**LANA`I PLANNING COMMISSION**
**MINUTES - REGULAR MEETING**
**AUGUST 15, 2007**

**Approved 09-05-07**

## A. CALL TO ORDER

The regular meeting of the Lana`i Planning Commission was called to order by Chairman Reynold "Butch" Gima at approximately 7:05 p.m., Wednesday, August 15, 2007, in the Old Lana`i Senior Center, 309 Seventh Street, Lana`i City, Lana`i.

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

Mr. Reynold "Butch" Gima: Okay, I'd like to call to order the August 15, 2007 meeting of the Lana`i Planning Commission. At this time, I'll turn this over to Clayton Yoshida to introduce the new members.

## B. INTRODUCTION OF NEW MEMBERS - Alberta de Jetley and Matthew Mano

Mr. Clayton Yoshida: Aloha and good evening Mr. Chairman and members of the Lana`i Planning Commission. Clayton Yoshida, Planning Program Administrator, Current Planning Division, with the Maui Planning Department. We have two new members this evening who were confirmed by the County Council last month. We have, first of all, we have Alberta de Jetley and we have Matthew Mano. I guess their confirmation comes at an opportune time as the Commission is about to embark on the review of the Countywide Policy Plan starting from early September. So, I guess, they're on the ground level as far as that is concerned, and I think we have a nice thick binder of information to give you for that Countywide Policy Plan. The public hearing is scheduled for September 5th at 7:00 p.m. at the Lana`i School Cafeteria.

With us also from the Planning Department, we have, Leilani – a very important person – Leilani Ramoran, Secretary to Boards and Commissions, and Mr. Thorne Abbott who is our Coastal Resources Planner, as well as from the Department of the Corporation Counsel, we have Michael Hopper, Deputy Corporation Counsel. Mike and I are kind of pin-shading tonight for Colleen Suyama and James Giroux as they are at the Council Land Use Committee meeting. If you've been watching on Akaku, as the Council deals with the Wailea 670 project. So the meeting started at 4:30 p.m. I believe. So they're before the Council right now.

And we passed out a schedule, meeting schedule, for the Commission. This Commission normally meets on the third Wednesday of the month at 7:00 p.m., but because you have a time limit on the Countywide Policy Plan – 120 days from the date of the first public hearing which is September 5th – the Commission graciously has allowed itself to have two meetings per month. So that's on the first and the third Wednesday's while they deal with the Countywide Policy Plan.

With that, I guess we can move on the approval of the minutes, unless the new members want to say anything. Alberta.

Ms. Alberta de Jetley: I'd just like to thank the Commission for appointing me. And I know we have a full agenda of items to cover so just thank you for being welcoming to me tonight. Thank you.

Mr. Yoshida: And I guess Matthew.

Mr. Matthew Mano: I'm good.

Mr. Yoshida: Okay. With that, we can move to our approval of the minutes from the minutes from the July 18th meeting.

## C. APPROVAL OF THE JULY 18, 2007 MINUTES

Mr. Gima: Okay. Thank you Clayton. And welcome Alberta and Matt. It's good to have you guys on board and very pleased we have those born and raised participating on the Planning Commission. I really appreciate that. Thank you.

That having been said, let the record show that we have quorum with Commissioners Elliott, Kaye, Gamulo, de Jetley, Zigmond, Endrina, and Mano present. At this time, I'll entertain a motion to approve the minutes of the July 18, 2007 meeting.

Ms. Sally Kaye: I so move.

Ms. Beverly Zigmond: I second.

Mr. Gima: It's been moved by Commissioner Kaye and seconded by Commissioner Zigmond that we approve the minutes of July 18, 2007. Any discussion?

Ms. Zigmond: Mr. Chair.

Mr. Gima: Bev?

Ms. Zigmond: I'd like to first of all say to the Department, and Clayton, I guess that will be to you, I'm glad – thank you for following up on the letter to the applicant at Jacaranda Square. I am curious if the applicant has made any response to that letter?

Mr. Yoshida: Mr. Chairman and members of the Commission, to my knowledge, we have not received a response from the applicant.

Ms. Zigmond: I have a few more questions, Clayton, please. Just because it's so easy for things to fall through the crack even with the best of intentions, there were several items. This is the third month, I think, that we're asking about them, so if I can just get that on the record and ask you. We had requested copies of the MOA and rescheduling the workshop on the MOA. Do you know anything that's been done with that?

Mr. Yoshida: I'm not – I know that's been a concern of the Commission, but I'm not sure when that item is scheduled for. Perhaps on the next agenda we can put it as an agenda item and we'll be prepared to address when, well, when we can distribute the MOA and when the Commission can discuss the MOA.

Mr. Gima: I can add something to that. The County of Maui – I mean, Corporation Counsel recommended that we not address the MOA until the Land Use Commission hearing deliberations are over. The Land Use Commission will be deliberating that issue next week Thursday and Friday on Lana`i. So it's going to be down at, I think, the conference center down at Manele at 10:00 or 11:00 on Thursday. And if they need to go a second day, I believe they will be starting at 9:00 a.m.. So following the disposition of that hearing will probably determine when we can have the workshop on the MOA.

Ms. Zigmond: Thank you Mr. Chair for that piece of information. And moving to the next issue, as Thorne is going to tell us today on the SMA if it's under $125,000 that the Planning Department can do an administrative approval. Regarding the Small Boat Harbor issue here, we have requested, and I'm going to repeat that if is under $125,000 that we're still asking to have that come before us. And I think last but not least, that was it. Thank you.

Mr. Yoshida: I guess at this time we're not aware of – I mean – the DLNR has not filed an SMA Assessment for those fuel lines and stuff. And we are aware of the request from the Commission that they be allowed to review such an application.

Mr. Gima: Okay, any other further questions or comments on the motion? Hearing none, all in favor say "aye."

Commission Members: "Aye."

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

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

**VOTED: To approve the July 18, 2007 minutes as presented.**

## D. ORIENTATION WORKSHOP

1. **Roles and Responsibilities**
2. **Discussion of Boards and Commissions Booklet Distributed by the Office of the Corporation Counsel**
3. **The Sunshine Law**
4. **Ethics**
5. **Ex Parte Communications**
6. **Rules of Practice and Procedures**
7. **Land Use Regulatory Framework in Maui County**
8. **Hawaii State Plan**
9. **State Land Use Law**
10. **Zoning**
11. **Special Management Area Rules**
12. **Shoreline Area Rules**
13. **Other Related Boards and Commissions**
14. **Lanai City Design Guidelines**
15. **Meeting Agenda**
16. **2007 Meeting Schedule**
17. **Recent U.S. Supreme Court Decisions on Takings Issues**
18. **Public Access Shoreline Hawaii (PASH) v. Hawaii County Planning Commission**
19. **Topliss v. Hawaii County Planning Commission SMA Case**

Mr. Gima: At this time, I'll turn the meeting over to the Planning Department for the orientation workshop.

Mr. Yoshida: Thank you Mr. Chair and members of the Commission. We thought that this would be an opportune time to have an orientation workshop for new members, as well as a refresher for the current members as we are about to embark on the General Plan review very shortly – say in the next three weeks or so. So with that, I guess – are we ready?

Mr. Gima: Excuse me Clayton.

Mr. Yoshida: Okay, with that, we'd like to call on perhaps the Deputy Corporation Counsel Mr. Hopper to provide some quick instruction on the sunshine laws and perhaps some do's and don'ts in serving as Planning Commissioners. So I call on Mr. Hopper.

Mr. Gima: Excuse me Michael, before you start, Commissioner Endrina, do you have a question?

Mr. Lawrence Endrina: Yeah, in the packet we got earlier, a couple of days ago, there was a sheet on housing on Lana`i, and I wanted to find out where this came from or what was this in the packet for?

Mr. Gima: Larry that's – when we had talked about the workshop, there was a suggestion that we send the Department of Housing and Human Concerns our questions so that's my written write up.

Mr. Endrina: Okay.

Mr. Gima: And so I sent it to Leilani as directed, and she sent it over to Housing and Human Concerns.

Mr. Endrina: Okay. Thanks.

Mr. Michael Hopper: Hello everyone, my name is Michael Hopper, I'm Deputy Corporation Counsel. I'm obviously not James Giroux, your assigned Corporation Counsel. I advise the Maui Planning Department and the – and also the Molokai Planning Commission. So I'm backing up James in this situation, but I've done these similar orientations for other boards and commissions. Bear with me if you've heard this lecture before but I think it's very important and also very useful do a refresher on these issues which affect all boards and commissions in the County of Maui.

The first issue I want to go over with you is the sunshine law, which is a very important State law which governs the way in which you are required to hold these meetings. It's essentially an open meetings law which requires that all of the deliberation you have and the meetings that you have take place in the open, and decisions aren't made behind the scenes, that they're made in front of everyone so that it's open to the public. So basically there are several requirements. One is that each meeting must have an agenda, specifying the business for the particular meeting and the business is limited only to those topics on the agenda. This is to prevent you from discussing things outside of your agenda so that the public will have notice of what's on the agenda and what will be discussed. So you can neither discuss, nor take action on items that are outside of the agenda. An agenda must be posted six days prior to the meeting, and must be filed with the County Clerk. And if individuals request that they receive copies of the agendas, they are required to receive that agenda at least six days prior to the meeting. Or it least has to be mailed to them. But it does have to be filed with the Clerks six days prior to the meeting date.

In addition, members of the public must be allowed to testify on every agenda item. You can limit their time of their testimony to no less than three minutes. However, if an agenda

item is discussed at a meeting and is posted, you have to allow members of the public at least three minutes each to testify about that item. In addition, one of the key issues with the sunshine law is all of the deliberation that you have are suppose to take place on the record. Thus, more than two board members may not confer with each other outside a properly noticed meeting regarding board business. So the three of you couldn't meet outside of a meeting and discuss anything that is before the board or that could come before the board.

Two of you may discuss board business. However, there can be no commitment to vote. You can neither make a commitment to vote or seek a commitment of another member to vote on a particular issue. So I would recommend not discussing board business outside of the meeting even if there's just two because to an outsider or reasonable person, how do they know you're not making a commitment to vote or something else. And so I would generally recommend against that.

The sunshine law has several – there's several things that can come up if you do violate the sunshine law. One is that the issues that you take action on could be nullified. Essentially if you vote on a permit or on something else, if it's found that you violated the sunshine law in discussing that issue, that issue, the vote can be voided. In addition, the sunshine law actually has a penalty for an intentional violation which is a misdemeanor which is punishable by, actually, by imprisonment. But that's only for an intentional violation of the sunshine law. So, and there's a lot more detail than what I'm giving you here. I'm just giving you the key points. So that's why we've handed out the sunshine law pamphlet to you and if you have further questions you could direct them either myself or James Giroux, and he should be able to advise you on these issues. But again, the sunshine law is a very important law and it's enforced by the Office of Information Practices, and they frequently render opinions on sunshine law issues. And, so if you need a more detailed opinion, you may consult them as part of your inquiry. So that's basically all the key points I have on the sunshine law. Again, read the booklet that you have about the sunshine law. It should clear up a lot of the information, or a lot of the questions you might have. So I think I'll take questions on item by item here. Does anyone have any questions about the sunshine law?

Okay, moving on. I wanted to discuss your Rules. You have a Rules among you – Rules for the Lana`i Planning Commission. They are similar in many ways to the Moloka`i and Maui Planning Commission's. And there are several key rules, some of which comes from State law involving the sunshine law as well as the Administrative Procedures Act. And others are just simply a part of your rules. First is the issue of quorum. You have nine members, are allowed to be on the Lana`i Planning Commission. That means, under State law, you're required to have – in order to have a meeting, you need to have at least a majority of the members to which your board is entitled to present in order to have the

meeting. That means in your case five members. If you do not have five members present then you cannot have a meeting. And the only thing you can really do is to basically recess the meeting to a future date. Other than that you can't have the meeting because it's not a valid meeting as far as State law is concerned.

In addition, in order to take any action, it is required that a motion be made, and seconded, and approved by at least five of nine members. So if you have five members, though you have a quorum, in order to take action on anything, you again need five members to vote to take that action. This is because it stems from State law which requires an affirmative vote of a majority of the members to which the board is entitled in order to take action. So whether you have five members present or nine members present, you still need a vote of five members in order to take action on any particular item, whether that's an SMA permit to vote to approve or deny it. And so that's required regardless of how many members you have. You would have to have at least five obviously.

And then just another issues that has come up before. Generally the Chairperson must entertain motions or basically ask for motions from the floor prior to a motion being made. This mean, for example, if someone is making public testimony, then it would be inappropriate for someone to make a motion in the middle of that public testimony. Yes?

Mr. Gima: When you say "you need five votes," you need five votes in the affirmative or the negative, correct?

Mr. Hopper: That's correct. If you don't have five votes to do anything at all, then there's no action taken. So whatever the action is to take, you need five votes. Whether it's to grant the permit, deny the permit, but if you don't have at least five votes to do something, then it's considered no action being taken and that can have certain consequences depending on the particular action. For example, certain permits state that if there's not action taken within a certain amount of time, the permit may be deemed approved or there maybe no comments given by the Planning Commission, for example.

Mr. Gima: I guess the point I was trying to arrive at – there were times when we had just five people at the meeting – what if four voted in the affirmative and one abstained, what would be the result of that?

Mr. Hopper: I believe under your rules there's actually no right to abstain. I believe if there is a silence or refusal to vote is considered an affirmative vote.

Mr. Gima: Okay.

Mr. Hopper: That's actually placed in there for sort of the protection of the board business

because if there's situations where there's no action taken because of abstentions the problem is if there's no action taken on whether it's the permit or recommendations to Council, then the time period would lapse without any comments. So that's placed in your Rules just to require either an affirmative or a negative vote on the issue. If you have five votes, or four vote for and one vote against, then you're right, there's no action taken because you don't have five votes. So, but, I believe under your Rules, and I can double check that right after this, I have the rules here, but it's certainly true with Moloka`i, Maui, and just about every other board or commission I've advised that if there's a – there's has to be – a silence or refusal to vote is considered an affirmative vote. So if you stay silent, that's considered an affirmative vote under your Rules.

Mr. Gima: Thank you.

Mr. Hopper: Okay, and that's all I have to say about your Rules. Again, you have copies of your Rules. So if you need more detail, you can consult them. And if you have further questions, either James or myself would be able to help you with those questions hopefully.
Another issue I have is generally fairness concerns. These stems from basically the due process rights of the applicants who are coming before you. This would particularly be in the situation of SMA permits which is the authority granted to you by the Maui County Charter is that you are the primary body in the County responsible for overseeing the special management area – basically it's the coastal zone management act and through that coastal zone management act, they've established special management areas of the various islands which comprises of Maui County and that's basically your jurisdiction – to get the Planning Department as your staff under that jurisdiction. However, it is ultimately your decision on the SMA and how that process works, and ultimately if permits are granted or denied. And now, as was stated earlier, there are certain provisions in your rules that provide if it's an SMA minor permit as defined under State law, the decision making goes with the Planning Department. If it's SMA major permit, you have the final decision over that.

So those are various issues that are comprised in your Rules. But my main point to make to you is that because of the due process rights of applicants under either SMA permits, you also have review under the shoreline setback rules of your –. Of your rules, is that if you're the final decision maker you are sitting in what's called a quasi-judicial capacity. That means you're essentially acting as judges and as jurors, really. And so what the law states about that and this known as the Hawaii State Constitution, but the United States Constitution, is that board members must not develop pre-conceived final opinions regarding specific projects that come before or likely to come before the board. In addition, avoid making any statements for or against a particular project or you maybe forced to recuse yourself from voting and/or participating in discussion about the project.

And that's to basically to maintain the integrity of decision making process. It's basically an applicant who comes before you does have the right to fair and impartial hearing, and if there's evidence that before they've even come before you to present any evidence, some of you have already made up your mind. Then it can be argued that they do not have a fair hearing, and that will call into question the voting procedure. There's actually been cases in the past on Maui where that's happened, and the vote had been challenged and over-turned because some of the votes necessary in order to take the action that was seen that they had already made statements against that particular project. And so really it's just for protection of the body to make sure that whatever action the body takes it's a valid action and a legal action. So that's an important concern there.

The next issue I would like to discuss – actually nicely feeds in from that which is the County Code of Ethics. And the County Code of Ethics – I have a handout here called an orientation for board and commission members. And it's a very basic outline of the Code of Ethics and it also includes the Maui County Charter which includes the Code of Ethics in it. And it states basically that with the Code of Ethics and because you are members of a Maui Planning Commission, you're actually considered officers of the County. So you are subject to the County Code of Ethics. And there's several rules with the Code of Ethics. One of them involves conflicts of interests which states that "you shall not engage in any business transaction or activity or have a financial interest, direct or indirect, which incompatible with the proper discharge of your official duties or which may tend to impair your independence of judgement." A financial interest has been defined by the Board of Ethics as "a financial interest of you, your spouse or your dependent child, and it may include ownership or interest in a business, your employment or perspective employment."

And an example given here is if you sit on a planning commission and your spouse works for a developer seeking a special management area permit. If you've got a spouse in that situation, or what they say is a dependent child, which means that it is an independent child who works for this developer, you would not have to recuse yourself. But if the child is still dependent upon you for financial support and they work for a developer, that would be considered as a conflict of interest. And these are decided generally on a case by case basis. There are not a whole lot of easy answers. Generally the facts have to be known and you bring these conflicts up. You can disclose to either the Planning Director, or the Planning Department or myself. We can look into them, and if we believe that further information is – or further opinion is necessary, we may consult the Board of Ethics which is required to render an opinion within 45-days of the request, and they frequently do that.

In addition, there are rules regarding gifts. "We shall not solicit, accept or receive any gifts, directly or indirectly, whether in a form of money, service, loan, travel, entertainment, hospitality, thing or promise, or any other form under circumstances in which it can be reasonably inferred that the gift is intended to influence you in the performance of your

official duties or is intended as a reward for any official action on your part. There's no dollar limit. It depends on the circumstances. And gifts can be in many different forms. It's not just someone that would pay you money or give you a car. It can be a golf outing or a dinner, things like that, so just be mind-full of those particular issues.

In addition, you can not disclose or use confidential information for personal gain. I suppose this should be obvious, but if you're purview to confidential information, this could be, an example, could be if an executive session is called – that's a special one of the sunshine law – which you would consult with your attorney which be myself or James Giroux on a matter. He may do that if there's an SMA permit and he's concerned with some of the action that's being taken or something. If he believes there's a legal problem. Disclosing information from an executive session for personal gain would be a violation of the Ethics Code because that's confidential information that the general public is not purview to. So that's the rule in the County Code of Ethics. And again it states here it's a case by case analysis required. And there's usually no easy answers.

Also, there's financial disclosure requirements. I believe you were all required to fill out financial disclosure forms which basically seek to, you know, disclose any potential conflicts you might have in the future as developers may come before the Commission for an SMA permit or other action, whether it be your review of a Change in Zoning or a Community Plan Amendment or a variety of other things. Any questions on Code of Ethics or any of those items that I've discussed so far?

Okay. Well, moving on, I'd like to discuss – I'll attempt to discuss briefly some important case law that might be relevant to you as you serve as a Commission member. A couple of the cases are called the Noland Doland lineup cases. These are U. S. Supreme Court cases which outline what sort of conditions are you allowed to place on permits. What do the conditions have to –? What do the conditions have to be in order for them to be legitimate conditions you could place on a permit? As you maybe aware, you'll have SMA permits that you'll need to look at, and something that's typically done is that conditions are placed on the permit which will requires the developer to do certain things in order for you to recommend – not recommend – in order for you to grant the permit. What the U. S. Supreme Court cases and the Hawaii cases have said is that "these conditions must have a rational nexus with the impact of the development." And in a case of an SMA permit, this basically means that the condition has to relate in some way to the impact that the development has. And in the case of SMA permits, the impact that is generally targeted is the impact on the shoreline, and in the Special Management Area. And the conditions that you impose must have a rational relationship with the impact of that development. So, in the context of SMA, it means that your condition must be, in order to mitigate the damage that the project may do to the shoreline, or adverse effects it may have on the shoreline or on the goals and objectives of HRS 205A, which is the Coastal

Zone Management Act.

And there's a variety of lists of goals and objectives of that statutes, and in order for your condition to have the rational nexus, it needs to be related to one of those conditions. And this extends to Changes to Zoning which you may sit here as an advisory capacity. The impact of the development must have some sort of – your condition must have some sort of relationship with the impact of that development. In addition, it must also be proportional to the impact of the development. This basically means that the degree of the condition must be equivalent to the impact of the development. If it's a single family home, for example, requiring a million dollar contribution to a shoreline protection business, maybe an example of something in that particular case, would be out of proportion. So even if there's a rational nexus between the impact of the development and the condition, so long as it's proportional to the impact of the condition. And that's typically on a case by case basis that's decided. And so that's something that you'll need to look at when you're thinking of conditions to place on permits in order to mitigate the impact of those developments, which is part of your duty actually under the SMA law, which is to basically review the permit request and mitigate the project as much as possible before deciding on the permit.

And this is something that is described in Hawaii Supreme Court Case –. Or actually this is a Hawaii Court of Appeals Case – this is a case of Topliss vs. Planning Commission of Hawaii County. And it basically gives a very good overview of what's required by the SMA permit law. And basically – I'm looking for the best quote here – essentially I can paraphrase. The case – the HRS 205A, basically requires you to review a special management area permit, and what the court said in that case was that even if a proposed development within a special management is shown to have a substantial adverse impact in accordance with the coastal zone management act, a Planning Commission is required to determine whether that effect can be practicably minimized. And when minimized, whether the effect is clearly outweighed by public health, safety or compelling public interest. So basically, if you look at a project, your job is to come up with conditions that could minimize the impact of that project as much as possible. And then, looking at the project in the light with those conditions being followed, balance that interest against the interest of public health, safety or competing public interest. And this is something that the Planning Department will help you with as they go along. They will give you an analysis of the project. They will give you their recommendation on the project and you can choose to adopt their recommendation or not to do so, and come up with your own findings and conclusions. Is there a question?

Mr. Gima: In the Topliss vs. Hawaii County Planning Commission, did the Hawaii County Planning Commission over step its bounds and that's why there was a lawsuit? And if so, what did they do?

Mr. Hopper: Well, what happened in that case is that they sought to impose traffic mitigation measures on the project. What the Court said was that there were not adequate factual findings on the record to show that the traffic impacts were in any way related to the goals and objectives of the 205A which related to shoreline preservation, or the adverse effects that the project could have on the shoreline. What it did was it remanded back to the Hawaii County Planning Commission and said you need to make factual findings and conclusion of law which clearly show that the traffic mitigation measure you are imposing have a relationship to the shoreline preservation intended by HRS 205A. And just to note in that case, there were factual findings made but the Courts stated that those findings were inadequate to justify the conditions that were imposed in that case. So, in granting the permit where you're the final authority especially, you need to make sure that your findings and conclusions are clear and that they state what you found and why find that the conditions that you're going to impose serve their purpose which is to serve the purposes under HRS 205A. And this something that is typically done by the Planning Department in their recommendations. But ultimately it is your job as a body to either to concur with those, or if you don't concur with those, come up with findings and conclusions that are sufficient to justify the decision that you make and any conditions that you impose.

Mr. Gima: So –. I mean, at a time of Planning Commission deliberating an SMA, I mean, I don't think any of us are skilled enough to determine what's findings of facts and conclusion of law. So how are we going to – how are we going to ensure – well, except for Sally – how are we going to ensure that whatever condition we oppose has a foundation of finding of fact or conclusion of law?

Mr. Hopper: Your attorney could discuss that with you in an Executive Session. It's been done in cases before. But in general, it's, you know, it's why you're appointed to the Commission. It's because of your good judgement and your ability to view the areas of your own island and say this project looks like it's going to have an adverse effect in this area, and here are some measures that either the Planning Department has recommended or that you believe would be appropriate. As far as determining on a case by case basis if particular conditions have that rational nexus and don't overstep their bounds, that can be difficult. And attorneys can argue about that for a very long time. At this point, I'm stating to you what the case law has said and what the standard is. When it gets down to a case by case basis in a particular project, it can become difficult sometimes. But I mean, I think, there are cases where that issue can pop out and there are clear cut cases that, for example, a particular condition might not have anything to do with the impact of the project. So it's basically just a caution that generally Courts aren't going to argue if you – with the findings themselves if you had some evidence to back them up. It's just that if you have nothing, or they're completely inadequate, is a problem. So I would just recommend that you make your best effort to back up whatever conditions you come up

with the findings of facts and conclusions of law. And that's not always done by every board and commission. And I just think that's an important thing in case down the line a denial of a permit would be challenged.

Mr. Gima: Thank you.

Mr. Hopper: Certainly. And then the last case I wanted to go over with you is the PASH Case, which stands for the Public Access to Shoreline Hawaii Case. This involves another Planning Commission – again, Hawaii County – in which – . The issue came up was to what extent does the Hawaii State Constitution's preservation of the right of native Hawaiian gathering rights require a Planning Commission to preserve those right in granting SMA permits? And what this case determined was that a Planning Commission does have an affirmative duty to protect existing native Hawaiian gathering rights in granting its SMA permits. And primarily what they are concerned with are beach access rights and other gathering rights. And that, in the definition of those rights under the Hawaii State Constitution is typically that they were existing pre-contact, you know, before Hawaii had contact. And there's a variety of rights that exist and those rights have to be protected by your Commission. And in order to do that, again, conditions are generally imposed to prove that type of access. And the Court in this case, which is Hawaii Supreme Court reiterates what I was just telling you about the Noland and Doland type of cases which states that those conditions would still have to have a rationale nexus with the goals and objectives of the Coastal Zone Management Act and be proportional to the impact of the development. But be aware that the Coastal Zone Management Act has a lot of goals and objectives and among them are basically preserving any – you're not having an adverse effect on any historical or cultural practice that is existing. So that's just a reiteration from the Hawaii Supreme Court that the Planning Commission has not only a right but a duty to look out for those native Hawaiian gathering rights in coming up with its SMA conditions. So don't feel that you have no jurisdiction in that area if a permit comes before you. And in fact, you have an affirmative duty to look out for those rights and to make sure they're protected. Particularly how you do that, that is up to you – again your discretion. And you're still limited by the proportionality and the rationale nexus requirements, but that's one of the other cases that I was asked to brief you on, and so that's basically the essential finding of that case. Any questions on anything? Okay. I've taken a while. Clayton, are you next or will it be Thorne?

Mr. Yoshida: Thank you Mr. Chairman, members of the Commission, we have a power point presentation and Thorne has copies of the power point slides which we'll distribute to you at this time.

Thank you for your patience. We'd like to start with our annual orientation workshop. We normally present this in April, but because the new members weren't confirmed until July,

and because the Commission is about to embark on its portion of the General Plan review of the Countywide Policy Plan starting next month, we decided to have the orientation workshop at this meeting.

So we're the Planning Department, and we provide technical support to the Commission. We are lead by the Planning Director, Jeffrey Hunt; the Deputy Director, Colleen Suyama; the Administrative Planning Office, Joseph Alueta. We are a Department of about 60-plus staff positions, and we are divided into three essential working divisions. The Long Range Division which deals with the General Plan update, the Community Plan updates and Long Range Planning studies, such as transportation studies. The Current Planning Division of which I'm a part of, and Thorne is a part of, and Leilani is a part of. We deal more with the Land Use Permitting, the Change in Zoning and the Special Management Area Permits, Special Use Permits, Design Reviews for Country Town Business District compliance, Landscape Planting Plan, Comprehensive Signage Plans. And then we have the Zoning and Enforcement Division that deals more with Building Permits, Subdivision review, staffing the Board of Variances and Appeals, as well as providing the enforcement relative to Coastal Zone Management and the Zoning Code. And then we're also supported by the Administrative Division which consists of six employees.

The next slide – the agenda for tonight – basically I'll go over the planning framework, provide an overview, and then we'll also be dealing with Title 19 of the Maui County Code relative to Zoning. Thorne will talk about the Coastal Zone Management Act, Shoreline Setback Variances, and Special Management Area Permits. And we were slated to have Francis Cerizo from our Zoning Administration and Enforcement Division but because FEMA officials are here due to the Hurricane, Hurricane Flossie, they're having a meeting on the Big Island. So he's unable to provide the orientation on the flood hazard districts and the County's policy against sexual harassment.

Planning resources that are available, we have the Lana`i Planning Commission, a nine member board, all residents of the Island of Lana`i who are appointed by the Mayor and approved by the Council, typically for a staggered five-year terms. So every year, you'll have two, one or two, or maybe three new members who'll be coming in.

We have the County Urban Design Review Board that does project design review and they provide recommendations largely in the Special Management Area. So say if there's a new building, commercial building in Manele, and it's a major SMA permit, the Urban Design Review Board would review that item and make recommendations relative to design, architectural design, landscaping, lighting, and so forth. And that Board has nine-members and four alternate members. And the Lana`i representative on that Board is currently is Kay Okamoto.

We have the Arborist Committee that's under the Parks Department, and they deal with the review of tree planting within proposed subdivisions, proposed right of ways, and parks. They nominate exceptional trees for protection. And they provide a recommendation, and they are staffed by the County Parks Department.

We have the Maui County Cultural Resources Commission that deals with historic zoning districts – the two in Lahaina, and one in Wailuku around the County Building, Kaahumanu Church. The approve uses and architectural designs within those historic districts, and they provide recommendations on special management area permits or other permit applications. It's a nine-member board. Nani Watanabe is the Lana`i member on that Board. And most recently they dealt with the Halloween events in Lahaina which was very contentious in the historic district in Lahaina. (Inaudible... changing of cassette tapes) . . . permit applications for their comments and recommendations.

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

Mr. Yoshida: Sure.

Mr. McOmber: The way this indicates Clayton – Ron McOmber is my name by the way – do all of these agencies suppose to report their findings or their understanding to the Lana`i Planning Commission? Is that the way this is set up?

Mr. Yoshida: If the Lana`i Planning Commission has jurisdiction over the matter, say in the case of Special Management Area Permits, the Lana`i Planning Commission is the final authority on those. They may look to the Urban Design Review Board to make recommendation on design. They may look to the Arborist Committee to make recommendation on preservation of exceptional trees or tree planting within the subdivision. They may look to the Cultural Resources Commission relative to preservation of cultural and historic resources. They may look to other Federal, State and County agencies for comments within the purview of those agencies relative to the Lana`i Planning Commission's review of, say, these Special Management Permits.

Mr. McOmber: So if an item comes before the Urban Design Review Board and they make a decision, whatever, that decision would automatically come to the Lana`i Planning Commission in relation to whatever that permit was or whatever that Urban Design item was?

Mr. Yoshida: If the permit was within the purview of the Lana`i Planning Commission – like Special Management Area Permits.

Mr. McOmber: But it had to do with the Community Plan because most Urban Design

Review stuff was within the Community Plan agenda. The stuffs they talked about is – a lot it is related to the Community Plan. The reason I'm asking that is we had something that went on with this Jacaranda Square and it never, I ever, heard it come back to the Lana`i Planning Commission – whatever their recommendation was, was never, that I ever hear, ever come back to the Lana`i Planning Commission. And the way it looks like to me that wheel is set up that it should be done – that should be brought back to the Lana`i Planning Commission.

Mr. Yoshida: Well, I believe in that particular case there was a Country Town Business Design Review and that falls within the parameters of the Planning Director who was looking to the Urban Design for their comments. I guess the disconnect was that when the Community Plan was done in – adopted in 1998 – because the Design Guidelines were adopted in 1997– the Design Guidelines were not changed to conform to the Community Plan policies relative to the Design.

Mr. McOmber: And who's fault was that? Was it County's fault? Was that something that was done administratively that they didn't catch?

Mr. Yoshida: I think the Department probably should have amended the Design Guidelines to conform with the Community Plan policies.

Mr. McOmber: I don't want to get away from your workshop here, but I'm really concerned about that, and I'm just asking that question. Thank you Clayton.

Mr. Yoshida: Yes. Okay, with the planning framework, we have the Hawaii State Constitution and we have the Hawaii State Plan, Chapter 226, of the Hawaii Revised Statutes, largely developed when I guess George Ariyoshi was the Governor, which provides a broader policies, goals and objectives in different functional areas. And from that we have the General Plan and Community Plans and newly adopted legislation known as Chapter 2.80B of the Maui County Code. We have the County Charter which was last comprehensively reviewed by the Charter Commission in 2002, but Charter amendments have occurred as recently as 2006. We are dealing currently with the 1990 version of the Maui County General Plan. We are embarking on the General Plan update which, again, the Countywide Policy Plan will come to the Commission in September – a public hearing in September of this year. We have the Lana`i Community Plan that was updated in 1998, and the Planning Commission reviews community plan amendments. So if someone wants to change the land use designation in the Community Plan from, say, Ag to project district, they would have to come to the Lana`i Commission for their review.

We have the Land Use Commission Statutes, Chapter 205, Hawaii Revised Statutes. And basically the role of the Commission relative to Chapter 205 is they deal with district

boundary amendment and also special use permits. If the land area of the district boundary amendment is greater than 15 acres –. Well, I guess all lands in the State are divided into one of four classifications: urban, Ag, rural or conservation. If a property owner wants to change the land use designation from, say, ag to urban and it's greater than 15 acres, then they would go to the State Land Use Commission. If it is less than 15 acres, then they would come to the County. First to the Planning Commission, and then to the County Council.

For the Special Use Permits – that's uses that are special uses. They would come before the Planning Commission. If it's more than 15 acres, it would go on to the State Land Use Commission. If it's less than 15 acres, then the Planning Commission would make the final decision. If the Planning Commission recommends denial of the permit, then that's the final action. The Land Use Commission cannot overturn a decision or recommend a decision for denial from the Planning Commission if it's greater than 15 acres. An example of a Special Use Permit that's greater than 15 acres is the Lana`i landfill which is in the State agricultural district, and it's more than 15 acres. That went to the Planning Commission, and then subsequently to the Land Use Commission.

We also have Zoning which is provided for under Chapter 46, Hawaii Revised Statutes. And a body in Title 19 of the Maui County Code where we have permissible uses, special uses, performance standards within any zoning district. The Zoning Code, Title 19, is divided into two sections: Chapter 19.02 regarding interim zoning and Chapter 19.04 which deals with comprehensive zoning. We've had interim zoning on the books since 1958 which is a long time for interim zoning. And we are trying to comprehensively zone properties to conform with the Community Plan. We did undertake after the Lana`i Community Plan – update was adopted in 1998. We undertook a project to try to zone a large portion of Lana`i City especially around Dole Park for the businesses to BCT Country Town Business so that the individual owners would not have to do it themselves. And there are a large range of different type of permits that the Lana`i Planning Commission would review under the comprehensive zoning section that are listed there.

Ms. Zigmond: Clayton, can I ask a question please?

Mr. Yoshida: Yes.

Ms. Zigmond: Going back to the more less than 15 acres. Something happened and I just want to make sure I understand this. You said if it's more than 15 acres it goes to the Land Use Commission. If it's less than 15 acres, it comes before us?

Mr. Yoshida: Okay, I'm talking about the District Boundary Amendment where if a person wants to change their land use classification from Ag to Urban – if it's more than 15 acres,

that goes straight to the Land Use Commission. So in the case of Manele – any one of the Manele Project – Manele residential, Manele golf course – those were more than 15 acres. Those went directly to the State Land Use Commission. In other cases, if it's less than 15 acres – say the Miki Basin, Maui Electric facility at Miki Basin, they existed under a special use permit previously, but then they wanted to seek more permanent zoning, M-2 Zoning, so they had to reclassify the lands from the State Agricultural District to the State Urban District. That was less than 15 acres. That came to the Lana`i Planning Commission and then to the County Council.

Ms. Zigmond: And it is that one that the Land Use Commission can not over turn? If it's down here where the less than 15 acres, in that example that you just gave?

Mr. Yoshida: Then, I guess, Chapter 205 allows the authority for Land Use reclassifications less than 15 acres provided it doesn't involve conservation district lands. Because anytime it involves conservation district designated lands, it automatically goes to the Land Use Commission. The acreage doesn't matter on that. But if it is in the Ag, rural, or urban district, and less than 15 acres, the County can deal with the land use change rather than the Land Use Commission. And there have been efforts in the past to try to increase that acreage – that acreage threshold so that the County could deal with larger, say, you know, up to 50 acres or so. Any other questions?

We also have Chapter 205A of the Hawaii Revised Statutes, the Coastal Zone Management Law, and Thorne will talk a lot more in depth about the shoreline SMA, Special Management Area, Rules and the Shoreline Setback Rules. We also have Chapter 343 of the Hawaii Revised Statutes relating to Environmental Impact Statements (EIS) and there may be occasion for the Lana`i Planning Commission to review and comment on either an environmental assessment document or an environmental impact statement document. I think an example of that was for the Manele Small Boat Harbor Improvement project where the State, DLNR, Division of Boating and Ocean and Recreation, came to the Commission and asked for its comments on the draft environmental assessment as one of the reviewing agencies, or reviewing entities for the draft environmental assessment. So those may come to the Commission.

Mr. Gima: Excuse me Clayton. What would be the difference for requiring an EA versus an EIS?

Mr. Yoshida: Well, with the EIS, it's a more thorough document. It involves a pre-consultation or publication of an Environmental Impact Statement Preparation Notice, first of all. And then, from that, those comments, then the draft EIS is formulated. And then there's a longer review period, you know, 45-day review period of the draft EIS. There's only a 30-day review period for the draft EA. And then there's an acceptance of the Final

EIS. And then there's a 60-day challenge period of the Final EIS. We're kind of going through this with the Moloka`i Planning Commission on the controversial La`au Point project there on the south-west corner of the Island. They've been one of the commenting entities on the Draft EIS. In that particular case, the State Land Use Commission is the accepting authority of the EIS. But we've had numerous – spent, I think, over 12 hours talking about that Draft EIS – or the Commission has.

Mr. Gima: No, but I'm still not clear what would determine if you require an EA or an EIS.

Mr. Yoshida: I think we'll go through that. I'm not sure if we'll go through that in the presentation. But I think if the project may have a significant environmental or ecological effect, then the Commission, or the accepting authority could require that, an EIS, be prepared in lieu of the environmental assessment to more fully disclose all of the impacts of the project.

Mr. Gima: So would we be one of the authorities that could require one over – the EIS over the EA?

Mr. Yoshida: There are certain triggers. One of them we had gone over before which was the Community Plan Amendment where the Commission could be the accepting authority of the environmental document, and make a decision as to whether they felt the environmental document was satisfactory – say an EA – or if they would require an environmental impact statement. We haven't come – sorry, I guess Corporation Counsel wants to add –.

Mr. Hopper: I just wanted to elaborate a little bit. Typically what's done is an EA is prepared. That's submitted to the accepting authority, and then you get either from the EA a FONSI, which is a Finding Of No Significant Impact. Or if there's a finding made that the project may have a significant environmental impact based on what's disclosed in the EA. And if there is a finding that it may have a significant environmental impact, then an EIS could be required if that finding is made. What happened in some situations as was done at the La`au Point situation is the developer simply go straight to the EIS stage believing that their project may have that effect, of a significant environmental impact, and so they go right to the EIS stage and they go on from there. But typically what's done is the EA is done, which is the more simplified document. And there are several triggers that would require a preparation of at least an EA, at a minimum. And if there's a finding of no significant impact from the accepting authority, nothing more need be done. And that finding can be challenged, but after there's a finding that there may be a significant impact, then an EIS must be prepared. If you go through that procedure, do the draft, get comments, do the final, get comments, and then a decision is made whether to accept the EIS. And that is really only step one with the project. In fact, then you go on to your

approvals. But, you have to finish that stage first if one of the triggers are met, that could trigger HRS 343.

Mr. Yoshida: Moving on to Title 19, Change in Zoning. The Commission – if someone wants to change the zoning designation from say R3 to B2-Business, the Lana`i Planning Commission would hold a public hearing and provide a recommendation to the Council. The Council is the final authority. So, an example, again, is with the Miki Basin plan. They did request a re-zoning to M2-Heavy Industrial. The Lana`i Planning Commission held a public hearing and provided a recommendation to the Council, and the Council made the final decision.

We have Conditional Permits. Those are to establish uses not specifically permitted within a zoning district which are similar, related or compatible to permitted uses. The Planning Commission would hold a public hearing and provide a recommendation to the Council. The Council is the final authority. An example of this is the West Maui Community Federal Credit Union. And example on Lana`i would be when they dealt with the Manele Small Boat Harbor Ferry System improvement project, two acres of it was within the project district. And so they needed to get a conditional permit for the two acres where they were going to have over-flow parking for boat trailers. And the Planning Commission held a public hearing on that, made a recommendation to the Council, and Council made the final decision on the Conditional Permit.

Ms. Zigmond: Clayton, excuse me. What would trigger the Council not to abide by the recommendations of the Planning Commission?

Mr. Yoshida: I believe if they found within their review that if they didn't meet the test of being similar, related or compatible to permitted uses. Or vice versa, if the Commission's recommendation was for denial, if they found that the proposed use was similar, related or compatible to permitted uses based on the record.

Ms. de Jetley: I have a question. If the Council approved or denied a use and it was contrary to the Lana`i Planning Commission, do we have any recourse to have them reconsider?

Mr. Yoshida: Well, I believe that the Council has the final authority on Conditional Permits. So, they're under Chapter 19.40, the Commission is charged with conducting a public hearing and making a recommendation to the Council. But the Council is the final authority. So, you know, as oppose to other cases, such as SMA where the Commission is the final authority. But I believe that the Council's decision probably would stand unless, well, maybe the Deputy Corporation Counsel might – as that is somewhat of a legal question – he may have further comments on that.

Ms. de Jetley: What I'm looking at is like on Moloka`i with the La`au Point. If the Molokai Planning Commission denied the project and the County Council approved the project, the public would have no recourse? It would become a contested case? No?

Mr. Yoshida: I guess I would defer to the attorney.

Mr. Hopper: Clayton is basically right. What's in the Code, it depends on what you're approving. Now La`au is not a Conditional Use Permit – well, I believe an aspect of it is – but that also involves the Change in Zoning, a Community Plan Amendment, a Special Management Area Permit, and I believe a State Special Use Permit as well. So there's a lot of different things you need to look in the Code. Some of them, like the SMA permits are actually the Moloka`i Planning Commission's sole authority. So Council wouldn't make a decision in that case and the applicant couldn't get it's project approved unless it had a Special Management Area Permit approved.

However, with a Conditional Use Permit, Council is the final authority in that case and there's really no appeal from the Planning Commission in that situation. The accountability would be in a legislative fashion. You know, the problem would be that you would feel the people of Lana`i would have come up with a recommendation and we're ignored by Council. And, you know, at that point, it's a legislative solution to vote the Council members out if, you know, that's a decision that you made that you believe was contrary to what the people wanted. There are certain instances – I believe, in the Change in Zoning or Community Plan Amendment – either one or the other or both, where in order to overturn the Planning Commission's decision there is a required two-thirds votes on the Council. I don't believe that's in the case of Conditional Use Permits, but that is based on certain other cases. But, you know, the ideas in those cases is that the Planning Commission is only a recommending authority and the Council is the final authority, although particularly with issues that are on neighbor Islands, Lana`i and Moloka`i, I believe that generally the Council does give heavy weight to which you as a Commission recommend. But again, yes, there's no direct recourse in that type of situation for the Planning Commission should the Council decide to go different way than what you recommended.

Mr. Yoshida: We have County Special Use Permits, which permit uses identified as Special Uses within a zoning district such as a Church within a residential district. And they have to meet specific criteria as specified in the County Code. The Planning Commission would conduct a public hearing and the Planning Commission is the final authority on the County Special Use Permit.

We have Planned Developments, although we haven't used them very much here on Lana`i. An example of a Planned Development is the Puamana Project in Lahaina where

it's to encourage desirable designs and land use patterns. It provides for an overall unit density while maintaining common open space. It's a three step process. The Planning Commission reviews and approves each of the steps and no public hearing is required.

We have Project Districts to provide a flexible and creative planning approach. These are established through the Community Plans. There's a phase project. The first phase would be a public hearing by the Lana`i Planning Commission to the Council on the Project District Standards Bill. Phase 2 would be a public hearing by the Planning Commission for approval of a preliminary site plan. And Phase 3 would be a department approval of the final site plan. I guess on Lana`i, they're familiar with the two project districts. One at Manele and the other at Koele. So any of the projects in those two project districts would come before the Planning Commission typically for Phase 2 approval if it was not already in the Phase 1 Project District Standards Bill did not need to be adjusted. And the Planning Commission is the final authority on the Phase 2.

We have the Bed & Breakfast – a controversial, hot topic right now. Bed & Breakfast homes which would allow small businesses to provide visitor accommodations in a residential neighborhood. There are three types based on the number of bedrooms used for that purpose. The Planning Commission would be involved in the Type 2, three and four bedrooms, where they would be the final authority. And the Type 3, five and six bedrooms, where the Council would be the final authority. We haven't had any Bed & Breakfast Permits Type 2 or Type 3 that have been dealt with by the Planning Commission.

We have the Country-Town Business District establishing development standards for businesses, and the Lana`i Planning Commission approved the design guidelines, the Lana`i Community Design Guidelines back in 1997. And the Department administers the Design Guidelines.

We also have other types of permit approvals. For Off-Site Parking which allows for parking requirements to be met on another lot within 400-feet. The Planning Commission is the final approving authority. And Accessory Uses which are defined in the specific zoning district, and the Planning Commission is the final approving authority on those.

Are there any questions on the land use planning framework before I turn it over to our Coastal Resources Planner Thorne Abbott to talk about the Coastal Zone Management?

Mr. Gima: How about we take a 10-minute recess right now?

*(The Lana`i Planning Commission recessed at 8:22 p.m., and then*

*reconvened at approximately 8:32 p.m.)*

Mr. Gima: The meeting is back in order.

Mr. Thorne Abbott: Aloha. My name is Thorne Abbott, and it's always a privilege to come over to Lana`i. I'm the Coastal Zone Manager and Shoreline Planner. I was a little disappointed that Pele's was closed today, so I had to go back to eating cheese covered french-fries with chili on them – always a good thing at the Blue Moon.

Today, I'm going to talk to you a little bit about Special Management Area and Shoreline Setback Rules. If you have any questions, please feel free to stop me at anytime. Clayton went over the Planning framework, and under the State Constitution, the State passed the Hawaii Coastal Zone Management Act in 1978. Under that comes two regulatory authorities, the Special Management Rules, Chapter 12-402 for the Lana`i Planning Commission, and the Shoreline Setback Rules, Chapter 12-403.

Now the SMA – you can barely see it here – it's the little pink outline that goes around the outer end of the Island. So there's actually not that much within the SMA. The minimum is within 100-yards of the shoreline. These boundaries were adopted by the Commission in 1979. State and Federal government subsequently approved those boundaries in the program. And all "development requires an SMA permit" when it occurs in that area.

Now there are a number of goals, objectives, and I want to go over those a bit. And just to clarify something – which I see the slide didn't get in there – the whole State is actually in the coastal zone. So the whole State is actually regulated by the Hawaii Coastal Zone Management Act. The regulatory authority for that is the State, the Office of Planning and the Coastal Management Agency. And so any agency actions that occurs anywhere in the State, those have to be consistent with the Hawaii Coastal Zone Management Act. Now through Home Rule, what the State has done is given over regulatory authority for implementing that act to the various Commissions within those special management areas. So, again, any agency action has to comply with the Coastal Zone Management Act no matter where it is on the Island. But when it's in that little, narrow, pink stripe around the edge of the Island, then that authority has been granted to you through Home Rule.

What do you have to do through the Coastal Zone Management Act? Well, there's 10 different goals and objectives. You have to provide coastal recreational opportunities for the public. You have to protect, preserve and restore Hawaiian and American cultural historic resources. You have to conserve aquatic natural resources for sustainable development. You have to reduce risks to new structures and enhance public safety. All of that stuff is through your Shoreline Setback Rules and FEMA, Federal Emergency Management Agency requirements when you build in the flood zones. You have to

protect, preserve and restore coastal views open space scenery. You have enhance public beach access and minimize beach loss due to erosion and site hardening such as sea walls. You have to minimize adverse impact and protect coastal eco-systems. Provide and co-locate coastal dependent facilities while minimizing negative impacts. And when I say co-locate coastal dependent facilities, a really nice state-type of home on the ocean is not – it may be dependent – people want to put, you know, close to the ocean, but a coastal dependent facility would be like a harbor, or a park, and Manele Small Boat Harbor. So they should be as co-located as much as possible so you don't have a number of different harbors and ports and facilities spread all over your coast line. You want to basically aggregate those together and put them in the same place.

Also you're required to stream line the permitting process and enhance public awareness. Part of this education tonight – orientation – is to also educate the public. I made an extra copy for Ron so he can take it home. Also you're suppose to stream line the permitting process and as you've seen already the process can be exceptionally complex. And finally, stimulate public awareness, education and participation.

There's a couple of different permit decisions that come out of the SMA Rules – excuse me – an SMA major is for a project that's over $125,000. It requires a public hearing. All owners within 500 feet are notified by certified mail. And the Commission has to put in conditions that avoid, minimize and mitigate any adverse impacts to coastal resources. Michael Hopper mentioned earlier about a Big Island case where they imposed some traffic mitigation measures that didn't necessarily, according to the Court, directly relate to the Coastal Zone Management Act's goals and objectives that we just went through. You noticed that none of those said anything about traffic. So that nexus is very important when you look at what kind of conditions you're going to impose.

A minor project is one that's under $125,000. It doesn't require a public hearing. It does have conditions to avoid, mitigate and minimize any adverse impacts. And that decision is made by the Director. It's not made by the Commission.

There's also Emergency Permits for eminent and substantial harm to public welfare or to prevent physical harm to persons or property. The Director may give oral approval but must submit a report to the Commission upon final determination. And the permit expires in 180 days. Again, it can have a condition to avoid, minimize and mitigate any adverse impacts. A good example of this is if we had a very large storm event – we just had a hurricane passed – let's say the Governor or the President of the United States didn't declare this as a national emergency or even a State emergency, but there was severe damage to one of the harbors or Courts or someone's private home. Then they can get an emergency permit to rebuild or protect that home right away. Basically by just calling the Planning Director, they can get it that quickly. But it does have to come back to this

Commission for review.

Ms. Zigmond: Thorne, excuse me.

Mr. Abbott: Yes.

Ms. Zigmond: One the SM1, the authority, is that for us? It's LPC?

Mr. Abbott: That would be LPC. Yes, that would be a Thorne Abbott typographic error. Yes. I'm glad you caught that so that next year we won't have that problem. My apologizes. Also, in this handout, I noticed that some of you noted that in the planning framework there's some print that's overlaid on top of itself. That's because the graphics of the power point program, but we'll get you handouts for the next Commission meeting for your records that it doesn't have it that way.

Exemptions – actually, we deal a lot with exemptions. That's what we deal with primarily in the Current Planning Division. You don't see those very often because they're not a development. For example, the Coastal Zone Management Act said "a single-family residence that's not part of a larger development is exempted from the rules, presuming that it does not have any adverse negative impact." So it can't have an impact on drainage, or view plains, or archeological or historic artifacts or any cumulative impacts. And those decisions are again made with the Planning Department. Yes.

Ms. de Jetley: I have a question. So if it's not a development, it's a single-family residence, if it costs more than $125,000 to build, it would be major?

Mr. Abbott: No.

Ms. de Jetley: How come?

Mr. Abbott: It can be a $10 million house. And we've have some that approach that. Not quite that much, but two, three, four or five million dollars. The exemption category and I have a slide later that I'll talk a little about how we grant exemptions. So the price of the project is not really all that important.

Ms. de Jetley: Well, the reason I'm questioning this – a single-family residence – and what would constitute as a single-family residence is in the Manele Project District there's a house posing as a family residence with eight bedrooms. And it's called a – they're calling it a hotel in their ads to sell that property.

Mr. Abbott: Okay, now that would –. If they –. Again, I'll get into that. I'll answer your

question in a few slides, if I may? If you bear with me okay?

The other thing you can do is you can deny a permit. You can deny and the Department can deny that as well if it's inconsistent with the State Land Use, General Plan, Community Plan or Zoning designation, or if it does have an adverse impact on coastal resources.

There is some decision making criteria you have to look at. You can have no adverse environmental or ecological effect based on the 12 criteria listed in your SMA Rules. Now, a lot of those criteria are measurable, you know, achievable type criteria. For example, parts per million of air pollution or the amount of drainage that's going to come from a site and affect another site. The effects have to be minimized in light of some compelling public interest. For example, in Manele, the extra two acre lot for parking was not going to have any trees. And zoning requires that there be trees in parking lots to provide shade. However, that parking lot is for trailers to turn around. And those trailers, of course, can't turn around and we can't be coming with boats if you have trees over top because the mast's of the boats would be getting in the way of the trees. So the compelling public interest was that we want to protect the boats that are going through this parking lot. And so the Commission approved of them not having trees in that particular case, for that portion of the project.

Mr. James Elliott: . . . (Inaudible). . . . Trees also require water.

Mr. Abbott: And the trees require water which is a limited supply. So there are those kinds of things that, you know, it's a little bit of a balance – a very good point.

Also the project has to be consistent with the General Plan and Community Plan and Zoning. If it's not, then the applicant can seek a Change in Zoning or a Community Plan Amendment. But the project can't be approved until they are granted that. And finally, it has to be consistent with the SMA guidelines. What are those guidelines? Adequate access to publicly owned beaches, recreational areas, wildlife and nature reserves; adequately and properly located public recreation areas; control, manage and minimize impacts of pollution; minimize any adverse effects to water resources and scenic and recreational amenities; and minimize the risk of coastal hazards to proposed structures. Again this is primarily done through your setback rules and through Federal requirements in a flood zone.

As far as approving something, you can set reasonable terms and criterion, and I underscored that reasonableness. However, if a project was going to create a whole lot of traffic – and let's say that was right next to a beach area – and because of that project there's a lot of traffic and you couldn't cross the road to get to the beach. Then you might be able to say, well, it will be reasonable under SMA and Coastal Zone Management,

public access issues to require some traffic mitigation such as a traffic light or a crossing light or changing the treatment of the road surface like a speed or something to allow people to cross the road. However, you do have to seek to minimize where reasonable any dredging, filling or altering of coastal areas; reduction of beach sizes; impediments of public beach access and coastal recreation; loss of coastal view plains; adverse effects to water quality, fisheries, wildlife and habitat; and any loss of existing or potential Ag uses.

Now back to exemptions – to follow up on your questions. I mentioned there's 12 criteria in your SMA rules. Those are ecological and environmental criteria. So if we find something doesn't have a negative impact on those criteria, then that's kind of a first hurdle. Then we have see if it's consistent with its land use designations. If it's consistent with those, then it passes kind of a second litmus test. If there's no direct or indirect long-term or short-term adverse impacts, then that's a third hoop that it kind of jumps through. And finally we have to look at any cumulative impacts. If there's no cumulative impacts from the project, then in fact, you know, based on the 12 criteria, there's not going to be an adverse impact from the project, or it the impacts are outweighed by compelling interest.
And then finally, HRS 205A, the actually State law, has a list of definitions of what is "development" and what is "not development." A single-family home, for example, is not a development. Going down to a drainage gulch and clearing that out, you know, picking up the debris and all that kind of thing, that is not development. Putting in utility lines – not development. But again, prior to giving it the exemption, if they're going to do utility lines right through the middle of a wetland, it's very likely it would have an adverse impact on a coastal resource with that being the wetland. However, it could be outweighed by compelling public interest which is we really need power on the other side of this area, and the only way to get there is through the wetland or it would cost a million of dollars to route around it. So we go through that in the Current Planning Division and assess every proposed action within the SMA. But for the most part what we end up doing is giving exemptions because they meet all of these criteria. Now when we do that, we usually write somewhere in the letter that the representations made in the written application are in essence they're conditions. If you're going to change those representations, for example, you're building a house and later you're going to use it as a rental property – not long term rental but like a transient vacation rental – then you would have to get reassessed based on the SMA criteria again. And at that point, you're no longer a single-family residence. If they're proposing that they are a hotel, they're no longer a single-family residence and they would have to be reassessed. *(Changing of cassette tapes)*

Ms. Kaye: Well, if – a good hypothetical, then, because this property, if they are representing themselves as a hotel in order to sell it – it's already built – so what do we do? What would be your recourse?

Mr. Abbott: That's pretty good question. Well, first off, if somebody buys it, that's fine. But if they want to operate it as a hotel, they'll have to get a license or a permit for that use. For example, they'd have to get a Special Use Permit if it's not in a hotel-zoned area. Is that correct Clayton? They'd have to get a Special Use Permit or Conditional Use Permit if it didn't meet its zoning. And if it was also within the special management area, then it would also have to get a special management area permit. And one of the first thing we'd say is, well, this isn't exempted because it doesn't meet its zoning designation. So let's say they bought it and they wanted to remodel it. That's probably where we'd catch this.

Ms. Kaye: But, what's your recourse? What do you do – if – make them go after a Special Use Permit?

Mr. Abbott: Well, you can deny the Special Use Permit.

Ms. Kaye: And then it reverts to being a single-family home with eight bedrooms?

Mr. Abbott: Correct.

Ms. Kaye: Okay.

Mr. Abbott: Mike will also respond to that.

Ms. Kaye: Okay.

Mr. Hopper: I'd also state that if there's someone who has particular knowledge of something that like that is going on where it's un-permitted or any other zoning violation, they can always contact the Planning Department. They have to follow up with an investigation, and they could, if they believe it's substantiated, issue a notice of violation for the SMA violation and also for the zoning violation which are punishable by fines in the case of the zoning violation of an initial fine up to $1,000 and a daily fine up to $1,000 a day. Special Management Area Permit has an initial fine of up to $10,000 initially, and $1,000 a day. The State law provides and rules should be amended soon to reflect that change is that an SMA violation can be punishable by up to $100,000 initial fine, and up to a daily fine of $10,000. It's also be substantiated and there has to be enough evidence for them to issue a notice of violation. So it would have to be proven that the use would be illegal. And that use, if the notice of violation was issued, the alleged violator would have the right to appeal to the Board of Variances and Appeals and basically prove their case – that basically, you know, appeal the issuance a notice of violation. And because of this stage, the, I believe the Zoning Administration and Enforcement Division has two full-time zoning inspectors for the entire County at this point and several other part-time. But I believe two full-time. It has been difficult for them to get to every zoning violation.

So generally they go by only complaint driven enforcement. So if anyone has a particular knowledge or the Commission itself would like an investigation into a matter, you can give that information to the Zoning Administration and Enforcement Division, and they will follow up on that particular complaint.

Ms. Kaye: Okay, and as you're speaking, you bring up a related question. If we backed up in the process, and someone was just beginning to build a house and asked for an exemption and this is being a small price, we didn't think that they should be exempted, but they were relying on, you know, some of the criteria in the Rules. Would we have any recourse as a group to like a pro-Counsel, a contact Counsel, and have an Executive Session or whatever, and say we disagree that this exemption should be granted? If that ever – would we even know about it?

Mr. Hopper: Again an exemption is given by the Planning Department only in that case. Council would not even see it in that situation, if it was deemed an exemption. If it was deemed not exempted, then it would have to get a Special Management Area Permit. If it's a major permit, it would have to come before you. If it's a minor permit, it does not. The decision on whether or not there's an exemption given on Lana`i is currently made by the Planning Commission – or it's currently made by the Planning Department. That's true of Maui as well. On Molokai, that decision is actually reviewed by the Planning Commission pursuant to their Rules. They amended their Rules to give themselves the ability to review SMA exemptions. Though that they are getting that information, they've also had the issue of a pretty full docket because exemptions not only review what is considered potentially development or not development. Your reviews which are defined in our Rules as any proposed action, which is much broader than development. So basically the planners got to show you everything that goes on in a Special Management Area – whether it's an interior renovation only to a home – all kinds of things. So if you do go down that route to amend your Rules, I recommend paying close attention to what you really do want to see and what you don't want to see because the meetings can get very long, and detailed. And that's an issue that they've dealt with. But you would definitely have that authority to do what Moloka`i has done as well.

Ms. Kaye: I would think that, as Thorne has pointed out, that's such a small area here, where we have that kind of jurisdiction, that it might not be such an erroneous thing. And I'd like to hear more about what we'd have to do to amend our Rules.

Mr. Abbott: Okay I'll speak a little bit to that, but to capitalize on what Michael said and also to address your underlying concern. So I'll mention two things. First off, you can go to the County website, use the on-line services or you can call ZAED, and enter what is called a request for service. And that means you want ZAED to go out and inspect this. And when they do, they put a flag on that parcel. So if there's a permit being processed and

there's an outstanding flag, we don't carry it forward until that flag is resolved or that issue is resolved. Okay. So that's one way that you as a public person can influence decision making with maybe knowledge you have on the Island.

The other thing as Michael said, any proposed action – I get fences, walls, people want to repair their deck. McDonald's goes out of business, KFC comes into business – same building, same place – all they're doing is changing their sign. It all needs to be assessed. So, I'd caution you very strongly on whether or not you want to pursue that route because suddenly you're looking at a lot of things that you really probably don't care that much about. You know, grandma's repairing a deck or something like that. Unfortunately the way the Coastal Zone Management Act is set up, by definition there are certain number of things that are exemptions, not developments, some things that are development. And if you're going to review exemptions, you have to pretty much review them all. Having said that, the process to amend the Rules, you want to speak to that or would you like me?

Mr. Elliott: Butch, can I just interrupt?

Mr. Gima: Sure.

Mr. Elliott: I, for several years, was the President of Manele Homeowner's Association, and this is the first I've ever heard of anything like this, Alberta. I don't know anything about it, but if it's at Manele, it has to be part of the Manele Homeowner's Association. And if that's a fact, we have very strict restrictions and guidelines against that, and all of it –. In fact, I'm going to check into this immediately, and the current President of the Homeowner's Association is a very close friend of mine, and I'm sure that we would put a stop to that in a heart beat. So, anyway, I just need to know more about it, but I don't think we need to go through this whole planning process on an issue like that because it's a cut and dry issue as far as we're concerned.

Ms. de Jetley: I'd personally would like to see us review the exempted projects mainly because of the concerns. There's a lot of undeveloped land on the Keamoku side of the Island. And some of that land has now been sold, and private homes are going to be built on those properties. So if a property is exempted now, and can be approved by the Planning Director, there's no dollar cap on it. So someone could, hypothetically, go down there and build a $2 - $3 million home. Right?

Mr. Abbott: Or $8 or $10 million. Sure.

Ms. de Jetley: I think the community needs to be able to review that and not have it exempted. So I think that the Planning Commission should be able to see – the Lana`i Planning Commission – should be able to look at any development that is coming up

along that coast line.

Mr. Abbott: I appreciate your – . I appreciate your concerns for the community, and I respect that, and we share that same concern as well. One thing Moloka`i has had a challenge with, and even the Maui Planning Commission frequently has a challenge with is – let's say you have an exemption such as a $5 million single-family residence. And the person has every right to develop their parcel as they see fit so long as they don't have adverse environmental or ecological effect. Let's say the Commission reviews this house, and says, well, we think it's too big. There's nothing in the Rules – you know, there's nothing environmental or ecological that says too big is unacceptable. You have to find very specific criteria such as it will hurt the wetlands. They're going to do excavation and we have a strong belief there are burials there. Now if they have an archaeological monitoring plan approved the State Historic Preservation Division that mitigates the potential impact because there's going to be an archaeologist on site. And if they run into anything, they'll stop and change the project, or respond to it. So one of the kind of catch 22 is you want to review these things, but at the same time, you're not really necessarily empowered to stop them if they don't have a direct kind of measurable environmental/ecological negative impact. And so you're in a little bit of a catch 22.

Ms. de Jetley: But what I'm looking at is that we'll put this landowner on notice that he can build whatever size house he wants as long as it's a single-family residence and it's not going to be used three months, four months, four years down the road as a vacation rental, or as some kind of a resort hotel. So we're putting him on notice from the very beginning that we expect it to remain a single-family home.

Mr. Abbott: I respect that, but again, we already do that in checking with the zoning and with consistency with land use. TVR's are not allowed. We actually do have a little paragraph that says, you know, if you use this for short-term rental your SMA can be – your exemption can be basically be pulled back and we can required a re-application. At which time if they were operating a TVR that was outside of the land use then they'd have to seek the Change in Zoning, and it would be an SMA major. Michael would like to speak to this also.

Mr. Lawrence Endrina: Let's me ask you in between. That piece of land or those parcels, even though they are exempted, it's in conservation, so who actually has authority?

Mr. Abbott: Okay, again, and this is a good discussion. I appreciate this. The DLNR, the Office of Conservation and Coastal Land (OCCL), is the lead authority to determining anything within the conservation district. They have very specific guidelines. Again, for them to deny something, they have to have a pretty sound scientific creditable basis. Within their conservation district, as you may know, they have seven different sub-zones,

and different things you can do within those sub-zone. So they have very restrictive and then they have kind of this general conservation area. So you would have to get a permit from them that typically requires an Environmental Assessment (EA). Okay. We would be a commenting – the Commission – would be a commenting authority on that EA. If it's less than 3,500 square foot it may not trigger any, but that would be their call. Now, having said that, if it's in the SMA, they've already met the obligation of the Coastal Zone Management Act according to the State agency, DLNR OCCL. But interestingly enough, we also require them to get an SMA assessment from us, so you're kind of getting a double bill. There's a lot of question as to the legitimacy of that at the State level, but that's how it's currently processed. And it would be based on the last discretionary permit so they'd have to get their State DLNR OCCL permit first which is called a Conservation District Use Permit, and then they can get their Special Management Area Permit or exemption.

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

Mr. Abbott: Sure.

Mr. Hopper: What you need to do is put that on agenda for a future meeting because it's not on your agenda right now. It's not up for discussion, and it would be agenda as discussion as to whether or not you want to amend the SMA Rules to provide for whatever you wanted to provide for. And you would have to take a vote as a body, not just one or two of you, but at least five of you to initiate a draft proposal that do whatever you want it to do. I'm not sure exactly how you want to amend your Rules or what you want to try to do, but that would be something that you would want to discuss as an agenda item at a future meeting because I don't think the agenda today is broad enough to get exactly into that action and for you to take hat action. But that's what you would have to do and then work out the wording of the Rules. You know, obviously someone can draft a proposal for you, you can modify it, change it, and then as far as rule making, you would have a public hearing on it. That's required by State law, and that requires a notice of proceeding, procedures such as notices in the newspaper and things like that. But Moloka`i has done it so it is possible. You would just want to see how you want to amend them and deal with the Planning Department and myself, or in this case, James Giroux on exactly how to go about doing it. But again, that discussion should really take place at a future, properly agenda meeting.

Mr. Abbott: Thank you Mike. Okay, if we can continue on because we still have Shoreline Rules to go over and it's getting late. This is not what we want to see in your future. Now your Shoreline Rules are a little different – every Island is a little different in their SMA Rules and their Shoreline Rules. Yours was adopted November 16, 1995. From what I know they haven't been amended since. They regulate the use and activities of land within the shoreline areas to protect health, safety and welfare of the public by providing

minimum protection from coastal natural hazards; to ensure public use and enjoyment of the shoreline resources to preserve and protect for future generations. It's applicability is through lands that abut the shoreline and lands that abut a beach reserve. That's a little different than Maui Island where it's any land that's within 600 feet of the shoreline, or 150 feet of the shoreline. And you have one method to determine the setback. It's based on the average depth of the lot.

Now a little bit about beaches and coastal erosions. On the right side, you see we have a nice beach there. You see how the water encroached in towards the land. That's coastal erosion and it's a very natural process. It's where the shoreline retreats over a long period of time, from sea level rise, wind, water and wave action. Now as the shoreline is retreating or moving inland, the beach width is maintained from sand which is naturally released from dunes and sand reservoirs such as sand transported up and down the beach, or even offshore reefs.

On the left side you have what's called a stabilized situations. The beach is loss, but the land is preserved. And that's beach erosion. And beach erosion is loss of sandy beach width. As reservoirs are depleted, sand transport is hindered, or sand reservoirs are impounded by manmade hardening structures such as sea walls or even slab on grade construction. If you ever go to the ocean, you're standing right down at the edge of the ocean where the water comes up, you put your feet together, after three of four waves go by, you find you're standing on a little mound of sand. Well, a house does the exact same thing. It's holding sand that should otherwise be released back to the ocean. And eventually what happens is that there's not enough sand under your feet and you fall over and you fall into the ocean. And that's fun, but not when it's your lifetime investment in a house. So we try to prevent the left, and keep the right.

Average lot depth – now this applies for lots that were created before June 16, 1989. It's 25-foot if the lot depth is less than 100-foot, 40-foot if the lot depth is between 100 and 160 feet, and it's 25% of the average lot depth up to a 160-feet – basically 40-foot for all other lots. So you measure the left-side, the right-side, the center line and you add those three up – you divide by three, that's your average lot depth – you take 25% of that.

There's a couple of different permit types that come out of the Shoreline Rules. A Shoreline Setback Determination – basically just determines where the setback actually is. It requires a State Certified Shoreline Survey, and that survey does a couple things. First off, that's the State telling the surveyor that they agree with the surveyor's opinion of where the ocean ends and the land begins. And it also says where the State's jurisdiction ends and the County's begin. It also tells us where to start measuring your setback from because we measure it from that line. Finally, it also captures any encroachments. That's not really common cure, but it's pretty common over on Moloka`i and especially on Maui

where old sea walls are actually build on the State's property. And of course you have to resolve those before we're going to let you get a permit.

We also have Shoreline Setback Approval that normally requires Chapter 343 compliance. That's the Environmental Assessment compliance. As for anything that's explicitly written out in the Rules, it's basically an approval that you can put a barbeque in or a minor structure in the setback area. You can get an approval with conditions which is very similar except for we can actually put conditions on it. We can say he's going to use Best Management Practices when he's constructing it or use silk fences.

You can also get a Shoreline Setback Variance. Now the things that I just mentioned are determined by the Planning Director, but a Variance is determined by the condition – the Commission – and that requires Chapter 343 compliance so you need an EA. It has to have a public hearing. All land owners that abut that parcel have to be notified and it does require a State Certified Shoreline Survey. And finally, we can deny it, either the Director or the Planning Commission if you can't prove, for example, an old sea wall is non-conforming – in other words, it was illegally built – if the project proposes to harden the shoreline or prevents sand transport; it blocks public access to beaches or recreation; or if it encroaches on State owned lands. Permissible structures in the setback are minor structures that are less than $125,000 that do not adversely affect beach processes, don't artificially fix the shoreline, don't interfere with public access and don't block public views. Any new structures have to be elevated on pilings or columns above base flood elevations. The County is held harmless. And they can't harden the shoreline.

There's a bunch of different structures that are permissible: any structure or activity that was approved since 1989; agriculture or aqua-culture or fish ponds that have been in existence since 1989; public boating, water sport, recreational facilities. A good example of this is the Canoe Hale that they're proposing to move on the beach. I think we were here for a meeting several months ago about that. The Commission can look at that, but they can also give over their decision making authority to the Planning Director to approve that because it's a permissible structure within the shoreline setback area. Beach nourishment or restoration projects; any existing non-conforming structures are allowed; minor structures and there's a whole list of things that are actually allowed in the setback like fences and walls that don't interrupt sand transport. Repairs of any structures that's legal as long as it doesn't expand, enlarge or intensify the use of the structure, and the repairs aren't more than 50% of the cost of replacing the structure. And repairs to old structures that were grand fathered in. Again, as long as they don't enlarge, expand or intensify the use. Now the repair has no financial limitation but it can't be damaged due to coastal hazards. And the idea there is, you know, a lot of these older homes are in the wrong place especially in Maui. And so over time as they redevelop, they have to adhere to the new shoreline rules and move back.

There's approval for criteria for a variance: cultivation of crops or aqua-culture, landscaping, moving of sand within a beach or dune system, drainage improvements, public own boating or water sports facilities, such as Manele Bay, public facilities or repair or improvements or utilities, private facilities or improvements that are clearly in the public interest. For example, if you wanted to demolish something, take it out of the shoreline setback, you'd have to get a variance apparently. But that is something that you folks could approve. And protection of a legally, habitable structure or public interest structure, or any private facilities or improvements that don't adversely affect beach processes, don't fix the shoreline and it would result in a hardship to the applicant if it were not approved. And last but not least, you do have to put some mandatory conditions in. Those are to maintain safe lateral access to and along the shoreline for public use, or they have to adequately compensate for it's loss. For example, purchasing the easement from the State. You have to minimize risk of adverse impacts on beach processes, minimize risk of structures failing, minimize adverse impacts on public views, and it has to comply with flood hazards, corrosion control and sedimentation rules.

And with that, I welcome anymore, any other questions. I don't think we're going into flood hazard district and sexual harassment because Francis is over on the Big Island with other hurricane managers appreciating what a real hurricane feels like, so hopefully they're staying dry. Thank you very much for your time. Any other questions?

Mr. Gima: Are you guys still doing the orientation workshop or are you guys done?

Mr. Abbott: . . .(Inaudible). . .We're done. Francis Cerizo is off-island . . . (Inaudible) . . .

Mr. Gima: Great. So if we're done with the workshop, then we can move on to the Director's Report.

Mr. Abbott: My apologizes.

## E. 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. Yoshida: Thank you Mr. Chairman, members of the Commission, with respect to Item #1, our running agenda item, regarding the affordable housing. And I believe that the Department of Housing and Human Concerns will conduct a workshop sometime this Fall on the information that the Commission requested regarding housing situation on Lana`i.

Ms. Zigmond: Clayton, excuse me, and for the benefit of the two new Commissioners, is there still time to submit to the Department our questions that will be forwarded to the Housing and Human Concerns?

Mr. Yoshida: Yes.

Mr. Gima: Any other questions or comments on Director's Report, Item #1? So when they say they're going to provide the workshop during the Fall, I mean that takes all the way into December. How would that impact our General Plan review processes?

Mr. Yoshida: I guess Mr. Chairman, members of the Commission, the Countywide Policy Plan will be a running issue for the next 120 days after September 5th. We have some other proposed Legislation that we'd like to bring forward to the Commission because it is amendment to Title 19, Zoning Code, relative to the rural districts; TVR's Legislation which is a hot topic right now, as you all know; and so forth. So we'll try to balance it, but then, you know, the Commission is moving towards two meetings a month. At least from September until the end of the year, primarily focused to finish its work on the Countywide Policy Plan. But some of these issues are sort of burning issues in the County and we will try to bring those pieces of legislation to you such as the TVR Bill so that the community can prove its input.

Mr. Gima: So will the Planning Department pretty much prioritize the agenda to ensure that we take care of this General Plan for the County before we address any other items?

Mr. Yoshida: We'll put the General Plan discussions, I guess, first on the agenda. Then they can deal with other items later in the agenda.

Mr. Gima: Okay. Any other comments or questions on Director's Report Item #1. Bev?

Ms. Zigmond: I think at the last meeting Butch had asked Erin I believe her name was – after she had given her little workshop on this process – I think you had asked something about if the Department could provide some sort of questions, guiding questions for us –. Is that what you had asked? Something to help guide us – I'm trying to look for it here in the minutes.

Mr. Gima: No my main confusion, and it was just my confusion last time, that I thought they

were going to do the survey and then come and do the workshop, and I had it backwards.

Ms. Kaye: At one point Butch you asked "can the Department get that agenda for the meeting to us so we can pass it out to the Community." That was one question.

Mr. Gima: For the General Plan Review? Okay. But not having to do with the housing study?

Ms. Kaye: On the slide where we had the review efforts, and I'm reading from the minutes here on page 8, "I know for me if it would be helpful before each meeting to have kind of like a guiding question so that when I'm reading the packet before the meeting I can use that as a guide." That was the question Butch asked.

Mr. Gima: Yeah, again, that was for the General Plan Review, not specific to the housing study and workshop. Okay, so, if there are no other comments or questions on Director's Report Item #1, then we can go to item #2, which is –

**2. September 5 Public Hearing on the Countywide Policy Plan at 7pm at the Lanai High and Elementary School Cafeteria.**

Mr. Yoshida: Item #2 as we had stated earlier, the public hearing, the first public hearing on the Countywide Policy Plan for the Lana`i Planning Commission review is scheduled for September 5th, at 7:00 p.m., at the Lana`i School Cafeteria. This starts the 120-day clock ticking. And I think they have circulated the binder of materials to the Planning Commissions. So you can familiarize yourself with the proposed draft of the Countywide Policy Plan – that would be helpful. Maybe the Commission may just want to accept public testimony at that meeting and ask its questions and deliberate at future meeting.

Mr. Gima: So September 5th would be the only opportunity for the community to provide public hearing?

Mr. Yoshida: Well we have – I guess Bill 84, our Chapter 2.80B says that the clock starts ticking for the Commission from the date of the first public hearing. However, as Mr. Mike Summers said, I mean, Mike Hopper had stated before when dealt with the sunshine law, on any agenda item people are allowed to speak on any agenda item. So if it comes up, the Countywide Policy Plan, under Unfinished Business comes up at a future meeting, the Commission can solicit testimony from the public, members that are there. So this would not be the only opportunity. This will be just a public hearing notice opportunity where we publish the notice in the newspaper that Lana`i Planning Commission is asking for the public to provide its input on this document. But it's not the only opportunity.

Mr. Gima: Is the Library the only place where the public can view the binder?

Mr. Yoshida: I believe so. I would need to check with our Long Range Division if it's available at any other location.

Mr. Hopper: I advise the Molokai and Lana`i GPAC's. And just for some background information, one thing that they did is that they allowed some of the Chairs – it's up to the Chair's discretion – allow public testimony throughout the meetings whenever they went over the Countywide Policy Plan. Basically they said you can testify whenever you want to, and you know, members would, people would, the public would just chime in or ask questions as the process went along was one thing. Also, typically Long Range Planning brings multiple copies to the meeting of their matrix which goes over all the different comments of the different Islands, and then the different sections that are being discussed at that meeting, and typically makes that available to members of the public. I don't know if they bring full copies of the plan to every single meeting because of just the paper involved in doing that. But I believe that they will be bringing sections of the plan to the meetings so that the public could follow along with the sections of the plan that you're looking at, and follow along with the discussion. But, yeah, the public hearing is just one in a series of many meetings that you'll have on the plan in that 120-day period. And just in my experience with the other plan reviews, most of the substance of discussion goes on at the subsequent meetings, not necessarily the initial meeting. The initial meeting is the public hearing requirement which starts the clock. But there's no reason why more deliberation would happen at that meeting than at your other meetings covering the same topic.

Ms. Kaye: Wait. Are you familiar with the binders? Do you know what's in them?

Mr. Hopper: Those are just the Countywide Policy Plan with the comments from Maui, Moloka`i and Lana`i.

Ms. Kaye: Right. Okay.

Mr. Hopper: Yeah, I've seen them I believe – not incredible deal, but the basic. I just got mines today.

Ms. Kaye: Okay. Well, I have two questions then because I just started to look at it and there's an example here if I'm understanding the process the way it was explained that I just have sort of a hypothetical question that will help me read the rest of the book, okay? There was, for example, draft language, Maui GPAC, Molokai GPAC, Lana`i GPAC, and then the Director's recommendation took out one word, and I'm assuming there was discussion somewhere along the line. And I can give you the example of what that is, but

where in this book am I going to find why that determination was made? Or is it?

Mr. Hopper: I don't think there's lengthy explanations by the Director for their deciding on the eventual language which you will have as the resource who made that decision before you and you can ask them that, and say why did recommend this language or that. And I don't want to get too far into it because –

Ms. Kaye: It's not appropriate now.

Mr. Hopper: Yeah, it's just that I don't want to risk the 120-day clock starting today or anything like that.

Ms. Kaye: Right. Then can you just follow up please so we don't feel a little blind sided in September. Who's going to facilitate this meeting? And how will it flow?

Mr. Hopper: Clayton should probably be able to answer that.

Mr. Yoshida: The meeting will be conducted by the Long Range Planning Division. I'm not sure exactly who will be the administrator. John Summers or some of the planners within the division, they would help to serve as resource people because they sat through a lot of the deliberations from the GPACs, and the formulation of what became the Planning Department's proposal for the Countywide Policy Plan.

Ms. Zigmond: Can you tell us which areas are going to be discussed at the September 5th meeting? Because there's all these different areas.

Mr. Yoshida: Well I think it's just the start of the process for the Planning Commission – the formal process for the Planning Commission. So we'll just have like an overview, I believe, and then answer questions from the Commission and open it up to the public, if specific members from the public since we're publishing notices of public hearing in the newspaper if people want to comment this is one opportunity for you to comment. There's also opportunities down the line where you could comment.

Ms. Kaye: Okay, so the minutes from last meeting when Erin from Long Range Planning laid out two sections per meeting we were going to address, that does not apply to this September 5th?

Mr. Yoshida: Well, that's they're plan. At subsequent meetings, deal with, try to deal with two sections.

Ms. Kaye: But not this first one? I did not understand that. Okay.

Mr. Yoshida: I believe that the first one is basically to answer any general questions from the body and to get public testimony.

Mr. Gima: Okay. Any other questions, comments on item #2. I just had one. One the meeting schedule there's no December 5th, is there a reason for that? There's December 19th, but not a December 5th.

Mr. Yoshida: I believe we –

Mr. Gima: Or is the December 19th just our regularly scheduled Lana`i Planning Commission meeting?

Mr. Yoshida: Yeah, I think the December 19th is the regularly scheduled Lana`i Planning Commission, but we could have a December 5th meeting depending on how the process goes where if we need another session then we can try to have another session. If we're ahead of schedule, we don't need to have the December 5th meeting.

**F. NEXT REGULAR MEETING DATE: September 5, 2007**

Mr. Gima: Okay. Our next meeting is scheduled for September 5th. I think there was some discussion about our Commission requesting an agenda item. Alberta or Sally?

Ms. Kaye: Mr. Chair, I wonder if we could make a motion to have the Planning Department – unless this could be answered tonight – tell us in aid of making a determination if we wanted to amend our Rules for SMA Exemption review. How many exemptions have ever come from Lana`i? Do we know that? We don't know that. Okay that would be one question. And if we could get some data from the Molokai process to assist us in deciding whether such a Rule change would beneficial.

Mr. Hopper: I don't think a motion is needed for that necessarily to put it on the agenda if that's just the only action that's going to happen at this point. So if the Department's okay with that, then it can be placed on the next agenda. I believe under your Rules the Chairperson sets the agenda. Is that correct? That's how it works in Moloka`i generally, with, in consultation with the Planning Department, right? Okay, so if, you know, the Chairperson is amenable to putting that on the agenda for the next meeting, I don't see necessarily – I mean, I want to avoid the issue that this not being on your agenda right now, but being on your agenda at the next meeting.

Mr. Gima: Yeah, I'm okay with that. Is that okay with the rest of the Commissioners? No objections? One quick announcement. For those of you going to the HCPO Conference, a gentleman from Sunpower or Sunlight Company on the Big Island, who is working with

the Company on the solar farm and also working with the school to possibly place solar panels on the six classroom building, is willing to conduct a tour if anybody is interested when we're over on the Big Island. I don't know the date and time yet. But if anyone is interested let me know so I can get the numbers to him. Okay. No other announcements? Meeting is adjourned. Thank you everybody.

## G. ADJOURNMENT

There being no further discussion brought forward to the Commission, the meeting was adjourned at approximately 9:34 p.m.

Respectfully transmitted by,

LEILANI A. RAMORAN
SECRETARY TO BOARDS & COMMISSIONS I

**RECORD OF ATTENDANCE:**

**PRESENT:**

Reynold "Butch" Gima, Chair
Lawrence Endrina, Vice-Chair
James Elliott
Dwight Gamulo
Sally Kaye
Beverly Zigmond
Alberta de Jetley
Matthew Mano

**OTHERS:**

Clayton Yoshida, AICP, Planning Program Administrator
Thorne Abbott, Staff Planner
Michael Hopper, Deputy, Corporation Counsel