first, and it wasn't at the end. So it was always odd that that was stuck in there, even though the preamble of the code said it doesn't allow dwelling units, and the last time I checked an apartment is a dwelling unit. And because of that, we're trying to clean up that kind of a conflict. How that happened is always a mystery, but I've been told the original ordinance is written in pencil. It's very interesting.

But we are - we are - like I said, so what we're trying to do is the current draft that you have before you right now, we would still allow apartments. But this is the biggest dramatic change from the M-1 District is that we would like to see, if you do an apartment, it would either have to be an accessory use to some type of industrial use or retail use - some other permitted use on the property - and that you couldn't just build a freestanding apartment on a property. You could build apartment units above a retail - and so the development standard. As also pointed out, say you had a large parcel of say 12 acres, and you wanted to some retail building, freestanding buildings, and then do an apartment building on the property but it wasn't the principal use that was going on and so you created your own little mixed use. And so that's the idea is that industrial area still should be industrial. You still have commercial. We're not

prohibiting apartments. We just don't want to make it the primary purpose within an industrial area. And secondly we – we're not making – we're not trying to create non-conformities, so in our code we are saying that if you have an apartment or a freestanding apartment in the industrial area, you – it's not like if it burns down, you can't rebuild it. You'll be able to rebuild it to as long as you've got a legal building permit, you'll be able to rebuild it to the exact same size and shape that you originally had which is different from non-conforming uses now. If you have an existing non-conforming use, one of the big issues is if it burnt down, I can't rebuild it, or you can only do 50%. The proposed amendments doesn't – is not so draconian. We are saying, we recognize Lao Parkside and many apartments that exists in Maui County, particularly on Maui in the Lower Main area that are part of an industrial comp area.

The other things – some new definitions. We're adding some new definitions to help clarify a few things. One, we are specialized education. So, these are facilities such as trade, language, music, dance. We've also seen them as a lot of – there's a lot of yoga studios, tae kwon do studios in there, so we're just recognizing that that's an allowed use because they do need like large, cheap warehouse space to have your gymnasium. Sometimes they have like kind of a mini gymnasiums.

Utility facility minors, you know, services that you kind want to have these. It's an industrial area, but you need to have some substations. We want to make that clear. And then under accessory uses, we also wanted to say that you could do your small scale energy facility. This is all part of our push toward making it clear that if somebody wants to put PV panels or small windmills or some type of small energy system on their building or as part of their property, they can do it, and so we just want to clarify it that that's allowed.

Under the development standards in the M-1 District, and I'm moving to – let's see – page-6 of Exhibit-1, under development standards. We're again we're consolidating all of the development standards that were scattered throughout the code. They had listed everything separately so we just put it in a table format that's a little easier to read. Again, page-6 of Exhibit-1. So it just gives you the minimum lot size. None of that has changed. All of the setbacks are pretty much the same. Nothing really dramatic. One of the key things that we've added was, again, as we've encouraged vent, pipes, chimneys, you know, antenna equipment, and also energy systems, we give you that 10 foot bonus. So instead of 60 feet, if you need to put, you know, solar panels or water heating systems on your roof or even an antenna or chimney, it could be up to 70 feet high. Or I should say, you can go 10 feet above the roof. Also allowing for free standing antenna or wind turbine structures. We're just allowing, but like all the other districts that have come before you, we require one foot setback for every foot in height, so you have to have a pretty good size lot. The way I like it is if you had a, say, a typical 10,000 square foot lot, most of those 10,000 square foot lots have about 100 feet width. Most likely if you put that thing right in the middle of that 10,000 square foot lot as a freestanding, you probably can do 50 feet. So you'd have to have a pretty good size lot based on that kind of a setback.

We're making it clear that, you know, accessory structures that can't – certain accessory

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structures can be within the setback such as boundary walls, parking areas, trash enclosures, ground signs and those types of things. We just want to clarify everything out. And then, you know, the existing enclosure requirement there, that's in the code now. I'm just making it clear that when you read it, it states it, but we want to make it clear that it's part of a development standard. Let's see, that's pretty much the highlights of the code for M-1. If you have any questions.

Mr. Green: May I ask a question?

Mr. Rabaino: Go ahead Commissioner Green.

Mr. Green: It's just under the development standards where you have maximum building height, I heard what you said, and I think I know what you meant. When I read what it says here, you could read it that an energy system could be 70 feet on top of the building. But you're basically saying you get an extra 10 feet.

Mr. Alueta: Correct.

Mr. Green: Is that not correct?

Mr. Alueta: Yes.

Mr. Green: So I would just – if this is the final wording – I don't know if this is the final wording or if this is just a summary for us, but if it's the final wording I think it's ambiguous – just that point.

Mr. Alueta: Okay. Okay. I can work –. It still has to go to –. What we do is we do a first draft of it, then we go through all the Commissions as well as agency review. Obviously any changes that need to be done for legal form and legality, that's going to be done after the review of the Commission before we send it to Corporation Counsel. So, I'll make sure to point that out. But the way it's wording it means like so – that's 70 feet total, not 70 feet above the roof. Okay. I'll make sure. Good catch.

Mr. Rabaino: Okay. Joe, I'm kind of curious, yeah, this is development standard yeah? What about the – because I'm looking at this freestanding antenna or wind turbine structure height and setback, yeah. And then I'm looking under the M-1, 7,500 square foot. What about these old homes, you know, we have a lot of people buying up all these old homes within the town itself, and some of them is not as big as 7,500 and those are existing. Are those grandfather where you can put up a –? I need to know.

Mr. Alueta: No. Yes, you could, but you would have to meet the –. As you saw when you had the BCT ordinance that came through, it's dependent upon the height of the pole. So if you had a small lot you could only do a small freestanding windmill. So you wouldn't be able to do a super tall one based on the small lots that you currently have. You could do a roof mounted

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one that's attached to the structure. And so in that case, yeah, you could do, I believe BCT is 30 or 35 feet, and I think in – and so we gave a 10 foot bonus. But I believe in Lanai Design Guidelines also has a one story at least along the –. That's my recollection. But again, this is for the M-1 District. I mean, this is for the M-1, M-2 and M-3 District, but I have a map here if you guys are curious as to –. So you can see that the darker purple is your M-1, and then the light-pink ones is your M-2 district. Again, you only have – the M-1 District, here right outside of town, and then you also have M-2 down at Miki Basin and then, I guess, is that Kaunalapau, the harbor.

Mr. Rabaino: Okay Joe, the M-1 – no, is that M-2 by the swimming pool area, the recreation, is that the lighter color, right, from the city map? Or is that where the . . . (inaudible) . . . house used to be?

Mr. Alueta: That's M-1.

Mr. Rabaino: That's M-1. Central service area, okay.

Mr. Alueta: So those are the only areas that you currently –

Mr. Rabaino: And the other one you get down there, is that Kaunalapau?

Mr. Alueta: Yeah.

Mr. Rabaino: Oh.

Mr. Alueta: The harbor. And that's M-2. And then also Miki Basin.

Mr. Rabaino: Okay. Thank you. Commissioners, any other questions for him? No? Commissioner Ornellas?

Mr. Ornellas: I was reading the comments that the Water Department did on this and one of the things that caught my eye is the – presently – well head protection strategy for Maui County is currently being finalized so it hasn't been – it hasn't been adopted yet, so how –? You know, how will that affect this plan as well as how does it affect Lana`i? Does Lana`i play–? I guess, I could ask Clay back there if they're part of the strategy for well head protection for Maui County. If not, then how does that play to us here on Lana`i?

Mr. Alueta: I talked to Mel – Mel from the Water Department, and we talked about –. I'll be having a meeting with him next week. He's trying to schedule a meeting right now. As indicated their well head strategy, to me, it's primarily should be happening during the general plan and community plan update in the map and identifying it. And it would identify future areas or help guide the community plan update and the CPAC, or whatever they are called now, where you want to put the industrial or where you don't want to put your businesses or industrial areas that may have some type of noxious use or potential pollutant into their wellheads. The

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second issue in talking with him is that his plan is to have an overlay map, or an overlay zoning map basically with this wellhead protection. And that's the reason I'm having a meeting with him next week is that when he does that, if that gets adopted by Council, then that would obviously create – could create a conflict with the allowable uses in the current industrial districts if his wellhead protection map overlays the existing zoning. So therefore what that will do is that if there's existing zoning, that would restrict the land use entitlements that that person could do on a piece of property if it's undeveloped. And if somebody already has a development, that could potentially create a non-conforming use that will occur because of that wellhead protection issue. Again, I view it more, his plan, is more of a long range, as a planning tool to say, hey, here's your wellhead protection areas, don't zone. And so during the time of community plan designation as well as zoning, you would want to avoid those areas.

Mr. Ornellas: Okay, so –. Okay, so, since the wellhead –. Yeah, nothing has happened with the wellhead protection, but it will have an effect on this ordinance. So why can't –. Is this thing time sensitive? I mean, why can't we wait for the community plan here on Lana`i and then bring this up at the community plan?

Mr. Alueta: Because this affects zoning, okay? And like I say, he's trying to do an overlay, and that's fine – good and fine. But zoning is zoning. That has nothing to do with what he's trying to do. These entitlements, because most of the most areas are probably not within the wellhead protection area, okay? So that's, to me, it's a separate and distinct area. One is for future planning of where you're trying to designate land on the community plan, as well as, what Council should consider when they're actually zoning a property because then they'll decide whether or not they should zone something M-1 or M-2, okay? As far as the time sensitive thing is that I get that all the time. Why don't we just wait? Why don't we just wait? Well, we wait, and wait, and the code hasn't been updated in 30 years. It's piece meal together and no one is going to accomplish anything. You wait and wait for what? Time is going to change no matter what. The earth is going to spin. I'd rather do it now, get what I can, get the changes, and keep moving forward because if I keep waiting for someone else, I going be waiting forever. And so my job is to just get it done, make sure it fits, and it all fits together because I'm trying to correct the problem of piece meal and waiting forever.

Mr. Ornellas: But isn't, isn't – isn't the theory behind community plan is suppose to do that? You know because as part of the community plan back in 1993, this was a mandate by us just to start putting – start making sense of all the zoning and, you know, what the County's got versus what the State's got, what the Company wants to do. So that way we all come off the same page and there's minium confusion. But, all I'm saying is that because there's a lot of interest here on Lana`i and we are chomping at the bit to get this community plan process started, I think the community should be aware of this. If this thing passes and our community plan comes up and then all of sudden people start to say, why did we do this and why did we do that and we want to change it.

Mr. Alueta: Then more the reasons for you to do this because what we're proposing here today is one is to fix and do help M-1, help M-2, and create a new district called M-3. So when you

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go into your community plans, right, during your planning phase, this will help you say, hey, if I zoned something M-1, you're going to have to go figure out how much of that land is going to be –? If I designate on a community plan as light industrial, how much of that land is really going to be used for light industrial? If I need industrial uses, maybe I should designate it as, it should be H-2. What are the uses in H-2? Or if I know that's going to be a real noxious industrial, maybe I want that as a restricted industrial where people are not going to. And so therefore this gives them another planning tool. If you go before now to the community plan and you don't have an M-3 District or the changes that are before you, they're not going to have that option of saying, hey, you know, we need an area that's purely industrial area. Okay, well, I'm going to create a purely industrial area on my community plan, but when somebody comes in for a change in zoning, what do they change it to? The only options are going to be M2 and M3 – I mean M1. If there's no M3, they can't fulfill the wishes of what the community plan wanted.

And you got to understand how the basic planning and zoning 101 goes, okay? You have your community plan which is basically the community wish list, okay? That tells you want in the future, okay? When the community says, this is what I want in the future and this is the area I want as B2, this is the area I want as BCT or M1, and it maybe be State urban, and State urban and County ag or something like that. That tells the landowner, hey, I should come in for a change in zoning or district boundary amendment, and what should I change it to? Well, that gives that person a roadmap that says the community is supportive of those changes. And you want to be – and like I say when the CAC meets, they want to be able to say, hey, if we designate this as this generic industrial or some type of community plan based of future needs, they want to have some idea of what's it going to end up with. When the guy finally comes in for the change in zoning, they want to say, hey, it should be M1, M2. And we have that language all the time. In Kihei you have areas where they're zoned as business because that's all there is, it's business on the community plan. But if you read deeper and you read the language within the community plan it said, the properties along South Kihei Road should be only designated – it's re-zoned to B1 Neighborhood Business. And that's all part of the planning. That was kind of a very good direction by the community, to the owners, and to the Planning Department, and to Council, what that property should be zoned. But like I say, you got to continue, I got to continue to update. My job is the zoning part. And then if I can help out the community planning part, but I take my cues. When the community plan tells me what they want, then I will come in and zone it, or do the changes.

Mr. Ornellas: Okay. I appreciate your passion, and it seems like this is your job like you say it is, and I like your passion. And the question arises in my mind when we get to the community plan part about these issues with Maui County, will you be here to enlighten the community, the CAC, the advisory committee, as far what you envision and what –? If you're still here because God only knows when the CAC is going to be created for Lana`i. But, you know, you'll be able to read what we wanted back then versus what's happening now, and then kind of fill us in as far as, you know, kind of go along with us as far as what's going to happen in the next 20 years.

Mr. Alueta: Yes.

Mr. Ornellas: Okay.

Mr. Alueta: Okay, just because – I mean, just because, one, the Long Range Division, they do it and they write it up. When I do an ordinance change, right, part of that job is to review what is the community plan. Is my bill consistent with the community plan? And I read what am I trying – one of the biggest languages that are hammered home in a lot of the community plans is streamline the ordinance. Streamline the permits. Streamline this. And update the County Code, so it's –. I mean, that's the kind of thing, and that's where I get my cues to do what they want me to do.

Mr. Rabaino: Any Commissioners, any questions for Joe?

Mr. Green: Are you going to do M1 separately, then M2 and M3? Or are you going through all three?

Mr. Alueta: I'm sorry, how is it listed on the agenda? I'll just –

Mr. Rabaino: Yeah. You have (a), for a proposal bill 19 of a light industrial, (b) is for 19.26 heavy, and (c) M3 industrial district.

Mr. Alueta: Okay.

Mr. Rabaino: You already was talking about the light, well, in conjunction of all three.

Mr. Alueta: Okay. I can go over the –. I'll go over all three at one time. So the M2 again is the – was intended to be your heavy industrial areas. Just so happened Costco and K-Mart moved into M2. And so again, part of the impetus is again to try to eliminate those conflicts by creating an M3 district. But also just to make it clear that it's the heavy industrial. So, I'm working – again, I'll work from Exhibit-1 of the staff report. I'll make a couple of corrections first off and that is on the title, on the first page, it should be M2 Heavy Industrial, not Light Industrial. It should be heavy.

Mr. Rabaino: Which one is that Joe? On the light industrial? M1?

Mr. Alueta: Yeah, it says M2. It's M2 Heavy Industrial. And then also development standard – and you probably should correct it on the first one too – is that I got mini setback, and that should be minium. There should be a U, M. If you look on the notes and exceptions for development standards, I'm missing a U, M on a lot of those. And then at the Maui Planning Commission, the Director agreed to add a utility facilities major as an allowed use. And so again in M2, I didn't do much except for reformatting, again, putting everything into a table format. I created a new section called special uses. Well, I created a section called accessory uses and structures. Again, creating the standardize uses instructions that you would normally see associated with allowed uses. Where areas where they have – under permitted uses, they had listed things as being a special use permit as approved by the County Council of the

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County, but conditional permits are approved by the Council, not special uses. County Special Use Permits are actually approved by the Planning Commission so there's a conflict there. So I clarified it, and so I made it as being a Special Use which is approved by the Planning Commission and not County Council so I just clarified that. I put all those special uses in one area so you can find what they are. And then I consolidated all of the development standards that were scattered in a couple of different sections and put it into one table format again.

The only other structural we might add or probably under the table format is uses allowed in the setback area, so there will probably be a table. But, no, right now, there are no uses allowed in the setback area because if you look at it, there's – the setback is zero for the most part. But it was pointed out that there is a potential that it could be adjacent so we would add uses allowed in the setback area and then in talking with my Director we would probably put fences, walls and, you know, ground signs, and those kinds of stuff that are typically found within your setback area – your mailbox would be allowed – so that would probably be added under development standards.

Mr. Rabaino: So Joe, in other words the zero are the same as adjoining – you mean from the boundary? From the boundary going inwards?

Mr. Alueta: Yeah. Correct. Normally it's zero, right, but some of these industrial – if the industrial area is –. If two industrial areas are abutting each other, they would be zero. But if the industrial area abuts – if the heavy industrial area abuts say the agricultural district, right, ag lots have a 15 foot, you know, 25 foot front and a 15 foot side, so therefore they would have to have a 15 foot setback if they abutted the agricultural district. So you would still want to have a fence along the property line, and so that would be within the setback. So we wanted to clarify that that would be allowed. So it's just one of those things that the way the code is set up, and this is the existing code that says zero or adjacent, so I did not change that at all.

Mr. Rabaino: Okay, Commissioners, any other questions regarding this subject matter? You've got one more, item no. 3, M3.

Mr. Alueta: Okay, and thank you Mr. Chair. M3 is again going to be 19 – it's going to be M3 Restricted Industrial. There are no zoned land. Obviously there's no zoned land of M3 that is yet to be determined by the community plan update as to what they want to do, if they do feel it. This gives both the community plan as well as the Council an alternative to doing a conditional zoning on an industrial area to restrict to commercial uses. Again this streamlines it so that if you are doing one of the noxious uses that does a special use permit, instead of having to continuing to get a renewal on a special use permit, you can just have the zoning of an M3 and be an allowed use. The M3 District again is intended for like a noxious uses, you know, dead storage, feed lots, stock yards, telecommunication towers, wood treatment plants, slaughter houses. But the key element is that it doesn't have that pyramiding effect where you say any use in the M1, or M2, or in the B2 District. So it doesn't allow for restaurants to be put in there. It doesn't allow for your retail shops to go in there or a K-Mart or a Costco. It has to be purely for industrial uses.

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But it doesn't mean that someone can't have an office for their building. It's an accessory use. And so one of the key unique things that we did was under accessory uses and buildings, we put office retail or indoor product display area, and then we limited it to 20% of the gross floor area not to exceed 1,000 square feet. And what this is aimed at is I had to talk to people who's businesses, at least in Maui County, who actually rents places. And so I talked to a few people and these are real people who have businesses and my architect BC Rock had – he had a manufacturing – he did granite – so he had a manufacturing storage yard out on Mokuele. And then he had to rent a retail space – or not retail – but he had another industrial place where he had his display where he displayed his finish product and sold his tile as well as other stuffs. And then he had an office upstairs where he did all of this architectural. So he needed like something like this, he felt, and he said that other people in the industry, and I talked to them is that where they need a base yard, they need an office, and they still want to do some retailing but they don't need to have a huge, a big retail area. They just need a place where they can meet clients and display the finish product, and then go out the back door and have a big, dead storage area, or big yard to store all of their stuff. And that was pretty much the typically and you'll see this happening in some of the industrial areas, the new industrials areas where they have been restricted on Waiko Road as well as in areas such as Earl Stoner's base yard out on Mokuele Highway. These kinds of operations are popping up where they have a very small retail. And this really protects them from having to compete against, like I say, a Costco or some higher end retail value or restaurant from bumping them out of their space or their warehouse space. So that's the intent of this whole area is to protect the truly industrial guys from being valued out I guess you could say from non-industrial type uses.

The development standards, you'll see, is a pretty generous. You know, you're going with the big area. We're allowing for really tall because you're going to have larger lot areas – normally larger lots. And let's see, so your setback again is the same. It's very similar or exactly the same as the M2, except we're going higher. You're going a little higher, up to, a maximum height of 90 feet.

Mr. Ornellas: Mr. Chair, a question for Joe.

Mr. Rabaino: Go ahead.

Mr. Ornellas: We've identified – I can't remember last year – we identified what a small energy system is. So would M3 be, if they were going to larger than a small energy system – if they were going larger – would that fit into M3 or –?

Mr. Alueta: Well, we're adding energy system major into the M2, so at M2 –

Mr. Ornellas: Oh, so it would be an M2?

Mr. Alueta: M2 or M3 would be allowed.

Mr. Ornellas: Okay, so windmills, the large, like the ones they have over on Maalaea, those

would fit into M2 or M3?

Mr. Alueta: Actually within the agricultural districts you're allowed, and a conservation district also. No, I think it's in ag, yeah. Ag it was allowed.

Mr. Ornellas: Okay, so, for those?

Mr. Alueta: Yeah.

Mr. Ornellas: So if this community wanted to change the designation from Ag to M3, they could do that? More work for you but –

Mr. Alueta: No, no. Remember, these uses, getting back to, you know, Planning 101 or whatever, the State designates lands, you know, conservation, agriculture, rural and urban. Okay? Urban areas is the area that the County can zone, so that's what this is. All of these uses have to be or should be within the State urban designated lands. There's are urban type use, not a thing. Rural and ag, the County and State has joint jurisdiction. Conservation, we can't touch. I mean, we can't, we technically have no jurisdiction over it, okay? So you wouldn't necessarily zone, one, because you would never be able to get a district boundary amendment to an urban. It would make no sense to urbanize the top of the mountain for windmills or anything like that. And that's the primary reason that the State Legislature when they amended the Chapter 205, they allowed for, in agricultural district, they allowed for windmills, and solar energy, yeah.

Mr. Green: Just because you showed us the map earlier Joe, where would the harbor activity show up? I see freight yard or something like that, but it always says railroad behind it.

Mr. Alueta: Where would it, the harbor facility?

Mr. Green: Yeah. I mean, I don't see it as a permitted use in M2 or M3 specifically.

Mr. Alueta: That's a good point. That would be a good comment to have, to incorporate like harbor facilities or something like that. I don't think it's unique to Lana`i, so that's a good catch. Again, this Code is old, so we like to try to correct it where we can. And we could add it to both the M2 and M3 Districts.

Ms. de Jetley: Joe, I have a question. Where do mortuary fit in? Because on this it says Department of Planning – Public Works was asking about mortuary should be added. So it should really be in the M3.

Mr. Alueta: I believe it's already allowed in the –

Ms. de Jetley: M1?

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Mr. Alueta: I think we considered it part of crematoriums which is a special use, excuse me. It's a special use in the M2. Let's see. That's a good point. We could add it. Mortuary could be added to one of the districts so I'm open to that as far as suggestions by the Commission.

Mr. Rabaino: Joe, can it be fitted into M2?

Mr. Alueta: Yeah, you can add it any where you want.

Mr. Rabaino: Because M3 is a little harsh yeah?

Mr. Alueta: Yeah, I don't think. I would say, you could add it to both if you wanted to see – if you felt it was appropriate in both categories, you could add it to both categories. Because again M3 does not have that pyramiding. So if you want to have a use that it's in M2 to be allowed in M3, you would need to state it specifically.

Mr. Green: But mortuaries wouldn't be something that would be in a B2 or B3?

Mr. Alueta: It probably is already. So if it is – I don't have my exact code, but I can double check that. But if it's allowed within those – I know that crematoriums are the only ones that would require a special use permit so –. And if it's allowed in the business districts, then it would be already allowed in the M1 or M2 by default.

Mr. Rabaino: Yeah but Joe if they going – okay, for just Lana`i, let's say the M2, Light Industrial Area, does it under the crematory as Alberta said, does that, is also adjacent to the cemetery that's going be within that area attached to it? Do you know what I mean? If you going to put it in M2, and then you're – what am I trying to say? You know, something like Nuuanu, like Valley Temple on Oahu?

Mr. Alueta: Yeah, I was thinking of that. That's the only one I know.

Mr. Rabaino: That whole area would be considered M2 because it's all going to be side by side right? The cemetery, the cremation and the burning of the ashes, and holding the funeral home and all that, all going being in one lot sort of speak.

Mr. Alueta: A lot of those areas are actually put within the State Special Use Permit and they're done that way. And so what happens is they get a Special Use Permit to do the graveyard or cemetery, and to have the crematorium or facility as an accessory to that facility. But like I say, it doesn't hurt if that's your comments. I mean, you bring up good points. If that the concern that, you know, you feel that mortuary should be, make sure that mortuaries are allowed in the M2 district, then that should be your comments.

Mr. Rabaino: Okay. Just to visualize, Joe, that we have the veteran cemetery up by Koele, and adjacent, just further away is the community cemetery. So as the thing expand, and let's say in the future they want to build a big unit up there so you can have viewing of your people and

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things like that, that would be classified at that area? Is that area still subject as – what is the word I'm looking for?

Mr. Alueta: Ag? Might be ag.

Mr. Rabaino: Ag area yeah, that zoning area, just that piece property up there for Lana`i. Because if you're looking at M1, would that fit – would that area fit under M1, just to get an idea?

Mr. Alueta: Well, again, you're separating two different things. One is the crematorium and mortuaries and graveyards. So the ones like say on Maui the mortuary and the crematorium are not part of the cemetery. They're in the, yeah, they're on a separate property, so they're in like, what do you call, they're either part of a church, you know. If you're a hongwanji, you know, something like that. Or if you are – of they're in the, as you indicated, in the commercial business or industrial districts already.

Mr. Rabaino: Okay. Thank you. Commissioners anymore? Green? Letty? You've been very quiet. Alberta, any more? John?

Mr. Ornellas: So the comments that Mr. Green and Ms. de Jetley came up with that it will be added to our list? Do we have to –

Mr. Alueta: I will make a note of it, and then if that's the wish by consent I'll include that as your comments.

Mr. Ornellas: Okay, so you need a motion? Well, you would want an approval by the committee?

Mr. Alueta: Yeah. I would like a motion, but if that's –. I can take it by consent meaning like if there's not objections to it, I can just added it. So I don't see any at this point. To add the one to make sure harbor, harbor facilities or transportation facilities as well as mortuaries are included. Okay. I'll add them to both.

Mr. Rabaino: Okay, Commissioners, any objections to that? None? So for the record, just add it in. Thank you Joe.

Mr. Alueta: Thank you.

Mr. Rabaino: Anything else you're going to discuss Commissioners before we have the public? Okay, Commissioners, anything else before I open it up? None? Okay, public testimony? Commissioners, anything else before I go to –? Okay, none. Okay, public testimony. Anyone want to come forward? Ron? Pat? Paul? Winnie? Clay? Okay none. Okay, I'm going to entertain now. Okay, we're going to close public testimony since none is going to testify. Joe?

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Mr. Alueta: Hopefully I can get a motion to approve, or recommend approval, of the proposed bills by the Planning Department with the changes to adding to M1 and M2, mortuaries as well harbor facilities.

Mr. Rabaino: Commissioner Green?

Mr. Green: I make a motion to recommend approval of the proposed three bills dealing with M1, M2, and M3 zoning with the –. I'd like to add one if I can, the language on antennas et cetera, et cetera, being a little ambiguous. In addition to what is the proper zoning for – or adding the category of harbor facilities and mortuaries.

Mr. Ornellas: I second.

Mr. Rabaino: The motion is made by David Green to and amend and include, for Joe to add in for the M1, M2, M3, and second by John, Commissioner John Ornellas. Discussion, Commissioners? Call for the vote. All those in favor, say aye.

Planning Commissioners: "Aye."

Mr. Rabaino: Any opposed? None. Congratulations Joe.

Mr. Alueta: Thank you.

It was moved by Commissioner David Green, seconded by Commissioner John Ornellas, then unanimously

VOTED: to recommend approval of the proposed three bills dealing with M1, M2, and M3 zoning, and adding the language on antennas, et cetera being ambiguous, and adding the categories of mortuaries and harbor facilities to M1 and M2.

(Assenting: Stanley Ruidas, Leticia Castillo, David Green, John Ornellas, Alberta de Jetley

Excused: Shelly Barfield, Matthew Mano, Roberto Hera)

Mr. Rabaino: Okay, I going take a 10 minute break so we can stretch our legs a little bit. Thank you.

(The Lana`i Planning Commission recessed at approximately 7:41 p.m., and reconvened at approximately 7:55 p.m.)

H. 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**

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October (Commissioners John Ornellas/David Green)

Mr. Rabaino: Meeting come to order. It's 7:54 p.m. for the record. Continuation of the Lana`i Planning Commission. We are in, let's see, Item-H. No, excuse me.

Mr. Ornellas: Mr. Chair? In the beginning of our meeting, we changed our agenda, moving (G) to (K).

Mr. Rabaino: Correct.

Mr. Ornellas: Alright, so the next thing on the agenda is (H).

Mr. Rabaino: Right, Other business. Okay. James, are you ready on the floor? You're next. Under (H), Other Business. No. He's not up yet. Yeah. So (J) when move to (K), and (K) moved up into (G) spot. The orientation when move down to (K). And (K) moved up to regular meeting date, June 15th. But right now we're on (H), Other Business, under the Lana`i Planning Commission's LWAC representatives to provide a brief update on the Lana`i Water Advisory Committee held in October.

Mr. Ornellas: Mr. Chair, the LWAC, I'm the representative representing the Lana`i Planning Commission on LWAC. I think I went through most of the information that is before LWAC at this time. We're hoping for a speedy approval of the Lana`i Water Use and Development Plan through the Committee, the Water Committee, Mr. Victorino's committee on the Maui County Council, and then adopted by the Maui County Council on the Whole. So I will keep you informed, and keep the rest of the members informed as the progress of that, including the little problem that we're going through right now. Alright?

Mr. Rabaino: Okay, thank you John. Commissioners, any questions for John?

Mr. Green: Excuse me. I don't have a question. I have . . . (inaudible) . . . I do note that I actually did give an update on the October meeting in November or December. John wasn't here and so we did have one last year.

Mr. Rabaino: Okay, thank you. Anything that would now interest that we should be abreast of or informed of? None. Okay. We're going to move to item-I, Unfinished Business. Number one, discussion on amendments to the shoreline management.

Mr. Ruidas: Chair?

Mr. Rabaino: Go ahead.

Mr. Ruidas: We suppose to look at this if Item-E was ahead of Item-I. So we going backwards on this one, this item.

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Mr. Rabaino: Okay. What do you mean by backwards?

Mr. Ruidas: If you look at the transmittal the one we had today.

Mr. Rabaino: The one that says May 11, 2011?

Mr. Ruidas: Under the SMA – I requested this.

Mr. Rabaino: Okay.

Mr. Ruidas: But according to the Director and Clayton, I believe, we were going to discuss this after Jim gives his presentation.

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

Mr. Ruidas: We need to know what the SMA procedures are, so Jim was suppose to give us the workshop on that. But since we moved it after the fact, now we have either amend this to go later or –. Can we do this later, Chair?

Mr. Rabaino: You want to do the unfinished business, item no. 1, the SMA map for later? Okay. Unfinished, one. So we're going to move to item number two which is the status of the No Ka O Grindz and Richard's Market permit. Joe? What is his name? Clayton. Sorry.

I. UNFINISHED BUSINESS

- 1. Discussion on amending the SMA maps for Lanai**
- 2. Status of the No Ka O Grindz and Richard's Market permits.**
- 3. Email dated December 9, 2010, from Stanley Ruidas, Vice-Chair, providing his comments and questions to the November 17, 2010 memo from the Planning Department.**

Mr. Yoshida: Thank you Mr. Chairman, members of the Commission. We were informed that the building permit for No Ka O Grindz was issued on April 7th, so they can – building can be undertaken. And the building permit for Richard's Market was issued on April 15th, so building can be undertaken.

Mr. Rabaino: Okay, so No Ka O, just to repeat, April 7th. So they got their permit, right?

Mr. Yoshida: Yes, they got their building permit.

Mr. Rabaino: To move forward. And Richard's Market, for the record, their permit is April -

Mr. Yoshida: 15th.

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Mr. Rabaino: 15th, and they can also move on to their project too?

Mr. Yoshida: Yeah, buildings can be undertaken.

Mr. Rabaino: Okay, thank you. Commissioners, any questions on that one?

Mr. Ornellas: Now Mr. Chair, for, on our next meeting, I think – again, you're talking about July is our next meeting? Is that what –

Mr. Yoshida: No, if you look on the agenda under June 15th.

Mr. Ornellas: June 15th. Okay, in our next meeting, can we invite the owners of No Ka O Grindz and also a representative from the Company to give us updates? Because No Ka O Grindz may have gotten their permit in April 7th, but I still see a lot of digging around the building. I'm a little bit skeptical about that fact. And then I want to know the update on the permit – what is Castle & Cooke is doing and what's their schedule is for Richard's. So can we send them an invitation to both of them?

Mr. Yoshida: If that's wish of the Commission. We'll note that the primary items on that agenda is going to be the Council Resolution 11-24 on Short Term Rental Homes.

Ms. de Jetley: Mr. Chair?

Mr. Rabaino: Go ahead.

Ms. de Jetley: May I suggest that if representatives from No Ka O Grindz and Richard's come that they be placed first on the agenda as soon as we open so that they can do their thing and leave, and not sit through the entire meeting waiting to be heard. So if they could be placed first on the agenda, after we open.

Mr. Rabaino: Commissioners? Is that a motion or just a –

Ms. de Jetley: No, it's a suggestion.

Mr. Rabaino: Suggestion, okay. Commissioner Green?

Mr. Green: I'd like to understand what the purpose is John? I didn't understand what you are requesting.

Mr. Ornellas: Well, Mr. Yoshida said that the permits have been issued to No Ka O Grindz and to Richard's. And if you drive past Ninth Street where No Ka O Grindz is going to go, they're not open yet, and there's a lot of work, looks like plumbing work, that's sewer work, around that building. Is that where the grease –? Is this for a grease trap? So how could they get a permit if the grease trap isn't even installed yet? So I just want to get it from the horse's mouth, so that

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way if they do have any concerns with the County, at least the County people are here to listen. And also, I don't exactly know what the whole Castle & Cooke, as far as what Richard's, what permit are they talking about for Richard's Supermarket.

Mr. Rabaino: The Richard's Supermarket is three doors behind that they want to use for storage, if I remember correctly. No?

Mr. McOmbler: . . .(inaudible) . . .

Mr. Ornellas: Yeah, so I'd like to know more about that permit, and find out what their schedule is for that. Getting permits and doing something sometimes takes years. So, but I definitely want No Ka O Grindz to be here to tell us exactly what's going on with their . . . (inaudible) . . . and if we can help them in any way, that would be great on our part.

Mr. Rabaino: Okay, if there's no objections by the Commissioners to place No Ka O Grindz and Richard's Market first on the agenda, opening of the agenda. No oppositions? No oppose? Everybody in agreement with that suggestion? Do I hear a motion for it?

Ms. de Jetley: Mr. Chair, I move if No Ka O Grindz and Richard's would like to appear before us, I move that we place them first on the agenda in our June meeting.

Mr. Rabaino: Anyone second on the motion?

Mr. Ornellas: Second.

Mr. Rabaino: So be it that the No Ka O Grindz and Richard's Market be placed on the agenda, at the June agenda, if that's correct. And the Commissioners has all agreed. Take a vote. All those in favor say aye.

Planning Commissioners: "Aye."

Mr. Rabaino: So be it.

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

**VOTED: to invite No Ka O Grindz and Richard's Market representatives to the
June meeting, and be placed at the beginning of the agenda.**

Mr. Ornellas: So Mr. Chair, so will we –. Do you want us, or I can do it. I can go and talk to Grindz and ask them to attend our meeting when we get our date and the agenda. Or are they going to get invited by the Planning Department?

Mr. Rabaino: Yeah, I was thinking on the Planning Department to give them notice that they're

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invited for the June meeting, to attend the Planning Commission, to express how their status for their permits is proceeding. Would that be fine Clayton?

Mr. Yoshida: We can do that Mr. Chair.

Mr. Ornellas: So Castle & Cooke and No Ka O Grindz?

Mr. Yoshida: Yes. We can do that.

Mr. Ornellas: Thank you.

Mr. Rabaino: Thank you very much. With that said, we move on to item number three, e-mail dated December 9, 2010 from Vice-Chair Stanley Ruidas comments and questions to November 17th memo from the Planning Department. Stanley, will you please enlighten us? Thank you.

Mr. Ruidas: Okay, I wrote this back in December with specific dates and minutes areas from our minutes dating back to the May of last year's Planning Commission meeting which was held in the Rec Center. And this was dated, I guess in December, which was around the transition time where Kathleen Aoki was switching over, and then, I guess, the new Director took over in January. But from that time we didn't have – I didn't have a response, so that's why we got it here and I was pushing to get a response on this. Basically Clayton knows about it, and I just want to hear any news or comments about this?

Mr. Yoshida: I think Jim probably can cover in his presentation how the SMA boundaries can be amended, the process for doing this.

Mr. Ruidas: And that was one of my main thing was about changing the SMA from – or amending the SMA from back – a year ago. So I've been trying to get this thing done. Basically if you look on the east side of Lana`i, or even the rest of the island, you've got a lot of archaeological sites that are covered in this CZM for protection and also in the HRS. And I feel that by asking the Planning Department where is the, what you call, the boundary, the existing boundary in the SMA, I hear 300 feet, but I don't see it in HRS. And some said, the other meeting, oh, it's that little thing, the little line. So I say, how big is that little line? Oh, 300 feet. So what I was looking at because of the numerous times that the shoreline changed and get all the erosions and stuff, I wanted to see if we could move to propose an elevation height instead of a height – I mean, distance from the shoreline because we've got a lot of cultural resources that, you know, got to be protected for the future generations and kids and all that. So that's part of the reason why was I looking at the SMA changes. And also to point out to the Planning Department what was left from December that didn't follow up question I asked them. And a lot of them was to do with, like when we had our drought on the, I think it was the 60 acres below the school when, you know, that was a potential fire hazard, dumping of trash, and no one gave an answer. And to me that was a County liability but no one took responsibility, so that was part of my letter. And if you guys read it, then you can see more of it.

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Mr. Rabaino: Okay, Clayton, would you care to respond to his letter for Stanley and other Commissioners? Or you want to go . . . (inaudible) . . .

Mr. Yoshida: Well, I guess the response we would make the presentation relative to his question about amending SMA boundaries with respect to the County's 70 plus acres for your housing project. In talking to the Director, or who is now the Director of Housing and Human Concerns, Jo-Ann Ridao, you know, they are trying to work with the Police Department. They are kind of aware of concerns about littering and so forth on the property. They will be here next week with the Land Use Commission to try to urbanize those 73 acres to move forward on the County affordable housing project.

Mr. Rabaino: You fine with that Stanley? Okay. The other, over here on the next page, yeah – well, I'm going back on the first page. The SMA shoreline management – the one he was talking about, the height elevation – what I was referring to, from reading this, you know, for tsunami and flood zones, what is the indication from, like he said earlier, 300 feet? Is it from the shoreline going upwards to inland? Or is from the high water mark going up to the inland? Which measurements are you using?

Mr. Yoshida: The shoreline is typically defined as the upper reaches of the wave, so it's from that what is delineated at the shoreline, 300 feet, mauka from that. I guess there was an opinion back in 1975, a legal opinion that, the boundary has to be at 300 feet from the shoreline. The County since adopted SMA maps which for Maui County was in 1979. And in some areas like Manele it's greater than 300 feet from the shoreline. But those were adopted by the Maui County Planning Commission in 1979.

Mr. Rabaino: Okay with the two maps that was provided by Leilani, the other one that is missing on this map is – okay, you have Kaunalapau there, yeah? – the east side. The east side is missing, yeah, Manele Small Boat Harbor? The Keamoku side yeah? Federation, we don't have that portion. That's the portion we're kind of interest too. What is the zone of the SMA area? If you have any updated or –?

Mr. Ruidas: I think what we should do is let Jim go through his presentation. And since we moved the discussion item from (I) to after then we can ask some more questions.

Mr. Rabaino: Okay. Mr. Ornellas?

Mr. Ornellas: Yeah, before we get to the orientation, as part of our handouts we got this memorandum from the Department Planning by William Spence, Planning Director. And this was a, I guess, Manele Bay Hotel is looking for an extension to the SMA time for building the tents and stuff down at Manele. Now I understand and it's their rights to submit written notification for an extension, but to provide, to agree to the extensions, and also delete one of the conditions of this, of the SMA, I think should becoming to us rather than the Director take it upon himself to approve this stuff. I mean granted he probably has the authority to do so, but things like this erodes our confidence that we fought long and hard for the conditions of Hulopoe

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Beach Park and the surrounding areas, and to eliminate a condition of the original permit, I think, he should have routed it back to us and then we should have a discussion about this. So I'd like to put this on our next agenda and have Mr. Spence come and tell us why he decided that this was okay and not come to us other than an already approved and we're on the back side as far as getting a copy.

Mr. Yoshida: Yes, I think Jim probably will go over in his presentation. But the Planning Director is the authority for SMA Minor Permits. This was a time extension for a permit that was original granted in 2002. So there was a prior extension to this one because it's been nine years since the original permit was an SMA Minor permit was granted. But if that's the wish of the Commission.

Mr. Ornellas: Mr. Chair, I would like to put this on the agenda for next meeting, and have Mr. Spence show up and tell us why he thought it wasn't important to bring this before the community and the Lana`i Planning Commission before approving it since some of the – since a condition was removed from the original permit.

Mr. Rabaino: Okay. Commissioners, any discussion on that? That we should have the May – let me read it – May 16, 2011 for the Special Management for the Minor Permit for the installation of temporary tents at Manele Bay. So William Spence to be here and plus we need to meet him since he's the new Director too so it's more justified that he comes and visit us and have this on the June agenda.

Ms. Castillo: Was that a motion John?

Mr. Rabaino: Is there a motion for this? Did you make a motion John?

Mr. Ornellas: I'll make that motion that this be put on the next agenda along with Mr. Spence being present at our next Planning Commission meeting in June.

Mr. Rabaino: Is there a second to the motion?

Ms. Castillo: Second to that motion.

Mr. Rabaino: Okay, calling for the vote. All those in favor say aye.

Planning Commissioners: "Aye."

Mr. Rabaino: So moved. The ayes have it. There's no opposing.

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

VOTED: to place the memo dated May 16, 2011 for the Special

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Management for the Minor Permit for the installation of temporary tents at Manele Bay on the June agenda, and to have Mr. Spence show up and tell the Commission why he thought it wasn't important to bring this before the community and the Lana`i Planning Commission before approving it since a condition was removed from the original permit.

Mr. Ornellas: Now this wasn't on the agenda, yeah, so this is considered as new business? I didn't see. I mean obviously there wasn't enough time to send this to us so it was presented at this meeting as a handout so that's another that I don't particular care for. They should have all of their information presented to us in a timely manner and not show up at the meeting and finding new topics.

Mr. Rabaino: Joe? Corporation Counsel, is that fine what we just what we just did? Made a motion to move it for next month meeting that Mr. William Spence, the Director of the Planning Commission, to be present, and to introduce himself to the existing Commissioners? Is that fine? Thank you very much. Clayton?

Mr. Yoshida: Yes, I'll convey that message to the Planning Director.

Mr. Rabaino: Okay, Jim, you may start your presentation. Thank you.

J. DIRECTOR'S REPORT

- 1. Open Lana`i Applications Report.**
- 2. Streamlining Ordinances**
- 3. Agenda items for the June 15, 2011 Meeting**
 - A. Public Hearing on the following:**
 - 1. MR. WILLIAM SPENCE, Planning Director transmitting Council Resolution No. 11-24 referring to the Lanai, Maui, and Molokai Planning Commissions containing a draft bill amending Title 19, Maui County Code, relating to Short-term Rental Homes. (G. Flammer)**

Mr. Yoshida: Mr. Chairman, we probably have to go through the Director's Report as they had amended the agenda and moved the orientation to Item-K or whatever it was. Open Lana`i applications report, if you have questions on that. Streamlining ordinances, the Commission did deal with the Department's proposals for various streamlining bills in January of 2010. Those were recently passed by the County Council in April of this year, and so just to kind of see the fruits of your labor.

Mr. Ruidas: Excuse me Clayton, we don't have the open applications report.

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Mr. Yoshida: We can circulate the ordinance to you, but again, these were passed by the Council on April 15th. Your next meeting is scheduled for June 15th. We have a time sensitive item which is the Council Resolution 11-24 which is in your packet relating to short term rental homes. Again, this is a Council Resolution so Commissions have a 120 days to get their recommendations to the Council. This was sent to us in late March. We also have a letter from Joshua Stone who is the Chairman of the Maui County Charter Commission to address the various boards and commissions, asking for any comments or proposals by June 30th. So that's another time sensitive matter.

Mr. Ornellas: Mr. Chair? Clayton, can –. So the Chair will be here for the Charter Commission to explain or is he just asking for?

Mr. Yoshida: No. I guess if the Commissioners – if the Commission has any proposals for Charter amendments that will be the time to discuss it and to come up with any kind of transmittal to the Charter Commission.

Mr. Ornellas: The Charter Commission. That's why we're here. It's a mandate from the Charter Commission – the Maui County Charter. I would like to get the Chair or whoever is in charge of the Maui County Charter as far as who can explain – you just heard Jerry kind of roll his eyebrows and know what exactly it is. I mean, as part of his homework, he should read the Charter before the next meeting. But we should also have a Charter member, that somebody that knows about, that answer the questions that we may come up with or even the audience may come up with. And also it would be nice to introduce our representative, or the Lana`i representative on the Maui Charter Commission. I think that's Kay Okamoto. But I think it would be nice to have her here too. I know she's very knowledgeable about Lana`i, but, you know, she could also hear some of the questions and ideas, so she should be also invited to our meeting. Thank you.

Mr. Rabaino: No objections to that. Yeah, so we invite Sally. I mean, Kay Okamoto.

Mr. Yoshida: Those will be the four items you want –. The No Ka O Grindz, Richards Market, Council Resolution 11-24, any kind of amendments you want to propose to the Charter, and that SMA.

Mr. Ornellas: So your plane is going to have to go back a little bit later. Maybe you guys can stay at the hotel, yeah, for the night?

Mr. Yoshida: Well, we wish our budget would allow that.

Mr. Ruidas: No forget the open applications report.

Mr. Ornellas: Opens applications report.

Mr. Ruidas: We didn't receive it today.

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Mr. Yoshida: Okay, we will submit an open applications report at the next meeting.

Mr. Ornellas: See what happens when the County doesn't have regular scheduled meetings every month. I mean, how many meetings have we had in the last six months? One? Two? So this kind of stuffs kind of builds up.

Mr. Yoshida: I think this is your second meeting of the year. Anyway, moving on, back to Item-K, we do have an orientation – oh, it's Item-G which became Item-K. We do have your orientation workshop number one, and Jim Buika will be doing your workshop on Special Management Area Rules, Shoreline Area Rules, and with that, how to amend the SMA boundaries. So Jim.

G. ORIENTATION WORKSHOP NO. 1

- 1. Special Management Area Rules**
- 2. Shoreline Area Rules**
- 3. Long Range Planning Division**
 - A. General Plan Update**
 - B. Community Plan Update**
- 4. Discussion of Boards and Commissions Booklet Distributed by the Office of the Corporation Counsel**
- 5. Ethics**
- 6. Recent U.S. Supreme Court decisions on takings issues.**
- 7. Public Access Shoreline Hawaii (PASH) v. Hawaii County Planning Commission**
- 8. Hawaii Supreme Court Decision regarding the Topliss case (SMA)**
- 9. Hawaii Supreme Court Decision in the case of Paulette K. Kaleikini v. Laura H. Thielen, in her official capacity as Chairperson of the Board of Land and Natural Resources, Board of Land and Natural Resources, and the Department of Land and Natural Resources.**
- 10. Other Relevant Hawaii Supreme Court Cases**

Mr. Jim Buika: Thank you Clayton. Thank you Mr. Chair. Commissioners. My name is Jim Buika with the Planning Department. And I lost my focus. I think the camera – there we go. Okay. It's called cockpit error right?

So an outline of my presentation, I will first go over the Coastal Zone Management Act (CZM), HRS 205A which is the State law which authorizes the Lana`i Planning Commission roles under the Special Management Area (SMA) Rules for the Lana`i Planning Commission, Chapter 402, and also the Shoreline Setback Rules and Regulations for the Lana`i Planning Commission, Chapter 403. And I have one slide on concluding remarks. So the first topic at hand, Coastal Zone Management Act is a Hawaii Statute enacted and codified as HRS 205A in 1977 and approved in 1978 here in Hawaii, and it is the State's resource management policy umbrella. It is our environmental law for the entire State of Hawaii. And it manages all of the Hawaiian

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Islands, and it authorizes the Special Management Area, and the Special Management Area Permit system and the Shoreline Setback Variances.

So looking at the Planning framework. Under the State constitution, the Coastal Zone Management law is on the right hand side there, and it is parallel with the zoning law, the Land Use Commission, and the Hawaii State Planning Act, and it forms our planning framework. And under the Coastal Zone Management Program we have the Special Management Area Rules and the Shoreline Rules – if I can get the pointer going here – and also authorizes the Lana`i Planning Commission to review Major SMA permits and variances.

So looking at the Special Management Area, it is a subset of the coastal zone, and it is depicted in yellow. And you can see it's a very thin band around the island, mostly along the coastal roads here. And it is minuscule compared to all of the island obviously. There is some substantial SMA area down in Manele Bay area. So that's the current SMA area that is managed by your rules. And again these are the rules and the shoreline setback rules. So the CZM Act authorizes the County to develop and administer these rules. So this is our permitting system. And the purpose and the goal of the SMA rule is to create a management tool for each of our island. And through a special set of controls which is our permitting process to ensure that allowable developments or designs is carried out in a manner consistent with the State law, the Coastal Zone Management Act objectives and polices, and certain Special Management Area Guidelines. I have two slides on those. So the goal of the SMA rules is really to further the policies of the State which is preserve, protect and where possible, restore the natural resources of the coastal zone.

So looking at these objectives and policies that the State law refers to, there are 10 of them, and I think you're fairly familiar with each of these. It talks about the resource on the left and then the objectives. The recreational resource is to provide a coastal recreational opportunity acceptable to the public. Historical and cultural – Stanley was talking about that earlier – to protect and preserve and restore natural and manmade Hawaiian and America cultural and historical resources. So that's a major focus of the law. Certainly scenic and open space – preserve that. Minimize adverse impacts of the coastal eco system. We want to, we definitely want to promote economic uses of the coastal zone, but we want to co-locate those coastal dependent facilities such as harbors and minimize the negative effects as we do it. Coastal hazard is becoming more and more a major focus of the Coastal Zone Management Act especially with sea level rise, such hazard as our recent tsunami, et cetera. So we want to enhance public safety and reduce the risks on the structures that are in the SMA area, in the shoreline area along the coastline. We want to manage the development, streamline our permit process, communicate with the public and have that participation through the SMA public hearing process to manage our coastal resources and minimize our hazard. Public participation through this program, we have an opportunity to educate the public, make them aware of the environmental sensitivities of the coastline. And certainly beach protection and access, and marine resources – we want to conserve and sustain these in a balanced ways. So these are the objectives of the Coastal Zone Management Act that are our overarching environmental review for any SMA permit.

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So looking at our rules specifically, the rules provide authority to your Commission as well as the Planning Director. So any proposed action within the SMA requires an assessment by the authority, and we've divided up the authority into the Commission which looks at Major SMA Use Permit, and the Director is the authority for a category of SMA projects that are exempted as well as Minor permits, as well as Emergency Permits. Yes, this next slide will explain that. His question was why is it called a Minor Permit. So to get into the Lana`i Planning Commission's role, the Planning Department, when a permit is submitted to us within the SMA, we first assess whether a proposed activity is defined as development, and certainly that's at the State level, the CZM law. The coastal zone management law defines development as pretty much any action, any development, any structure, any action that we do such as grading, is a development. However, under the State law they realized that anything we do, it is a development, obviously, we're developing something. But what we have done is we've come up with 16 categories of exemptions, and I'll go over some of those, the main exemption categories. So many of the common development activities that have minimal environmental impacts are considered not development. And there apart a little bit more by dollar value, and this is where we get into the category of a permit that I'll go over a little bit in a slide or two.

So a project if it's deemed a development and it has a valuation greater than \$125,000 then it comes before this body, the Lana`i Planning Commission, as a public hearing and it can be conditioned. If it's less than \$125,000 and it is a development, it stays with the Planning Department, and it is authorized as a Minor Permit and can have conditions but without a public hearing process. So that's the difference between a Major and Minor. There's a public hearing and no public hearing. The Lana`i Planning Commission during the public hearing looks at the Major Permit, and the Director authorizes a Minor Permit with no public hearing. And every permit when it comes to the Planning Department is, in the SMA, is assessed via 12 evaluation criteria, and I have a slide that actually talks about those 12 criteria. And they're in your rules here under Section 12-402-12E. And our objectives, through the assessment process, is to minimize the effects to the environment, as well as, developed in an economically feasible way. And there are proposed guidelines through the State law that carry into your SMA rules, and I'll go over those.

So these SMA guidelines, I have two slides on these. It's first to ensure that we have adequate access to publically owned beaches, recreational areas, wildlife and natural reserves. No development will hinder that. Adequate and properly located public recreation areas. Adequately controlled, managed and minimized impacts from pollution and runoff. Minimize adverse effects to water resources, scenic resources and recreational areas. And minimize risks of proposed structures from coastal hazards. So in our assessment we look at each of these areas to try to –. You can see the words adequate and minimize are all underlined there. So we can't – obviously we can't completely get rid of impacts, but we try to minimize. Again, the SMA guidelines seek to minimize these things, and this is part of your role. We don't want to dredge, fill or alter coastal areas, reduce the size of beaches, create impediments to public beach access and coastal recreation. We want to minimize loss of coastal views. Minimize adverse effects to water quality, fisheries, wildlife and habitat, and loss of existing potential agricultural uses.

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So really the bottom line through the Coastal Zone Management Act and through these SMA guidelines and our Lana`i Planning Commission SMA Rules, what we're doing through the permit process is we're seeking to minimize where reasonable adverse impacts to the environment. So that's the goal of the program.

And these are the criteria in your rules that every planner whenever we get any type of SMA permit look at that and evaluate the project against. So are we losing? Are we going to have an irrevocable loss of natural or cultural resources? Obviously we don't want to do that. If it significantly curtails the range of beneficial uses of the environment. If it conflicts with any other State long term environmental policies and goals. If it affects the economic or social welfare of the community. Involves secondary impacts such as needing more schools, or more roads, or more infrastructures with the big development as an example. Having a cumulative impact. Does it have a substantial effect on a rare or endangered species of an animal or plant or it's habitat? Is it contrary to all of our zoning, our State plans, our General Plan, subdivision ordinances? Will there be a detrimental effect on air or water quality or noise levels? Does it effect environmentally sensitive areas including hazard zones, coastal waters, et cetera, tsunami zones, shorelines? Does it substantially alters the natural land forms and existing public views along the shoreline? And then the catch all there would be contrary to the objectives and policies to the Coastal Zone Management Act. So this is the criteria that we use as planners to evaluate a project. And many, many times a project does violate some of these areas. And like on a Major Permit, one that comes to you – or even a Minor Permit or even as Exemptions – if there's like, number one especially, if there's a potential impacts to burials or iwi or any cultural resource, we make sure that the State Historic Preservation Division (SHPD) gets a say, gets a review. And if there are any requirements from SHPD on that project, we hold up that permit until the cultural resources are mitigated to the best of our ability such as having an archaeological monitor onsite for any ground alteration. So that's an example. Obviously environmentally sensitive areas, we'll look at the flood plain, the shoreline et cetera. I'll talk a little bit about that. So even though a project comes in to us, it may take a while, but it's altered to minimize any existing impacts that we pick up.

So any questions there so far? That's just kind of the overview of the law. And I'll just go through quickly the types of permits that we have, again. I did mention them. The highlighted one here is the one that comes to you. Any project over \$125,000 requires a public hearing. Owners within 500 feet are notified by certified mail. And you can condition the project to avoid, minimize and mitigate impacts. Minor permits and emergency permits, you are both notified at the next meeting here, but they are determined by the Planning staff via the Planning Director.

A type of an emergency permit. What might be an emergency permit to an applicant really is not an emergency. It's usually not an emergency permit according to your rules. This is a Maui example of the Kahana Sunset AOA where the beach – we had big waves and it undermined the lanai connected to the building. It was shut down. The residents were moved out, and you know, obviously, we had potential structural failure. It was just sitting on a big sand pile, an old beach dune. So we can authorize or the Director can authorize an emergency permit to protect life and property. And then we get the Lana`i Planning Commission involved at the next

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possible meeting to inform them of what's going on, to get your blessing on the project, and update you on what's going on.

Other actions on permit applications – there are exemptions that are done by the Planning Director. These are designed as not development such as a single family home. Again, there are 16 of these exemption categories. But it's only exempted – you can see the underline there – it's only exempted after an SMA Assessment is completed. We go through those 12 criteria, and that the proposed action is determined to have no adverse impacts on such things as drainage, view plains, archaeology, historic, natural and coastal resources including cumulative impacts. So we often work with the applicant to minimize those impacts before we would exempt the project. And then denials of projects can be done both by the Planning Director or the Lana`i Planning Commission if they're inconsistent with State Land Use, General Plan, Community Plan and Zoning – some of the topics that Joe was talking about earlier – or if it has an adverse impact on coastal resources. And we have in, with the Maui Planning Commission, last year, we had a few of these denials. And then again there are – there is a reporting requirement to you and also once we report them to you on the Director's Report, it can be challenged within 10 days after the Director's decision.

So quickly just on exemptions versus permits, and I'll go over the shoreline rules very quickly. An SMA exemption cannot have conditions because it is exempted from the SMA permit application process, and there are 16 categories of these. And a proposed action may be exempted if it includes, as I mentioned before, measures to avoid, mitigate or minimize adverse impacts. Again an example that I already mentioned is the approval from State Historic Preservation Division for archaeological monitoring during all ground altering activities.

In contrast an SMA Use Permit may contain formal conditions to avoid mitigate or minimize adverse impacts on coastal resources, and all of you are familiar with these standard project conditions and project specific conditions. Some of these common exemption categories that are in the State law, they're not in your rules so they are at the State level, single-family residence not part of a larger action such as the subdivision; structural and non-structural improvements for single-family residences; repair and maintenance of roads and highways that are already existing; routine dredging of streams as maintenance; repair and maintenance of underground utilities; repair and maintenance of existing structures; and demolition of some structures. So these are fairly obvious. They're fairly logical. You can see that if they do have good mitigation in them, they won't have too much impact on the SMA.

Quickly, just the shoreline setback rules and regulations for the Lana`i Planning Commission, Chapter 12-403. Again, these are addressing a subset of the objectives of the CZM Act, the coastal eco systems, coastal hazards, beach protection and access, also marine resources. And again these fall in to if we do do things in the shoreline area that are not allowed, there are some allowances in this setback area, but it would require a shoreline setback variance by the Lana`i Planning Commission. And the objectives are I've kind of summarized them to make them logical. You want to move out of harms way along the coast. Plan for obsolescence of structures in the shoreline setback area over time. Ensure the shoreline access and limit the

types of structures and activities in the shoreline area.

Again there are some administrative things that the Planning Director and planners do. We determine the setback line and we can approve some minor activities in the setback area that are allowed by your rules. But the variance is the main one that would come to the Lana`i Planning Commission. Any shoreline setback variance requires an environmental assessment, it requires a public hearing and notification involved. Homeowners or landowners around the project requires a State Certified Shoreline. And there are some denials of activities in the setback area both by the Planning Director and the Lana`i Planning Commission. Things that would harden the shoreline, prevent sand transport, and basically encroach and present problems with beach processes.

And there are a couple of permissible activities. Your rule allowed minor structures and activities at a dollar value of less than \$20,000, that don't impede the natural movement of the shoreline and don't alter the existing grade. So those are kind of your criteria that you set up. And any new structures have to be above base flood elevation, and the County is hold harmless, with no liability, and it cannot harden the shorelines. So if something that does harden the shoreline as a seawall comes to you as the shoreline setback variance. So those would not be allowed.

And just to sum up, there are some variances that can be granted, and I'll just list all of these and you can read through them. Landscaping, crops, aquiculture, drainage improvement, boating harbor facilities, water sports facilities, public facilities, and some private facilities where improvements are clearly in the public's interest. And then private facilities that may artificially fix the shoreline provided that erosion will cause a hardship such as if a bluff is failing and a house is going to fall into the ocean. But we don't want to adversely affect the beach processes, artificially fix the shoreline, and the applicant needs to prove that there's a hardship if that variance is not approved. There are some mandatory variance conditions. And when we get there, we put these in and present them to you. Again, it's allowing the access, minimizing impacts.

How do we determine a shoreline setback area? We have shoreline rules in place. That setback area is done by an average lot depth. We want to move structures out of the –. When we develop, we want to move them back. And I guess I have a quick slide on that to conclude. I'll show you the picture here. We do that by a calculation. Usually the planner would have that before it's presented to you. But if the lot is a very shallow lot, less than 100 feet, we have a minimum setback of 25 feet, up to 150 feet. The setback can have step setback from – like 101 feet, the setback becomes 40 feet, up to 150 feet. Anything larger than that, deeper than that, is 25%, up to a 150 foot setback. And then there's a simple arithmetic calculation for calculating what the average lot depth is. We take three points along the depth. If the wavy line is the shoreline, then we add them up and divide by three, and then we use this calculation to come up with an average lot depth. That's usually done for you.

So I'll just conclude by saying that Lana`i shorelines provide for tourism, economic benefits,

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recreation, fishing, food, cultural practices, and our quality of life. Our shoreline is threatened with coastal erosion that we know is accelerating. And our shoreline and coastal erosion processes, they are a system, and we do have a UH Sea Grant expert, coastal expert, Tara Owens who provides support to our staff to look at planning decisions from the sound scientifically neutral point of view, from the scientific point of view, to advise us when we need it. And again, just to repeat, in conclusion, the last bullet there, through the Coastal Zone Management Act, and through the SMA Guidelines in the Act, and through your Rules for the Lana`i Planning Commission, we seek to minimize where reasonable adverse impacts to the environment. So those are my comments about the SMA Rules and the Shoreline Rules, and here are our resources. And I did handout these slides to all of you, and thank you for your attention. If you have any questions or comments, I'd be willing to entertain them. Thank you. I did you give you a handout. I think Leilani did handout all of these slides to each of you. Any questions?

Mr. Green: Dave Green. I have a question. Where would harbors fit into this? I think harbors are generally controlled by the State, but they're obviously in the coastal zone.

Mr. Buika: Harbors are often –. What we do is obviously all of the infrastructure leading up to the harbor is on land and is part of the Special Management Area, so it would be again be the – all these support or the infrastructure that leads to harbor is evaluated under an SMA permit. And again would mostly likely would come to you as a development for your review as part of the –. So it's kind of a multi-jurisdictional permit. Usually, actually, it's probably Federal also. Okay, yeah, so we do review those and then the offshore is a State permit. You look puzzled.

Mr. Green: If you take any development at a harbor, is that not covered by any of this?

Mr. Buika: If it's harbors in State waters, you would have to define the State jurisdiction. It would not be under your jurisdiction, at the Lana`i Planning Commission. Off shore.

Mr. Rabaino: Which of the – Dave? Which one do you mean?

Mr. Buika: Maybe –

Mr. Rabaino: Under State harbor, for example –

Mr. Buika: May I turn it over to Joe Alueta or Clayton? I'll give it Clayton. How does that sound? How does harbors fit in? The question is harbors fit into the SMA permit process, correct?

Mr. Green: I'm thinking more about the development of the harbor. Actually, I was thinking specifically about some of the damage that took place to the small boat harbor here as the result of the tsunami, and the repairs to that. And was that an emergency something rather that was granted and whatever? So that's the general question, but specifically that was my thought process.

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Mr. Yoshida: If the harbor, under the jurisdiction of State Department of Transportation – because if it is then they can exempt themselves from SMA as they have at Kahului Harbor.

Mr. Rabaino: Clayton, I think what Commission Green is trying to get at is because we had the tsunami at Manele Small Boat Harbor. Okay. I'm aware of the Federal which is the FTA that came in and did a survey down there. Okay that is separate from the State Tsunami Emergency Funds to fix up the harbor? Like our wharf where Expedition comes in? Because they're wondering when they're going to start that because I know there's been a lot of activities down there, within the harbor, within the breaker area where they surveying the damages and what not. Because the last I read in the Maui News it was 1.6 millions to fix that Small Boat Harbor. So what is the jurisdiction? Because if Harbor is under SMA jurisdiction or not?

Mr. Yoshida: Well, you're talking about Kaunalapau Harbor?

Ms. de Jetley: No Manele.

Mr. Rabaino: No. Manele Small Boat Harbor.

Mr. Yoshida: Small Boat Harbor. That's DLNR and they're subject to SMA – I mean, the Commission, years ago, did grant SMA for the parking boat trailer improvements and so forth, so, yeah, they are subject – DLNR is subject to SMA. DOT Harbors Division is not.

Mr. Rabaino: Which is DOT, the Department of Transportation is exempted from the harbor for SMA whereas –? DLNR is not.

Mr. Yoshida: DOT can exempt themselves from SMA like they have at Kahului Harbor. That's the DOT Harbor. But if they are improvements like Maalaea Harbor is DLNR, under DLNR, Department of Boating and Ocean Recreation, and they are subject to SMA and shoreline setback variances.

Mr. Rabaino: Okay, so for Manele Small Boat Harbor, being that we're more concerned about they're starting to fix the, you know, that wharf that comes out. Is that require SMA too or is that exempted from SMA? Exempted, okay.

Mr. Alueta: Go back. Department of Transportation, like Harbors, they make transportation hubs, right? They transport goods and services like Kahului Harbor, they have the option to exempt themselves from the CZM. Because obviously it makes no sense for, every time you try to do a harbor improvement for a commercial harbor to run around and go get a coastal zone because you obviously are doing a development in the shoreline area, in the harbor facility. DLNR which is not DOT was not exempted. So the Small Boat Harbor that are under the Department of Land and Natural Resources Ocean Recreation Division are subject to the SMA, and that's why you have been seeing them come in for SMA permits. So there's dual jurisdiction. Normally there's a conservation district if it's within the water, below the shoreline, and they also need to get an SMA and Shoreline Setback Variance. So they would have to at

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least get an assessment, and they may be exempted under the exemption provision – under the SMA that Mr. Buika went over.

Mr. Green: If they're not exempted, would we expect to see any repairs to take place at the harbor if it comes to the Lana`i Planning Commission?

Mr. Alueta: Do you expect to see this? If they're not exempted, yes. You would expect to see this.

Mr. Yoshida: Again, if we deem them to be exempted, it will come before the Commission because you concur with the Department's exemption. That's part of rule amendment. That's why when they wanted to repair Kaunalapau Highway, or the road from Lana`i City to Kaunalapau, they had to come before you. State Department of Transportation had to come before you and say, well, we want to do these repairs to the road, and the Department has deemed it, the Director has deemed it to be exempted, but does the Commission concur with it? And then we got into this, well, when the barge comes in, then you can't work when the barge comes in and all of that.

Mr. Rabaino: So Commissioner Green, did he answer your question? Are you still unsure?

Mr. Green: I believe so. What I thought I heard was that when repairs are made to the Manele Small Boat Harbor, that whether they're exempted or not, the Lana`i Planning Commission, if they're exempted would have to concur with the exemption. If they're not exempted, we would – I don't know – whatever repairs need to be made or alterations that might be made to strengthen the harbor for future tsunamis et cetera would that come to Lana`i Planning Commission?

Mr. Yoshida: If it was a development and it qualifies for a minor permit, then the Director would issue that. But if was a development, and is a Major Permit, then the Commission would do that. So you would see the Major Permit and you would see the exemption, but you wouldn't necessarily see – well, we would transfer you a copy of the Minor Permit, but the Director would issue that. So I think, Jim, if you can kind of go over briefly how SMA boundaries can be amended.

Mr. McOmber: . . . (Inaudible) . . .

Mr. Buika: Yeah. I don't know. Was Lana`i included in the Presidential Disaster Declaration? It was. It was, so then there are FEMA funds that all, even under the emergency funding, all funds by other Federal Agencies also to kick in such as probably harbor, DOT Harbors. Is that State or Federal? Federal Harbor. Yeah. So any other Federal Agencies can't contribute to repair and reconstruction, usually like 75% of the cost.

Mr. Rabaino: Well, the last I heard was FTA is the one they waiting for the Expedition to get their money to build, to improve the wharf area, the docking area. Yeah, so nothing has been

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heard after that. Because that's the life line for Lana`i that's why. That's why we asking about the SMA, yeah. If they come forward to the Planning Commissioners or it's not affected by the Planning Commissioners on the SMA?

Mr. Buika: Yeah, once this pass the high water mark, it becomes the State jurisdiction. It's no longer the jurisdiction of the Lana`i Planning Commission.

Mr. Rabaino: Okay, Commissioner Green, you still got questions? Go for it. This is your hour.

Mr. Green: I thought I understood until you said if it's pass the State – if it's pass the high water mark the Lana`i Planning Commission doesn't have a jurisdiction. Oh, you mean, if it's below the high water mark.

Mr. Buika: Yeah, below. What did I say?

Mr. Green: Well, you said pass.

Mr. Buika: I'm sorry.

Mr. Green: Depending which way you're looking.

Mr. Buika: Yeah, makai of the high water mark.

Mr. Green: Okay. I understand.

Mr. Rabaino: Any other, Commissioners, questions for Jim, Commissioners? Letty? Stanley?

Mr. Ruidas: So Clayton should we introduce the questions now or after the presentation of the Long Range?

Mr. Yoshida: . . . (inaudible) . . .

Mr. Ruidas: Yeah.

Mr. Buika: Sure, I'd like to do it now. We can wrap this up just shortly. I did hand out a memo or a memo dated May 11th. It just says transmittal of information on the process to amend the Lana`i Special Management Area Boundaries and it's very short. It's just a one page. It's four pages, double sided. Do you have that, the May transmittal, dated May 11th? So what I did is I just copied for you the excerpts from the Special Management Area Rules for the Lana`i Planning Commission. It's Section 12-402-22 that actually talks about adoption and amendment of Special Management Area boundaries and maps. That's Exhibit-1 on the back side of this here. And then there's, in addition, I've attached an excerpt from the Hawaii Revised Statutes Chapter 205A, Coastal Zone Management Act, Section-23, County Special Management Area boundaries that does – it talks about authorizing you as the Lana`i Planning

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Commission to change those boundaries. However, if you contract them, they must be reviewed by the State Office of Planning for compliance with the objectives and the policies of the Coastal Zone Management Act – the ones that I just went over – but they do authorize you as the authority to amend these rules. So if we look at the rules on that second, on that page there, look at Section 12-402-22, that's titled adoption and amendment of the Special Management Area Boundaries and Maps. There are five subheadings there – A, B, C, D, and E. A, B, and C talk about initiation of a change, an amendment, to the boundaries of the Special Management Area maps. It talks about that the Director may at any time initiate comprehensive review. That's number-B or subsection-B. C, the Commission by a two-thirds vote of its total membership, may direct the Director to initiate a comprehensive review and amendments to the Special Management Area boundaries. Subheading-D talks about the public notice that is involved, that it has to be published in the paper and various entities need to be alerted to the fact that this is going on. And then the important one is subheading-D on the next page there that states that the Commission may amend the Special Management Area boundaries only if upon finding that the amendments will further the objectives and policies of the Coastal Zone Management Act as amended, and will be consistent with the General Plan and other applicable ordinances in the County of Maui. It's also reviewed by the Office of Planning, and then you – once all of the amendments are completed you need to render – the Lana`i Planning Commission needs to render a decision within 60-days and publish the maps.

So it doesn't talk about too much specifics, but it does give you the authority to begin that process. Some of my thoughts on the process, I have never gone through it myself, but obviously I think Vice-Chair Stanley has already alluded to some of his concerns about, you know, I think one way to do it is to look at areas of future developments, potentially where we have future developments in environmentally sensitive areas – right, your culturally sensitive areas that are not protected by any special management area and then try to – we can have a process. My thoughts was potentially through the Community Plan process that you're going through right now is to look at where do we expect future development, where are our environmentally sensitive areas, to identify those and to consider the pros and cons of adding the SMA. Adding those areas specifically to the SMA boundaries so that any future developments in those areas would go through our criteria for evaluation and with any large developments certainly would come before the Lana`i Planning Commission for review and approval to make sure that you're minimizing impacts to cultural resources, the environment, coastal zone, et cetera.

And any areas that you think – we have those 10 that were –. I had that little table up there in your slide that have your 10 objectives. Any of those objectives that you think would be impacted by future development can be looked at. Hazard prone zones, cultural areas, scenic and open space, coastal eco-systems such as wetlands, those were all areas that I looked at. Obviously, the original, on all of our islands, the SMA boundaries were done in 1977-78. That's arbitrary lines delineated by roads, existing roads on the islands, and that at the time may have made sense. It obviously doesn't make sense now. So that's really the comments I have is that we can guide what you're doing and we can initiate a review – formal, informal – however you want to do it. So what I've done at least preliminarily is I've given you the language that is in

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your rules that guides you there. It's not much. Obviously, you have a lot of leeway in what you do, and we would have to set up some sort of a formal process, the Planning Department and this Commission.

Mr. Rabaino: Okay so Jim, on this page 402 – sorry for the interruption, but –

Mr. Buika: Sure.

Mr. Rabaino: 402, you have on the E-section, yeah?

Mr. Buika: Yes sir.

Mr. Rabaino: There's a paragraph, Department of the Office of Planning, you said this thing that you mentioned earlier, is a review from 1978? Did I hear correctly?

Mr. Buika: Yes.

Mr. Rabaino: So it's time to update the maps then because we're in the 2000's already, you know what I mean? And Alberta has a question for you. Commissioner?

Ms. de Jetley: I think Commissioner Ruidas in his e-mail, he mentioned that there is approximately eight miles of flood coastlines that is habitually flooded with every storm. So I think what – correct me if I'm wrong – on 402-22, under (C), we can by two-thirds vote, so we have quorum, we can direct the Director to initiate a comprehensive review. And then under your SMA rules, assessment's criteria, under number-10, it would effect environmentally sensitive areas such as the flood plain, shoreline, tsunami zone, erosion prone, coastal waters, fresh waters. And all of the east side of the island, that would be from the area referred to as Shipwreck Beach all the way Lopa would qualify under this criteria. So can we cut to the chase and just – I make a motion to follow number (C) which is the Commission will by a two-thirds vote direct the Director to initiate a comprehensive review of this coastline. That would be the eastern side of the island.

Mr. Rabaino: East side yeah.

Ms. de Jetley: We need a second.

Mr. Rabaino: That's the motion you making right now, right?

Ms. de Jetley: Yes.

Mr. Rabaino: For the (C) and two-thirds vote? Motion on the floor. Anybody second?

Mr. Ruidas: Can I discuss one thing?

Mr. Rabaino: You want to discuss it first?

Mr. Ruidas: Yeah, just not the east side particularly. It's in the flood zone area if we make it, you know, to that. But like Kanaloa area, 300 feet, the heiau is more than 300-feet. So potentially that would also be included. But as long as you initiate it then we can, I guess, fine tune it after.

Mr. Rabaino: Well, let's list the areas of concerns, number one, with Alberta's motion, and the areas that's affecting Lana`i under the shoreline management so that Jim can go review those areas that we're going to point out the district or the location where we're concerned where the flood zone is as well Kanaloa. And reading from what –

Ms. de Jetley: Okay, let me withdraw my motion. I withdraw my motion.

Mr. Giroux: Jerry?

Mr. Rabaino: Go ahead.

Mr. Giroux: We've got to leave in about 10 minutes or else our pilot won't be able to land in Kahului. The other thing is that the rule says it's two-thirds vote of the total membership so –.

Mr. Rabaino: Yeah, we don't have everybody, that's understood. John not here. John went home.

Mr. McOmber: . . . (inaudible) . . .

Mr. Rabaino: Yeah, well, we're just discussing this, but you know, we're reviewing what, the handout he gave, what Jim gave. So she has withdrawn her motion. Anything else we should know, Joe? I know you got to catch a plane, it's understood. So what happens with the rest of the agenda here? Do we move it for June?

Mr. Yoshida: Mr. Chairman, I guess we're somewhat pressed for time, but maybe if –. Well, one is to answer Commissioner Ruidas's question, under Exhibit-2 of that memo, there is an Attorney General's opinion. You wanted to know where the 300-feet came from. It talks about 100 yards in excess of 100 yards from the shoreline. I guess we have Kathleen Kern here. Maybe she can briefly give an update as to where they are with the Lana`i Community Plan update. You know, she is here. She will be on Lana`i frequently, but that's more doing their research and whatever else they have to do before the CPAC.

Mr. Rabaino: Okay.

Mr. Yoshida: I think, for five minutes and if you have any immediate questions. But she can just tell you where they're at as far as the Community Plan update.

Mr. Rabaino: Okay.

Ms. Kathleen Kern: So I can –. Yes, I can let you know where we're at with the Community Plan update for Lana`i. As you know we had an event, a community event, April 7th. It was a panel discussion which was about some of the ideas that have been brought up by the community in previous meetings that we had. And we brought in some folks including professors Davianna McGregor, Colbert Matsumoto, Alan Fujimori and Bob Agres to talk about ideas for the future for Lana`i. So we've transcribed the panel discussion. We wanted to send it to the panel just to get and make sure that we heard everything correctly. What we're working on right now is working on the – looking at the existing plan and trying to assess what's been implemented, what hasn't been implemented, and also trying to tease out the existing plan for both Moloka`i and Lana`i, and kind of mixed up what we call goals, policies and actions. And we want to tease out those apart and first of all sort of create a much sort of clarity, a greater clarity regarding what's its goals versus the policy versus an action.

Under Maui County Code 2.80B there are additional requirements for the new community plan update. So there's additional research and work that we have to do to provide options to some of those elements which include things like an implementation of a monitoring plan, a financial analysis, as well as perhaps street scape guidelines. So we have some work to do over the summer for us to develop the kind of report that can go to the CPAC so the CPAC can then have something to deliberate about and advise.

The process for selecting the CPAC rests with Mayor and Council. We are on the verge of sending Mayor and Council a letter to get that process started. As you know they're in the middle of budget deliberations and they probably won't start the CPAC selection process until after the budget has finished. So it could be that the CPAC selection process starts in June or July. How long it takes them to do that, we won't know. There will 13 members of the CPAC. Nine selected by Council, four selected by the Mayor. So if things go as expected, CPAC could be selected in the Summer. We could be looking at CPAC meetings starting in December if all goes well. And we do want to add as part of this is either as part of the CPAC or just before the CPAC we're looking at doing additional community workshops to really focus on ideas on the ground. If anybody has any questions I'd be happy to answer them.

Mr. Ruidas: So an estimation, when will all that stuff come to the Commission, the Lana`i Commission?

Ms. Kern: Yes. Once the CPAC is selected and goes through its training and then starts deliberations, the Community Plan Advisory Council has six months to do their work. The Planning Department has one month to turn around the revisions, recommendations and bring something to the Planning Commission. The Planning Commission then has also six months to work with the plans and recommendations, and then expect us to do revisions, and then it goes to the County Council for a year, up to a year.

Mr. Ruidas: Okay, well, I guess when that comes up I'll be on the other side of the table. I going

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be gone. Even Alberta.

Mr. Rabaino: Okay, thank you. But they'll make something ready for us though by then – the little bullets so that we can just review.

Ms. Kern: Yes. We most likely will have things in sort of a matrix format showing what's in the existing plan, what are the recommendations for the new plan, the options for recommendations, so we can track what's old, what's new what are the CPAC's recommendations.

Mr. Rabaino: Okay. So you're saying 13 for membership, and nine will be appointed by the – I mean, nine will be appointed – out of the 13, nine will be appointed by the Maui County Council and four will be chosen by the Mayor?

Ms. Kern: Mayor's Office.

Mr. Rabaino: Okay. Thank you. Commissioners, any questions? None.

Mr. Ruidas: So Clayton what's the verdict? Are we deferring this to the next meeting or we going to make a transmittal to the Director?

Mr. Rabaino: Yeah, because we got the (G). Well completed finished the – no we not – under the Director's Report, item 3 . . . (inaudible) . . .

Mr. Yoshida: I think we're moving the rest of our orientation to the July meeting, so Corporation Counsel and the sunshine law. Next month you have the short term rental bill . . . (inaudible) . . . and the other items you . . . (inaudible) . . .

Mr. Rabaino: So the rest of the agenda would move for June or July?

Mr. Yoshida: The Richard's Market and No Ka O Grindz is a continuing item. The orientation, the rest of the orientation session will move to July.

Mr. Rabaino: Okay, so the orientation is July, but the June one going be as No Ka O's and Richard's Market and the ones that we mentioned earlier.

Mr. Ruidas: So this unfinished business is number one, discussion of amending the SMA maps, would that discussion be, since we never reach that part, be on the next meeting agenda?

Mr. Yoshida: We could put it on the agenda, but, again, the Council Resolution and the amendment/proposals for Charter Amendments are time sensitive because their Chair Joshua Stone wants proposals from the Boards and Commissions by the end of the month, end of June. And the Council wants the recommendations of the Planning Commissions by the latter part of July.

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Mr. Rabaino: Okay, so we'll have a meeting in June though.

Mr. Yoshida: Yeah, definitely.

Mr. Rabaino: Okay, well, you need to, yeah, because too much cancellation that why this is building up.

Mr. Yoshida: We can put on the, that unfinished business.

Mr. Ruidas: For next month?

Mr. Yoshida: Yeah, but the priorities are going to be the other three.

Mr. Ruidas: Yeah, but it's not my fault the plane going pick you guys up today, so, you know what I mean? We ran out of time. We ran out of time so many times that, you know, if we had a meeting last month, we wouldn't have run into this situation.

Mr. Yoshida: Yeah. For sure the July –. I mean, you know, we can put it on June if we can get to it.

Mr. Ruidas: At least let the Director know what going on, you know, what we discussed tonight.

Mr. Yoshida: Yeah. He'll be here.

Mr. Rabaino: And no more future cancellation, you know, before all this kind stuff build up yeah. Thank you. Do I hear a motion to adjourn?

Ms. Castillo: Meeting adjourned.

Mr. Rabaino: Okay, so move. And the time is 9:25 p.m. Thank you.

K. NEXT REGULAR MEETING DATE: JUNE 15, 2011

L. ADJOURNMENT

There being no further discussion brought forward to the Commission, the meeting was adjourned at approximately 9:25 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
Leticia Castillo
Alberta de Jetley
David Green
John Ornellas (excused at 8:15 p.m.)

EXCUSED:

Shelly Barfield
Roberto Hera
Matthew Mano

OTHERS:

Clayton Yoshida, Planning Program Administrator, Current Planning Division
Joseph Alueta, Administrative Planning Officer
Jim Buika, Coastal Resource Planner, Current Division
Kathleen Kern, Staff Planner, Long Range Division
James Giroux, Deputy Corporation Counsel, Department of Corporation Counsel