

**LANA`I PLANNING COMMISSION
MINUTES - REGULAR MEETING
DECEMBER 19, 2007**

APPROVED 01-16-08

A. CALL TO ORDER

The regular meeting of the Lana`i Planning Commission was called to order by Chair Reynold "Butch" Gima at approximately 6:05 p.m., Wednesday, December 19, 2007, in the Lana`i High & Elementary School Cafeteria, 555 Fraser Avenue, Lana`i City, Hawaii.

A quorum of the Commission was present (See Record of Attendance.)

Mr. Reynold "Butch" Gima: Okay, I'd like to call to order the December 19, 2007 meeting of the Lana`i Planning Commission. Let the record show that we have quorum with Commissioners de Jetley, Elliott, Endrina, Ruidas, Zigmond, Kaye and Gima present. Let's see. Okay, at this time I will entertain a motion to approve the minutes of November 7, 2007.

B. APPROVAL OF THE MINUTES OF NOVEMBER 7, 2007 (Circulated with the December 5, 2007 agenda. Commissioners please bring your materials with you.) and NOVEMBER 21, 2007.

Ms. Sally Kaye: Can that include the ones that I sent you all by email? Okay.

Mr. Lawrence Endrina: . . . (Inaudible) . . .

Mr. Gima: Any second?

Ms. Alberta de Jetley: I second.

Mr. Gima: Okay, it's been moved by Commissioner Endrina, seconded by Commissioner de Jetley that we approve the minutes of November 7, 2007. Any discussion or corrections? Bev?

Ms. Beverly Zigmond: I just had a couple of corrections that I don't think Commissioner Kaye caught because these were mines.

Page #23, the first Ms. Zigmond, it's "kuleana" - k, u, l, e, a, n, a.

Page #34, the second to the last sentence, I think that should be "pass" - p, a, s, s.

And one more, page #65, about the eighth or ninth from the bottom, it says "well I understand how you cannot" - it suppose to be "clone" - c, l, o, n, e. And that's it.

Mr. Gima: Sally, you already e-mailed your corrections? Okay. Any further discussion? Hearing none, all in favor of approving the November 7, 2007 minutes as amended say aye.

Commission Members: "Aye."

Mr. Gima: Oppose? Okay, motion is carried.

It was moved by Commissioner Lawrence Endrina, seconded by Commissioner Alberta de Jetley, then unanimously

VOTED: To approve the November 7, 2007 minutes with the corrections as noted.

Mr. Gima: Now I'll entertain a motion to approve the minutes of November 21, 2007.

Ms. Zigmond: I so move.

Ms. de Jetley: Second.

Mr. Gima: Okay, it's been moved by Commissioner Zigmond, seconded by Commissioner de Jetley that we approve the minutes of November 21, 2007. Any discussion?

Ms. Kaye: I just want to add something for the record. We got a letter in the mail today, or this past week, from Colleen about the housing workshop. And I just want to point out in the minutes, page #53, we talked a little bit about that. And I wanted to be very clear about what Vanessa Medeiros said to me on Maui, which is reflected in the minutes. But Colleen seems to think that we were thinking that they had something to do with developing the 65 acres, and I never thought that. She just indicated that it was being considered, and I think that's reflected in the minutes. And in response to this, maybe we can wait till the end of the meeting under unfinished business to think about how to deal with it. But that's the only clarification I wanted to make.

Ms. Zigmond: Before I make my two corrections, I wanted to say, Leilani, I just think it's amazing what you do because it's pretty amazing.

Page #4, about the eight or so line from the top, it says "I can't think right now of a" - it should be "phrase" - p, h, r, a, s, e.

And page #18, again it's where I'm speaking, it says, "I think an example of that was recently seeing the beach personnel putting down drinking water on the sand for the all too tender feet of some of the hotel guests" is what that should read. Thank you.

Mr. Gima: I guess you just have to enunciate better next time. Okay, any further discussion or corrections? Okay, hearing none, all in favor of approving the minutes of November 21, 2007 as amended say aye.

Commission Members: "Aye."

Mr. Gima: Oppose? Okay, motion is carried. Thank you.

It was moved by Commissioner Beverly Zigmond, seconded by Commissioner Alberta de Jetley, then unanimously

VOTED: To approve the minutes of November 21, 2007 with the corrections as noted.

C. UNFINISHED BUSINESS

- 1. MR. JEFFREY S. HUNT, AICP, Planning Director, transmitting the 2030 Countywide Policy Plan (Plan) to the Lana`i Planning Commission pursuant to the provisions of Chapter 2.80B of the Maui County Code. The Lana`i Planning Commission may be review and provide recommendations on Section IV (Goals, Objectives & Policies) of the Plan, which was revised to reflect the recommendations of the Maui, Molokai and Lana`i General Plan Advisory Committees. Emphasis will be placed on the revised Vision Statement, and Core Values and Principles Sections, and the Implementation Chapter. (Circulated with the December 5, 2007 agenda. Commissioners please bring your materials with you.)**

The Maui, Lana`i and Moloka`i's Planning Commissions are being asked to provide recommendations and proposed revisions to Section IV of the draft Countywide Policy Plan. The Planning Commissions have 120 days to complete their review, with the Lana`i Planning Commission's 120-day period beginning on September 5, 2007. (Plan was mailed previously. Commissioners: Please bring your copy. To view Section IV (Goals, Objectives & Policies) see Maui County website at: http://www.co.maui.hi.us/departments/Planning/pdf/Full_Directors_Report.pdf)

- a. **Public Testimony**
- b. **Action**

Mr. Gima: All right Ms. Simone, it's your ball game.

Ms. Simone Bosco: It's your last meeting, and I wanted to thank you all for an excellent job with wrapping up the Countywide Policy Plan review. So you will have met your deadline after tonight, so that's fantastic. And then what we expect to be able to do is turn around the product from all of the Commissions by January 10th for transmittal to Council. Okay? That's a date that we're all shooting for and I have to meet that deadline so I just wanted to thank you again for helping me meet that deadline.

We're going to start with the Vision Statement. Julia has it projected here and I'm going to ask the Commission to –? Can you all see that, by the way, up there on the screen?

Ms. Kaye: Simone, can I ask you a question first before you get started?

Ms. Bosco: Sure.

Ms. Kaye: What you sent to us in the mail that has incorporated all the things that we discussed and voted on, is this just our version? Is this just the Lana`i changes?

Ms. Bosco: This is just the Lana`i version.

Ms. Kaye: So Maui island got their – Maui Planning Commission and Molokai got theirs?

Ms. Bosco: That's right. That's right.

Ms. Kaye: Okay. And are we going to be looking at that?

Ms. Bosco: No, we're not. We're just looking at Lana`i's version tonight.

Ms. Kaye: That's what I meant – Lana`i's version.

Ms. Bosco: Yes.

Ms. Kaye: Because there's some things that –

Ms. Bosco: – that you want to review?

Ms. Kaye: Yes.

Ms. Bosco: Absolutely. We can do that. Okay, on that note, why don't I go ahead and just quickly explain what handouts you have or should have, and I have them in hard copy too in case anyone needs a hard copy. It would be this sheet of paper with the box. It has a vision statement, and on the back, it has the core values. And we're going to be acting on that tonight. And then I also handed out the section four – or not handed out – but mailed out section four. This is a stapled packeted document and what this is is all the work of the Lana`i Planning Commission. All of the policies that were voted on and all of the implementation actions are incorporated into this document.

You'll see that there were some new underlined policies. Those are the new policies that you folks voted on and also the implementing actions and some of them have underlines. What it is not showing, so you know, is the strike outs. So where there was a word removed, that's not showing. It's not a true Ramseyer per se, but we're going to be transmitting the complete record to the Council so they'll be able to see which words were struck out.

And also, in the last mail out, I mailed out a memo dated December 11th. And its subject line reads proposed implementation chapter format, chapter five, with the County wide policy plan.

And I have a couple of other handouts if we need them. They're nothing new. This is the original chapter five. You have that in your binder and it says Next Steps. And I can hand that out if you want to refer to it. And then there's also an additional document I brought with me just in case you want to look at the 1990 General Plan version of the implementation piece. So that's here if you need it. And what else? I think that's it. So if anyone needs any of that, I have it – let me know – and there's copies for the public too.

All right, we'll start with the vision. Now I want to say that I was not at this meeting, but we never ran the vision statement by the Lana`i GPAC. And we never had the chance to run the core values and principles piece by the Lana`i GPAC. And I don't know exactly how that happened – if they ran out of time or what happened – but I want to explain that you guys are speaking for Lana`i here because the GPAC did not have a chance to actually review this piece. And so I'm just letting you guys know that because in your packets, in your binders, you might have noticed that there was no vote. The Lana`i GPAC didn't have a vote on this. So it's just for informational purposes for you to know you guys are speaking for Lana`i.

You have a vote on the vision? Okay, so then look – turn it around – the core values doesn't have a vote? Okay, then I spoke too soon. The vision was acted on – the core values wasn't. Thanks. Sorry about that.

All right, so the vision statement, if we can discuss that. I'll go ahead and let you guys lead the discussion and then we'll just take your changes. Okay? If you want me to read it, I can.

Mr. Gima: Simone, who initially drafted the language for this vision?

Ms. Bosco: This was originally drafted by the Department, by the Division, and its genesis is from the Focus Maui Nui vision statement, and the effort of the Focus Maui Nui. So we took the language directly from their efforts. I don't know if you guys are familiar with that process. It's slightly tweaked though. And I have, if you want to look in the record, we have all the changes, but this is the final version.

Mr. Gima: I can support this vision because especially if the foundation is from the Focus Maui Nui which had a broad representation and input. And specifically there's wording in here where people or the citizens need to take responsibility for this vision, and especially the wording about being good stewards.

Mr. Endrina: This is the vision for the County for the next 30 years?

Ms. Bosco: 25 years.

Mr. Endrina: 25 years?

Ms. Bosco: Yes.

Mr. Endrina: Would there be something in here to include some kind of planning vision?

Ms. Bosco: Planning vision?

Mr. Endrina: For the past - beyond the 25 years?

Ms. Bosco: We're only looking at the 25-year time frame.

Mr. Endrina: I'm just thinking for the next –

Ms. Bosco: But the 2050 Plan addresses that. That's a whole different process – with

sustainability – 2050 Plan – that goes beyond it, but not in this document.

Mr. Endrina: Okay.

Mr. Gima: Anybody has any objections to any parts of that vision? Maybe rewording. Okay, do you need us to take action? Okay. I'll entertain a motion on the proposed vision.

Ms. de Jetley: I move that we accept the vision as written.

Ms. Zigmond: . . . (Inaudible) . . .

Mr. Gima: Okay, it's been moved by Commissioner de Jetley, seconded by Commissioner Zigmond that we approve the vision as presented. Any discussions/questions? Hearing none, all in favor say aye.

Commission Members: "Aye."

Mr. Gima: Oppose? Okay, motion is carried.

It was moved by Commissioner Alberta de Jetley, seconded by Commissioner Beverly Zigmond, then unanimously

VOTED: To approve the Vision Statement as presented.

Ms. Bosco: Thank you. Excellent. Okay, we'll turn to the back page, the Core Values & Principle piece, and you guys want to discuss this. Basically this piece is punching out the unique and primary values that the County as a whole wants to emphasize. And I guess – just wondering – the Director had added the very last bullet point that – again all of these came from the Focus Maui Nui effort, and then we had comments from the other GPACs, not Lana`i, but Director also had comments too – very few – one of them was to add the very last bullet point.

Mr. Gima: Excuse me, this came from Maui Nui also?

Ms. Bosco: Yes, it did.

Ms. Kaye: Can I just ask, the second bullet, compassion and understanding, is that compassion for and understanding of others?

Ms. Bosco: Yes.

Ms. Kaye: Can we say that?

Ms. Bosco: Yes. Excellent. Compassion for and understanding of others.

Ms. Kaye: And the fifth bullet down, honor for all cultural traditions and histories.

Ms. Bosco: Histories – yeah – that’s right.

Ms. Kaye: Actually, I’d take the “for” out.

Ms. Bosco: Okay, honor all –

Ms. Kaye: Right.

Mr. Gima: I know the focus of this is in the next 25 years, and I think, particularly for our State and the different cultures, there’s many cultures have this whole value of reverence and remembering what our ancestors did. Specifically, for Lana`i, I always want to remember, you know, what all the old timers here did for us to make Lana`i what it is today. And I don’t know how we can incorporate that in there so that we don’t all only look toward the future, but we remember how we got to where we are and who was instrumental in making that happen so that we don’t forget our old timers.

Ms. Bosco: Can we add something perhaps to the sixth bullet point down and make reference to past generations? You might want to think about adding something there – consideration of the needs of future generations and remembrance of past generations – something like that. It’s just a thought.

Mr. James Elliott: How about consideration of the contribution of past generations and the needs of future generations.

Ms. Bosco: Thank you.

Mr. Gima: Because again, I think core values and principles are used when sometimes there are conflicts in deliberations and what not, you can always go back to your core values and principles as a way to maybe help resolve that conflict. And so if we get too stuck on what we should be doing in Maalaea or in Kaunakakai, we can say, okay let’s look back at what our old timers had in mind.

Ms. Bosco: That’s very right. So go ahead and look at that – go ahead. Consideration of the contributions of past generations – do we want and the needs of future generations of

as well as? Which would you prefer? As well as? Okay. Great comments.

Ms. Kaye: I would want to suggest we think about adding “and our communities” to the last bullet.

Ms. Bosco: So after of our families and our communities. I’m just remembering in the first sentence, I think it was Maui that changed “our islands” to “our people.” That’s something to think about because I don’t think islands foster anything that the people do. I don’t know if you want to change that too – take a look at that – see if that reads well for you.

Ms. de Jetley: . . . (Inaudible) . . .

Ms. Bosco: Our residents. Is that okay? Everybody likes that better?

Ms. Kaye: I actually like island. When we keep focusing on people, we disassociate ourselves from the land. I thought about and I thought I’d made the point.

Ms. Bosco: Okay, thank you. Anyone else? You have to take a vote on this too. Any discussion?

Mr. Gima: Quick let’s vote before Dwight gets here.

Ms. Bosco: We’re on the Core Values piece. And if you need a copy of it, I have it for you. We’re just about to complete our or continue our discussion and go into a vote if you’re ready.

Mr. Gima: Any other modifications?

Mr. Elliott: I’m just wondering if we didn’t just put “we” back in that – to accomplish our vision, we must foster – and we encompass like everybody.

Ms. Bosco: We.

Ms. Zigmond: I would have to agree with Commissioner Kaye on the – keeping connected with the land, and thus, staying with the original word, islands – or islands.

Ms. Bosco: Okay.

Ms. de Jetley: I think we need to go back to residents because when we say to accomplish our vision, the islands can’t think. And we’re not just a collection of islands, we are a

State. So our State must foster or we must foster or residents must foster. It's better than islands because island is, you know, you're talking about a land mass and it doesn't make sense. And then the other thing that we have gone back and forth with its residents and citizens. We've tossed that back and forth so I would have to go with "we."

Ms. Bosco: How about if we said to accomplish our vision, the people of our islands must foster.

Ms. de Jetley: The people of our islands would be correct, or the residents of our island State.

Ms. Kaye: I think residents is not in the spirit of what we've been doing here for the last several months because everything that this General Plan does has been inclusive of visitors. So I think we or people of the islands is better. I think residents excludes visitors.

Ms. de Jetley: Well before this meeting I was reading *Pacific Business News*. In this State right now, we are reaching a crisis point. The residents of this State have to decide what direction we're going to go, not the tourists coming to our State. This particular article, people are totally now fed up to their eyeballs with the way visitors have over run our State. We're responsible for where our community is going to go for the next 25 years. It's our responsibility to direct where the visitor goes. So visitors have nothing to do with this. We need to decide, not visitors.

Ms. Bosco: Can we live with the people of our islands since it broad enough that it's not going to exclude any one entity?

Ms. de Jetley: The people our islands means anyone who resides in our State, and it will get us away also from the word "local" which I really object to because every time anybody gets up and arms about it everything. It's always newcomers against old timers. So people of our islands would be very appropriate.

Ms. Bosco: Thank you.

Ms. Zigmond: Because what I was going to say on that was, well, I understand and agree with what you're saying Alberta, some of the core principles actually include the visitors like honoring the traditions and respect for diversity – that wouldn't be just exclusive to the residents, so I like the people.

Ms. Bosco: Any other comments?

Mr. Gima: If there are no other modifications, I'll entertain a motion to approve the core values and principles as amended.

Mr. Elliott: I move that we approve the core values and principles as amended.

Ms. de Jetley: I second.

Mr. Gima: Okay, it's been moved by Commissioner Elliott, seconded by Commissioner de Jetley that we approve the Core Values and Principles as amended. Any further discussion? Hearing none, all in favor say aye.

Commission Members: "Aye."

Mr. Gima: Oppose? Okay, motion is carried.

It was moved by Commissioner James Elliott, seconded by Commissioner Alberta de Jetley, then unanimously

VOTED: To approve the Core Values and Principles as amended.

Ms. Bosco: Great. Thanks. Excellent guys. Okay, can we move to the next piece which is going to be Implementation piece? Are you guys ready to discuss that? All right. Great! Okay, Julia is going to be taking notes.

So I'll start with explaining what I handed out again. This includes all of the changes that the Lana`i Planning Commission made to the original draft that we brought to you in September. And what I've done here is present the implementing actions which refers to how we're going to be implementing these policies at the very tail end of each objective section. And this is the format that we used when we first brought this section to you. We brought it to you in this format. What we've been talking about doing all along is creating a Chapter Five. And I passed out a memo dated December 11th which explains the Chapter Five in concept, and how we envision Chapter Five. Now we couldn't bring the full Chapter Five to you at this meeting – even though it's in a draft form – we have it written in draft form – because after speaking to the Director and Staff in-house about how we're going to proceed through the implementation piece, we realized that what we need to do is very carefully think about how the implementation piece will play out through agencies and through the budgeting process. So instead of presenting the full chapter to this body today, and within this process, we decided it might be more appropriate to give it much more careful thought – not change the implementing actions at all that you guys

have approved. Carry those forward just like we have been discussing, however, we really want to further develop it and get the support of the agencies and really carefully think about the implications and how the strategies might be actually implemented. And we felt that at the County level, I mean not the County, but the County Council level, that would be the more appropriate process or phase or body to help us to identify some of the budgetary implications and so forth.

So what I wanted to do is tell you that we still would like very much to develop the Chapter Five as I had been discussing with you all along, and take the implementing actions statements that this body has all approved – and the other bodies have approved – and to still create a Chapter Five. And I've given an example in this memo on how that – say one strategy would look. And if look in Exhibit 1 in the memo on page – the second page – what I've done is I've provided an example of how the Protect the Natural Environment strategy would look. Okay, so if you could turn your attention to the exhibit – what I did here is I listed in the first section of the bullets, implementing action statements that this body has approved. And they all relate to the natural environment. So what we did is we clustered all of these statement together, and how that would work is we would place them under a larger implementation strategy and here we've called it land use regulatory tools. So that's an implementing – that's an implementation strategy. And each one of those statements has fallen under subcategories. For example, the subcategory sensitive and productive lands inventory has implementing actions that this body has approved, and also the other bodies support, right under that subcategory. So you can see how this would work, how this would be organized. Each of these, every single one of these implementing action statements that this body has approved would be kind of categorized into a larger strategy. And if you turn the page you can see that there is another subcategory, conservation easements, and then there's a little blurb about what a conservation easement is, and then you see the bullet points. And the bullet points represent the implementing action statements that this body has approved. And it fits very neatly under the subcategory on conservation easements.

So this is kind of the format that we would like to present to Council. This is one option for how we would present the Implementation Chapter, but we would go into much further – we would – there would be more subcategories. There would be other strategies. And I've listed some of those other strategies at the bottom of the page here. You can see the whole long list of regulatory actions, sustainable practices, community design guidelines, agricultural land protection. So each one of these represents a larger strategy, and the implementing actions that this body voted on would fit under those. So we want to try and really give it some thought and carry each one of those statements forward and not add anything but structure it in such a way that we open the door and say hey these are examples of implementing actions, but they fit under a strategy and there are other

implementing programs, tools and actions that the County needs to identify. And they can further, in the agencies, in functional plans, and in the programs of each agency, you can – it's not an end all list is what I'm trying to say. There would be other implementation actions that wouldn't be in this chapter but we would explain that. We would say this isn't the end. These aren't the absolute most important actions that the County needs to take. But we want to say this is the beginning point. And also you keep in mind in the community plans, you'll have an opportunity to have your very own implementation program where you identify community implementation strategies. So that's a separate process and that's one other avenue for implementation still available to this island. But what we need from you today is to just ask for your support in going forward to develop this chapter as I presented in this memo, and that's what we need to have you vote on.

Mr. Elliott: Butch, I just wanted to express to you a little bit – and obviously I'm nothing but a lay person in this process – but I just wanted to express to you a little bit of a disappointment that I feel knowing that we're engaged in a planning process. And in particular when we get into the area of implementation, to me policies and visions, those are all a bunch of words. And it's easy to write them down, and then just put them in the closet and never even think about it again. But when we're talking about implementing action, to me, that should be something that is measurable and trackable. And there should be a point of accountability and responsibility to those points. And so far from – see what I thought we might have been engaged in is a process of saying here's something we want to do for our islands and here's how we're going to get it done. These people are going to be responsible for seeing that these things get done. And I just have to tell you right now when I'm looking at this, I'm pretty disappointed because it looks like it's going to end up even in an implementation section of just being a bunch of words. And without anybody to be accountable, anybody to be responsible, any time frame whereby certain things are going to be accomplished and all of this, that's what I would have wished would be part of an implementation process. I just wanted to express that to you, and hope it isn't too late to get that incorporated into the process somehow.

Ms. Bosco: That's exactly how we feel too. That echos our concerns. And in order to garner the support of the agencies and also air marks each statement or program, you really need to collaborate with all of these agencies. And there wasn't the time to actually incorporate the agencies during the last four months or so in this process. And that's why we need more time and we need to really carefully think out how that – which agency would be responsible, for example. And that's why we have another – we have at least another six months of time here to further refine this section. Hopefully we can do it very soon. You know how government working with agencies, it's going to take meetings, it's going to take meetings with Directors, and you need to really work with the agencies and also with the Council to identify which actions will be done by who. So that's something

we do want to do but we can't just do it recklessly. So at this stage, we're not quite ready. We want to put it forward and we want to say these are the strategies we feel are important. We're going to present the chapter. We'd like to go forward, but we also need to do exactly what you said – kind of do some ground trouping within the County on how is this going to get done. So I appreciate your comment.

Ms. Kaye: I have a question. I had sort of the same reaction as Jim in that my understanding throughout this whole process was that what we were looking at is implementing actions had simply fallen of the radar as policies, and on second look, became much more implementation oriented, but that wasn't where we were going to end up. That the community plan process would then allow us to locally decide what we wanted to do, implementation wise. But I'm getting a different feel from this. So maybe you can clarify for me, how are our local implementation steps going to stack up against the ones that the County has selected? Are they going to be as important, less important, take priority, which would take priority?

Ms. Bosco: Well the community plan process opens the opportunity up for the community to identify their own strategies, so that's why we asked you to take a look at these by the way at this stage so that we have your agreement going forward that these are the implementation actions that this community or this body, at least, supports. So down the line, what's required from Bill 53 is that the Community Plans and the Countywide Plan and even the Island Plans, the other Island Plans, have to be consistent. They need to be compatible. That's a requirement. So I would say the implementation program of the community plans need to either, a, be not conflict necessarily with the Countywide Implementation actions. However, we've garnered their support so far so we're not going to go against. What's at this stage been presented, hopefully, would not be a contradiction to what the community plan process we're putting forward.

However, let's say there's a policy –. Let me give you an example. If there's an implementation strategy at the Countywide level that says protect shorelines – to find a means of mechanism to protect shorelines – well at the Lana`i Community Plan level, the community would further define how they do that. So on Lana`i it may mean something different than it does on Maui. So you'll have that freedom to do that.

Ms. Kaye: Right and I understand that. I guess I didn't pay much attention to the implementing actions because as I said I thought they were just policies that look better as implementing. And we kept saying all along, well, we'll deal with implementation later. And I guess what I'm asking for is clarification, these aren't the only implementing actions.

Ms. Bosco: No they aren't.

Ms. Kaye: Because there's some that don't have any.

Ms. Bosco: No they aren't.

Ms. Kaye: Okay.

Ms. Bosco: But I don't want to –. See the danger that we're in right now is we don't want as a division to develop additional implementing actions in Chapter Five because we want to be able to go forward with confidence that we have the support from the GPACs and from the Planning Commissions of what we've already brought before them – what they voted on. We don't want to just fly out off in left field and present something that nobody has even looked at because that would preclude the process – that would kind of defeat the process. But we want to say in Chapter Five that there are other implementation strategies that need to be identified. This isn't the end all. This isn't it. There are more. And that's reserved for the Community Plan process as well.

Mr. Endrina: Before the six months is up, will we be able to have a decision on the implementation part of it? Or what's on the implementation before it actually gets passed through?

Ms. Bosco: Well, what I can say – the answer is your time for the review of the Countywide Policy Plan is 120-days and that's it. That's the comment period. So I guess the answer would be, as far as a body, no. However, going forward, we will be producing something for the Council and if something comes up which is, you know, if there's a concern just like you see the GPAC members here, as resources, this body could be a resource. I'd rather have Corporation Counsel explain this actually. But the comment period and the review period for the Countywide is coming to a close now. So that's why we want to discuss this with you now, see how you feel about the concept of where we're going with this, and garnering your support for the concepts of the Department. You give us the permission to further develop the Chapter going forward – that's what we need.

Mr. Gima: . . . (Inaudible. Changed cassette tape) . . . We have our vision and our core values and principles. We have the policies, our goals and then policies.

Ms. Bosco: Objectives.

Mr. Gima: Objectives.

Ms. Bosco: Policies.

Mr. Gima: And then what's next? Strategies or actions?

Ms. Bosco: Well that's a very good question. Strategy as we're proposing it now in Chapter Five, and then specific actions.

Mr. Gima: Okay. The second part to help me understand, in your example using land use regulatory tools, I imagine you have other County or other Planning Department preestablished strategy?

Ms. Bosco: Yes.

Mr. Gima: That would be helpful for me to know what all those other ones are.

Ms. Bosco: Yeah. Sure.

Mr. Gima: And the third part would be if we agree to this format, I could support that as long as the initial format that we have, where we have the goal, the objective, and the policies remain as is. Because if you only see the strategy and then the action underneath, I think it can get lost in what work everybody in the County did.

Ms. Bosco: Okay. Got it.

Mr. Gima: Another suggestion would be, in the current format where you have the goal, the objectives and the policies and implementing actions, you can put on the side of the implementing actions, 3a, which stands for land use regulatory tools, sensitive and productive lands inventory. That way you can cross reference so we don't get lost as to where this implementing action went.

Ms. Bosco: So let me see if I heard you right. What you just said was you would like to see the structure as it's presented in section four now where it's the goal, the objectives, the policies and the implementing actions that you voted on remained in section four. And, there should be a cross referencing system within section four that links it to section five – how we've treated it in section five. Okay, Maui said the same thing. I just want to let you know that's an excellent comment.

Mr. Elliott: I just have another question of whether or not it is impossible to go further in these implementing actions. I'm not trying to prioritize anything, but let me just –. Let's just start where you started with land use regulatory tools, and sensitive and productive lands inventory. And then you go down to a series of bullet points, and I'm not going to assume that any of those bullet points are more important than the other. But let's just flip over the

page where the bullet point it says “document record and monitor conditions, populations and locations of floral and fauna communities and incorporate habitat lands in the inventory exercise.” My question there is who is doing that? And why that couldn’t be designated or at least if no body is designated to do it, say to be determined and somebody is going to have to point to somebody or something. But if there’s a – assuming there’s a County government structure somewhere, there should be a sign to be able to do that. And if they have it assigned to them, then the odds are pretty good they’ll probably get it done. I mean, it’s their job. But if you just put it down there, they might not ever get around to it.

Ms. Bosco: Absolutely. I absolutely agree. And so what I’m hearing is that where you would like to it go. You would like to see each implementing action tied to a responsible party, and actually budgeting or timing even. And that’s how the Community Plans are suppose to be done too, and the Maui Island Plan. At the Countywide level there isn’t a mechanism in Bill 53 for that, and that’s what we’re actually trying to create. We’re trying to do exactly that, and it has to be done thoughtfully or you’re right, it’s just things just don’t get done.

Now to answer your question earlier. The other implementation tools that the County uses to get things done are things like Ordinances, Capital Improvement Programs, the functional plans within each agency that guides their actions. That’s another implementation tool. There are certain internal programs that are implementation tools such as the CZM Program. And we would like to create more. And that’s the whole purpose of this. We’d like to create things like a community trust. That may not be something that the County does, but that the community can assist in doing. So it’s not all County initiated, but, yeah, there are other ways to do it within the County. So, I’m trying to think of other examples here. I can’t think of any right now – enforcement is an implementation tool.

Ms. de Jetley: I have a question. Under this implementing plan, all of it will come back to the County so that residents in a particular community can give public testimony for and against an action?

Ms. Bosco: When you say that, what do you mean? I’m trying to understand it.

Ms. de Jetley: Just for example, we have talked about increasing urban density to stop sprawls, and in Hana, I think Joe had – it was in the newspaper – that Joe was suggesting 20-units of vacation units on top of Hasegawa Store. And then one of the store owners on Lana`i told me that her building was being inspected to see whether or not a second story could be put on it to increase density. And that would be part of an implementing action,

and it's just so totally against what we have been working toward in our community that I wondered whether or not people in this community would be able to give public testimony to things that they definitely don't want.

Ms. Bosco: Yes. Absolutely. Just because there's an implementing action in at the Countywide level or even at the Island level, the community has an opportunity to oppose certain legislative actions and that's what the process allows for public hearings in other venues for the public to speak up. So there may be an ordinance that comes to this community that doesn't agree with. And yes, you do have an opportunity at that point to say no we don't agree with how this policy is proposed to be implemented through this Bill, for example. So yeah, that's the beauty of implementation, is that, you have an opportunity at each step to decide is this how we want to see something happen? We don't just – it depends on what we're talking about here – but in the case of Bills and things that have public hearings, yes, you do have that chance.

Mr. Gima: Excuse me.

Ms. Bosco: Yes?

Mr. Gima: We're going to have to take a recess right now because we have to start the public hearing at seven.

Ms. Bosco: Okay.

Mr. Gima: So we'll take a recess on this GPAC stuff and come back to it after we're done with the public hearing. As soon as Joe is ready.

(The Lana`i Planning Commission recessed at approximately 7:00 p.m., and reconvened at 7:02 p.m.)

D. PUBLIC HEARING (Action to be taken after each public hearing item. To begin no earlier than 7 p.m.)

- 1. MR. JEFFREY S. HUNT, Planning Director, transmitting Council Resolution No. 07-108 referring a Bill for an Ordinance to Prohibit Superstores in Maui County to the Lana`i, Maui and Molokai Planning Commissions (RFC 2007/0099) (J. Alueta)**

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

Mr. Gima: Go ahead Joe.

Mr. Joseph Alueta: Good evening. As you know as the Administrative Planning Officer, I bring to you before you ordinances or changes in the rules. There's two methodologies in which laws start. One is the Department initiates it or it gets initiated by the Council through a resolution process. And when you have a Resolution, it kinds of get thrown down to the Planning Department to bring to the three Commissions and it's kind of more a damage control to see what is there and how does it fit into Title 19. There's a 120-day deadline for you, the three Commissions to get me, or for the Department, as well as the Commission to get any comments back to the County Council.

The proposal is for a sort of like a superstore ban. The Department doesn't have a position for or against initiating a ban on superstore. We are more concerned with if there is going to be a ban, we rather make it something that's simple and easy to enforce. The current ordinance, the current proposal by the County Council is to establish what a superstore is which is 90,000 square feet, containing, having 25,000 shop keeping unit items, or UPC items, as well as having 20,000 square feet of dedicated area to groceries. From an enforcement stand point that would be very difficult for us to figure out. We would have to go and measure everything and count items. It would be easier for us to deal with square footage – meaning, how big is the building? – so we would rather, if there is going to be a ban, we just keep it based on some type of square footage.

Hana Advisory Committee picked 75,000 square feet as their proposal. They accepted it, so they recommended it. Along the lines of the Department as well as, we feel that you can't just define something in definition sections of 19.04 and then say these are prohibited. We feel based on the structure of the Code, you need to go through the Code, and where ever you allow for retail or whole sale, to specify that those certain size is prohibited.

Mr. Gima: What was the justification or basis for the Council's Resolution prohibiting superstores?

Mr. Alueta: My understanding is that as through oral history, being what was told me, is that there was a meeting of a variety of Council – they have a thing called HSAC, Hawaii Congress of County Officials I guess – and during one of these meetings, I guess the heads of the County Councils had a package of Bills or Resolutions that they wanted to get passed Countywide at the various Counties around the State. And that's why you have attached the various Bills from Kauai, Honolulu and the Big Island. And this is Maui's version of it, and that was the attempt.

Mr. Gima: Because usually when you have a Resolution, you have a bunch of whereas that pretty much justify the proposal, and I don't see those whereas. I mean, I do see them, but I don't see much of a justification. I'm just curious what was the basis for the proposal. I think Corporation Counsel is itching to respond to that.

Mr. Michael Hopper: Something that may be helpful is that section one of the Bill is a purpose section. It actually mirrors what Hawaii County and the other counties had. There may be a paragraph that you could read that would give you sort of more of an insight into what the Council was thinking when it sent it down.

Mr. Alueta: It's on the exhibit one. Or on the report, it's the ordinance I gave you which is exhibit A of the Department's memo report, and then if you turn the page, there is an exhibit-1 of that A, and that's basically the ordinance. And I believe those were previously transmitted to you. I'm not aware if you were given the Committee Report. I thought you were given the Committee Report, but that also has been attached. That sort of gives what they were talking about, I guess, during that Committee where this was discussed. And then, again, the Department did send it out to a variety of agencies. And we did also get some comments from the public as well as organizations, and those are also attached for your review. But again from a Department's standpoint, we don't have enough information whether we want to support a ban or disapprove. We're just saying that from a structural standpoint, we feel that it needs to be set up differently. I've outlined in my memo report which I passed out the pro's and con's of going with our proposal, and hedging our bets and that is if you're going to do a ban, it should be based on a square footage. And you should also list it throughout Title 19 in a variety of commercial core districts and say that you know where ever it says retail or whole sale that except for superstores shall be prohibited.

Mr. James Elliott: Butch can I? I have a question. On a presumption that somebody, whoever it might be, came in and was going to propose a building of a large superstore. Is there not a mechanism in our planning and development process that could allow that to be turned down on its own merits? And the community rises up and says no we don't want it, we don't want a building here. We just don't want that to happen. And wouldn't there be a public process whereby that would be stopped? And the reason why I'm asking the question is that if you can simply stop a store from being built if you don't want it built, why would you need an ordinance to broadly cover everything? And that's my question – why would you need an ordinance?

Mr. Alueta: As I outlined – to answer your question, simply no. No. You couldn't stop building like that.

Mr. Elliott: There's no community process involved that is posting?

Mr. Alueta: No. Not at all. You come in for a building permit – if you have the land use entitlements on your property such as in an industrial or commercial core and you meet the building codes, you can build as big of a building based on your floor area ratio, your setbacks, your height limitations. And maybe on, like I say on Lana`i and Molokai where you have design guidelines, you don't have as far as I know very few large industrial areas where potentially people would build some buildings. On Maui, as I indicated in my staff report, we already have four buildings of over 130,000 square feet. The Bill limits it to 90,000 along with so much shop keeping item units as well as groceries stores. If the Bill was adopted as is, we have estimated, we're not exact, but we believe that probably Costco would be the only one that would qualify under the existing Bill and they would become an existing non-conforming use. Wal-Mart potentially could be. We're not sure if they have the square footage as far as groceries, but they're 141,000 square feet. And Home Depot is 140,000. K-Mart is whatever. So you have several buildings that already meet the square footage size. It's whether or not they have the product mix which is the 20,000 square foot grocery area. From the Department's standpoint we're not concerned with that. We don't really want to go out and measure square footage within a store and then count items to determine if it qualifies as a superstore.

Mr. Elliott: I want to make sure I'm really understanding you exactly right because I mean I don't understand what building permits and all of these things are all about apparently because I thought there were all kinds of things that come into play before a large structure could ever get built. I mean there would be an environmental impact which would include traffic which would include, you know, all kinds of things, and then the public would have an opportunity to comment and respond before those permits were ever approved. And you're telling me that none of that is even true?

Mr. Alueta: No. It's not at the building permit stage. That's kind of late in the game for a lot of these things. A lot of those analysis of traffic is done during your change in zoning phase, or even in your community plan phase to decide whether or not you want a commercial area here, and looking at the potential impacts and what are the potential – what's going to be developed there. And the same thing when you do a change in zoning – when you grant a zoning change, you're granting that person the entitlement to do whatever they want to do based on the zoning category. So if someone has five acres or 10 acres of industrial zoned lands, and they're only – whatever is allowed in the industrial district, and if they meet the building code setback, the floor area ratio, they can build whatever they want. The other issues of water, drainage, sewer – those are all engineering problems. As long as you can provide your drainage, provide the water, provide the fire flow, and as far as traffic goes, you need to connect to those roads. If

you're going to connect to State's, you're going to have to get permission from the State. The State would then require you to do, you know, maybe some engineering or traffic study to see whether or not you need to put a light. But those are all – there's no real public – it's just a matter of a fact. Do you meet the criteria or don't you meet the criteria? The only time you get into a subjective or a requirement for an environmental review – what triggers for an environmental assessment is, one, a community plan amendment. The only time you don't do an environmental assessment is during the community plan process because that's one of the exemptions. No EA's are required during the updates.

But if an individual comes in for a community plan amendment, they would be required to. On Maui because, and not so much on Lana`i, but on Maui, we have a lot of areas that are in the Special Management Area. And a lot of times that requires an environmental review. More so for coastal zone processes but however they've expanded to include other things such as traffic and social and environmental impacts. Like I said, once you get zoning entitlements and you can meet the criteria of certain buildings, you can build it. Just like if you had a single family, you have residential zoning, if you come in and you build your house and well, I can build up to 30 feet and I can build as long as I meet my six foot setback for the first story and 10 feet for the second story on the side yards, and I have a 15 foot whatever the front yard setback is, that's what I build. And as you've seen throughout the County of Maui, sometimes you'll have people building 700 square foot houses, some people will build a 4,000 square foot house on the exact same size lot. But it all depends on how they design their building and what they want to do.

Ms. Kaye: I have a question Joe. I have the same reaction when I read through all this stuff that enforcement would be a huge issue. Who's going to count all the SKU's? And so I thought Kauai's version was much cleaner. So that's my comment. That's what you want tonight, right, is just our comment on this?

Mr. Alueta: Yes, and I'm kind of hedging my bets here. If you support the ban – if you support that concept I guess you could say of banning such large structures or large operations that you make it simple and you leave it on a square footage. As you say, the Kauai methodology would be the best as well as putting it through and making a recommendation that they go through the County Code and where ever there are commercial enterprises are allowed, such as in the business district or in the M1 and M2 Industrial areas, that those be specifically spelled out that superstores are prohibited. Besides simplifying the definition of a superstore.

Ms. Kaye: I have two questions then.

Mr. Alueta: Okay. But like I say, if you don't agree with the proposal, you just say that you don't agree with and you reject it.

Ms. Kaye: There's no mention in any of them on height restriction. Is that because it's unnecessary?

Mr. Alueta: Yes. Because the zoning category would determine the height.

Ms. Kaye: Okay. So my second question then is this whole push to have groceries limited in size is that if you take that out because of the enforcement difficulty and limit it to just store size, then that does allow someone say, I thought 70,000 square feet is a reasonable size – that allows them then to fill their shelves with whatever they want, correct? So does that then defeat the purpose of having put that restrict in the first place which I assume is to make a little healthier competition for local endeavors that are already selling retail wears?

Mr. Alueta: It could be. It could defeat but like I say I don't understand the true concept behind the whole issue of which industry are they trying to protect.

Ms. Kaye: That's my question.

Mr. Alueta: Okay, so are they trying to protect the supermarkets? Safeway is 40,000 square feet alone, but it wouldn't qualify as a superstore because it's only 40,000 square feet. But it doesn't – so again, we're not sure what the intent is or at least the intent is not as clear as we would like it to be. However, since the Planning Department would be the ones trying to enforce this, we want to make it something that we could potentially enforce because it's easier just to say when a person comes in for a building permit, we can figure out how big the building is. But if we have to go out and try to calculate grocery floor area relative to other retail spaces, and again, counting items in the store, it seems a little hard. And I always believe that no matter what law you write, people will always find a way around it. So they'll just build one square foot less here and one square foot less than what you have, and make one less item, then you say you can't. So it will always be a cat and mouse game no matter what. And I'd just rather have it just be clean cut as to what the size is as far as how big the over all building is and that will make it easier for us to enforce.

Mr. Endrina: Joe, if it's 90,000 square feet then, gross square feet, that would be almost the size of the city. For us, how would we protect Lana`i from anything bigger than, let's say, 40,000 square feet?

Mr. Alueta: I haven't reviewed your Lana`i City Design Guidelines. So that might be your best bet when tying in your thing, as well as, your community plan update because I think it has to do with design characteristics – the scale and operation as well as your community plan language because I believe Lana`i has a lower height limitation in some areas than what is called for in the zoning code. So we try to, I mean, for the most part, we respect what's in the community plan. We use both at the same time and it's not just the zoning code.

Mr. Endrina: So in that case then, if an application for a store for Lana`i, it would be okay to build it, but under the community plan it would be stopped.

Mr. Alueta: Well, when they came in for their building permit, not only does the person who's trying to build the permit looks at the County Code, they should also be cognizant to have a good consultant, to look at the design guideline booklet as well as your Lana`i Community Plan to see what limitation I had and what are the wishes of that community. At the same time, if he doesn't, the Planning Department when we review it, when our Zoning Administration reviews it, we also review the language within the General Plan and the Community Plans with respect to that building permit.

Ms. Zigmond: Then what happened with the two-story building here, since that was not in agreement with our plan originally, our community plan? How did that slip through? And what's to prevent something else from slipping through?

Mr. Alueta: Yes, it did slip through. I wasn't involved in that. That was one of the reason we are now more cognizant of the languages throughout all of the County and all of the varieties of the General Plans because there are conflicts that we find. Where we do find conflicts, we try to make the changes so that they're changed in Title 19 in itself. So this could be one of those opportunities where you put "for Lana`i only" – you set up your own parameters and that's entirely up to you. I mean this is an ordinance that's coming down from Council, they're seeking your comments, and we'll pass it on.

Mr. Elliott: Am I assuming correctly that this ordinance is designed towards new construction and does not affect the existing construction? How is that implicated in that?

Mr. Alueta: As indicated in my memo report, you have, I believe, identified four existing stores or buildings that are of larger than the 90,000 square feet that we are aware of, and that is the Wal-Mart, the K-Mart, the Costco, the Lowe's and the Home Depot – so that's five. If you adopt the Council's proposal as it defines a superstore, it would make the buildings existing non-conforming. However, it would also prevent the buildings or the operations from changing their product mix to include groceries of 20,000 square feet.

Because the Council's definition of a superstore has three criteria to our superstore: number of products, total square footage of the building, and 20,000 square feet of dedicated grocery area. So it would potentially prevent the K-Mart or the Wal-Mart from converting or expanding their existing grocery offerings. As well as, it's not anticipated that Lowe's or Home Depot would enter the grocery market, but it would prevent those operations from doing so.

If you adopt the recommendations of the Planning Department with regards to simplifying the definition of a superstore to be only square footage then these operations would be in a sense, the structures would become existing non-conforming. But the product mix that they offer would not be restricted and then therefore, they could modify their existing floor plan without expanding the size of the building.

Ms. Kaye: Are you aware Joe – has this triggered anywhere by some of the companies wanting to build additional stores on Maui? Are they planning for it actively?

Mr. Alueta: We did have testimony from the Wal-Mart people.

Ms. Kaye: That they were disappointed.

Mr. Alueta: They've actually showed up at all of our other Planning Commissions. I think one might be here – I'm not sure – one of the representatives. But they have indicated, at least the Hawaii Manager, when he was present at the Maui Planning Commission, that he was not, they were not planning any store expansions on Maui or in Maui County. They are looking on Oahu in the next three years. But he could only speak for a three year time horizon. And the only one he had was in, I believe, Kapolei or some place – they were planning another one.

Mr. Gima: Alberta and then I've got a question.

Ms. de Jetley: I, for myself, am oppose to this resolution because I think it restrains free trade and that building sizes and uses should be addressed through the zoning process. There is nothing that says in our State. We as residents should be free to shop where ever we want to shop. And for the County now to be saying that we can't shop at superstores, we can't have anymore superstores built, I think it's totally against what the United States is all about. We should have the freedom to shop where we want. There was a lot of discussions about small mom and pop stores. I shop, like instead of going to Home Depot, I go to Maui Ace Hardware, Marmac because their excellent service. Superstores force the smaller stores to become more competitive and to offer Maui County residents better prices. I think that we should address the size of stores and all

businesses through the zoning process rather than putting an out-right ban regardless of this 90,000 square foot size. It's just adding another layer of bureaucracy and restraint of free trade to our community. On Lana`i we have zoning laws. We have our Country Town Zoning process in it. It would not be economically feasible for a superstore to come into Lana`i. So for us to even worry about is silly. A lot of our residents go over to Maui to shop. They can shop on Maui. They can shop here. We've given them that choice. It's up to them where they go.

Mr. Gima: Jose, can you – I have two questions and one statement. The first question is so precedence has been set in other counties?

Mr. Alueta: I believe that Kauai is the only one that adopted it. The Bill on the Big Island died. I believe that they're trying to reintroduce it, but it was on the front page of the paper that it died.

Mr. Gima: When Larry asked earlier about language that may pertain specifically to Lana`i, you had mentioned about how our community plan may have language in there that would possibly restrict so-called big stores, superstores. With that being said, do the other community plans on the Island of Maui have such restrictive language that you would not need a Bill like this?

Mr. Alueta: Not that I'm aware of. I'm not aware of any community plan language that restricts the size by square footage for commercial enterprises. The only type of design restrictions that I'm aware of, within the community plan languages, had to do more with shoreline parcels or parcels near the shoreline, either with the height, either by stories or by feet calling out, setbacks, or for percentage of view corridors. I'm not aware of anything with regards to the square footage – of setting a maximum square footage for any commercial. Normally that's left to the zoning category, and another thing that limits it is, you know, some planners call it the blue print, and that is your subdivision. A lot of times, your communities have a blueprint of how the lots are laid out – the tax map key – and buildings come and go, but those lot lines tend to stay. So if you allow for certain large lots, or large commercial lots, then you tend to get large buildings on those commercial lots. If you have smaller commercial lots, then you tend to get more smaller scale commercial buildings. Because of land ownership is split apart, it's hard to consolidate.

Newer subdivisions, it's easier in industrial. That's why you see the congregation of these larger stores within Kahului, along Dairy Road area because A&B has developed industrial subdivisions or large commercial subdivision, and either did them because they had a buyer in mind with this ideas that these stores were going to be coming in. Or because

there was blank slate for one owner, these large enterprises such as a Wal-Mart or Home Depot were able to come in and buy up several lots contiguous to each other before any development occurred on it.

Mr. Gima: And then the statement – maybe it's even kind of a question – my initial reaction when I first saw this was that this is being initiated to protect the mom and pop's. However after thinking about it for a while, I'm just wondering if this may have been initiated so that the superstores can no longer have any competition to their operations. You know you can't bring in a Walgreens. You can't bring in a Target. Was that ever discussed or considered as part of this deliberation?

Mr. Alueta: No, but the main people who are oppose to the Bill is Wal-Mart. So from that aspect, it's the big stores who are oppose to the ban itself. And I think more because it has to do with the product mix. They may or may not be going in that grocery way. But your ideas did come up as far as conjecture. Other people have come up with the same idea, but nothing has come about as far as testimony from other people.

Mr. Dwight Gamulo: Yeah, I agree with you Butch and some of the things Alberta said, and I was just wondering why is limited to 90,000. Where did they get that number especially when you have stores that are bigger than that already? If somebody wanted to come here, like Target, and they wanted to build a store, and it had to be smaller than Wal-Mart, it kind of seems unfair, you know what I mean. So that's one reason I am not in favor of this resolution.

Mr. Alueta: Do I hear a motion?

Mr. Elliott: I would just make a comment too. I'm just sitting here thinking the implications to us and Lana`i. Imagine us being the ones that say, you know, all of these people getting on the Expeditions Ferry to go over and shop, that they're not going to be able to do that anymore. Well, it's not entirely true, but in the long run, it does have an effect, doesn't it? Of not having shopping as available to the residents of Lana`i. I would think it would have that affect.

Ms. Kaye: I understood Joe to say that the existing stores that we all shop at now, would still exist as non-conforming uses. So it's not going to limit our shopping. It's just going to maybe save the view lines and save some space from being eaten up by more stores. I'm would be in favor of this Resolution if it was limited to square footage – not Resolution – the Bill.

Mr. Gima: Out of curiosity about – when we started talking about the affordable housing

thing, we had talked about coming up with some anti-speculation language, and James Giroux said based on – I forget what he cited but he said it's unconstitutional to do that. I'm just wondering, this almost has the same flavor – like you're restricting – I don't know if free-trade is a correct term, but is that comparable or is it two separate different kind of concepts?

Mr. Hopper: We discussed this – well not me – I wasn't there, but over heard the discussion on Maui. And I don't know what James said in that particular case. I imagine it may have been something along the lines of limiting certain things to Maui residents or something like that. And that could be considered something that would restrict the right to travel or if you want to file a privileges of immunity clause of the constitution or potentially the commerce clause. This, because, this is not a ban on Wal-Mart or a particular store. It's a ban on all structures of a certain type that are of a certain size. And that is not necessarily unconstitutional. And I don't believe it would be unconstitutional. We haven't reviewed this Bill formally or signed off as to form and legality. But as I can see it, it is simply a ban on a, in certain zoning district, of the size of a structure for the particular use. And that in of itself I would not see as being a constitutional problem because that's what zoning is. That's all over the Code of different set back restrictions, use restrictions and things like. So I wouldn't see that as being a problem. If you limited it to 90,000 square feet or 75,000 square feet, you know, Wal-Mart or whoever would have the right to come in and build an 89,999 square business that does the exact same thing. So I don't see it having a constitutional problem. I would agree with Joe on the – if you do this island, a ban could do it the way that Kauai has done it. Go into the different districts – it could be allowed – say it's restricted and certainly don't do it as it is now just in the definition section. Because someone reading this code would have to look at the definition of food and beverage retail in order to determine that superstores are prohibited, and that could create some problems. So you really need to go into those different zoning districts and say it's prohibited, if that's what you're planning on doing.

Ms. Kaye: I wanted to point out and ask, I went back and looked for that in our big book, our zoning, Chapter 19, and that phrase isn't in the version I got – the food and beverage just does not exist. It's on line. I found it on line, but it's not in the version in the books that we got.

Mr. Hopper: There's a definition in 19.04.

Ms. Kaye: Yes.

Mr. Hopper: It's not one of them?

Ms. Kaye: No.

Mr. Hopper: That would be problem.

Ms. Kaye: Yeah, so that was a problem.

Mr. Hopper: In any case, there's no reason to really necessarily be – I guess you can amend food and beverage retail if it is in there just to clarify that that doesn't include the superstore. But certainly, you shouldn't have your superstore ban and the definition of another term. It's just very – it would be very difficult for someone reading the Code. And I'm not sure if this ordinance sort of assumes it's going to be done by each individual County. They may just not know what every single –. I mean this is the version that came down from the meeting of the Councils. They may just not know what every County's resolutions – or Code – looks like. But I think Kauai, in my opinion anyway, did it the right way. If you're going to do it, and we don't give any opinion on whether or not you should do it or not.

Mr. Gima: . . . (Inaudible. . . Changed cassette tapes) . . . to either approve or disapprove the Council's Resolution or do we also have the option of proposing our own language?

Mr. Alueta: All three. As I was indicating, if you make a motion to – if the Board wants to reject the Resolution outright, or the Bill outright, then you can do so. But we would ask that you state that should the Council ignore your recommendation and adopt some type of ban on superstores that you incorporate the Department's, the Planning Department's recommendation with regards to limiting it to size only and putting it throughout the Code as far as in what districts they're banned in.

Ms. Kaye: Would it benefit it us in anyway to defer this and give some thought to language that would cover Lana`i? No, I remember you said a little while ago, putting in language, except for Lana`i –

Mr. Alueta: Yes, I –

Ms. Kaye: – would be one.

Mr. Alueta: You could. I'm not going to tell you can't. Deferral is always an option. I just have to return some of these comments back by January 10, 2008, so there's time.

Ms. de Jetley: Joe, I have a question. Under present zoning laws – and this is just

hypothetical – if I had a 20 or 30 acre industrial sized lot on Maui, not on Lana`i, on Maui, and it was already zoned for light-industrial, and I wanted to build a store at that location. Under this resolution, I would be limited to a store no more than 90,000 square feet, but the land mass that I have, I have more than ample parking, so I`d be restricted from building anything, although I have the land area that I`ve paid for. I`ve already got the zoning. I`ve already got the zoning in place. I`ve already got my permits to hook up to the State roads, so is the County going to reimburse me for land that I can`t use because of this restriction now on square footage?

Mr. Alueta: No – on several fronts. One, we haven`t taken all value or all reasonable value from your land so you wouldn`t hold up in the Constitution. Secondly, you can subdivide the property. If there`s 30 acres of lot and the minimum lot size in the industrial area is 20,000 square feet. So you would be able to subdivide out the property. You made another statement toward the end with regards to connect. That`s assuming you had a connection – that means you had already obtained a building permit. So if you had already obtained the building permit to build such a structure, and the County tried to enforce it against you after you obtained a building permit, then we, the County, might be in trouble. But I do not believe such an ordinance exists. How the implementation of it would be – whether it`s going to be existing structures or if you haven`t received a building permit – and that`s normal. We`re having that case issue with the rural district as you recall. The way we`re wording the Bill currently is that if you`re already in the building permit process and you`re in the rural district, the proposed new setback and standards for the rural district, it would not impact you. It`s only if you`re coming in for a building permit after that. So I hope I answered your question in multiple ways.

Mr. Gima: Is the language you guys are recommending, the 90,000 feet, aggregate square footage? Does it have to be all in one? Because I can think of Sears up in the mainland where they had their main store and then couple of 100 yards down they have their auto and tire separate. So in those situations, can Sears have a 90,000 square foot tire shop and then a 90,000 square foot regular Sears? Or is it an aggregate 90,000 square feet?

Mr. Alueta: I believe that it would be as long it`s under one business. So if it`s Sears and Sears, you know, then potentially they could, someone could argue that yes this is in the same area. But if it`s two separate building in separate locations, I think you`d have a hard time. But if it`s on the same lot, I think there could be some argument there.

Ms. Kaye: The way Kauai did their Resolution, they did aggregate.

Mr. Alueta: Aggregate of all buildings?

Ms. Kaye: It's section four – I don't know if that's an A or what but – if there owner lease processor otherwise control in any manner by the same individual business, then they're within like 800 feet of each other.

Mr. Alueta: Okay. Yes, then, we would recommend that also. And like again, we're not recommending size. We'll just say, we'd want it to be clearer. We think Kauai has made it clearer and we would follow that line.

Mr. Elliott: I just want to make a comment that I think it's interesting to begin with that Kauai has adopted it, the Big Island hasn't, and this discussion is taking place. And I just want to make my comment that I would not be comfortable in voting for this right now. My primary reason is because I'm concerned that this could have unintended consequences that we're not smart enough to figure out in a 20 or 30 minute discussion here knowing that this information is mostly only, you know, been delivered to us. And I just want, as long as I have the floor to comment also, which has impactful to me, the correspondence by Paul Brubaker of the Senior Vice-President, Chief of Commerce, of the Bank of Hawaii who stated that the draft Bill would not achieve its stated purpose and that they're more appropriate and effective means of mitigating any negative impacts that superstores. Doctor Brubaker characterize the Legislation as protectionist and inefficient. And I just think there's an awful lot of information that I would need to have before if I could ever vote to support of this right now. I'm just making that comment.

Mr. Gima: Would it be appropriate to take public testimony at this time? Okay. Anybody wishing to? Pat Reilly, followed by Ron McOmer.

Mr. Pat "Fairfax" Reilly: My name is Fairfax Pat Reilly. I'm a resident of Lana`i, and holiday greetings to everybody. Thank you for the opportunity for this testimony today. This is excellent! I love this. You just got through approving the vision statement, and this baby comes up and Member Elliott just asked about implementation and where's the implementation? And guess where's it at? It ain't here. It's on Maui County Council. You don't have a thing to say about it. Take a big breath. You want one on Lana`i? That's all you've got to worry about. Write this baby for Lana`i. Let the County take care of itself. My guess is this baby is going through no matter what you do. So how do you craft language if the vision you want for Lana`i is not here? If you want a 60,000 or 90,000 square foot box store on Lana`i and all you've got to do is change the zoning. And I understand Castle & Cooke is selling some ag lands around. This is real important except you won't have any control over this. But I would beg you, my thing is, my vision of Lana`i 20 to 50 years from now probably doesn't include a box, super box, store.

And the classic struggle between free enterprise business and the quality of life as you

envision it for Lana`i maybe is in a clash. Will people constantly go to take Expeditions and go shopping? Or we do have commercial area right here. Somebody is going to convert it into industrial right down town. How about the old truck station? I don't know how big that lot is. And my understanding of this that Chair Hokama and the Councils did get together and part of the idea was also to –. And there are many proposals, I read it in the paper, on Maui to want to build additional box stores. So this is money. This is big money. And these box stores make a lot of revenue. It's not rock science. They make money off this. But the clash becomes is that what you would like to see for Lana`i? If I said this baby is going through, I would amend it to, I don't know, what's Richards, what's Pine Isle? What's General? How many thousand square feet is that? That seems to fit my design guidelines and that's appropriate. But man, while I'm looking at the vision statement and listening to this whole GPAC thing and we're going to do the Community Plan, it's too late already guys. We won't be able to stop that unless it's written into the Maui County General Plan and the Community Plans, and by then this would have gone through. So I don't have any issues. The Kauai Bill sounds and I haven't even seen the darn thing, but the Kauai Bill sounds appropriate, but not for Lana`i. So I ask you to struggle with that one, and I'm sorry about that. And I would agree, it's hard. I've been there and it's hard to get this at the last minute and come up with, just think of Lana`i, that's all I say, think of Lanai. Thank you very much.

Mr. Gima: Thank you Pat. Any questions for Pat? Ron.

Mr. Ron McOmber: Good evening and happy holidays. My name is Ron McOmber. Following a little bit from what Pat said, you're going through the General Plan reviews. These things should be discussed in the General Plan and then it trickles down to the Community Plans. I think each individual Community Plan on each segment of Maui needs to put that in their community plan. Do they want big boxes or do they not want them in their areas? Because they're really are the ones that are going to be impacted by the traffic, the infrastructure. If the rumor is right, there's a Target that's about to open in Lahaina. Who in the hell approved that in the County knowing the infrastructure problems that runs between Maalaea and Lahaina? It's just going to increase the traffic just unbelievably coming in this other direction. So if that was approved by the Planning Department or by the County, and knowing how bad that infrastructure is, well somebody is not thinking.

Now let's get back to Lana`i, and we're going to do this on a little bit smaller basis. But I'm going to warn all of you that Mr. Murdock, in the back of his mind, every time he comes here, he talks about tearing Richards Shopping Center down, and replacing it on the other side of the park. What this Community Plan and what the GPAC need to consider is the vision of what do we want that new store to look like so it doesn't put the other few stores

out of business. We really need to consider that, and we're going to consider that in the Community Plan. We'll talk about it. These are new things that are popping up all the time. Every time we turn around there's something new that was not in the original General Plan talk – when we were talking about it at the General Plan review process.

The other thing that's about to happen, ladies and gentleman, on the 27th of this month, the Department of Boating is going to be here talking about putting paid meters in down at Manele Harbor. And we need to talk about that, and we need to talk about that in the General Plan also. If they're going to privatize all the harbors, all the recreational harbors in this State, it affects local people. It affects everybody that locally uses those mosquito fleet. So we're getting hit all the way around. It isn't just the big box stuff guys. Big boxes are here, and they're not going to be on Lana`i because we can't support them. We couldn't even support a McDonald's here. We need to worry about it at a smaller level here on Lana`i, but we need to do it through our Community Plan and through the GPACs.

I have no objections to big boxes. I think they've been, to most of us, it's been kind of a great thing because we can buy products on Maui and put them on the ferry and bring them back with us. We couldn't do that before. I don't know about groceries. I mean, I've been in Wal-mart and seen their prices. They're no different. Safeway tops them most of the times – they beat them with their prices. So they're competitive. They keep people competitive. But I'm more concerned of what's going to happen to Molokai and Lanai` and Hana and places like that. And let the Community Plans speak. I hope that the other communities in Maui County will stand up and take a strong local stance like we hope we'll do here on all these issues. So I won't wander anymore. I really don't have any personal objections to it. Either way, I accept it. I think we need to look at it at what's going to happen on Lana`i. And we're going to have a problem with Mr. Murdock redoing his town. And we can't run all the businesses out of business just because he wants one mini-superstore of his own. Thank you for your consideration, and Merry Christmas everybody.

Mr. Gima: Thank you Ron. Any questions for Ron? Any other persons wanting to testify? Hearing none, closing the public hearing portion. Why don't we take a 10 minute recess before I move on to taking action on this.

(The Lana`i Planning Commission recessed at approximately 7:55 p.m., and reconvened at approximately 8:05 p.m.)

Mr. Gima: We're back in session. Joe before we start talking about possible actions, when did the 120-day clock start?

Mr. Alueta: As indicated on the memo report, September 12th.

Mr. Gima: And tonight is the first opportunity for us to –?

Mr. Alueta: Yeah. Well you're the last Commission to go through it. It's just that, one, the Department had to send out for agency comments, and then secondly, we got a little bogged down with the scheduling because we had, one, we had the transient vacation rental ordinance and B&B amendments, the rural bill that needed to get done, as well as you have your GPAC hearings. So that's the reason. We've been trying to get it on an earlier date, but could just not do it. For the record, I barely make that 120-days on good days, so don't let that stop you. It's in the Charter and that's what they ask – 120-days – and after that point, Council can take action without the comments from the Commission.

Mr. Gima: The reason I asked, I was just seeing if deferring is an actual option that we have. So we can accept this – we can take action accepting the Resolution. We can reject the Resolution. We can modify it. Or we can defer. Correct?

Mr. Alueta: Correct.

Mr. Gima: Any further discussion before I entertain a motion? Alberta.

Ms. de Jetley: I'd like to make a motion. I move that we reject this Resolution.

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

Mr. Gima: Okay, it's been moved by Commissioner de Jetley and seconded by Commissioner Gamulo that we reject the Council's Resolution pertaining to prohibiting superstores in the County of Maui. Any further discussion? Bev and then Sally.

Ms. Zigmond: Is your motion meant to just reject it period or reject it to possibly change it?

Ms. de Jetley: My motion is to reject it period because I believe that we have enough zoning regulations in place on Lana`i to ban superstores on this island.

Ms. Kaye: My response to that is we can't be taking the position that we're an island of our own. We're part of Maui County and I think we have a responsibility as a Planning Commission to weigh in on this regardless of the position. I think we have that responsibility. I would prefer that we would do what Joe recommended earlier that we don't like this language but if they want to adopt it that they take the Planning Commission's language to support the Kauai approach and limit it to the square footage.

Mr. Gima: Any comments about that or wanting to modify your motion?

Ms. de Jetley: I think maybe if we took a vote on it and try to see where everyone was standing then if it fails we work the motion.

Mr. Gima: Any other discussion? I'm a bit worried that if the motion – let's see. No, I've got to think about this a little more. So Sally are you suggesting that we need more specific language for Lana`i or are you just saying we should – you're recommending that we amend the motion to reflect what Joe had suggested?

Ms. Kaye: I think if we just simply say go off and do what you want to do Maui. It has nothing to do with us, we stand the chance of shooting ourselves in the foot. Maui can do what it wants and then it will apply to us whether we like it or not. Having said that, I don't get from Joe that we have time to think about inserting the language that would protect Lana`i tonight unless somebody can come up with something right now. So the solution I think would be to say we don't like the way this is written. It's not enforceable, but Kauai did it right and we would support that approach. And that's what the Planning Department I think is recommending.

Mr. Gima: Dwight and then Jim.

Mr. Gamulo: I still, I don't like this, the ordinance or the resolution, to recommending approval of this ordinance. I think 90,000 – why are you limiting it at 90,000 square feet when we have stores already there that are bigger than that. That means they're going to have competitive advantage, one. And two, I don't have anything against big box stores because of the reason stated by other people. They allow competition that lowers prices to consumers, and I'm a consumer. And especially places like Home Depot – I use. So I recommend that we do as Alberta said in her motion.

Mr. Elliott: I think at even at this moment we don't really know whether the Kauai thing is a good thing or not a good thing. Whether it's workable and whether they can implement. We just don't know that – I don't know that I should say – I don't have any knowledge. I do know that the Big Island rejected the thing at this point. And I do have a concern for Lana`i and that's exactly what I'm concerned about, the only thing in a real serious way is I don't want to see anything to negatively affect Lana`i. And it's my feeling that if we were to reject the vote, we're only solidifying and strengthening our position as far as Maui County is concerned because then they know that whatever they're doing there, that we have our own reservations here on Lana`i, and to be in the position to want to deal with

those later on. That would be my concern. I'm really listening to what Pat and Ron said, we care about Lana`i and I think by rejecting this, we don't weaken our position.

Mr. Gima: I think the Planning Department had suggested that there was a possibility that County Council may hear all the comments from the Planning Commissions and still go ahead with a prohibition. And that's why I'm asking, do we want to include? I mean, should we vote to reject this resolution, do we want to include a recommended language should the Council not follow our recommendations? And I think that's what the Planning Department is saying – they're saying Lana`i Planning Commission may reject the Resolution. However, County Council, if you go ahead with prohibiting, this is what the Lana`i Planning Commission is suggesting that the wording should be.

Mr. Gima: Is that accurate Joe?

Mr. Alueta: Yeah.

Mr. Gima: Okay. Alberta?

Ms. de Jetley: Could we vote on the first motion to see where it stands and then if it passes, can we make another motion saying that in our Community Plan, our Country Town Zoning would ban big box stores anyway? Okay, we don't want big box stores on Lana`i, but we also realize that the commercial facilities that we have in our community now are inadequate. We go from barge to barge. Our stores presently, the existing stores that we have are too small to continue to serve the needs of this community as they are today. We operate now on a week to week basis, consistently running out of food because our stores are too small to accommodate our present population and the present demands of our population. So eventually they will have to expand our stores, right? But we will never ever be able to support a big box store on this island because our population is too small. We don't want to shoot ourselves in the foot and say well yeah we only want a store of a certain size. The present zoning laws that we have will take that into account. Castle & Cooke or Pine Isle can only build a store that will only conform into the existing land space, whatever existing land space they have. Do you see what I'm trying to say? We need to allow for future expansion and it will never include a big box store.

Mr. Gima: I see what you're saying. At the same time that wouldn't preclude the County Council from adopting this prohibition. And that's why Joe had suggested that even if we reject this Resolution, they may go ahead and pass it. And so as a safety net for us, he's suggesting we suggest the language about limit it to x-amount of square feet.

Ms. de Jetley: As a business person, I don't think the County or government has any right

to put that kind of restrictions on a business. You should be able to expand your business to meet the demand. But for us to say, well, you can only build a 90,000 square foot building when Dwight said they're already building businesses exceeding that size. I don't think that's fair at all. I think that you have to let the consumer set the demand.

Mr. Gima: I understand that. All I'm saying is that there is the possibility – as strongly as we may feel about rejecting this Resolution – there is a possibility at the County Council may pass this Resolution.

Ms. de Jetley: And I also think that enough consumers are against this Resolution that they're going to have a hard time once it actually comes before them to get it actually passed – that they'll be flooded with people protesting this Resolution.

Mr. Gima: Sally?

Ms. Kaye: I have to say that I'm really opposed to this nimbi approach. You keep your box stores over on Maui because it's convenient for us, but we're not going to have them here on Lana`i. We have a responsibility of Maui Island – we see that they have a problem and it's visual – it's traffic. Everybody that goes over there complains about traffic, and we don't have an unaltered right to just expand as much as you want to. I'm sorry, this is a limited island. We did a whole GPAC around preserving the environment and now we're doing 180 and saying build as much as you want. I'm sorry. I'm just saying that's my position. I don't want to get into an argument about it, but I really think that if Maui sees that it has a problem, we have a responsibility to respond to it somewhat. And a way that would support their efforts, the fact that there are preexisting use stores means that they're not going to be penalized.

Ms. Zigmond: I have to say that I cannot support the motion that's on the floor right now. I don't think that it is conforming to what we're talking about in the GPAC. I just can't do it.

Ms. de Jetley: I disagree mainly because I think that it should be zoning regulations that are already in place that determines size and use.

Ms. Kaye: Zoning can change. That can change at any time. And watch as Joe pointed out, they're already zoned huge size. Somebody can come in without a ban like this and build another one and then there will be just be more and more and more. I think that's what Maui County is trying to put a control on.

Mr. Alueta: Mr. Chair, if I may, I just wanted to clarify to Commission de Jetley that this is

a zoning. What they're doing is trying to – we have existing zoning regulations for each zoning category. This would set a superceding and go across each of the zoning categories to set it. That's why it's in the zoning code. That's why you're seeing it. So you're just saying that – if I read you – you're saying the existing zoning regulations are adequate to regulate these? Okay.

Mr. Gima: So the motion that's on the floor is to reject the Resolution. Correct? Everybody clear? I'm not. Is the intent of the motion to allow free trade and choice or is the intent of the motion to insure that we have something specific for Lana`i? That's not real clear to me because I'm hearing several things.

Mr. Elliott: Can I speak? I know you're asking the question to Alberta but I could speak for myself, not necessarily for her, but I can say this because the intent of the motion for me would be back in relation to the quote that I read from the Vice-President Chief Economist of the Bank of Hawaii. What he said that the draft Bill would not achieve its stated purpose and there are more appropriate and effective means of mitigating any negative impacts of superstores. And he characterized the "Legislation as a imperfectionist and inefficient." And that's what I feel and that's why I don't want to just put a stamp on this because that raises all kinds of questions in my mind that I don't have the answer for right now. And so if I just voted to approve this then I'm perhaps unknowingly opening up the door for a whole bunch of things that I did not know. That's why I'm not in a position. I could consider deferring as we try to get greater understanding. But I also now that an island of the Big Island, you know, has sufficient people that they've decided that they didn't want to go this way. And I don't even know for sure how the final details because there's still a lot of unknown stuff. We're talking about size of store, and SKU's and how many and a lot of other things which are very much unknown. So how can you just approve something that you don't really know what the consequences ultimately might be.

Ms. Zigmond: . . . (Inaudible) . . .

Mr. Elliott: What's that?

Ms. Zigmond: What if that bank expert has a hidden agenda?

Ms. Kaye: You know the bank expert, he answered part of your question. The bank expert said that it was "inefficient as written" and Joe was suggesting that, he agrees, that "it's inefficient as written," and his suggestion is limit it to floor size. That way you preserve the visual impact, you limit the traffic impact, and you don't have the SKU problem. He talked about that before.

Mr. Elliott: Okay, that's a good point, but that's a very nebulous thing. By us approving this without nailing down specifically what it is we are approving – we don't even know what we're approved. And that's another reason why – I mean I don't know what the specifics are. I mean, when we say, let's adopt the Kauai version – I don't know.

Ms. Kaye: We're not in the position to adopt anybody's version. We're only in position to recommend to County Council that that version makes more sense because it's more efficient than putting in all the SKU and square footage of groceries.

Mr. Elliott: But I don't know that we had an option to be voting on that. We're not voting on are we doing the Maui version or the Kauai version. I thought we have this one ordinance in front of us and we're here to either approve or reject or defer or change.

Mr. Gima: That's why Joe had suggested if we chose to reject the Resolution that he made a suggestion that we might want to state to the County Council that if they go ahead and pass the Resolution that this is the wording we would suggest. Because again, as strong as we feel about this Resolution, the County Council could trump us.

Mr. Elliott: . . . (Inaudible) . . .

Mr. Gima: What's that? Right, so because that's a possibility, my question to the Commission is do we want to include language in our decision whether should we reject this Resolution?

Ms. de Jetley: And that's why I suggested we vote on the motion that's on the floor and then do another motion with what it is that we want. But in a letter to Gladys Baisa by Pamela Tumpat from the Maui Chamber of Commerce, she writes, "if we are concerned about the impact a superstore could have on our community then let's go ahead and create ways to address our concerns and ensure that superstores incorporate a smart growth principals instead of creating an outright ban. Such a ban further portrays an anti-business sediment, a perception that plagues our State and not a perception that we want for Maui County and limits the options of our residents." So we don't have time tonight to go through and draft another Resolution of what we want. If we reject this Resolution outright, then make another motion that they should send it back to the table and study the issue further and open it up to more community input.

Ms. Kaye: Have the Planning Commissions on Molokai and Maui dealt with this?

Mr. Alueta: They've held their public hearing and closed them – that's about it. Maui has deferred action and it will be placed on their January 8th meeting so that they can – they

wanted additional information, like what was the rationale, whether there was any case studies of other areas who have banned it. I mean, they are out there. It's just that stuff was not provided to the Department when the Resolution was sent down. So the Department will have to either go back to Council Services and see if they have any information that they have as background when they initially drafted this Ordinance.

Molokai, again, held a public hearing, however, they had a long meeting, and we ended up deferring action at the last moment. They didn't have enough members. They lost quorum at the end. Right after Maui – the next day – so the 9th. I'm sorry, it's a timing issue. I'm not – and again, I don't want to – hopefully no one will shoot me for saying this, but you can defer it if you want – if you really think that there is information that you're specifically looking for. But if you feel that you can work through your issues tonight, I would encourage you to do so.

Mr. Hopper: In addition, if the Council gets this without your comments, it can take action, but I believe it would need a two-thirds vote. They need a higher vote to take action without your comments even if you didn't make them in a timely manner. But, yeah, along with Joe, I would certainly advise you to make your comments if you could. Is the first thing that Council is going to take up as soon as that 120-day period ends? Probably not. But what the Charter says is that they can take action – they need a two-thirds vote – if you don't make your comments within the 120-day period. Practically does that typically happen? I don't believe it typically does so just so you know.

Mr. Gima: Alberta would you be willing to reconsider and defer this? Because I understand your position on this and at the same time I'm not feeling real comfortable about what the impacts are for Lana`i. Do we have enough language either in here or proposed that will take into consideration how it's going to impact Lana`i? And if you do reconsider and withdraw your motion, I would suggest that we put this on the next month's agenda and specifically ask the Planning Department for more information, just like the Maui Planning Commission, the Molokai Planning Commission, that will help us make a more informed decision.

Ms. de Jetley: Why don't you just let us vote on it and see where we are?

Ms. Kaye: Now that I know that it isn't lost, I would wholeheartedly support a deferral. If there's some way that we can figure out a way to protect this island and still help Maui with their issues, then I think that's the high road to take. Specifically, I would think we'd need more information. It sounds like the other Commissions asked the same questions we're asking about other studies and what's the intent of this and why was it written the way it was – all questions we've asked tonight.

Mr. Alueta: Two things, Mr. Chair, is, one, that you do have a motion on the floor. Secondly, it was just Maui – Molokai’s approach as far as in their discussions has been what we want for Molokai, and they’re going to say for “Molokai only, this is how big we want the store,” and they’re looking at a smaller number. From Hana, if you look at Hana’s comments, they just threw out the number. They went along with the Department’s recommendations as far as size make-up – 75,000 was a big enough store. And then for the Cultural Resources Commission has indicated – they were confused as to why they were looking at it at the first place and they just felt it should be – have a Hawaiian architecture in the end. They debated it like you, going around in circles, and then they find, wait it minute, our job is this and they just commented on what their job was.

Mr. Gima: Okay, so we do have a motion on the floor. And since you’re choosing not to withdraw the motion, any further discussion? Okay, hearing none, all in favor of the motion to reject the Resolution pertaining to prohibiting superstores in the County of Maui, all in favor say – all in favor, raise your right hand.

Commissioners Alberta de Jetley, James Elliott, and Dwight Gamulo: (Hands raised.)

Mr. Gima: Okay, all oppose, raise your right hand.

Commissioners Sally Kaye, Lawrence Endrina, Stanley Ruidas and Beverly Zigmund: (Hands raised.)

Mr. Gima: Do I need to vote? Okay, I vote. Okay, motion fails. Okay, what’s the pleasure of the Commission now?

**It was moved by Commissioner Alberta de Jetley, seconded by
Commissioner Dwight Gamulo, then**

MOTION FAILED: To reject the Resolution.

**(Assenting: Commissioners A. de Jetley, J. Elliott, and D. Gamulo
Dissenting: Commissioners S. Kaye, L. Endrina, S. Ruidas, Beverly
Zigmund and R. Gima
Excused: Commissioner M. Mano)**

Ms. Kaye: I’d like to move that we defer this matter for our next meeting in January and send a comment back to County Council that we have not had enough information to make an informed decision, and we would like as much information from the Planning

Department that we can get with respect to the impetus for this Bill, and – sorry – yeah right, any studies you would have where such a prohibition has occurred elsewhere. What else? What else do we want to know? Can I ask what the other two Planning Commission do?

Mr. Alueta: Let's just hope they don't say I want to know what Lana`i does first before I –.

Ms. Kaye: Well explain it to them that we got it last. Is there anything else that we'd want to know to help us make a better decision? Anyone wants to add to that list?

Mr. Gima: Is there a second?

Mr. Elliott: Did I hear wording in that about Lana`i specific? I don't know how to say that, but I thought that was one of things we were discussing was that –

Ms. Kaye: That's one of the things we would hope to accomplish that we can't pull off tonight. Molokai wants to do the same thing. They're going to have a meeting before ours, maybe we can get some guidance from how they pull it off. Maybe it's simple as what we did – were you at the meeting when we did the last Legislation where we exempted ourselves from the TVR's?

Mr. Elliott: Yeah.

Ms. Kaye: By putting in one phrase.

Mr. Elliott: Right.

Ms. Kaye: We could do the same thing that from what I understand Molokai is thinking, we're going to limit box stores on Lana`i to x-square feet. Just give that some thought between now and then.

Mr. Elliott: I would think the next vote or the next motion hopefully would have some language that was Lana`i specific in it. That's what I was saying. That was my hope to accomplish.

Mr. Gima: We have a motion, but we don't have a second.

Ms. Zigmond: . . . (Inaudible). . .

Mr. Gima: Okay, it's been moved by Commissioner Kaye and seconded by Commissioner

Zigmond that we defer the decision on the Resolution pertaining to prohibiting superstores in the County of Maui, and I can't repeat all that you said, but we have it on record.

Mr. Alueta: The motion was to have what was the impetus of the Bill from the County Council, any studies pertaining to ban of superstores that were used in the study, and then what did Molokai and Maui do.

Ms. Kaye: And also Joe, you indicated that you have not have time, you as a body, the Planning Department has not had time to really think about all the ramifications of this to take a position. So perhaps by the time we have our next meeting you'll have informed yourselves a little bit better, and be able to . . . (inaudible) . . .

Mr. Gima: Okay, any discussions on the motion? Hearing none, all in favor say aye.

Commission Members: "Aye."

Mr. Gima: Oppose?

Ms. de Jetley: . . . (Inaudible) . . .

Mr. Gima: Okay, motion is carried.

It was moved by Commissioner Sally Kaye, then seconded by Commissioner Beverly Zigmond, then

VOTED: To defer the Resolution to the next meeting and requested further information as noted.

Mr. Gima: . . . (Inaudible. Changed cassette tapes.) . . . unfinished business number one.

Ms. Bosco: Okay. Thanks. So we're all ready to move on? What we're doing here then now guys is trying to basically ask you if you would support the Planning Department in moving forward in developing the Chapter Five which is the Implementation Chapter. And we want to hear your comments too and your suggestions so if you had time to digest what I had told you guys earlier, if you could provide us with some direction on this and take a vote too, then we could know where at least this Commission would like us to go as far as the implementation piece.

Mr. Gima: So you were saying earlier what Jim was asking for in terms of who are the responsible agency or party be and then a completion date would be found in the

implementation matrix for more of the Community Plan rather in the General Plan. Is that accurate?

Ms. Bosco: Well let me refer to Bill 53 okay to answer that question. The Maui Island Plan in Bill 53 is required to have a complete implementation program which addresses capital improvements, finances and budgeting, and it's required to have an implementation schedule and milestones and status reports. That's Maui Island Plan. The community plans, okay, have a – don't have all of that. It is required that they have an implementation program, financial budgeting element, capital improvement element and a schedule. So that's the community plans. At the Countywide level, there is no requirement for all of those details – the timing, the schedule, the budgeting. However, if we have an implementation piece at the Countywide level, we would like to develop that piece in a similar way so that we can identify the timing, identify the budgeting, identify at least the responsible agencies. So that's where we would like to go. It's just not a requirement in Bill 53.

So to answer your question, that's where we want to go, that's where we'd like to develop it. However, if we come up to a point in the process where we can't work out all of these pieces, it's going to go to Council in the best form we can get it to them in. You follow me? It's going to get to them and then since they do handle all the budgeting for the County, they're going to play a much larger role in how the Countywide Policy Plan is implemented. Okay, so I don't know if that answered your question, but the answer is yes, we would like to develop the specificity that you were speaking of earlier, but we need more time.

Mr. Gima: Just for some historical information, I've seen an implementation matrix for the Community Plan and I think that's something that's probably going to be more pertinent for us on Lana`i is that implementation matrix. But I hear what you're saying – you want some accountability, you want this to be a live document, a living document, as oppose to just something on the shelf. Okay.

Mr. Elliott: It would really be nice to be able to read the document and have a sense that something was really happening. I mean, it's not that these are just great ideas, but a sense that something was really happening because of it.

Ms. Bosco: Yes.

Ms. Kaye: You know, one thing that I'm going to back to this again because I didn't get, I'm sorry if I'm the only one, that we should have been thinking about implementing actions as we went along to add them to the list. Somehow I thought that was not what we were doing with the GPAC review. And if I'm wrong, could we, have we missed an opportunity

to put in implementing actions?

Ms. Bosco: Yes, you could have added implementation actions at any point.

Ms. Kaye: Was that clear? Was that clear to anyone?

Ms. Bosco: Yes.

Mr. Elliott: No. I thought we were told that we're just going to wait to later to talk about any implementation.

Ms. Kaye: Yeah, that we were leaving that for the last.

Mr. Elliott: I really felt that was the case.

Ms. Kaye: I'm almost positive I could go back and find that in the minutes.

Ms. Bosco: Okay.

Ms. Kaye: I'm really feeling very cheated here. I mean, it's not your fault necessarily, but the concern I have, again, is you guys are going to do an implementation plan action. You're going to do an action plan so we know what we're talking about, and you're going to run it through agencies, and you're going to work on the budget angle. But then we're going to do our Community Plan and we may have budgetary issues with that and we'll have missed the boat.

Ms. Bosco: Well the idea is that we identify broad strategies that can be implemented at the Countywide level and at the – and in the –. Okay, let's just say this – the implementation piece for the Countywide Policy Plan would have policies that all the islands need to address in one way, shape or form. At the Community Plan level, there is a different process and there's an opportunity for this community to identify their own priorities and attach it to a budget sort of speak. So it doesn't preclude – the Countywide Policy Plan doesn't preclude the community to identify their own strategies and link it to budgets. So none, they don't compete with each other necessarily.

Ms. Kaye: But you will have settled your budget issues and we'll just be approaching ours if there's a budgetary concern. Your review will be done by all the agencies who are going to have to, as Jim say, carry it forward.

Ms. Bosco: No there's a separate agency process for the Community Plan updates. It's

not that it's done at the Countywide level and it doesn't happen again. I know that because I'm the project manager on the Community Plans. We'll be having a separate process for the Lana`i Community Plan.

Ms. Kaye: So when we come up with all the implementation steps that we just didn't bother to give you, you'll say fine, we'll take them all.

Ms. Bosco: You'll have that opportunity. Yes. Absolutely.

Mr. Endrina: But then at that level, the Community Plan will be done by not really by us.

Ms. Bosco: It depends on –

Mr. Endrina: I don't think so.

Ms. Bosco: You will have – the Planning Commissions will be looking at the Community Plan, the new draft of the Community Plan after the GPACs do – or they're call CPACs – but the GPACs did it first.

Mr. Endrina: Of the draft – okay. And then we can do our suggestions to the implementations then?

Ms. Bosco: Yes. You guys have a chance to.

Ms. Kaye: And can't we show up as residents to the meetings?

Mr. Endrina: Sure. Yeah.

Ms. Bosco: Absolutely, you're resources.

Mr. Hopper: I want to comment. You're always a Planning Commission while you're on the Commission. But the issue would be is it something that is Board business that's on a pending agenda? And if you've completed your review of the Countywide Policy Plan, it's not on your agenda anymore. So it's no longer Board business, so you could show up. If it was Board business – if it was something that you had on the agenda and you wanted to testify in front Council, you could potentially get into a sunshine law problem if more than two of you showed up at that meeting. But what I've been told by OIP is that they've considered Board business pretty narrowly and that's how they – they consider participating in a meeting very broadly, saying that if you've got two – if you've got three

members at a meeting at even shows up, whether or not they say anything, they've told me that can be considered a meeting if the meeting that they're there for is something that could be considered Board business. But in order to deal with that, they've basically construed Board business very narrowly, meaning something that's basically on an upcoming agenda. And if you've completed your GPAC or your Countywide Policy Plan review, I don't see anything that would preclude you from going to Council, in either testifying or at the very least attending that meeting. And I brought up that example – that's why you have GPAC members here. They had me look into that, and that's what OIP told me about them, and I see it as something very similar to you. But if it comes up on your agenda, and you're going to have it referred back to you for some sort of review, that would change things.

Ms. Bosco: Thanks Michael. Okay, are there any other recommendations that you have regarding this? So we can take them back and consider them.

Ms. Kaye: Do you need a motion?

Ms. Bosco: Yes I do.

Ms. Kaye: Understanding what you really are asking us to do is to support your continuing efforts to have agency review and do some budgetary implication analysis, I would move that we are more than willing to give you that support with the caveat that we really want to make sure that we can add implementing steps when it's appropriate.

Ms. Bosco: At the Community Plan process?

Ms. Kaye: At the Community Plan process.

Ms. Bosco: Okay. Very good.

Ms. Kaye: And that they would be considered as equal forces the ones you guys have already done. Is that fair?

Ms. Bosco: Absolutely. Thank you. And I have the Chairperson's comments too. I wanted to – you may want to – I have those comments. I don't know if that's going to be another motion or what, but, you want referencing and you want to make sure that the format stays as it is in section four.

Ms. Kaye: Yes, if the motion could incorporate Chairman Gima's matrix of tying in the policies and objectives with the implementing plan and the subsections you want to add

so that it's very user friendly. That would be a recommendation we'd do as well.

Ms. Bosco: Okay. Thank you.

Mr. Gima: Okay, it's been moved by Commissioner Kaye and seconded by Commissioner Endrina that we support the Planning Department's proposed implementation chapter format, Chapter Five, of the Countywide Policy Plan, with the following – with the caviat and recommendations made by Commissioner Kaye. That having been said, any further discussion?

Mr. Endrina: I just have a question. Will we eventually get the Chapter Five?

Ms. Bosco: Will you get it?

Mr. Endrina: Will we get it?

Ms. Bosco: Yes. I would like to distribute it back to the Commission once we transmit. Yes.

Mr. Endrina: Okay.

Ms. Bosco: Actually, what I'll be doing – let me answer that a different way. When that transmittal is made to Council, the Commission Secretaries are all going to get a copy of it. And at that point, I think, the decision would be made by the Administrator of the Commissions whether they distribute it back to you – I would recommend that they do.

Mr. Endrina: "You get 'em" Leilani?

Ms. Bosco: Okay. All right.

Mr. Gima: Okay, any further questions or discussions? Hearing none, all in favor say aye.

Commission Members: "Aye."

Mr. Gima: Oppose? Okay, thank you. Motion is carried.

It was moved by Commissioner Sally Kaye, seconded by Commissioner Lawrence Endrina, then unanimously

VOTED: To approve and support the Planning Department's

Implementation Chapter, Chapter V, of the Countywide Policy Plan with the recommendations as suggested by the Commission. In addition, the Commission request to be allowed to add implementing actions during the Community Plan Process.

Ms. Bosco: And I just wanted to add to your last discussion about superstores. There are policies that you guys approved. It's very broadly written in the Land Use section. And just so you guys know that Molokai added a policy back in to their version which basically discourages the big box stores. Just so you know, there's several policies addressing that issue already.

Ms. Kaye: . . . (Inaudible). . .

Ms. Bosco: Yes, there is one policy in – not the big box one – it isn't in yours, it's in Molokai.

Ms. Kaye: Could you make that available to us – their language?

Ms. Bosco: I can exactly tell you where it is. It's already in your binder in the Economy Section.

Ms. Kaye: Okay.

Ms. Bosco: In the Economy Section, look under the Molokai GPAC's recommendations and you'll see that there was one policy there that they recommended. They're the only GPAC that recommended it, and let me read the language so you know what it is – “discourage the influx into rural communities and traditional small towns. And that large national or Statewide retail wholesale operations that disrupt the limited economic basis of the smaller locally owned business – that smaller locally owned businesses rely on to survive.” And I'm going to just double check where that is. Are you finding it? It's under Economy – yeah, it's under Economy. Just a second. I'll just pull it out really fast. It's Molokai. Okay, here we go. I just want to give you the reference number so you'll have it. It's coming up on the screen. There it is. There's their language - discourage the influx into rural communities and traditional – yeah, that's the one. I'm going to find out where it is here though. I think the language is –.

Ms. Kaye: We can find it.

Ms. Bosco: There it is right here. It's under – what is that? – 6013 under F. Butch is that

Economy? Yeah, so there you go. I'm just pointing it out because it's there. It's in Molokai's draft. And then you have another one under yours. It's under Land Use, and it is basically "protect rural communities and traditional small towns by regulating the foot print, location, site planning, and design of structures." It's not specific to big box stores, but it does get to the same kind of issues. It the same kind of intent. And that's under Land Use, under objective three, just so you know.

Mr. Gima: Okay, let's move on to –

Ms. Kaye: . . . (inaudible)

Mr. Gima: I'm sorry.

Ms. Kaye: Simone, with respect to these, I went back over them and there's some things that sort of got dropped that we had actually voted on.

Ms. Bosco: Okay.

Ms. Kaye: Can I do that really fast?

Ms. Bosco: Absolutely, and there is one typo I can point out too you, but, anyway, go ahead.

Ms. Kaye: Let's see if we found the same one. On page #64, under implementing actions

Ms. Bosco: Yeah, this is Housing.

Ms. Kaye: Yeah. You have under B, "decedents," and I think you mean descendants.

Ms. Bosco: Under the implementing actions? Yes, thank you.

Ms. Kaye: I didn't I think you would want that one passed.

Ms. Bosco: Thank you.

Ms. Kaye: On page #78.

Ms. Bosco: That is Physical Infrastructure.

Ms. Kaye: Right. Objective Three – bottom of the page – we made notes to change energy

“self-sufficient,” not “self-sufficiency.”

Ms. Bosco: Yeah. That’s another typo. Yeah. I got that one. Thank you. That’s good

Ms. Kaye: On page #83, you have H as italicized and I’m not sure if that should have been an implementing action, in which case it would become E.

Ms. Bosco: That’s Land Use?

Ms. Kaye: Yeah.

Ms. Bosco: I’ll look into that.

Ms. Kaye: Great idea, but I’m not sure where that suppose to be.

Ms. Bosco: I’d have to look at that.

Ms. Kaye: And then the next one, the next page, Strive for Good Governance, F, under objective one, ensure the protection of native natural resources. We voted to move that to K-5.

Ms. Bosco: Thank you – moved to K-5.

Ms. Kaye: It was going to be moved to position County government.

Ms. Bosco: Okay, ensure the protection of native natural resources, native Hawaiian rights, moved to K-5.

Ms. Kaye: Right.

Ms. Bosco: Okay.

Ms. Kaye: And I thought that we – I’m sorry, go back one page, #85, objective three, E – “ensure laws, policies and regulations are internally consistent,” we were going to move that to K-4.

Ms. Bosco: Okay. Thank you.

Ms. Kaye: Because it belonged under General Plan.

Ms. Bosco: Okay. Thank you. My typo that I caught, just so you all know, was under the cultural section, and it's just that objective four should have "landscapes" at the end of it. So it should read "preserve historic architecture structures, cultural sites, and cultural landscapes." That's just so you know. I caught it. That's under the Culture Section, page #57, objective four. The actual objective four should have the word landscapes at the end of it. It accidentally dropped off. I dropped off Maui County throughout the document where I felt it was appropriate to do so. That was one where I dropped off Maui County, but I dropped of a little bit too much at the end of the sentence. Thank you. I appreciate that. Anything else?

Well thank you all. You've been wonderful to work with. I really appreciate all the efforts you put into this. And hopefully, we'll have a product that we can be proud of when it gets to Council and I hope you guys stay involved with the process. And if you ever have any questions about it, give us a call.

Mr. Gima: Thank you. Okay, we'll move on to Communications – discussion of the processing of SMA Exemptions. Anybody from the Planning Department going to report on any updates on this?

E. COMMUNICATIONS

1. Discussion on the processing of SMA exemptions.

The Commission may look to direct staff to produce draft legislation regarding amending the current process. (Previously discussed at the October 3, 2007 and November 21, 2007 meetings.)

Mr. Alueta: This is for the SMA Exemption. It has been – like I said, it did come back from Corporation Counsel and has been transmitted out for agency comments. We're just waiting for agency comments. Once that's – their comment period should end sometime in January – middle or beginning part of January, and then after that we'll schedule it for the Lana`i – one of your meeting. I'll try to shoot for your February meeting that way I can – I'll plan ahead and schedule it before I get all of the agency comments. That way we don't have to wait around for that next 30-day because the Bill is back from Corporation Counsel so there is an Ordinance. It's just that I won't have a report written. So I'll talk to Clayton Yoshida to see what your agenda are like and I'll try to shoot for February. Any other questions on that?

F. DIRECTOR'S REPORT

1. Commission Chair's request to discuss the following:

The feasibility of changing the zoning of the remaining 65 acres of land donated to the County of Maui by Castle & Cooke for affordable housing. The change would go from its current zoning to the appropriate type of zoning that would make the land ready to be improved.

Mr. Alueta: With regards to the zoning – 65 acres – that's your item – it's under Director's Report. I'm sorry.

Mr. Gima: I apologize. I failed to make copies of the e-mail I got from the Facilities Department of the DOE. If there are no problems – may I forward the – I guess I'll forward the email to you Leilani. But in the nut shell, no metes and bounds have been set on the 65 acres or the whole 115 acres. The bid has gone out or is about to go out to determine the boundaries for the 50 acres for the school expansion. And someone in the Mayor's Office wants to use, I guess, the same surveyor to do the remaining 65 acres. So that's where we are at with those two parcels.

Ms. Kaye: This might be a good time to just take a second and say with respect to the housing study that's kind of flipped-flopped and has gone back and forth. Is it my understanding the rules, Michael, that we can have like a subcommittee of the Commission to discuss, not board business, but to study issues and report back?

Mr. Hopper: I think it can be board business, it just has to be – you have to do certain procedures in order to get that committee formed and have them make their report back to you. And you'd have to have action taken on what it is you want them to research, who would be in it – it can't be more than, in your case, four members would be the most, but you can't have a quorum.

Ms. Kaye: Okay. Because I'm understanding the 65 acres hasn't even been – it has gone nowhere. Nobody knows what it's going to look like or what kind of uses. It might be a good time to tie in. We seem to not be able to figure out what it is we want the County to tell us about housing issues because we don't know what questions to ask. And I'm not sure how to efficiently deal with that issue except for to maybe ask for a couple of volunteers to get together over coffee and figure out what is it we want to ask them to do. I did find – and I thought Colleen might be here tonight – but there is a State study. Mrs. Medeiros and I talked about that that has Statewide data, and she suggested that that kind of data can be extracted to be island specific. And I found a website for the company that did the study and I'd be happy to call them and find out how that process works. But

I just don't know what else to do with this except try to figure out a way to get more data to give to them to let them know what we really are looking for.

Mr. Gima: I took the responsibility of sending a one-page write up when the Planning Department suggested that we transmit some information or question so I'm not sure what else Vanessa is needing over and beyond what I submitted. Yeah, so it's too bad Colleen is not here. Is it appropriate for me to call Vanessa directly or is the Planning Department needs to say to Vanessa have you responded to the one-page document that I submitted months ago?

Mr. Alueta: Are you referring to the December 4th letter? Are you aware of that letter? Do you have that in front of you?

Mr. Gima: From Colleen?

Mr. Alueta: From Colleen. Yeah. So you're requesting? I didn't read the letter so I'm not sure what – did she inform you that there was not going to be a workshop at this point?

Mr. Gima: They said they need further clarification from us on what we needed.

Mr. Alueta: Okay.

Mr. Gima: And I'm saying I submitted a one-page document months ago following the initial request for a workshop because we were told that – well, we shouldn't just assume that the 65 -acres is going to be used only for affordable housing. We may need other type of housing and we may need information about density and whole bunch of stuff. So we were instructed to provide Housing and Human Concerns information, questions, and what we would like from them and that's what I did.

Mr. Alueta: And that was before Colleen's December 4th letter?

Mr. Gima: This was months ago.

Mr. Alueta: Okay. I'm not sure she's aware of that letter because she's writing you asking you –

Mr. Gima: Who, Colleen or Vanessa?

Mr. Alueta: Colleen. Because she's asking you for information. Did your previous letter address these questions that Colleen is asking for additional information?

Mr. Gima: It was written so long ago I'd have to go look at it.

Mr. Alueta: And that's what I'm wondering if she wrote the letter not being aware of your previous letter.

Mr. Gima: But I sent the letter I believe to the Planning Department who was suppose to transmit it to the Housing and Human Concerns.

Mr. Alueta: I will follow up. If you can tell me the – if you know the date of your letter – or if you have another copy of it that would assist me. But I would obviously – that is not acceptable as far as from our Department's stand point because she does not make reference to having received your letter in anyway. That makes me curious because normally we would say, "in response to your letter, we need this additional information." So I need to go and find out what happened. I don't believe that Colleen may be aware of your letter or it was not given to her when it came into the office. So let's – if you can give me some dates then maybe I can try and track it down, or better yet, just give me another copy and I'll make sure it gets into Colleen's hand, and hopefully into Vanessa Medeiros'.

Mr. Gima: Anything else Sally? Any other comments, questions on the 65-acres? Okay, number two under Director's Report, we're going to talk – at our two meetings ago we requested more information about open space. And I think for our December 5th meeting we were sent some maps of the open space on the island, and we also got the Chapter 19.07.

2. Chair's request to consider the implementation of zoning for properties designated Open Space in the Lana`i Community Plan.

Mr. Alueta: This is the maps that were handed off to me by Mr. Yoshida per your request with regards to the zoning of potential open space as well as your Community Plan map that shows where the open space designations are. I believe that was your primary question. I'm not sure where you want to go with this. I have been instructed by our Department to inform you that if your intentions as far as the initiation to zone the lands that are currently designated as open space on your Community Plan, the Department, Long Range is waiting for the next iteration – once the next set of Community Plans is finished – before they start to initiate the implementation of zoning, if anything, if that's your intentions.

Mr. Gima: So Long Range is saying they won't consider zoning open space on Lana`i until our new Community Plan is completed. Is that accurate?

Mr. Alueta: Yes. That's my instructions that I was given before I got on the plane was that they do not want to initiate such a change until after you – the iteration of the Community Plan has been completed.

Mr. Gima: So they don't want to – they don't want to zone open space in the event that the Lana`i Community Plan changes the open space designations?

Mr. Alueta: I think so, and also I think because it is that's one of the main reasons, but at the same time it's not an easy task to go about it, and therefore it would take a lot of staff resources. We are limited in Department resources and right now the focus is to complete the General Plan and the Island wide Plans for the three islands, and then start up on the Community Plans. So I don't think they want to embark on a project, that size of a project, at this point.

Ms. Kaye: Can you explain, Joe, a little bit – let's assume the Community Plan – because it's real clear in the Community Plan that open space is over set on conservation on what is land use designated conservation for a large part. Let's assume the Community Plan leaves it right where it is, what would then be the process and how long does it take and why is it difficult?

Mr. Alueta: We'd have to draft a ordinance, prepare a zoning map as to whether this would just qualify as a zoning map. What type of legal notice would be required as well as the public would have to determined – whether all the individual land owners – whether we can do a general mail out by all the tax bills and so forth. And then hold a public hearing on Lana`i with the Commission, and then transmit it up to Council. It would take the same path as the Rural Bill. I think that the main – I believe that there is two subdistricts. You have to determine which district it would go in. I believe there's OS1 and OS2. I think the biggest hurdle – now I'm just trying to think off the top of my head – when open space first came into being and was created within the zoning districts in Title 19 was one of the stumbling blocks that Council grappled with and why they chose not to just go ahead and comprehensively zone those areas was the issue of takings. And a lot of the open space areas it's agricultural. It's designated for agriculture. And so I think that's where they felt a little uncomfortable and there was some lawyers rattling their sabers. And I think that was the biggest obstacle, at least, from a Countywide perspective. Whether those same issues impact Lana`i, I do not know.

Ms. Kaye: Well then what – because I have not participated in a Community Plan process before – what was the purpose of designing an open space in the Community Plan? What does that do?

Mr. Alueta: It's whatever your description of what open space is intended for in your community plans. And as to whether or not it's clear enough as to keep it free of structures. The purpose and intent – some Community Plans are a little different. A lot of times it's normally natural drainage ways, sometimes it might be cultural sites, or flood plains. To this date, I only know of one person who has come in and voluntarily zoned his zone open space. And that was because, as you know, that was Betsill's on Maui because they were attempting to subdivide some agricultural lands into lots, and to be compliant with the Community Plan. Because a portion of their property had a strip of open space through it, they needed to zone that section to be consistent with the Community Plan. So they re-zoned it from agricultural to open space. And that's how we were able to get that section zoned to open space.

Mr. Gima: Would you say since probably 100% of the open space land is owned by Castle & Cooke, would it be in their best interest or detrimental to have it zoned OS1/OS2?

Mr. Alueta: I'm not going to wager on that. I don't know. That's nothing I can comment on.

Mr. Gima: If we wait for the Lana`i Community Plan process to re-establish the Community Plan zoning, they won't do the OS1 / OS2, all they will do is the OS designation. Correct?

Mr. Alueta: I don't know if they're going to get into that detail. I mean, I do not think that when – I do know when that the OS – when open space was first contemplated it was just open space. It was only when they established the zoning category within Title 19 that they came up with, wait a minute, maybe we should come up with – they came up with the subcategories of OS1 and OS2. And if you look at it, I believe OS2 allows for structures. So I don't know. You do have in your Community Plans light industrial and heavy industrial. We have done that on a Community wide level so it's potential/foreseeable that during your next Community Plan process that they may want to take a closer look to find out what their intentions are with the open space. And whether or not they want to drill down and designate or potentially push things toward a subcategory and give the, let the Planning Department and the County Council more guidance.

Mr. Gima: Because I think one of the reasons why I brought it up for discussion is without zoning it OS1 /OS2, it doesn't come before the Planning Commission. Is that accurate? If anyone should want to develop in the open space area, it doesn't come to the Planning Commission unless it is zoned OS1 or OS2? Is that accurate?

Mr. Alueta: Yes and no. I'll give you yes and no. One is if someone came in – I believe if someone came in within one of these OS districts, yet it was agriculture and the use that they're proposing was consistent with the State agricultural district then potentially they

would be able to do something without you knowing about it. If it was a subdivision, they couldn't. They would have to come in and get – it would be inconsistent with your Community Plan – and have to get a zoning for that. This is what's on your current if that's what you're saying – was this – I'm trying to think what was the Community Plan prior to this plan ag or open space. So it was not impacted by the Agricultural Bill. If it was Community Plan Ag, it was automatically zoned Ag. So if this was done prior to the Agricultural Bill, then – I believe it 1997 – I'm not sure. Then it was only the areas that are zoned community plan ag were automatically zone to County ag.

Ms. Kaye: So wait. When you look at our Community Plan map that has open space and ag has disappeared, that open space doesn't apply. It reverted to ag, or it stayed and it went from community plan ag to County ag, right?

Mr. Alueta: Correct. If it was community plan ag.

Ms. Kaye: So the open space designation we have on our old community plan is no longer accurate.

Mr. Alueta: No, no, no, it is. If you had open space on your community plan, then it was not impacted by the Ag Bill. So what I'm saying is so it's still State Ag community plan open space, and it would only be County Ag if there was a zoning for that area. If not it would probably be interim. So you would probably have interim open space and State Ag County interim. So to answer your question, if there was a proposal or something in there, the Department would look at the State designation but we would also look at the Community Plan and then look what was allowed in your open space designation under your Community Plan. So we would look at it and potentially bring it before you.

Ms. Kaye: So you're saying when we do the Community Plan, not only do you look at the areas but you're going to have to look at the definitions.

Mr. Alueta: Yes.

Ms. Kaye: Because the definition of open space in here is a lot less restrictive than the OS1 and OS2.

Mr. Alueta: Yeah. Less restrictive or more restrictive?

Ms. Kaye: . . . (Inaudible). . . .

Mr. Alueta: Okay. Yes, we do look at the language.

Mr. Gima: So to recap, Long Range Planning is recommending that the Lana`i Planning Commission not to take any action on this until the Lana`i Community Plan is completed.

Mr. Alueta: I'll say that the Department's – my instruction is from my boss which is Colleen and Jeff was that they instructed me that they were going to take this issue up of the open space for Lana`i after the Lana`i Community Plan. And that doesn't mean you can't – I'm not sure what action you're trying to take, so I can't really tell you that you can or can not take it. If you help me out maybe I can guide you a little better. But all I was given as far as my instruction was to present you with the maps, the maps that were given to me before I left and to give you that instructions that we were going to take it up after the Community Plan. So I'm not sure what the impetus of this agenda item is.

Mr. Gima: Well the impetus was to see what would be beneficial for our community and for us as a Commission to consider zoning open space so that if there are any type of applications on open space land that it comes before the Lana`i Planning Commission. So we just wanted to see whether it would be beneficial for us to pursue that or not. So does anybody have any objections to the Planning Department's recommendation that we hold off until the new Community Plan is completed? No not necessarily. We were just in a discussion phase right now. If there's no objection then we'll follow the recommendation of the Planning Department. Okay, hearing none, we'll follow the recommendation of the Planning Department. Let's keep this on the table because it's a long ways before the Lana`i Community Plan gets completed.

Mr. Alueta: And I think you should keep in mind also the issue that there is a zoning category of OS1 and OS2, and keep that in mind when you do your review as to if you want to see subcategories in. And again – well, I'll leave it at that. Thanks.

Ms. Kaye: Okay, just one final question then to make sure we're clear. The designation that's in our existing County Community Plan is good until it's revisited. In the mean time, if somebody owns land that by our Community Plan was zoned open space, designated open space, but zoned agriculture, then if they wanted to do anything with that property but use it in an agricultural fashion, they'd still have to get some sort of zoning change. Is that right?

Mr. Alueta: It's a yes and no answer. Yes, they could do it. As far as ag – if all they are doing was ag on it without any subdivision. If they were subdividing the land, they then would have to re-zone it. . . .(Inaudible. Changed cassette tapes.) . . .

Mr. Gima: So ultimately when and if we ever do pursue this, it would be helpful to have the overlays on this Community Plan map that includes a County zoning and the State Land

Use designation, right? Because, one, some of these are going to supercede or take priority on how we address these issues, correct?

Mr. Alueta: It would help, yes, to have some type of overlay that shows what the State districts are as well as the County zoning. We do have the ability to do that now.

Mr. Gima: Okay, thank you. Last item under Director's Report, open Lana`i applications. Anything jump out?

3. Open Lana`i Applications Report.

Ms. Kaye: Yeah, I want to know, what is the Koele Resort Lana`i City request for comments, Castle & Cooke. Do we know what that one is?

Mr. Alueta: No I do not. I apologize. I'm no longer in the Current Division so I don't see these projects. But my main goal here tonight is if you have a question, is that I will get back to the specific planner and have them contact, or at least report back to Clayton so we can get it back on your next – that's why I'm taking notes on this agenda so they'll know what to report back on.

Ms. Kaye: I think – Alberta help me out here – Commissioner de Jetley, a couple of months ago, asked a question about the second one down, the Brown Residence. And Paul Fasi at that time said he wasn't even sure whether it was Keamoku or Manele because apparently this gentleman owns property in several places and we never really did get a report on the status of that one.

Mr. Alueta: Okay. So I'll follow up on that one as far as where is it.

Ms. Kaye: Yes, please, that would be good. And the first one, I would like to know the status of that one at the next meeting.

Mr. Alueta: The Castle & Cooke –

Ms. Kaye: The met towers, yeah. Request for comments, DLNR.

Mr. Alueta: Okay. The status of it? Okay.

Ms. de Jetley: I have a question, Joe, please. On the very bottom of the page, there's an application that's been open since April 12, 2006 and it's a rock wall and a dwelling. Why is it taking so long?

Mr. Alueta: I saw that too and I have a big question mark on it because –. What's interesting is it is a building permit so I'm not sure why it was assigned to Danny Dias. I can only assume that he was reviewing it for compliance with another associated SMA permit. So I have a question I'll mark for myself on that too. So I'll find out on that why that is taking so long. It's not uncommon for building permits. As you see they have several permits out. And sometimes they languish because not because we're not processing it, it's more that we've asked them for more information or said that they're not in compliant with something, and they don't respond so the permit sits either until they respond or until we return it to them. And because this is a building permit, it's not a permit from the Department, from the Planning Department, so we can't return it. It has to be done by Public Works.

Ms. Kaye: And doesn't it also stay open until there's a final inspection. So it could be that they just haven't called for –?

Mr. Alueta: I –. Yeah.

Ms. Kaye: You don't know.

Mr. Alueta: I have a question mark on it so I'll find out on it. But for building permits, it's not uncommon for them to be open. It took me two years to build my house so.

G. NEXT REGULAR MEETING DATE: January 16, 2008

Mr. Gima: Last call on Lana`i applications. Okay our next meeting is scheduled for January 16th, and we have the deferral on the agenda. Correct? We have the follow up reports on the open projects. We have a request from Pat Reilly to have a recommendation to convene before the Lana`i Planning Commission a workshop to review the issues related to water for Lana`i. Any comments, questions about this recommendation?

Ms. Zigmond: Mr. Reilly, first of all, thank you for submitting this. I have always believed that we need to have more information. And I'm asking the Department, because I agree with you that we need to have a workshop with the Water Company, if we could please get that on the agenda. Is that possible, like in this life time? Thank you.

Mr. Alueta: I will convey your message again to Colleen to find out exactly what happened. You know, as you said, with your previous letter as far the workshop asking – apparently she's not aware of that. I have it down it own as a follow, and I'll ask Colleen to contact. I'm sorry. You want a meeting with Water Department?

Ms. Zigmond: This is in reference to the memo from Pat Reilly to the Commission dated December 5th, which you're getting a copy of right now, recommending that we have a workshop with the Water people, and I'm asking if we can get that on an agenda soon because, I think, everybody is aware that water is a big issue with us.

Mr. Alueta: Did you mention this letter as part of one of your agenda items for the next meeting?

Mr. Gima: I'm just bringing to your attention that we received this request and I'm trying to get input from the Commission on whether we want this on the agenda for the next meeting.

Mr. Alueta: Okay.

Mr. Gima: If you want it on the agenda, you have to be specific in terms of who the Water people are because we need to know who specifically who is to provide the workshop.

Mr. Alueta: Right. But I think it would be helpful if you just had the letter to discuss for scheduling at your next meeting. So you have this on the agenda item, you discuss who you want, what you hope to accomplish out of it, you can discuss his letter in detail on the record, and then during that meeting we can hopefully, you can make your formal request to the Planning Department to set up that meeting. But I would suggest placing that item on the agenda for discussion purposes. Corporation Counsel would like to comment on something.

Mr. Hopper: Just on the open permit applications, I just wanted to suggest that those each be separate agenda items listing that person's permit, so the person would know that their permit was going to be discussed at that meeting. That's really how it should be. When you just say "open permit applications" on the agenda, not everybody get the same mail-out you do so they don't all know that they've got a list with their permits on it. So I don't think it's a problem at all. It's just I would note that each of those items that you want – it could say follow up report on the following applications and list all the information that is in there on the agenda itself – would be a recommendation.

Ms. Kaye: Would it be helpful to just say we want a follow up report on all of them and then a general follow up and people don't have to be noticed?

Mr. Hopper: No you don't have to send notice necessarily to the individual person. I'm just saying put it on the agenda as that person's project because I would think if you were going to have a meeting on my project, I would probably want that to be on the agenda.

Mr. Alueta: So at this time Mr. Chair I do have for follow up – it would be permit #RFC 2007/0054. That's the DLNR permit. Follow up on permit EAC 2007/0026, which is you want to know where the Brown Residence is at. And then also on permit #B2006/1907 – I'm sorry – it was BT 2006/2828 and that's for the retaining wall. Is that correct or did you want it on the dwelling, Commissioner de Jetley?

Ms. de Jetley: . . . (Inaudible) . . .

Mr. Alueta: All of those?

Ms. de Jetley: . . . (Inaudible) . . .

Mr. Alueta: On Nathan Owens - okay – those two items. Okay.

Mr. Gima: Everybody is going to be here for the January meeting? We'll have quorum if the rest of us are here. Okay. May I make a request of the Planning Department? You know when we have potentially contentious discussions on Resolutions or Bills or Ordinances, I know for me it would be helpful. I know you put in a lot of work writing it up in narrative form. I have a hard time making decisions when I'm trying to analyze narrative forms. What has helped me in the past is to have a kind of like a matrix showing the pros and cons of what's being proposed, what are the financial implications, who is the actual deciding authority, what are some planning implications, and what's the statutory basis for that action. And having it a matrix form, I can compare a lot easier than trying to do it from a narrative form. As an example, when I lived in California, all the ballot measures came in that format. You had the pros, the cons, and the you had the rebuttal, you had the financial implications, and then you had the statutory basis for what we were going to vote on. It was very helpful and easy for me to make a decision looking at it that way as oppose to seeing a three-page, 15-paragraph narrative. I don't know if that is possible, but in terms of helping me make a better decision, that format will help me immensely.

Mr. Elliott: I'd really like to piggy back on what he just said too because the other thing we learned tonight in our earlier discussion was the superstore issue came up in September, and I don't know why, even though it's not on our agenda until December, but why couldn't that information go out to Planning Commission members? Instead what we did was we received in our packet about seven days ago with no opportunity to reflect and think and maybe get some opinions of some other people that might be involved in that whole process. And it just seems to me if it's something that the Commission is going to discuss, get it out there, and then we can be more prepared than just a few days of quickly glancing over some information.

And then tonight, you handed out the Wal-Mart response, which I doubt that everybody has an opportunity to even read sitting around here. I mean, I haven't had a chance to. But this kind of information, in advance, would be just extremely helpful. So I just wanted to piggy back on what Butch said.

Mr. Alueta: You're the only Commission that got the summary because I know how much you like to have some kind of cover letter and summary. The other two Commissions didn't get it. They'll be getting these reports – as you saw I wrote the memo report today because I know how much this Board likes to have that. As far as the pros and cons analysis, some Ordinances just don't need it. They're coming out of the Council and all they're asking for is your comments. And I really don't know what they're looking at. And I'm not in that expertise to give you that. I can attempt to, but the pros and cons, that should come out of the Council because it is their Bill. It's not my Bill. I didn't write this and I don't feel like I need to justify it. That's one of the reasons you didn't get much.

As far as getting the Ordinance to you, that is not a problem. I can send it to you as soon as I get it. It's just that I don't want you discussing it until you have it agenda. And it's not going to be agenda until the Department is ready to bring it forward to you and present you with some agency comments. And so, yes, you got the Wal-Mart, that is part of the agency comments. They weren't an agency, but they just sent in unsolicited comments. I don't normally send those type of comments to the Commission unless they are specifically sent to that Commission. Majority of those are sent to the Maui Planning Commission. They are not even addressed to the Lana`i. I just felt that because we had a lot of these comment letters come in – actually there wasn't that many – there's only a handful – it was easy enough for me to attach them my staff report. Normally I would just say, I would give you a summary saying, we have six in favor and two oppose or I'd give you a summary, but I wouldn't provide the letters in itself. But I did feel they were important enough and there was only a few of these to provide to you. But yes I do.

Mr. Elliott: I just want to respond as a retiring Commissioner here because I'm going to be going off the Commission very soon, but, boy what a difficult position it is to be thrown into a situation where you've got almost no information and no time to make a decision and all of sudden a decision is suppose to be made. And some of these decisions might, you know, have a half life, that it goes on around the world for years, who knows, but I just don't understand the process, that's all. It's a concern for me.

Mr. Alueta: As I explained earlier, Commissioner Elliott, I agree with you. When you get a Resolution, it's damage control for me. I have a short turn around time. The only requirement is to get it to the Commission and get it back. I try to send it out to agency comments because I feel that's the most important thing to do is to get some type, the lead

agencies, to comment on whether or not this is good idea or bad idea, and get that information in your hands. Because it is initiated at the political level, again, it's a damage control for the Planners, like myself. That's all I can do. I'm in the same boat as you are. It gets thrown down to us by the Council and then we try to deal with it as best we can. We throw it down to the Planning Commission and hopefully you can deal with it as best as you can, and then we send it back up. And that's why Resolutions are hopefully used sparingly, and for only good ideas. And the whole purpose and intent that Resolutions are used is to quicken the process up, and normally it's a slam dunk item. Meaning, it's something that they feel that they have good political consensus to achieve. And they don't normally send down – you don't normally use the Resolution methodology for controversial items because it takes away from good analysis by the Planning Department, other agencies, and by this Commission. So it sets us with a shorter time frame.

Mr. Gima: Okay, so I think it's fair what you said that if it's coming from Council that you shouldn't have to do that analysis. Would you transmit my request to Council saying that we would like that type of analysis so we can lead to more informed decision making on our part? And then items that are initiated by the Planning Department, could you do the analysis that I have requested?

Mr. Alueta: Yeah. I tried to in my staff report. I try to make –.

Mr. Gima: No, I'm suggesting that pros and cons, and financial implications, planning implications, who's the deciding authority, the statutory basis, so you can make a comparison.

Mr. Alueta: I'll try Commissioner Gima.

Mr. Gima: Unless the rest of the Commission feels that this is adequate in narrative form, then I'll yield to the rest of the Commission. I'm just sharing what helps me make a better decision.

Mr. Gamulo: . . . (Inaudible) . . .

Mr. Gima: Okay, thank you. All right – only 9:40 p.m. – thank you everybody. Meeting is adjourned.

H. ADJOURNMENT

There being no further discussion brought forward to the Commission, the meeting was adjourned at approximately 9:40 p.m..

Respectfully transmitted by,

LEILANI A. RAMORAN
Secretary to Boards and Commissions I

RECORD OF ATTENDANCE:

PRESENT:

Reynold “Butch” Gima, Chair
Lawrence Endrina, Vice-Chair
James Elliott
Dwight Gamulo (from 6:30 p.m.)
Beverly Zigmond
Sally Kaye
Alberta de Jetley
Stanley Ruidas

EXCUSED:

Matthew Mano

OTHERS:

Joseph Alueta, Administrative Planning Officer
Simone Bosco, Staff Planner, Long Range Division
Julia Staley, Staff Planner, Long Range Division
Michael Hopper, Deputy, Corporation Counsel