

**LANA`I PLANNING COMMISSION  
MINUTES - REGULAR MEETING  
NOVEMBER 7, 2007**

**APPROVED 12-19-07**

**A. CALL TO ORDER**

The regular meeting of the Lana`i Planning Commission was called to order by Chair Reynold "Butch" Gima at approximately 6:05 p.m., Wednesday, November 7, 2007, in the Old Lana`i Senior Center, 309 Seventh Avenue, Lana`i City, Lana`i.

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

Mr. Reynold Gima: Good evening. I'd like to call to order the November 7, 2007 meeting of the Lana`i Planning Commission. Let the record show that we have quorum with Commissioners Kaye, Zigmond, Elliott, Mano, Gamulo, de Jetley, Endrina and Gima present. Unfortunately our new member is not here yet, so if there are no objections we will table that until he gets here. And at this time I'll entertain a motion to approve the minutes of October 3, 2007. Okay Jim.

**B. INTRODUCTION OF NEW MEMBER - STANLEY RUIDAS**

**C. APPROVAL OF THE MINUTES OF OCTOBER 3, 2007**

Mr. Elliott: Mr. Chairman, just before we move to adopt the minutes of the October 3<sup>rd</sup> meeting, I just want to remind the Commission Members that once again these minutes that we're approving were not the minutes of our last meeting. They were the meeting before. And what I also wanted to remind the Commission of is the fact that at the close of our last meeting on October 17<sup>th</sup>, one of our motions included the fact that first up on the agenda would be the – would be the special management – the project extension for the special management area in Manele Bay. And so in looking at the agenda, I would just like to make a motion that roughly at 7:00 p.m., and in the conclusion of this first item that we would take up the business of the five-year extension. I would like to make that motion to do that.

Ms. Alberta de Jetley: I second the motion.

Mr. Gima: Okay, it's been moved by Commissioner Elliott and seconded by Commissioner de Jetley that we modify the agenda to reflect that under unfinished business, at 7:00 p.m., we will take item #2, the five-year time extension to be followed by the item #1, transient vacation rentals. Okay? Any discussion? Okay hearing none, all in favor say aye.

Commission Members: "Aye."

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

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

**VOTED: To amend the agenda to review, at 7:00 p.m., Item #2, under unfinished business, the Castle & Cooke's five-year time extension request, and to be followed by Item #1, the**

**Transient Vacation Rental Bill.**

Mr. Gima: At this time I'll entertain a motion to approve the minutes of October 3, 2007.

Ms. Sally Kaye: I have a question on page 68 of the minutes. Under my statement, the very last sentence reads, "I also note that while saying we want to be green and we want to conserve energy, the residents" of Iwole - I, W, I, O, L, E - "got a letter essentially threatening eviction if they didn't stop hanging their clothes," and Iwole was left out.

Mr. Gima: So would anybody like to make a motion?

Ms. Beverly Zigmond: I'll make a motion to accept the minutes of October 3, 2007 with the amendments.

Mr. Lawrence Endrina: Second.

Mr. Gima: Okay, it's been moved by Commissioner Zigmond and seconded by Commissioner Endrina that we approve the minutes of October 3, 2007 as amended. Any discussion? Hearing none, all in favor say aye.

Commission Members: "Aye."

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

**It was moved by Commissioner Beverly Zigmond, seconded by Commissioner Lawrence Endrina, then unanimously**

**VOTED: To approve the October 3, 2007 minutes with amendments.**

**D. WORKSHOP ON THE COASTAL ZONE MANAGEMENT PROGRAM CONDUCTED BY STATE OFFICE OF PLANNING - CHAPTER 205A, HAWAII REVISED STATUTES**

Mr. Gima: At this time we will be having a workshop on CZM, and I'll turn the floor over to Thorne.

Ms. Colleen Suyama: This is for the Coastal Zone Management Workshop that's being presented by Office of State Planning. I'll introduce Doug Tom who's in charge of the Coastal Zone Management Program at the Office of Planning.

Mr. Douglas Tom: Thank you. With me tonight is Deb Mendes. In our office, she coordinates the SMA permit system. As I will mention in my presentation, she's the one who does most of the SMA permit registration because we have that authority in the community district. Right now we have two - one in Kakaako and Barbara's Point. Thanks for allowing me to speak tonight. It helps me fulfill my obligations to the Federal Government. We are required to make presentations on the CZM Program and the SMA

to all planning authorities, County authorities, that deal with SMA, and we're also offering it to the City Council.

Coastal Zone Management, or CZM, is a concept also known by other terms: Comprehensive Resource Management, Integrated Resource Management, Ecosystem Management, and place-based management are a few. It is about looking at an ecosystem as an interrelated whole rather than at the individual species, resources or uses. In a system, everything interrelates. Nothing is mutually exclusive or independent. CZM is also about balancing the needs of economic development and conservation of resources in a sustainable manner.

Its genesis was the 1969 Report of the Commission on Marine Science, Engineering and Resources established by the Congress. This body was more fondly known as the Stratton Commission after its Chairman, Julius A. Stratton. The Commission expressed concerns that although coastal areas were the backbone of the nation's economy, they were not managed properly. So, its report underscored the need for a national policy and management system. It emphasized that population shifts to the coast were intensifying competition for and conflict over resources, and coastal degradation was resulting because the system of multiple management regimes dealing with coastal affairs lacked coordination.

In response, the Congress enacted the National Coastal Zone Management Act of 1972. In designing the law, the Congress determined that the State, rather than Federal or local government, was in the best position to manage the zone connecting land and sea. The two basic reasons for this were that the State exercises discretion in land use policies and hold claims to the waters and submerged lands in the territorial sea. In addition, the Congress also recognized that coastal states had different values and needs. As a result, it designed a flexible, voluntary national program, based on the principles of State's rights and self determination. To further encourage State participation, the Congress offered grants to states to plan and administer their programs and the privilege of administering the Federal consistency review program. These carrots were difficult for states to ignore. The provision of Federal consistency was especially appealing from a state management perspective. It was the first national measure to overturn the long held Federal supremacy clause because federal agencies can no longer act independently of or in conflict with a State's federally approved enforceable CZM policies, unless their actions were clearly important to the national defense mission or necessary to comply with a higher national statute.

In 1973, the year after the national law, the Legislature enacted Act 164, which mandated the preparation of a statewide CZM program that conformed with the national act. After several years of planning, the Legislature enacted the State CZM law, codified in Chapter 205A, Hawaii Revised Statutes, upon which the Board of CZM program was based. In September 1978, the U.S. Department of Commerce officially approved the Hawaii CZM program, and the State became eligible to receive administration grants and administer the federal consistency review program.

Hawaii's CZM program was part of the most extensive citizen participation effort in the

nation at the time. Throughout the planning process or phase, the regional citizen advisory committees provided local reactions to the content of the plan. Maui, Moloka`i and Lana`i each had its own committee. A statewide citizen's forum comprising some 50 to 60 people representing various interests provided a statewide reaction. The Chairs of the regional citizen advisory committees were members of the statewide group to link the local perspectives. A Policy Advisory Committee comprising State and County Directors having responsibilities related to CZM and two members of the Legislature provided the statewide policy perspective. In addition, a Federal Advisory Contacts Group provided federal input. All bases were covered. But in the final analysis, the citizens flexed their muscle and demonstrated power and influence. Their recommendation for the initial set of seven objectives and supporting policies was enacted by the Legislature. Word for word, typographical errors and all.

In 2001, the Legislature established the Marine and Coastal Zone Advocacy Council, an all citizens group, to support the CZM program and advocate the interests of the general public. The 12 member Council is also charged to work toward implementing an integrated and comprehensive management system for marine and coastal zone resources. The Council actively participated in the update of the Hawaii Ocean Resources Management Plan. Citizen participation continues to be a major influencing factor to the further development and implementation of the CZM program. This is important since stewardship is at the community level, and government and the community need to work together.

Hawaii's CZM Program was enacted to provide a common focus for State and County actions dealing with land and water uses and activities. As the State's resource management policy umbrella, it is the guiding perspective for the design and implementation of allowable land and water uses and activities throughout the State. In finding that the State was over-regulated and under-managed, and that laws, ordinances and rules dealing with coastal resources needed a more effective and coordinated focus. The Legislature also observed that the various regulatory mechanisms were too functional and often duplicated or in conflict with each other. So it made a purpose for CZM to encourage agencies to look at resources in a different way. Agencies now must look at resources from a broader ecosystem perspective, instead of individual species or resources. In addition, rather than duplicating or usurping the authorities and responsibilities of the State and County agencies, the CZM law build upon them, forming a team or network. To effectuate this network concept, Chapter 205A requires legal and operational compliance with its objectives and policies. Within the scope of their authorities, all agencies must assure that their statutes, ordinances, rules and actions comply with the CZM objectives and policies. In this way, a network for State and County agencies are bound by the Statute helps carry out CZM's multi-functional purposes and requirements.

The CZM area encompasses the entire State. Because there is no point of land more than 30 miles from the ocean, a definite land-sea connection exists throughout the State. So designating the entire State as a CZM area was logical. What occurs on land, even on the mountains, would impact and influence the quality of the coastal waters and marine resources. The CZM area also extends seaward to the extent of the State's police power and management authority to include the territorial state. This legal seaward boundary

definition is consistent with Hawaii's historic claims over the Hawaiian archipelagic waters based on ancient transportation routes and submerged lands.

With this background, I'll now focus on the SMA permit system. The SMA permit and shoreline setback variance are administered by the Counties except in community development districts where the Office of Planning has the responsibility. These programs are authorized under parts two and three of Chapter 205A. The SMA permit is the most publicly recognized management tool of CZM, but it is the most misunderstood. It is perhaps because land use policy terms, such as urban and resort, are too esoteric for the general public to understand. Instead they find meaning in specific design which they can assess for public access, ecosystem, water quality, aesthetics, historic and cultural values, hazards and other CZM related measures. As a management tool, the purpose of the SMA permit is to assure that allowable developments are designed and carried out in a manner consistent with the CZM objectives and policies, and SMA guidelines. It is not a land use policy determinant as many in the general public want it to be.

Mr. Gima: Will you explain that last statement because I'm not sure I understand why that's the case?

Mr. Tom: Hawaii is the first State in the nation to have a State Land Use Policy that was enacted in 1971. That forced the whole thing with the Land Use Commission. There are three land use programs – land use policy programs in the State. One is done by the . . . (inaudible) . . . that's carried out by the Land Use Commission. The Land Use Commission is the quasi-judicial body that is responsible for taking all land classifications to any one of the four land use commissions. You've got the urban, rural, agriculture and conservation. The other body that is responsible for making land use policies would be the land board. Within the conservation district they do that by placing lands into – what's that term? – well, they have different districts that allows different uses within the conservation districts – sub-zones. The third body that makes policies, the land use policies, would be the County Council, and they do that by the adoption of the General Plan. And the function of the General Plan is really discussed by the General Plans. So those are the three bodies that establishes land use policies for the State. So that means that all permit approvals are not land use policies determinants. They become management tools. In the case of SMA, it becomes, within the context of the CZM objectives and policies, SMA is that, it is merely a land use – I mean, really a management tool – to assure that the uses and activities that are permitted by the land use policies are designed and carried out in the manner consistent with the CZM objectives and policies and SMA guidelines. So that's really –.

The SMA permit system was an inherited system. During the formative CZM planning effort in the 1970's in the wake of what many termed uncontrollable – uncontrolled development – the Shoreline Protection Alliance spearheaded the passage of Act 176, the Shoreline Protection Act of 1975, as an interim measure, until the State completed its statewide CZM Program. The Counties vehemently opposed the Legislative proposal, but lost the battle. After some experience administering the SMA permit, however, they fought for its retention as a permanent feature of the CZM program. Where the SMA overlaps the State's conservation district, they discovered a new power over development proposals

where they previously had none. The SMA Permit gave them the power to deny developments in the overlapping area if they could demonstrate inconsistency with the CZM objectives and policies. They did not want to relinquish this new found policy. In 1977, over State opposition, the Legislature supported the Counties and made the SMA a permanent CZM feature. Instead of a band around the island, the State preferred designating areas of particular concern where important and vulnerable coastal resources were threaten by human intrusion and applying specific management provisions to activities affecting the targeted resources. The State did not see much value in scrutinizing all developments in urbanized areas at the same degree as in undeveloped areas within the SMA band.

The CZM law authorizes the County to expand their SMA boundaries at any time by ordinance or rule. If any County exercises its right it must file a map of the revised SMA area with the Office of Planning. Boundaries contractions however are decided by the Office of Planning upon review of a County proposal. The authority must clearly demonstrate that each proposed contraction will not compromise any of the CZM objections and policies.

Chapter 205A mandates an SMA permit for development. Its definition of development, however, is vague and confusing. But that was the intent of the authors who wanted to prevent potentially bad projects falling through the cracks. Together with the shoreline setback variance, the SMA permit system is administered by the County Planning Commissions except for the City and County of Honolulu, where the City Council reserves for itself that authority. In situations where there are multiple permits for a specific development, the law requires the SMA to be the first obtained. It does not preclude concurrent permit processing.

The initial cost threshold for determining an SMA permit was \$25,000. In 1982, it was elevated to \$65,000. And in 1991, to \$125,000. Several unsuccessful attempts to repeal the cost criterion were made. The argument that the potential for adverse ecological and environment impacts is the key substantive question to determine whether a development should be processed for a major or a minor permit, and that cost was not an arbitrary factor without substantive value was soundly rejected because the environmental community expressed distrust of government. It demanded a specific criterion to trigger the opportunity for public participation in the permit process or to challenge the County's administrative decision to process an application for a minor permit. In addition, the concept of categorical exemption to simplify the process was discussed with the counties on several occasions but consensus could not be reached.

The purpose of the SMA permit is to – the purpose of the SMA permit is to assure that allowable land and water use activities are designed and carried out in a manner consistent with the CZM objective and policies. Guidelines for the authorities to consider are provided in Section 205A-26. They are also reiterated in a participant's guide to the Special Management Area Permit process in the State of Hawaii – a copy of this, I believe, all the Commissioner have – which we prepared in response to a federally requirement based on public complaint. Copies of the report are available for public distribution at the County Planning Departments and at local libraries have reference copies.

In assessing proposed developments, the authority must find there is adequate public access to shoreline areas if they are reasonable public recreational value. The County public access plan should be consulted in the assessment. The authority must also assure adequate solid and liquid waste disposal facilities are provided to prevent adverse effects on the resources in the SMA. And alterations to land forms are minimal in their impacts to water, scenic and recreational resources. In addition, because no development can be approved unless the authority has first found that the development is consistent with the CZM objectives and policies, the authority is also obligated to assess proposals for the impacts on historic and archaeological resources, and assure they are preserved as determined by the State Historic Preservation Office.

I might add at this point that we prepared and in 2006 submitted to the Governor and Legislature, the Hawaii Ocean Resources Management Plan, or ORMP, as required by Chapter 205A. We are relying on the SMA permit system to help assure consistency and support of activities with the ORMP which provides context for the CZM objectives and policies in SMA guidelines. The ORMP is our first step toward a comprehensive futuristic plan for the best and wisest uses of the ocean and near shore areas consistent with the public trust document. We heard loud and clear from public complaints that present management focus are not successful, so we are formulating a moku management approach for plan implementation. In charting in the new course of action in dealing with the ocean, we based the ORMP on three perspectives, rather than described resources and uses in the traditional section or functional fashion.

In the first perspective, looking toward the mountain, we realized that the land is connected to the sea, and that inland activities directly affects the ocean and the benefits that we derive from them. Polluted run-off and the major sewer spill of 2006 in Waikiki are reminders of this relationship. Acknowledging that a vibrant and a healthy ocean environment is the foundation for quality of life in Hawaii. The second is about preserving our ocean heritage. Looking away from the land, we see the ocean as the most vast and important natural resource. It is where we see cultural enhancement, inspiration and recreation. It is also where we harvest valuable resources and carry out numerous economic activities. The ocean is Hawaii's heritage and future. The third perspective recognizes the need for promoting collaborative governance and stewardship. Looking at each other, we understand the importance of working together and sharing knowledge, experiences and resources to improve and sustain our efforts caring for the land and sea. After all, human activities are responsible for the health or decline of natural resources.

The hope is to transform the ORMP into a prescriptive, living document that offers a sense of purpose, place and direction that could provide meaningful context for statewide planning and management. We realized it will require extensive collaboration, creative thought, time and political support, but it is a worthwhile endeavor. We are encouraging the counties to help assure the integrity of the ORMP through the SMA permit system.

The SMA guidelines require the counties to minimize any development which would substantially interfere with or detract from the line of sight toward the sea from the state highway nearest the coast. Hence, the authority must make a concerted effort to minimize adverse impacts on structures on coastal view plains. Modifications to designs may be

necessary so structures can better conform with the environmental landscape. If structures are overly obtrusive, they must be substantially redesigned or the permit should be denied.

Coastal eco-system must not be allowed to be degraded and water quality must be preserved to the maximum extent practicable. Best management practices to reduce or eliminate the amount of polluted run-off entering the ocean must be employed to deal with identified problems. Retention basins and grassing areas are common measures to help retard polluted runoff. They may be important mitigation measures to substantiate permit approval.

Each geographic area has a different set of coastal hazards to deal with, so the CZM hazards objective applies accordingly. Where applicable, the reduction of hazards to life and property from tsunamis, storm waves, stream flooding, erosion, subsidence, and pollution, must be seriously considered. We are investigating the need to strengthen the law to assure that hazards are seriously considered in the decision making process.

The authority must also consider these factors in rendering a decision on a development proposal in the SMA. If the assessment can not demonstrate that the development's design and implementation are consistent or in compliance with the CZM objectives and policies, authority can not legally issue the permit.

Administration of the SMA permit statewide has been inconsistent. At times, SMA permits conditions extends beyond the CZM context. They need to have a rationale nexus put in enabling statutes, objectives, policies, and guidelines which comprise the substantive and legal context. In other words, the SMA permit should be a limited review and approval system to assure consistency and compliance with the CZM objectives and policies and SMA guidelines. If they are non-CZM interest, the County could impose conditions to assure them through its own non-SMA legal mechanisms.

Three examples of SMA permit conditions lacking rational nexus with the CZM objectives and policies and SMA guidelines are presented for illustration. We have determined that they are neither acceptable, nor enforceable.

The first requires appropriate measures to be taken during construction to mitigate short term impacts relative to ambient noise levels and traffic disruptions. However, ambient noise levels and traffic disruptions are not addressed in the CZM objectives and policies. Hence, for the purposes of the SMA permit, conditions relating to them are not acceptable. If these are bonafide public concerns, conditions relating to them should be imposed in separate county legal mechanism. The second calls for appropriate energy conservation measures to be incorporated into the project. Although the idea is good, it is not directly related to CZM and therefore it should not be a mandate via the SMA permit. The emphasis on the third is crime prevention, which also does not relate to CZM. Therefore, these conditions should not be imposed in the SMA permit. They should similarly be addressed in separate county legal mechanisms.

The CZM program is examining SMA permit conditions and may issue administrative



guidance to assure they have reasonable relationship with the CZM objectives, policies and guidelines. Statutory amendments to clarify the permit system based on this reasoning are also being considered. The goal is to assure that the SMA is a simple management tool to assure consistency and compliance of permitted uses and activities with CZM objectives and policies. Finally, I wish to mention that we spearheaded two amendments to Chapter 205A at the County's request. In 1993, the threshold for civil fines, the authority can impose, for SMA permit and shoreline setback violations, was elevated from \$10,000 to \$100,000. In addition, the allowable daily fine, while the violation exists, was raised from \$1,000 to \$10,000. To date, however, may be only one or two fines have been levied at far lower levels than the authorized thresholds. In 2001, the definition of "development" was amended to expand county discretion to require SMA permits for exempted activities when they determine that there might be significant environmental or cumulative impacts. It appears that this has been a popular administrative provision based on County actions.

That concludes my remarks and I'm available for question.

Mr. Gima: Thank you very much. Any questions, comments? I have one. When you were mentioning at the beginning about how the whole State is CZM because of the 30 mile rule – can you talk about how, as Planning Commission, we're to take that into consideration when we're deliberating on an SMA?

Mr. Tom: That's a good question. I don't know what the legal answer is. I'll be very frank, but I can tell you what the City and County of Honolulu does. They will also monitor developments just mauka of the SMA boundary to see what kind of impacts they may have. And based on that effect, they may want to require an SMA permit application. And in some cases, they're even considering – we might consider expanding the boundaries to include those areas. But generally there should not be that much concern because if it is a concern of the County, then they can address the development in those areas that are beyond the SMA to their planning enforcement program.

Mr. Gima: Is this rule kind of based in the ahupua'a concept?

Mr. Tom: No, but I think it's going to emerge. And as I mentioned that we are committed to developing a moku management framework. The Legislature did enact a bill that establishes the ahumoku council kind of bill. The group have a bunch of nominations for the Governor to appoint on. But we don't know what the substantive task of that moku council is going to be. But through further development of the Ocean Resources Management Plan, we have made a commitment to look at the moku concept. The example I used is that in government, at the Federal, State and County level, sometimes you get tied up in standardization. And you know, I looked at Oahu – I look at the west side, Waianae, it's brown dry. And I look on the east side, Manoa, green and wet. Already it tells me that . . . (inaudible. Did not speak into the microphone) . . . we need to look at developing and implementing different policy measures according to what the conditions are. So we are looking at possibly working with the communities to develop a more appropriate policy for their own moku area. And we chose the moku because they're only about – according to the Hawaiian group – there's only about 30 established. Whereas,

initially the Hawaiian groups were pushing us to adopt the ahupua`a concept, but there's over 500. And when you have over 500 different interpretations to deal with, it gets messy and unruly. So we have agreed that we will be looking at the moku as the framework.

Mr. Gima: This timely presentation because one of the things we're considering is an SMA extension, and one of the issues has to do with concerns that are outside the SMA boundaries. So that's why I wanted to get more clarification of what basis does the CZM intent in the objectives – how does that fit in into our deliberation?

Mr. Tom: I don't want to get into – because that's – what you're asking would be really a concern was more of a land use policy issue. But because the entire State is in a coastal zone, the objective and policies apply. However, there aren't any additional management tools that the CZM program has instituted. The only one was the SMA. So it is the responsibility of the agency that has management jurisdiction over that area in question – to take on the activities in manner that is consistent. I know that's kind of generic, kind of broad response, but I'm trying to think of specific examples.

Mr. Gima: Maybe I can be more specific. I mean, we're looking at the impact on a natural resource that is not located in the SMA area. So when you're talking about the 30 rule – 30 mile rule – that means that the natural resource – we're talking about that's within that 30 mile rule, but it's not in the SMA boundary.

Mr. Tom: If it were some kind of natural resource that comes under the jurisdiction of the Department of Land and Natural Resources, they are ready. The concerns should be expressed to them because they have the authority to do deal with that. And they, in that area outside of the SMA, they are obligated to ensure they're in compliance with the CZM policy.

For instance there are cultural values that the community is very concerned about. DLNR has that authority. It is their legal responsibility to deal with that. So, and if we see something, we would tell DLNR that they really need to look at that may – by ignoring it, might constitute a violation of CZM. Because I recall when Harold Matsumoto was our Director, he use to make us be very active. He use to send us to the Land Use Commission to be cross examined by them, to tell them basically that, you know, if they approved the project that they're going to violate State law, and we going to take them to court. You've got those different political systems in operations. You know, that concern has come up from time to time to time, and they legally or problematically the answer that I can tell you is that it is something like the cultural resources, these people need to petition the Department of Land and Natural Resources, and to tell them that by not taking action, they will violate the CZM law. And it's clear. The new Chairperson understands that they are obligated under the statutes.

Mr. Gima: And then also I saw in your presentation that if in our deliberations on an SMA that whatever additional conditions we may propose it has to come under one of these objectives?

Mr. Tom: Yeah, basically, we're saying that any SMA condition, you need to have – it

needs to be related to the CZM objectives and policies, and SMA guidelines. If they're not, there should not be conditions of the SMA permit. What we're saying – because the CZM program and the SMA permit, in particular, are not catch all to everything. You know, there are limitations. And if the people – if the Commission feels very strongly about some other things, we say hey, that's the Commission's prerogative. However, if the shoe doesn't fit, don't worry – meaning that if it doesn't fit CZM, don't use CZM as a way to impose that. You know, find other County mechanism to impose that.

Mr. Gima: Any further questions? Do we have questions from the public? Pat.

Mr. Fairfax "Pat" Reilly: My name is Pat Reilly – resident. You just finished that and that was my question to the County, and maybe to you – what are those other structures that the County or Commission could use beyond placing conditions within an SMA permit? Are you talking ordinances or departments? I wasn't clear what you meant by structures.

Mr. Tom: Actually, I meant mechanisms. Be it Legislative, it would be in a form of an ordinance, or by administrative decree or something like that. But it's not really for me to speak on that because I'm not that familiar with the County's processes and requirements or provisions.

Mr. Gima: Thorne you wanted to add something to that?

Mr. Thorne Abbott: Thank you very much Doug for your presentation. And I'm not Corporation Counsel, and I just have my opinions. But relative to what you're going to regulate outside the SMA, there's a case law from July of this past year from the Big Island in which there was basically grading right outside the SMA for a subdivision of which a small part within the SMA. They didn't change anything, and they didn't do anything within the SMA – it's all outside the SMA – but the Director of the Planning Department stood up in court and said, "there's a reasonable expectation that all this mass grading is going to create run-off during a heavy rainstorm, right across the SMA and going into any shore reef." That you can regulate even though it's slightly outside the SMA. It has that reasonable likelihood of having an adverse impact on a coastal resource based on case law. Now I'd ask you to get Corporation Counsel's interpretation of that, but that was from the Big Island and it's a direct water quality impact.

The second thing I'd like to reflect on – recently you did Manele Bay, the small boat harbor ferry improvements – and I think what Doug is saying is things like – Ron McOmber stood up and said, "we don't want big spot lights there because at night time there's some beautiful stars and there's a nice trail that you can walk on – the Fisherman walk." That's beautiful, scenic, coastal resource and that's protected. The number of parking spaces has no relation to coastal resources. It has nothing to do with coastal resources. That's a zoning code thing. The number of trees in the parking lot doesn't have a whole lot to do with coastal resources. So I think that's the kind of what Doug is underscoring. There's other mechanisms and other policies we have in place to regulate certain aspects of a particular project. But it's important that the Commission – any conditions the Commission impose reflect CZM resources, coastal resources, like water quality, coral reefs, marine protection and that kind of thing. Thank you.

Mr. Tom: Can I make one last comment? You know, when I was in Washington DC in March at the National Program Management meeting, you know, we always had meetings with the Congressional staffers of the key committees in Congress, and they told us point blank that Congress – it's a foregone conclusion that Congress will be passing the CZM programs around the nation to deal with the issue of global climate change. But they did not give us any idea what substances they were really talking about. So it's going to be a big challenge, and that's going to be a bigger challenge for the Planning Commission to deal with down the road. So as we understand what the congressional charges are going to be on us, and we're going to have to work closely with the counties so that everybody has a common understanding, and when we go to the Legislature at least, hopefully, we'll be speaking one voice. But we understand that you guys are going on the transient that's having to deal with the various proposals. So I just wanted to let you know that comes down the pipe. And we haven't the faintest idea that we're going to have to deal with, and when we're going to have to deal – you know – come up with something like that. Thank you very much.

Mr. Gima: Thank you Doug. It is 6:46 p.m.. We can't technically begin until 7:00 p.m.. Correct Colleen? So why don't we take a break and hopefully by that time Stanley will show up and then we will start the unfinished business portion of our meeting, taking up the five-year time extension request.

*(The Lana`i Planning Commission recessed at 6:46 p.m. and reconvened at 7:00 p.m.)*

#### **E. UNFINISHED BUSINESS**

2. **MR. RALPH MASUDA, Vice-President of Planning and Zoning of CASTLE & COOKE RESORTS, LLC requesting an amendment to the Special Management Area Use Permit and Project District Phase 2 Approvals for a 5-year time extension on the period to complete construction of the Manele Residential and Multi-Family Development at TMK: 4-9-017: 001, 002, 003, 004, 005, and 4-9-002: 049, Manele, Island of Lana`i. (95/SM1-015) (95/PH2-001) (P. Fasi) (A time extension was previously granted by the Lana`i Planning Commission in 2003.) (Previously discussed at the March 21, 2007 meeting.) (Public hearing conducted on September 19, 2007 and further discussed on October 3, 2007 and scheduled for October 17, 2007 meeting.) (Materials were previously mailed. Commissioners: please bring your copy to the meeting.)**

**The Commission may take action on this request.**

Mr. Gima: Lana`i Planning Commission is back in order. And before we proceed to the first unfinished business item, I'd like to introduce our new and our ninth member of the Lana`i Planning Commission, Stanley Ruidas. Welcome Stan! As always, we always give new Commissioners an opportunity to say a few words. Well something about yourself and where you're from.

Mr. Stanley Ruidas: Can I reserve that for later?

Mr. Gima: That was pretty slick. Sure. Okay. All right. Yes? Okay, also in the audience is Stan's dad, long time resident and one of the, I think, the founding fathers of the LCWA back in the 1940's, I think, 1940's and 1950's, Mr. Julian Ruidas.

Okay, so we're on to the first item under unfinished business. Castle & Cooke Resorts LLC requesting an amendment to the Special Management Area Use Permit and Project District Phase 2 approvals for a five-year time extension on the period to complete construction of the Manele Residential and Multi-family development. I will request now that Paul Fasi give us a recap of that brought us to this point.

Mr. Paul Fasi: Thank you Mr. Chair. This matter arises from a request by a letter dated December 18, 2006 for a five-year Special Management Area Permit time-extension and a five-year Project District Phase 2 approval time-extension. On March 21, 2007, the matter was presented before the Lana`i Planning Commission. The matter was deferred for 180 days to September 19<sup>th</sup>. The reason for the deferral was that the applicant had to submit a report on the condition stated that the applicant shall continue to develop other non-potable water sources for irrigation as proposed. On September 19, 2007, the matter was brought before the Lana`i Planning Commission for a public hearing and the matter was deferred for the reason being that no consensus could be reached at that particular point of the discussion. On September – I'm sorry, I'm going to skip that. That was just an amendment that the Department received. The next hearing was October 3, 2007. It was again deferred to October 17<sup>th</sup>, in which we weren't able to get to the item because of the calendar and the time constraints at that time, which brings up to date, today, November 7, 2007.

Mr. Gima: So Paul, this is the second five-year time extension request, correct?

Mr. Fasi: Yes sir.

Mr. Gima: And the original Special Management Area Use Permit was granted in 1995.

Mr. Fasi: Correct. So we are deliberating tonight regarding the, again, the time extension and some of the concerns that the Commission has regarding this extension.

Mr. Gima: Any comments or questions about the recap and everybody understands where we're at? Everybody understand what our task is this evening? Okay. Any questions that were left unanswered that you want answered from either the applicant or the County? Because I've got a bunch of them.

Ms. Zigmond: Will going through the conditions answer those questions? Because that's why I was sort of holding off on my questions until we address the different conditions.

Mr. Gima: Yeah, you can do that, but I'm just wondering if there were any questions that were posed at the last meeting that were not answered. Jim.

Mr. Elliott: It occurs to me that we have in our possession two documents that the authors have not really had an opportunity to respond or to present to the Commission verbally. One, by Sally Kaye dated October 8<sup>th</sup>, and the other one dated October 12<sup>th</sup> by Ralph Masuda. And it just seems to me a good way to proceed would be to let Sally present her concerns and issues and so forth, and then to allow Ralph to respond after that to see whether there are any differences in the point of views of the two people.

Mr. Gima: Any objections to that or any other suggestions? Sally.

Ms. Kaye: Actually, I think I rather have everything on the record and follow it up with the memo, and as you can tell, it's probably self explanatory. I would say that based on what the applicant responded to my original memo, we're in pretty good compliance with a lot of the issues especially under #25. So I would defer that and maybe suggest we deal with condition #14 first, and go from there, if anyone has no objections. I have a couple of questions on #25, but they're more questions than anything else. And #25 only becomes #24, Ralph, when the Commission says that they don't want to pursue. That's not my decision to make alone. #24, if the solar unit wants to come off the table, that's up to the Commission, and then #25 becomes #24.

Mr. Gima: Let me comment, and then we'll go Bev and then Alberta. I think that's a good suggestion on yielding on most of #25 because in retrospect I think a lot of the issues under the proposed condition #25 are issues that are dealt with by the Lana`i Water Advisory Committee. Wouldn't you agree Jim? Okay. Bev and then Alberta.

Ms. Zigmond: I have a couple of questions on that #25, but I was going to make a suggestion and I don't know if it makes any sense to anybody else or not, but sort of go backwards on the conditions because I think how the various conditions are going to be agreed upon will determine #1.

Ms. Alberta de Jetley: Mr. Chair, my suggestion was that we take each condition individually starting at #1 – get that, #1 and #14 out of the way, and then proceed to #24, but Commissioner Zigmond would rather do it starting at #24 and then work back. Is that correct?

Ms. Zigmond: Because my – how I'm going to vote on condition #1 depends on the ones subsequent.

Ms. de Jetley: Then I would concur.

Ms. Kaye: Okay then my suggestion that we table #25 for now because we are in substantial compliance. You don't want to do that? I think that might be more fruitful use of our time.

Mr. Gima: You look puzzled Jim.

Mr. Elliott: . . . (Inaudible. Did not speak into a microphone.) . . .

Mr. Gima: I think what Bev is saying is we'll vote on #1 last because all the discussions prior to that will determine on how we vote on #1. Any questions or comments about Sally's proposal over proposed condition #25?

Ms. Zigmond: I have a question, please, on item g. I'd like to see the usage for roadside landscaping irrigation and golf course, as oppose to just potable and non-potable for hotel operations. And I was wondering what is the applicant's concern or objection to making that available?

Mr. Gima: Before we ask Ralph to respond, correct me if I'm wrong, I thought we were taking #25 off the table.

Ms. Zigmond: We're taking it off the table?

Ms. Kaye: Well there were some questions similar to what Bev just said. If you want to deal #25, I've prepared a list of the things I think we absolutely agree on – Castle & Cooke's wording is perfect. We can just dispense with them. It's only four or five that I had a couple of questions on and Bev's was one. But rather that slog through them one at a time, I thought maybe we could deal with #14 and then go back.

Mr. Gima: Any objections to that? Bev? Okay, so we'll go to the meat of our discussion tonight on condition #14. Any preliminary comments on condition #14 before we get to Sally's proposed language and Ralph's response? I have one question. Paul, in preparation for this time-extension request, is it the Planning Department's position that Castle & Cooke is in compliance with condition #14?

Mr. Fasi: That is correct.

Mr. Gima: Could you elaborate on how they're in compliance with condition #14?

Mr. Fasi: When they submit their compliance report that covers this particular condition, they basically agreed to the condition and within its parameters that they shall continue to develop non-potable water sources.

Ms. Zigmond: I thought the condition was that they would, not that they shall continue to, but they would. And at one of these last meetings, I'm forgetting which one, they said no they hadn't, so that doesn't sound like compliance to me.

Mr. Fasi: Well, if that's what they stated in the last meeting, then I would concur with that.

Ms. Zigmond: It is in the minutes and I will it find if I need to.

Mr. Fasi: Okay.

Mr. Gima: Okay, Ralph.

Mr. Ralph Masuda: The way we responded to this condition was that we had, prior to approval of the SMA, back in 1995, we had only two wells, #1 and #9. And after that we developed well #14. Although it might have been drilled in the 1990's, it wasn't put on line until 2004. So I mean, this is – that's why we're saying that we have met the condition and we will continue to look for alternative or, again, like we have reported in our past meeting that we are looking at perhaps drilling another well in the Palawai. It would be also from the high level aquifer. It would be brackish.

Mr. Gima: So the fact that you didn't bring it on line until 2003 is the basis for fulfilling condition #14? Is that your position?

Mr. Masuda: . . . (Inaudible. Did not speak into the microphone.) . . . Butch, like I said, we're not stopping at that. You know, we are looking at the possibility of drilling another well.

Mr. Gima: Sally.

Ms. Kaye: The problem that I have with that is that this condition was originally imposed in 1995. There was an extension asked for in 2003, and the one well is now covering three compliance periods. And the response that came from the applicant – this all started for me at a meeting that I wasn't even at and that was March 21<sup>st</sup> – where you said, and several Commissioners agreed, that we wanted to see a report of going forward with how this condition was going to be complied with. That's what caused the 180-days to first start running. And what we hear is, we haven't found the sources yet – we admit that there's not enough to go to full build out and I know that's – just a minute Ralph – I know full build out is down the line. But we don't have a clear picture of what that means. And we don't have a clear picture of the amount of water you think you're going to need incrementally as you go along.

Mr. Masuda: Well I think that we have on file and also with the Lana`i Water Advisory Committee our basic time tables for development of water, and that's your table. What do you call it? 5.0 now? And that's in draft form and it goes to year 2025 or something like that. But for the alternative water, for your brackish water, we would need to drill another well, and mainly because maybe we may have to shut one of the other wells. But we haven't studied the exact location yet, and we would need the engineering reports to really settle on a site.

Mr. Gima: Paul.

Mr. Fasi: In their compliance report, after it was – that 180-day referral and we wanted them to elaborate on conditions #3, 7, 9, 10, 12, and 14; and we would get back together at the September 17<sup>th</sup>. Well, during that time, the Department requested that the applicant review all the conditions. So their response to #14, and I'm going to read it to you – hopefully it will help clear something up – and I quote “CCR has created a non-potable water system which is utilized for irrigation purposes. Landscaped areas within the residential project are irrigated with non-potable water. The source of this non-potable water is brackish water from wells #1, 9 and 14. Non-potable brackish water, well #14,



was drilled in 1995. The waters from these wells is stored in 15 million gallon open reservoir and conveyed to the Manele Project District.” Second paragraph is “the Manele Bay golf course also utilizes non-potable water for its irrigation. In addition to the brackish water system previously described, reclaimed water from the Manele waste water treatment plant is also used to irrigate the golf course. The treatment plant has been expanded to provide a capacity of 140,000 gallons per day, and to provide R-1 quality water. At the present time, the Manele waste water treatment plant produces between 70,000 and 100,000 gallons per day of reclaimed water. The Manele waste water treatment has planned for a capacity of 400,000 gallons per day. As additional development occurs in Manele, the waste water treatment plant will be expanded to treat additional waste water which will result in an increase of irrigation water.” That was their response.

Mr. Masuda: What you don’t see here is when the well was actually brought on line – when we started actually using the water from well #14. Although it was drilled 1995, we didn’t start using that water until 2004.

Ms. Kaye: Well, I should say it again, the condition was imposed as worded in 1995 so if the well was drilled then and not used, it made the compliance – I’m sorry – the extension request in 2003 compliant, but nothing has happen since then. And expansion of waste water treatment plant doesn’t speak to source. You have to have a lot of toilet flushing and dishwashers going to create the waste water that’s treated that then goes in to the system. And if people aren’t living down there full-time, I’m just wondering where the water comes from that this expanded capacity would treat. So again, show us the water is all we’re asking. But expanding capacity doesn’t speak to source, and that’s what the condition asks for.

Mr. Masuda: The ultimate planned capacity is 400,000 gallons per day, but we’re not saying we’re going to do that right now. We have expanded it to 140,000 gallons a day and that would be enough to cover us for a while until such time as more units come on line and perhaps maybe, hopefully, increase the occupancy of the Manele Bay Hotel.

Mr. Gima: So Ralph just to maybe help clarify some things, the time-extension request covers 218 multi and single family units. Is that correct?

Mr. Masuda: The time-extension is for 166 single-family and 54 multi-family. The Palms, like I said, the Palms is a separate item. It was not part of this application.

Mr. Gima: So 210 is the total?

Mr. Masuda: Total units, yeah.

Mr. Gima: Okay, so at 210, what is the projected non-potable water use for 210 units? I mean, if you go by – I saw some language in here that they estimate 100,000 gallons per day for non-potable irrigation, per unit, down in the Manele Project District. Is that accurate?

Mr. Masuda: Not 100,000 gallons a day per unit.

Mr. Gima: No 1,000. 1,000 gallons per day per unit.

Mr. Masuda: I think it's more than that per unit.

Mr. Gima: Correct me if –

Mr. Masuda: I'm trying to find that table.

Mr. Gima: I don't know if this is the same item but I remember when Cliff made a presentation or responded to questions, he was saying something to the effect that there isn't the non-potable capacity to meet the needs of this request. Is that accurate?

Mr. Masuda: For this request?

Mr. Reilly: Point of order . . . (Inaudible. Did not speak into the microphone.) . . .

Mr. Gima: Okay, thank you Pat.

Ms. Zigmond: I personally find it a little unnerving that we don't have that information – how much water.

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

Mr. Gima: Okay Joe.

Mr. Joe Kaakua: What's the question again?

Mr. Gima: Based on the 210 projected units for this time-extension request, what's the projected non-potable water use for those 210-units?

Mr. Kaakua: Okay, in our –

Mr. Clay Rumbaoa: 500,000 gallons per day – at 2,500 gallons per day –

Mr. Kaakua: For a single-family

Mr. Rumbaoa: Times it by 210 is a little over 500,000 gallons per day.

Mr. Gima: Non-potable water?

Mr. Rumbaoa: Non-potable water.

Ms. Kaye: In addition to what's being used currently?

Mr. Gima: Clay take the mic.

Mr. Rumbaoa: That's for the – yeah – that would be in addition to. Yeah, that's for single-family. My name is Clay Rumbaoa. I'm with Castle & Cooke, Engineering Department.

Mr. Gima: So Clay, you're saying approximately ½ million gallons per day of non-potable water use for the 210 multi-family and single-family units?

Mr. Rumbaoa: Yes. That's based on the projections that we presented to LWAC on the table 4.23. We utilized at 2,500 gallons per day, daily usage, and based on the 200 such units multi/single family, yes.

Ms. Kaye: And I recall from – which one was it now – probably the September meeting asking you, Joe, if well #14 along with #1 and #9 were going to be sufficient, and you said, “no.” So now Mr. Masuda said tonight that you're thinking about drilling another well with the potential of having to shut one down. So are we in the same position of still needing more non-potable water from the three wells?

Mr. Kaakua: Right now we're planning on drilling a fourth well. Whether we shut one of them down or it's a replacement well, we'll actually answer that later. Right now, I'm drilling a fourth well, and we need the water.

Ms. Kaye: . . . (Inaudible. Did not speak into the microphone.) . . .

Mr. Kaakua: And we need the water. During the year, we have your wet period and your dry period, and the dry period we need the water.

Mr. Gima: Okay, while you guys look for some more information, any questions or comments from those who haven't said anything yet? So while you guys still looking, let me ask Planning Department, could you explain to us what the intent of the language in condition #14 was? And specifically what the Planning Department meant by “other?”

Mr. Fasi: The Planning Department would assume – and I wasn't the Planner at this time this thing was brought before the Commission – I would assume that it is everything other than what they have existing.

Mr. Gima: I know, but what was the intent of making sure that they develop more or other non-potable water sources?

Mr. Fasi: To provide enough water for their build-out.

Mr. Gima: Was there the impression that the current non-potable source was not enough? Because I don't recall that being in the application or representations.

Mr. Fasi: I cannot answer that question.

Mr. Gima: Okay. Thank you.

Mr. Fasi: Thank you.

Mr. Gima: Did you guys find it Joe? Did you guys find the information you were looking for?

Mr. Kaakua: Yes I did. I would like to clarify something. The 210 units, 166 is single-family and the projected demands is, for single-family non-potable water, is 2,500 gallons per unit. That comes up to 425,000. Multi-family is 54 units. We estimate or project 1,200 gallons per multi-family unit, and that amounts to 10,800 gallons.

Mr. Gima: For a grand total of?

Mr. Kaakua: 435,800 gallons. What is this? It's all on this report.

Mr. Rumbaoa: And I just wanted to add that for the next five years which this permit is for, we'll probably use a fraction of that amount because we won't be building obviously 210 units in five-years. So we may build 50 units in that time.

Ms. Kaye: Can I ask you a question Clay? I understood from what Ralph said before that you're not building anything but the multi-family – that you're just preparing the lots, bringing infrastructure to the lots and then the person has to go through all of the permitting process. Is that correct? For the single-family?

Mr. Rumbaoa: Yeah, I mean –

Ms. Kaye: Okay, so you're only talking 54 that you would be building, potentially, within the five-years or not. You don't know. You won't be building the single-family.

Mr. Rumbaoa: Yeah, we don't know.

Ms. Kaye: You don't know? Or you aren't building it?

Mr. Masuda: Like I said before, generally, single-family, we sell the lots, and the person that buys the lot contracts in and builds his own home. But we're still obligated to provide the water because we are a public utility.

Ms. Kaye: Right.

Mr. Gima: Ralph, what was the Company's understanding of the intent of project specific condition #14?

Mr. Masuda: If my memory serves me right, at that time, like I said, we had two wells, #1 and #9. And because of the need beyond the Manele golf course for brackish water for irrigation because of the development that's not going to happen, we decided that another well was needed.

Mr. Gima: I understand your response, but what was your understanding of the intent of this condition?

Mr. Masuda: The intent of this condition, I guess, was to make sure that we don't run out of brackish water for irrigation. I mean, this was something that wasn't decided, you know, in a single evening and, you know, it was a condition that was worked on and we finally ended up agreeing to that condition.

Mr. Gima: As part of the Company's participation in the Lana`i Water Advisory Committee, I think the Company has made representations that they plan to develop alternative non-potable water sources over the next 20-25 years, to the total of 1.5 to 2.0 million gallons per day. Is that accurate?

Mr. Masuda: Well, looking at the table, 5.0 or 4.23 or whatever table that you want, it starts off as an alternative water source after the 10<sup>th</sup> year, and then at build-out, which is 20 years, is 1.3.

Mr. Gima: And, I know the Company has been asked at previous meetings, has the Company identified the source of this alternative water whether it's going to be new wells, catchment, conservation, desal and/or all of the above?

Mr. Masuda: I think it's going to have to be all of the above including conservation. I don't believe that the study that addresses desal is complete, and what the source for the desal is going to be.

Mr. Gima: When I asked both you and the County about the intent of condition #14, I had my own assumptions about what the intent was. And I think if you look at the ordinance that provided the 650,000 gallons per day to the golf course, I think the language in that ordinance states that something to the effect of the County Council wanted to protect the water resource of the Island, and that the wording also stated in there that we are to broadly interpret the language of that ordinance. That having been said, there's been a lot of discussion about what/why the water resources on the Island need to be protected. One being we have only one aquifer. Two, we have no surface water. Three, there is not the replenishment of the aquifer like we use to have in the pineapple days with the irrigation. And four, most recently, based on Cliff's representation, 67% of the water being pumped today is going down to the Manele Project District. So, I'm assuming that when they say other non-potable water sources for irrigation purposes, that we're not pulling water out of the high level aquifer. Is the Company in agreement with that intent or assumption?

Mr. Masuda: I think the Company's position is that it's not the way that you put it. I mean, I'm saying is we would continue doing wells within the high level aquifer if it's for brackish water. This is something that, again, is going to come up again in the remand issue as to whether or not the high level aquifer is – we are drawing potable water from the non-potable wells. And 2408, it goes on to say that the total amount of non-potable water drawn from the high level aquifer that may be use for irrigation shall not exceed an average of 650,000 gallons per day. So it allows us to pull non-potable water from the high level aquifer. That's 2408.

Ms. Kaye: I'm sorry I don't have it in front of me, but isn't 2408 specifically designed for the

golf course? Right, so it doesn't deal with the other million of gallons of non-potable water for irrigation purposes down in your district? Okay.

Mr. Gima: Paul/Colleen, what are we to do if we have Corporation Counsel questions tonight?

Ms. Suyama: Because we were short of Corporation Counsels today – because James Giroux who's your normal Corporation Counsel is on vacation, so Mike Hopper is his back up during those times. But we also had a Council Land Use Committee meeting which Mr. Hopper was, you know, forced to attend, so he couldn't attend today's meeting. So the agreement was that if there was a legal question that the Commission has, he is on-call. I have his cell phone number. We can call him and you can pose whatever legal question you have for him at that point.

Mr. Gima: One question I would have is if this time-extension is granted without some reference to whether non-potable water is pulled out of the high level aquifer or not out of the high level aquifer, would that be setting precedence?

Ms. Suyama: I'm not really sure because the way I read the current condition #14, it's basically saying the applicant shall continue to develop other non-potable water sources for irrigation purposes which seems to mean to imply to me that they did not want to have potable water that's usually used for domestic purposes to be used for irrigation. So whatever method that they needed to find non-potable sources is what they need to develop. My point is that regardless of what happens, if Lana`i Company fails to find other non-potable sources, it affects Lana`i Company's ability for their clients or their potential owners to provide water for irrigation or for landscaping. So the burden is on them to provide that because they cannot use the potable source to provide that irrigation water. So if they fail to find other sources, what eventually will happen is that their owners and clients will not have water for irrigation, and that means your golf course is in jeopardy of drying up and your grass and everything. So the onus is on them to provide that source, whatever that source is. Whether it's desalinization or whether it's, you know, more brackish wells that are developed, conservation efforts that could be done, reuse of affluent – that burden is on them. And I don't think this is an SMA condition or an SMA concern. I think it's more a land use concern.

There's also the State Land Use Commission that's reviewing their land use district boundary amendment that was granted and the conditions that were attached to that. And part of those conditions does deal with the potable and non-potable water sources for irrigation purposes. And to me, that point as to whether they have irrigation water or potable or non-potable sources, are really under the purview of the Land Use Commission, who's already dealing with that issue. And I think you should basically focus your discussion on the SMA issues, which is more the environmental issues as it relates to what happens with development. What impacts does this development have? And I don't think an impact on the potable and non-potable sources is an SMA issue at this point. And I think that was clear from the presentation that came from the Office of Planning. And to me, you know, it should really be the Land Use issue that if there's something wrong then it should've been either the Land Use Commission or the County Council to have dealt with

that – that issue.

Mr. Gima: I understand that. I understand what you're saying and I did hear Doug mention that. However, that's why I asked the earlier question, what is the intent of the Planning Department's project specific condition? If what you're saying is correct then #14 should not have been in there, but since it is, that's why we're deliberating this issue. Secondly, if you're saying the onus will be on the applicant to either dry up the golf course or whatever, I understand that rationale, however, I'm also hearing the applicant say we're going to continue pumping from the high level aquifer. And that is a concern based on the assumptions I had stated earlier.

Ms. Suyama: And what the applicant is also saying is that the pumpage from the high level aquifer is the brackish water.

Mr. Gima: Yeah, it's coming from the high level aquifer. That's one of the big issue. We only have one aquifer.

Ms. Suyama: And that's an issue that's already being reviewed by the Land Use Commission, and I think it should stay with the Land Use Commission as a development issue in terms of the land use that was granted. I think you have to look at what the SMA. Doug Tom pointed out to you the criteria of the goals and objectives of the SMA, and because this is related to the SMA permit, I think you have to relate it to those criteria.

Ms. Kaye: I would just second what Butch said. It's a project specific condition. We didn't put it there. Someone else did and it was a condition of the original grant of the SMA permit. I'd love to litigate this a precedence because I think it's going to happen down the line that when there's a single high level aquifer – I mean, the dilemma here is that you don't want to have to find water before you need it. And our dilemma is we don't want hear five years from now, oops, we don't have enough or we didn't do enough or whatever. And I don't know why we can't come to some agreement that shows us how much you need, where you're going to find, and we go from there.

Mr. Gima: (Inaudible. Changed cassette tapes.) Yeah, I still want to know if this is going to set precedent or has it already set precedent?

Ms. Zigmond: How can we not consider a condition that was an original condition that we didn't do even if it wasn't the kuliana of this Commission? It was there.

Mr. Gima: We stay on the record or do we go Executive Session on this?

Ms. Suyama: It's up to if you want to go Executive Session. . . . (inaudible) . . .

Mr. Gima: No I'm not asking any liabilities.

Ms. Suyama: . . . (Inaudible) . . .

Mr. Gima: What's the pleasure of the Commission? You want to continue as is or go into

Executive Session?

Ms. de Jetley: Mr. Chair I would like to see this on record, in open session.

Mr. Gima: Okay. Hi Mike. This is Butch. The question I had – we’re talking about condition #14 regarding that the applicant shall continue to develop other non-potable water sources for irrigation purposes – the question that I had was if this time-extension request is approved without any changes in the wording of condition #14, will that set precedence in terms of water being pumped out of the high level aquifer?

Mr. Michael Hopper (via teleconference): What’s the current condition? What’s the wording of the current condition? Was that what you just read to me?

Mr. Gima: Yes.

Mr. Hopper: Could you repeat it please? We’re in open session right now right?

Mr. Gima: Correct.

Mr. Hopper: Okay. Can you read that condition to me again? I’m sorry.

Mr. Gima: That the applicant shall continue to develop other non-potable water sources for irrigation purposes. This is a project specific condition.

Mr. Hopper: Okay. I understand that, and you’re saying that with that condition remains unchanged, will that set a precedence as far as use of water from the high level aquifer?

Mr. Gima: Correct.

Mr. Hopper: Well the condition alone I don’t see – are you proposing any more restrictive conditions – is that what you’re trying to choose between?

Mr. Gima: There’s –

Mr. Hopper: I mean, the condition itself the way I read it has nothing to do with the high level aquifer. That may be how it turned out to operate. But reading the condition alone, it simply states, in my opinion, that they would be – they would be required to develop other sources of potable water. But it doesn’t really specify anything to do with the high level aquifer that I can see from the condition’s wording alone.

Mr. Gima: Okay.

Mr. Hopper: Are you seeing something than I am? I don’t see how that condition itself relates specifically to the high level aquifer.

Mr. Gima: Well, overall it’s confusing because Colleen was saying that technically this is – it doesn’t have an impact on the SMA and yet we’re having to deliberate it because the



Planning Department is the one that came up with the project specific condition. And some of us do have concerns about more water being pumped out the high level aquifer although there's nothing stated in this condition to that affect.

Mr. Hopper: So you want to find a way to restrict water being used from the high level aquifer. Now you've got your SMA conditions which do have to do with the impact on the Special Management Area specifically, and you also have the Phase 2 approval extension, I believe, which may allow you to look at conditions that don't necessarily have to do with the SMA itself. But I believe this (inaudible) condition that was placed on the SMA permit, if I'm not mistaken. I mean, if you're looking at putting an additional condition on it which restricts the use of the high level aquifer, I think you'd want to find from the applicant how – what effect that would have on their continued build out because I'm not sure if this would effect any sort of their feasibility to do so and you would want to do that before voting on the condition. And then if that's a condition on the SMA, you would still definitely have to have findings of facts and conclusions of law stating your basis for that condition. I'm not certain if you need the same findings of facts and conclusions of law to make it a condition of the Project District Phase 2 approval, although, as I understand it, as a precedent for this project, all of the conditions have been looked at together. If the same conditions were placed on both approvals and you have basically not separated the two as far as the type of approvals that you have given. I wouldn't necessarily see a basis for imposing a condition on one approval and not of the other. But, I mean, if you have concerns that use of water from the high level aquifer will somehow affect the Special Management Area, then based on 205A you would have the right to put in a condition that would mitigate that impact with whatever it would be as far as less use from that aquifer. Again, though, that will still have to have findings of facts and conclusions of law that would back up that basis. So I'm not saying it's impossible to have an effect on the SMA but you would need to make that finding that the use of water from the high level aquifer is having a detrimental affect on the Special Management Area specifically. That condition itself, the way it's worded though, I don't see how it has anything to do with the high level aquifer in particular though – alternative sources from what I can read.

Mr. Gima: Okay. Thank you Mike. Any further questions for Corporation Counsel while we've got him on the line. Okay. Thank you Mike.

Mr. Hopper: Okay. Call if you need anything else. I'll be here.

Mr. Gima: Okay. Bye.

Ms. de Jetley: One of the things that, when we looked at this, that I don't think we're taking into consideration is prior to this year did you not charge for irrigation water? For all of the homeowners down in the Manele Project District – were they being charged for their irrigation water?

Mr. Kaakua: Right now we're not charging anyone for irrigation water because we're applying for a PUC license to charge them.

Ms. de Jetley: Then if you are going to be charging for irrigation water – if you go down

into the Manele Project District now, you can see blatant mis-use of the water. People over water. The landscaping is such that they're not using drought tolerant plants. I think it's my belief that once you start charging for water, you'll actually see your irrigation water usage figures drop rather than increase because people would be more conservation minded and they will – because of the cost of water, will start to be more conscious of the water and I think that your figure will drop. That's just my personal belief.

Ms. Kaye: I think generally speaking that kind of conservation measure is the first line of defense. What would concern me is the fact that people don't live there. That there might be automatic systems, and they're there two weeks or three weeks of the year, and the water is still may being –

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

Mr. Gima: Okay, other thoughts, comments, questions about condition #14 having heard what Corporation Counsel had to say? How do we want to proceed then on #14?

Ms. de Jetley: Mr. Chair, then are we going to be taking each condition and trying to get it passed or rejected and then moving on? Is that what the game plan is? Because if it is the game plan, I'd like to make a motion that the applicant shall continue to develop other non-potable water sources for irrigation purposes – period.

Mr. Gima: Bev?

Ms. Zigmond: That's too nebulous. There's nothing. There's no standard. There's no measure. It's too nebulous.

Mr. Gima: So we've got a motion on the floor. Motion dies for lack of a second. So it appears that and based on what Corporation Counsel is saying that we cannot – in order to change or make condition #14 more restrictive, we need to have findings of facts, conclusion of laws that substantiate the restriction. Is that everyone's understanding? Okay. Maybe it would be helpful for the Commissioners if the applicant is willing to – are you willing to stipulate that other non-potable would mean – no you're already saying that you're going in for another well. Correct? Okay. So Bev, what more type of specific language are you looking at to make it less nebulous?

Ms. Zigmond: Just the source. And I'm so confused right now as to what we can do and what we can't do.

Ms. de Jetley: Mr. Chair and Commissioner Zigmond, I don't think it's our responsibility to ask Castle & Cooke what their sources because they're the developers. It's their responsibility to find the water for this project. If they can't find the water, they can't do their project. And if they don't have it, then they don't have it. They not going to be able to build out. I would like to go with their proposed amended condition and that – I'll read that – “that the applicant shall continue develop non-potable water sources in addition to wells #1, 9 and 14 as necessary to meet future irrigation demand.” That's the end of my motion.

Mr. Elliott: I second.

Ms. Kaye: I would – discussion – that’s worse.

Mr. Gima: Okay, it’s been moved and seconded that condition #14 reads that the applicant shall continue to develop other non-potable water sources for irrigation purposes in addition to wells #1, 9, and 14 and as necessary to meet future irrigation demands.

Ms. Kaye: So you’re not considering the second sentence? Okay.

Mr. Elliott: Can I speak to the motion?

Mr. Gima: I’m sorry, a motion was made by Commissioner de Jetley and seconded by Commissioner Elliott. Any discussion? Jim?

Mr. Elliott: I want to just speak to the fact what I think absolutely everybody knows and understands that water on this Island is a huge concern, and it’s going to continue to be as we go forward. The only concern that I have at this moment is looking at this particular project as a point to sort of draw the curtain on the water issue. I know it’s going to have to happen. It’s going to be dealt with at some point, and what we’re looking at right now is a relatively modest expansion of a project and if I could bring everybody’s attention back to our October 3<sup>rd</sup> meeting where a community resident said “I speak tonight as a resident of Lana`i. I was born and raised here – moved back in 1990. I think you guys are facing a very important decision here,” and going on and it says “if you decide to deny, maybe 25%-30% of the community people will not have jobs to continue on.” In other words, we have a process that’s going on in the island that includes development and it includes an awful lot of people’s jobs that are involved here right now.

And it’s my opinion, while water will always be huge concern, that this continuation of this project – I think the big concern that Castle & Cooke is going to have is when they come for the next phase of the project which I think is going to be a major, major battleground from everything that I’ve been able to learn over the last few years. But what I’m concerned about is what we’re doing here right now is we’re messing with the possible lives of a lot people that are residents right here on this island that are connected with the jobs and everything that are going on. That’s what I think is really taking place here because this is not a huge project, and in terms of this project will not even be completely built out in five years. And I want to remind everybody that the build out that’s being developed by the Lana`i Water Advisory Board and so on is based on 20-year projection of where a plan is being put together to make sure that the water is in place to be able to do that. But we’re not at that threshold on this project right now. That’s just my opinion. This is not the threshold time for this issue and I’m concerned that if we take steps and take actions here now, we could inadvertently harm more people on the island of Lana`i than we think we are really helping. Because now we’re talking about numbers and so on, but the fact is that when you look at water use numbers there’s enough water available according to all the projections and standards in order to sustain the growth of this project by the numbers that have been presented to us. That we know, and that is fact.

And it's not to say that this #14 doesn't need to stay in place because it does. The Company knows very well it needs to find alternative water sources because they're not going to get another – in my opinion and it will be long after I'm gone off of this Planning Commission, but in my opinion, they're not going to get another project passed until that is really resolved. But right now, we're just talking about a five-year extension for about 160 homes which won't even be built in five-years. So that's what I think we're dealing with. I think it's been an excellent point. I commend Commissioner Kaye for the in depth detailed work that she's done in putting all of this together. I think it's really well to bring a heightened awareness to this whole issue, but I think now we need to have an awareness of what are the actions and what are the steps that we're doing and how does it affect the further development of progress on this island is what I would say. So that's why I do not want to – I don't want to go much beyond – that's why I support the motion that's on the floor as it's read, and it would be very interested to hear any alternative or amendment to that motion and what the potential effects would be because I think the proposed motion deals with what we need to deal with on this island right now. Thank you.

Mr. Gima: Okay Bev.

Ms. Zigmond: I think that emotional appeal by Mr. Allas in stating there was some 25% of the island's jobs were at stake for that little part of the construction project was way too high. I'd like to hear the names. I'd like to really know who. There's so many construction workers down there that don't live on this island. I think that was an emotional appeal.

Ms. Kaye: I'd like to ask you a couple question because of what you just said, and one of them is a long the lines of what Bev just responded. What's the math? How many people are impacted if 25% to 30% of the population is laid off – how many people is that?

Mr. Elliott: On this island?

Ms. Kaye: He said 25% to 30%.

Mr. Elliott: Well, I'm not – I don't think –.

Ms. Kaye: The math is 824 people.

Mr. Elliott: Yeah.

Ms. Kaye: And I do not believe there are 824 people. Now that's point one. You also said you think this is really a small development area, but it's not just the number of units, it's the amount of water. You don't consider 435 million gallons – thousands – sorry, sorry – a big increase than what's already going down there? You're on that committee.

Mr. Elliott: Well I'll tell you my interpretation of it is that this project is not going to alter that system to such a degree. And I think by stopping that project, for example – not that we're suggesting that we would do that – but if we did, what I'm suggesting is that the alternative impact on other people would be greater than the ability to just move forward with allowing a few more homes to be built over the next five-years, and it's certainly not going to be

160. I mean, I'm watching a house that takes two-years to be built and that's just one house. So I mean, they're not going to build a 160 house in five-years. And so we're talking about a five year extension that allows the island to continue forward in the development process that was initiated many years ago. And I don't believe that this project would necessarily alter the balance of everything on this island. That's what my point of view is.

Ms. de Jetley: Mr. Chair, I wonder if anyone from Castle & Cooke can answer this question. I've heard that this week alone there were 15 construction lay off in the Manele Project District. Is there any truth to that?

Mr. Masuda: Actually, the total is 20 island residents got laid off in Lana`i Builders, and 10 from Rock and Concrete, so 30 total.

Ms. Kaye: And I was told by one who was laid off that it was directly result of the Pines not going forward, and the Palms not going forward – that's what they were told. It has nothing to do with this.

Ms. Zigmond: Most of them have been reassigned already.

Mr. Masuda: Where have they been reassigned to? I want to know that.

Ms. Zigmond: Some of them are now driving buses Ralph.

Mr. Masuda: That is not the construction site of this Company. That is the hotel and that is not under our jurisdiction. It's Four Seasons. We're talking about Lana`i Builders and Lana`i Rock and Concrete people.

Ms. Zigmond: Which has nothing to do with this project that's before us.

Mr. Masuda: I don't know how you can say that because Lana`i Builders also is building, you know, the infrastructure work that we need, and Rock and Concrete – we need crush rocks and materials for concrete and all of that. I mean I don't see how you can say it's not tied into this approval. Everything on Lana`i is tied in.

Mr. Gima: Okay, we still have a motion of the floor. Any other comments?

Ms. Kaye: Say it again.

Ms. de Jetley: Since I made the motion, I'll read it again. That the applicant shall continue to develop non-potable water sources in addition to wells #1, 9, and 14, as necessary to meet future irrigation demands.

Mr. Gima: Question was when does public testimony come, and it will come before the final vote.

Mr. McOmber: . . . (Inaudible. Did not speak into a microphone.)

Mr. Gima: Okay, I need some help procedurally here Colleen.

Ms. Suyama: . . . (Inaudible. Did not speak into a microphone.) . . .

Mr. Gima: Okay, we're been advised. We'll open public testimony to the whole agenda item, not only on condition #14. So at this time, I will open up to public testimony. Motion is still on the floor.

Ms. Suyama: . . . (Inaudible. Did not speak into the microphone.) . . .

Mr. Gima: Okay, Colleen suggested that we withdraw the motion and the second, take public testimony, and then re-state the motion.

Ms. de Jetley: Mr. Chair, I would be agreeable to that. I withdraw my motion.

Mr. Elliott: I agree. As the second, I agree to withdraw the motion.

Mr. Gima: Okay, it's been moved by Commissioner de Jetley and seconded by Commissioner Elliott that we withdraw the original motion made by Commissioner de Jetley. At this time, we'll take public testimony. Pat Reilly.

Mr. Reilly: Thank you Chair Gima. I really appreciate Commissioners – welcome Stanley – for taking this time and this is agonizing but you're wonderful for doing it. I have three or four things to say. It's clear to me, and I'm sure it's clear to everybody, that you need to have a workshop on water, and you need to see what Commissioner Elliott and Commissioner Gima are seeing in terms of the total project. That's the only way you're going to understand how these incremental projects are going to come up. I agree with Commissioner Elliott that this is one small portion of the whole development at the Manele Project District. You need to see how the water use as described in the plan before the Water Advisory Commission is placed. That may give you a little more comfort. However, every time there's a project, you will come to this issue.

My understanding of the language in that condition is the other means outside the high level aquifer, and the reason that that's what I think it means, it was placed there when the project district first was being considered by the Land Use Commission and by the County Council. And it's because of what you've already said. This is one aquifer. If you pull non-potable water out of the single aquifer, potable water runs down into that well. So no matter what you're pulling the water out of, you're draining potable water towards any existing well.

Thirdly, I agree with the Water Director is you have to be concerned about the condition of the wells and the ability of the corporation to maintain the wells and its transportation system. A gentleman was here a couple of weeks ago who use to be – 21 years ago he worked for the plantation – he said, it's kind of sad because all those pipes we put into the pineapple fields are just rotting. Okay, we're not going to use those pipes anymore and there's a separate water system that's been put into the town and down for Manele. But his vision was, we put a lot of work in the infrastructure and now it's rotting out in the

pineapple fields because we can't use that transportation system. This is a big expense for this company to produce these wells, to drill the wells, and to maintain it. That's a big issue for this community and it will be an issue in expenses. So I would guess in your water meeting, you need to have the Commission on Water Resource Management, you need to have LWAC, you need to have the County Water Department, and LSG make its presentation before you and I think you'll get a comprehensive picture.

I emphasize again "other means," to me means, no water from the high level aquifer. That creates a big barrier. Fourthly, this condition, if you give them five years, if you give them three years, you want to see a tangible result because this permit is going to come again, and again, and again, because they'll never build all 166 houses and 54 units. So this permit will be renewed. So think of it concretely. What do you want to see when this permit comes up again and you won't be here. And as related to that, I have this, the minutes of all meetings of the Lana`i Planning Commission, the agenda which include a future Special Management Area, Phase or related permit applications shall be attached to materials prepared by Maui County Planning Department to the Lana`i Planning Commission when this comes up again. So at least the Commissioners that have to see it would be able to read the minutes of your detailed discussion at that time. Thank you very much.

Mr. Gima: Hold on Pat. Thank you. Any questions for Pat?

Ms. Kaye: Pat, I have a question for you. You said something along these lines before and I know you sat in our chair for a while, what would you recommend? What kind of accountability?

Mr. Reilly: Accountability would mean, you see a well, you see a desal plant, you see a fund of money put in escrow to move that project forward, or you see some progress in the construction of it. So I mean whatever makes sense in terms of this condition of having potable water, an alternate water source, I would want to see something concrete. Either a significant plan and a funded plan or a well being drilled and put into operation. You yourself noted here that the well was drilled in 1995 and didn't go on line until 2004.

Mr. Kaakua: Correct.

Mr. Reilly: So something happened. Is that a standard that sufficient to meet the needs of this condition? You have to set a standard that meets your needs. Do you want to see desal plant in five-years? That's probably pretty unrealistic. But what would you need to see to say, yes they've met a minimum standard to have addressed this condition. That's what you're saying they haven't done in your argument but I think you need to think about that – what is a reasonable standard in five-years or whatever years you're giving them. Thank you.

Mr. Gima: Thank you Pat. Ron.

Mr. Ron McOmber: Name is Ron McOmber – resident of Lana`i – member of LWAC, president of Lana`ians for Sensible Growth. I gave each and everyone of you a copy of

the MOA. And in that MOA, specifically, Castle & Cooke promised not use water from the high level aquifer. If this goes through, allowing them to use this water, and not watching that, I would add to this, and the recommendation of developing alternative water source, the key word is outside of the high level aquifer. It has to be because if you give them permission to use this water from wells #1, 9 and 14, or any other wells along that rift area, they're going to have the same problem they're having now.

The reason they want to drill another well right now is well #9 is failing on them – failing severely on them. They have to rest it for hours at a time. They pump it for four or five hours and then they have to rest it. We've heard this from the Water Director. We've heard this from other people. I heard this from Harry Saunders the other day sitting in a meeting with Mr. Murdock. Mr. Murdock went through the roof when we mentioned – well I mentioned to him desal. He is absolutely adamant about doing desal. But without doing desal there's no other water on this island. I recommend that if you're going to give him this condition, #14, the key word has to be outside of the high level aquifer. It cannot be in the major aquifer – they've already tapped it and they've already having problems. Well #14 is the most recent well. Well #9 was the first one they put in service and when they first pumped that, they were getting nine and 12 and 14 million gallons every 28 days. It's down to three and four and five million every 28 days. The condition was when they put well #14 in – and you can challenge me on this, I know these numbers – that they were going to use well #14 and well #9 equal. They cannot do that. They're pumping 13, 14 million every 28 days out of #14. #14 is going to fail on them like well #9 did. It's almost in the same line. And if it does that, they're going to have to build in another well, beside the well they're talking about. The only reason they were going to put another well is #9 is failing on them.

And it wasn't too long ago the chloride levels in #1 dropped below 287 parts per million. 250 is the Health Department's regulation on drinkable water. When it hit 287, guess what? The Company jerked that well report away from our local boy that was doing it and gave it to a guy from outside island to change those numbers, and they came in over 300 from that time on. That is suspect. And we watched it at the Water Working Group. These are facts folks. This is not taking a poke at the Company. They're hurting for water, and the amount of water they're using at Manele right now – that reservoir down there shows about 5-million gallons by visual. I just did the number up to date, and there should be 29 million gallons in that reservoirs. It has about five or six in it right now. Where is the rest of that water going that's not being metered? This Company is not creditable on their water so do not give them the courtesy of letting them get off the hook. Make them accountable for this water. It has direct reflection on the SMA because the water taken out of that aquifer is feeding the SMA project at Manele. That's all I've got to say. Do not let this happen. If you're going to put a condition on there, then put a condition that water has to be outside. They have to develop a source outside of the high level aquifer. Thank you.

Mr. Gima: Thank you Ron. Any questions/comments for Ron?

Mr. Elliott: Ron, I do have a question. I guess the question has to do with the wording that you're talking about here, and I guess the question that I have is are you concerned at this point on this project of that wording over and above the possibility of construction lay-offs



and that sort of thing. I mean, would that –. You're not going that far. Am I understanding that correctly? You're saying wording needs to be done to create an accountability over the next five years, and therefore to go ahead and approve the five year time extension? Am I not correct?

Mr. McOmber: You didn't hear me say that. I don't think you should give them five years.

Mr. Elliott: You don't?

Mr. McOmber: My personal opinion. But that's not what I'm here talking about.

Mr. Elliott: And my question of you again, is that you think five-years should not be given even though such an action might involve the jobs of a number of residents here on Lana`i.

Mr. McOmber: That's bull. That's bull.

Mr. Elliott: Well –.

Mr. McOmber: I don't believe that for a minute.

Mr. Elliott: If there isn't any construction work going on down there, where are those people going to work? Are you saying they don't live on the island here?

Mr. McOmber: Most of the construction workers that got laid off, got laid off already. They've got some homes to build here in the city. They've got small projects. The big projects like at Kaumalapau is done. The big project down at Manele is done. Most of the flat work is done. Most of that stuff is going to turn over here in the next two or three months. This would have happened anyway. These lay offs of these 15 to 30 guys had nothing to do with water issues. I'm here to protect the aquifer, and the water resource.

Mr. Elliott: I know your passion for that, and I'm concerned about, and I think we all are. I think if there's a difference of opinion is how – at what moment does that aquifer come in to serious, serious jeopardy? I think the figures that we've seen. I've sat on the committee. Am I not right Butch, isn't there roughly – isn't the trigger four million gallons a day on the study that they talked about, and we're looking – no, or is it three and we're at two. Isn't that correct? I need somebody to – because I've seen so many different numbers. It gets really confusing. It really does. But my question really Ron is that the idea – is it really your intention that this five-year extension should not be granted and that's not your intention is it?

Mr. McOmber: No.

Mr. Gima: Excuse me Jim. He didn't even address the five-year extension.

Mr. McOmber: Yeah.

Mr. Gima: He's just addressing condition #14 I believe.

Mr. McOmber: I'm only looking at #14 and protecting that. I'm telling you what I'm seeing in the periodic water report and what is happening with those wells. And those wells are the major, major supplier of water to the Manele Project District – major – those three wells. More than any other wells on the island. You never heard me say you don't have enough potable water. You never heard me say anything like that. I'm telling you that there's something terribly wrong with this water system in the Palawai Basin. And building another well is only going to correct what well #9 is doing. We had people way back long before you were on this island that said to do that aquifer right. You'd have to put five wells along where well #1, spacing them so many hundred yards apart because they will never ever last if you continue pumping like you're doing. And when #14 goes on its okole and everybody is certain that we had a chance to make a comment about that. I'm saying develop the additional water they need outside of the high level. If they don't have it, then desal. And if they don't want to desal then Murdock can close up his little luxury home packages and go home. We'll still have our drinking water and that's my concern, and I haven't changed that. So five-year extension, that's up to this group. That's what – you guys make that – that's not what I'm saying. But condition #14, you need to put a condition on there that says it will be outside of the high level aquifer.

Mr. Gima: Okay, thank you Ron.

Mr. McOmber: Thank you.

Mr. Gima: Any other public testimony? Okay, at this time, we'll close public hearing.

Ms. de Jetley: Joe, if we did do that proposed amendment and added that it would be for water sources outside of the high level aquifer, would you be able to live with it?

Mr. Kaakua: Live with finding sources outside of the high level aquifer? I think it's difficult to find quality water even for irrigation outside of the high level aquifer. But, just reading past material, I think it's difficult. I think we tried. I really have to defer to our geologist as to whether there are viable non-potable sources for irrigation outside of the high level aquifer. I think a lot of people tried in the past not successfully.

Ms. de Jetley: I have another question that I'd like to address to Mr. Masuda. For your future development, the 166 single family homes and the 54-multi family homes, could you possibly see whether or not it would even be feasible to put a covenant on the new homes that you built that they would have to use conservation management on their properties and that they would have to adjust their landscaping so that we're not looking at very lush, green, tropical retreats. Do you see that maybe happening to make this a viable project?

Mr. Masuda: They all jumped ship.

Ms. de Jetley: My biggest –

Mr. Masuda: I think that would have to be done.

Ms. de Jetley: See my biggest thing in looking at this whole project is we're not looking at

a brand new project. We are looking at extending a permit for an existing project that absolutely has almost no way of being built out at the end of five-years.

Mr. Masuda: It won't.

Ms. de Jetley: So I think, you know, what I see us doing now is just deferring and deferring, and coming up with all of these questions. And we're never going to be able to get past this to come to some kind of a decision. I don't know where the rest of the Commissioners are, but I keep throwing out – I can keep throwing out motions to try to get something done, but I don't see how we can come to some kind of resolution on this.

Mr. Gima: (Inaudible. Changed cassette tapes) That's a point well taken and this has dragged on, you know, longer than six months and it's important to note that the thing that really triggered the deferral was that parking. That was a big thing – the parking. And six months went by in order for the Company to comply with that, and during the interim, I think, we looked at this request a lot more thoroughly and saw some pukas, and I think that's why we're going through this very important discussion. And yes it is frustrating and it's difficult because we may want to impose certain conditions but we don't have the foundation or basis by which to do that. And both Corporation Counsel and Planning Department has made that well aware. At the same time, I feel frustrated because this is one part of the project district and it's hard to see it just in of itself because it would have been helpful for me in making the decision if I knew all that came before this and what's going to come after so you can look at the big picture as oppose to just this small part of the project district.

You're right Jim, in the Water Advisory Committee, right now the Company is pumping approximately two million gallons a day, potable and non-potable. And that Joe has provided us information that the pumping capacity of all the wells, pumping 24 hours a day, is around six million gallons. But if you do it at 67% then it comes down to like about four. So, yeah, there is that buffer. That's one part of things we need to take into consideration, but we also have to take into consideration of looking at the cumulative effects of this request. And we have to look at the cumulative effects it has on the aquifer.

I cringed when you started talking about jobs, and let me give you a back drop on that. Back in the early 1990's before the Land Use Commission hearings, Tom Leopard saying Lana`i is going to turn out like Moloka`i and we're going to be a welfare state if you don't pass this. And so, I cringed because I don't like to be put in the position that I feel threatened. We should deny or approve this based on its merit, not because –

Mr. Matthew Mano: . . .(inaudible) . . .

Mr. Gima: Right. And so I just needed to let you know that. That having been said I'm not sure especially with Corporation Counsel not being here, I'm not sure we can add more restrictive wording to condition #14. Does anybody feel otherwise at this point?

Mr. Elliott: Can I just respond to your point because I just want to make it very clear? I agree with you. If it was an issue between jobs and having enough water to support the

island, there is no question about that. And I'm certain, and I'm not suggesting that. But – just to come back to what you said – what I said was I don't believe this project is going to be the thing that's going to tube the water system on this island. That's my point. But if we didn't act appropriately, then jobs would be affected and I believe, unnecessarily. So that's my whole point, and I don't want to see jobs affected unnecessarily, but I certainly would agree it would be on its merit if it's a choice between water for the island or jobs – of course it's water. I just wanted to clarify that.

Mr. Gima: The trend now and I think Sally has provided us some resources – the trend throughout the State and – the County, the State and the Country is that people in our positions, we have to take the responsibility of insuring water is available at the time of approval. Historically, that was not the case. They got their approval and then you go find the water. I don't want to be in a position where I approve something and then later they say where's the water? How come you guys approve it if there was no water, or if there was no source or there was no identification of the source of the water? I don't want to be in this position. I don't think our Commission should be in that position. Ralph.

Mr. Masuda: We have the water for this project. We have the water. That's all. I mean, we have the water.

Ms. Kaye: You've had more than enough advance notice that we were going to ask this sort of question and you're still just saying "we have the water," but we don't see it. So I'm wondering if we could add some other condition to this – a condition of a report – Alberta let me finish please. If your position is from what you heard Corporation Counsel say that we're not in a position to absolutely require where it comes from at this point in time. That could be adjusted in time factors or whatever. But to reinstate the wording – to use your words that it would be other – I mean, I don't see the difference – if you put in develop other non-potable water sources in addition to wells #9 and 14, you say the same thing. And then maybe we could add something about a compliance – a build out report with water usage on a year to year basis. And then they have time to find out where its coming from.

Ms. de Jetley: I'm wondering if I can throw out my motion again. Put it out on the table and see what happens to it – see where we are.

Mr. Gima: Just to reiterate. You're saying that Castle & Cooke has the 435,000 gallons for this project request, recognizing that within the five-years you're not going to have full build out, but you have that water.

Mr. Masuda: Like I said, we have the water.

Mr. Gima: Okay, where is coming from?

Mr. Masuda: It's coming from the potable wells.

Mr. Gima: Potable?

Mr. Masuda: Are you talking non-potable?

Mr. Gima: That's what condition #14 is – non-potable.

Mr. Masuda: Wells #1, 9 and 14 we have enough water. That's why we're still looking at another well. I think your problem is that it's coming from the high level aquifer.

Mr. Gima: That's one problem. So you're saying the additional – the potential, additional 435,000 gallons can come from #1, 9, and 14, in addition to what's already being pumped on a daily basis. Is that what you're representing?

Mr. Kaakua: We're putting in a fourth well – a new well – non-potable well.

Mr. Gima: With a capacity of?

Mr. Kaakua: We'd like to have a capacity of ½ million gallons a day.

Mr. Gima: And potential location of this fourth well is?

Mr. Kaakua: Along our transmission line near the bird farm.

Mr. Masuda: Which goes on to say that we are meeting condition #14.

Mr. Gima: Any comments, questions Commissioners?

Ms. Zigmond: Mr. Chair.

Mr. Gima: Bev.

Ms. Zigmond: How about this wording – that the applicant shall continue to develop sources of non-potable water for irrigation purposes in addition to wells #1, 9, and 14, and report on the projected irrigation demands associated with the proposed development and how it is being met for each year during that extension period.

Ms. Kaye: I would amend to insert other – “other sources” – and I think if you want that to be precise, maybe it needs to say the project – what did you say – the project district? Proposed development – does that need to be more specific like the Phase 2? Come on help me out here guys.

Ms. Zigmond: That the applicant shall continue to develop other sources of non-potable water for irrigation purposes in addition to wells #1, 9, and 14, and report on the projected irrigation demand associated with the proposed development and how it is being met for each year during the extension period.

Mr. Masuda: How do you want the report to be presented? On a monthly basis? Bi-monthly? Or as the same as an annual report? Or every six months? How would you want this condition to be reported?

Ms. Kaye: Can I ask you a question about that? I'm so glad because I didn't want to forget

to do this. You want to build 166 single-family units down there, and how many are still unoccupied? You don't know.

Mr. Rumbaoa: . . . (Inaudible.) . . . .

Ms. Kaye: Eight. And they're built out – the lots. And so that leaves 150-something, and how long – when was the last of those eight completed? How long did it take to do those eight since 1995?

Mr. Masuda: . . . (Inaudible) . . .

Ms. Kaye: He just said since 1995. Okay, we have 150 left, and you have no idea, the market could turn around or it continue to slump and you may – you don't know. So, would a monthly report say “nothing happened, nothing happened, nothing happened?”

Mr. Masuda: That's right.

Ms. Kaye: Okay, so quarterly? Still nothing happens. I mean, you're asking us, and we don't have the information to answer you.

Mr. Masuda: We don't have that information either.

Ms. Kaye: So it's just all a guess.

Mr. Masuda: Quarterly – I mean basically quarterly would probably end up “nothing happened.” However, because we can do it ever six months, based on condition #14, we can do it ever six months, but the rest of the conditions would be annual.

Mr. Gima: Dwight and then Jim.

Mr. Dwight Gamulo: You're asking for an extension of this project, and you want 160 or whatever, but you're not ever going to finish them in five-years right? Why don't you get a different permit?

Mr. Masuda: We cannot wait. We cannot file another permit.

Mr. Gamulo: It would take too long to file another one?

Mr. Masuda: That's right.

Mr. Gamulo: Can you reduce the number of units that you have in this plan?

Mr. Masuda: It's only 166 and 54, plus the 38 for the Palms.

Mr. Gamulo: Yeah, but you're not going to finish it right?

Mr. Masuda: Well we're going to continue working on it. You'll never know.

Mr. Gamulo: My point is that we give you a permit to do these and you don't do it right, then you ask for a permit to do the other ones, and we'll work on those later.

Mr. Masuda: No, we can't do it.

Mr. Elliott: I was just going to say that I heard Beverly's motion and I thought I heard Ralph respond. And if she's happy and Ralph's happy, I just wanted to say I'm happy. If we can get this thing to work, then off we go, you know?

Mr. Masuda: I think you need to add the time period to your condition.

Mr. Gima: You mean the reporting time period? It's not a motion. She just threw it out for discussion. Any other comments before – in the event she does make a motion? Any further questions?

Ms. Kaye: I find it's really interesting that Commissioner Reilly had that interpretation of "other." I think that all the points you've made historically about leaving the high level aquifer alone is great. I am understanding you to think that we don't have the juice to go there right now. And I would argue that that would be a perfect use of SMA connection between the aquifer, but that would be for findings of facts and conclusions of law. I think there are provisions that would support that, but –.

Mr. Gima: I mean, there's a back up to this both positive and negative because of the Land Use Commission having to decide on the Supreme Court remand, they may rule that the Company cannot use water from the high level aquifer, and then it will then affect this decision. However, if they say they can, then it would support the current condition #14. Would you tend to agree with that Colleen?

Ms. Suyama: . . . (Inaudible. Did not speak into the microphone.) . . .

Mr. Gima: So what's your pleasure Bev?

Ms. Zigmond: I make a motion that condition #14 reads that the applicant shall continue to develop other sources of non-potable water for irrigation purposes – I'm biting my tongue. I'm not saying what I really want to say – in addition to wells #1, 9, 14, and report on a semi-annual basis on the projected irrigation demand associated with the proposed development and how it is being met for each year during the extension period.

Mr. Mano: I second.

Mr. Gima: Okay, it's been moved by Commissioner Zigmond and seconded by Commissioner Mano on Bev's motion. I can't repeat the whole thing. Any further discussion? Hearing none, all in favor, say aye. Oppose? Okay, motion is carried.

**It was moved by Commissioner Beverly Zigmond, seconded by  
Commissioner Matthew Mano, then unanimously**

**VOTED:** To amend condition #14 to read “that the applicant shall continue to develop other sources of non-potable water for irrigation purposes in addition to wells #1, 9, 14, and report on a semi-annual basis on the projected irrigation demand associated with the proposed development and how it is being met for each year during the extension period.”

Mr. Gima: Okay, do we want to do with anything with proposed condition #24 or 25? Let's take a 10 minute break. We're in recess.

*(The Lana`i Planning Commission recessed at approximately 8:50 p.m., and reconvened at approximately 9:00 p.m.)*

Mr. Gima: Okay, we're still on the same agenda item. We're looking at condition #24/#25. Sally and Bev, I think you guys had some things you wanted to discuss.

Ms. Kaye: If I could expedite this so we can continue on conciliatory manner here. As Ralph pointed out, conditions #2 through #13 and #15 through #23 have been adequately, and I think the County would agree to this, addressed and should remain in place for the extension period subject to an annual compliance report. Right? Okay. I think on the list that was originally submitted for #24, e, f, j, k, l and m are all – we agree on the language of it. I know, I'm sorry – e, f, j, k, l and m.

Now f had, and I'm making the record here, f has to do with the Department of Health's annual reports which Cliff Jamille told us last October happened here on an annual basis. I called the Department of Health, and in fact, they told that doesn't happen on an annual basis, but that every couple of years, a sanitary survey is conducted. And they said that one was conducted in August of 2005, and sent to a John Harrison in September of 2005. So that's, I think, the kind of thing that you're saying you would supply? So we agree that any Department of Health activity that happens and I don't know of anything besides the sanitary survey. So those are off the table. We agree that those, as Castle & Cooke has worded them, are fine. I wouldn't quibble over language at this point.

Now c, again – I just want to make a record – c is the condition of the lines and the wells and replacements. And I actually put that in there because Cliff Jamille and Rocky Sanches and Tim Hill and Tom Todi were so wonderful in sharing information and they were so proud of their system, and it was abundantly clear that the Company has put huge amounts of money into up grading the system, and I thought this would be the chance for them to brag on their system because they so clearly were proud of it. But if that's not the kind of information you want, I wouldn't fight over that, unless somebody else on the Commission thinks it's important.

So nobody has an opinion on c, and you still don't want to talk about that kind of information? Okay.

Mr. Gima: A lot of that is discussed in the Lana`i Water Advisory Committee.



Ms. Kaye: So we can assume that will come here at some point? Or you'll bring it here? I mean that's always been the issue is you guys have it, but there's only two of you on. Okay, take it off.

Mr. Gima: Yeah. We can, and Jim, technically, is a representative from the Lana`i Planning Commission to the Lana`i Water Advisory Committee.

Ms. Kaye: So you can provide us that information, then great. Okay, g, was the one that Bev brought up, and I'm not clear. My question was also why landscaping and construction couldn't be provided along with the data because I understood that there are meters down there – one for the golf course and one for landscaping – is that correct? And construction, Butch you asked at one point, how much construction water had been used? And I think Clay provided those figures and said it was 30,000 for 2005; 57,000 for 2006 and 35,000 up until June of 2007. So clearly that data is available, so I'm just kind of curious why you wouldn't want – why did you take those two out?

Mr. Masuda: You're talking about g?

Ms. Kaye: Yes.

Mr. Masuda: We still have construction in there.

Ms. Kaye: I didn't see. I'm sorry.

Mr. Masuda: In my proposed, in my response.

Ms. Kaye: Right, but your proposed condition took it out.

Mr. Masuda: But it's covered in the – I see what you mean – isn't it covered in the periodic water report? Or the quarterly reports?

Mr. Kaakua: Quarterly.

Mr. Masuda: Quarterly reports – these meter readings on both potable and non-potable usage for hotel operations – and it's covered in there.

Ms. Kaye: In what?

Mr. Masuda: In my proposed condition.

Ms. Kaye: I see.

Mr. Masuda: You want us to add construction in there? We can.

Ms. Kaye: In landscaping because it's metered. You said at one point, in a prior meeting, that landscaping was metered. So I didn't know if it was just an oversight or you had some reason for not wanting to.

Mr. Gima: Sally, what was the end result you're looking for?

Ms. Kaye: I would propose my language for g as oppose to Castle & Cooke's because it just has a few more.

Mr. Masuda: It says that you have metered readings of water usage both potable and non-potable that differentiates between what is being used for hotel operations, hotel irrigations, road side landscape irrigation –.

Ms. Kaye: Would Jim or Butch have? I mean, is that data available?

Mr. Masuda: Roadside landscaping, irrigation, Hulopoe Beach Park, the golf course, construction and residents.

Ms. Kaye: It's a typo. So is that acceptable?

Mr. Gima: Again Sally, what specifically were you looking for if this information is provided?

Ms. Kaye: That we have a clearer picture. I mean, right now, it's all water potable going – yeah – no, it's not even the potable water that's going to the Manele District, it's just which wells – the amount pumped. The non-potable water just goes to the Manele District. We don't know where it's going, and I just thought that kind of detail would help the next Commission understand where the water was going and prevent this from happening.

Mr. Gima: Jim, use the mic.

Mr. Elliott: I'm not aware that we have any roadside landscaping report at all. I've never seen anything like that.

Ms. Kaye: Is it possible to get it? Is that metered? You don't know.

Mr. Kaakua: We'd have to pull out individual meters for roadside. Construction meters –

Ms. Kaye: Do you keep track of this kind of allocation over your water?

Mr. Kaakua: We bill construction meters. Construction meters are basically on the fire hydrant – the temporary meters – so it's one of our customers that we bill. Billings are done by monthly, every two months. No, in this report, we do not have irrigation, roadside irrigation meters.

Ms. Kaye: That's not part of the periodic water report.

Mr. Kaakua: Yeah, this is a quarterly report.

Mr. Masuda: Quarterly report is a requirement for the Palms, site C. When we went in for zoning, from the County Council, and they put that requirement on there, and that basically

deals with the Manele Bay Hotel Beach Park multi-family, single-family.

Ms. Kaye: So I'm hearing you say, you're already having to compile that information for somebody?

Mr. Masuda: But it wouldn't include the construction or the roadside landscaping. We can give you the Manele single-family and multi-family irrigation figures.

Ms. Kaye: And that information is not available from your (inaudible) either then?

Mr. Elliott: The answer is no because all we get is the –

Mr. Masuda: You get the periodic water report.

Mr. Elliott: The monthly –

Ms. Kaye: Well, I put it in there because I read through all the old minutes. When issue has come up over the last year and a half and these were questions other Commissioners asked so I put it in assuming it was important to them.

Mr. Masuda: Well, we'd be willing to furnish that information. If we had the data for roadside landscape irrigation, then we will provide it, but probably we won't. It's probably just covered under single-family and multi-family irrigation.

Mr. Elliott: Can I make--? There are separate associations at Manele Bay. There's the – and then there's the homeowner's association which is responsible for the roads and the landscaping so that the Manele Bay Homeowner's Association should get an irrigation report for the water as well as the individual Terrace units, so it should exist.

Mr. Masuda: Like I said, if it does exist, we'll provide it.

Mr. Gima: Are you looking for end use or source?

Ms. Kaye: . . . (Inaudible. Did not speak into the microphone.) . . .

Mr. Gima: Okay, so where are we now?

Ms. Kaye: Again, it's not a drainage plan, and I apologize if I was imprecise. It's not a drainage plan for each swimming pool. I know you don't have access to that because they're on single-family. If I lived down there, and I emptied my swimming pool, does it go into the sewer? My question was prompted because I read the covenants down there and they're not allowed to go on the golf course. It goes into the sewer. Okay.

Okay, so your wording of h is fine. I have no problem with that, unless somebody else does, and you've explained why drainage was taken out because you don't have access to that. And I just really would like some clarification of the fact that you said at the last meeting that there aren't any swimming pools on the multi-family units, and Mr. Fasi's

report to us has consistently maintained that there can be swimming pools in the multi-family units. Could you just clarify that?

Mr. Masuda: For multi-family, basically, what we have are spas.

Ms. Kaye: So Mr. Fasi was wrong in saying swimming pools. So there will be no pools?

Mr. Masuda: There is no swimming pool per se.

Ms. Kaye: Per se?

Mr. Masuda: But we do have –

Ms. Kaye: It's a yes or no question here Ralph.

Mr. Masuda: What I mean is there is no swimming pools, but we do have spas. And basically it's approved. It goes through during the phase 2 and phase 3 process.

Ms. Kaye: And you said the number of spas existing at the time when it was originally constructed, that sort of begs the question of can they change that? Can they add something else? Why did you say "originally?" . . . (Inaudible) . . . I just wondered what that meant.

Mr. Masuda: All the spas are not the same. I mean, it can be circular, it can be rectangular, but they hold different capacities of water.

Ms. Kaye: But originally constructed – implies that there will be a change to it or a modification or something. I just wanted to ask you why you put originally.

Mr. Masuda: You mean, why we put approximate?

Ms. Kaye: No, why did you put in originally?

Mr. Masuda: Okay, the SMA and PD2 area covers only the 54 units of the Terraces, so that's the originally constructed – applicant in the multi-family project located in the subject SMA and PD2 area. That's only the Terraces. The Terraces A and B. That's what was approved for the SMA and Project District Phase 2 that's under consideration tonight. There will be, in the Palms – no, no, not in there. Because we don't have – this is the maximum that we get – 54 units.

Ms. Kaye: 54 is already done? They're finished? You're going to have more to build?

Mr. Masuda: Not in this area.

Ms. Kaye: Okay.

Mr. Masuda: It would have to be in another area like the Palms.

Ms. Kaye: Any comments from anybody? Okay, I thought your response was funny, but I know you didn't think I meant tent permits. I laughed pretty hard on that one. That's not what this was intended to do. It was really in response to Pat Reilly, former Commissioner, saying time and time and time again that we don't have a matrix. We don't know the outstanding. We just learned that the Palms wasn't part of this like two meetings ago. So it was really just where are you on all the permit applications and subdivision processes within this project area. I know that's not on the table, but as Butch pointed out, for us to be able to look at cumulative effects, it's helpful to say, for example, next year, we only did five lots and we're not doing anything else in any of the other areas and here's where we stand on our Palms.

Mr. Masuda: Our proposed condition that progress reports from the subject SMA and PD2 for subdivision processing and drainage improvement shall be provided. Is that enough or do you want a little more?

Ms. Kaye: I think, if it's the pleasure of the other Commissioners, it would be helpful to the whole project area. You know, where are you on the Palms and the rest of it. Because if you're only going to give us what we have now, you've already agreed to do that as part of it. No you haven't really.

Mr. Masuda: I hate to stray from the original project. The Palms, I think it can come up. We may need a time extension on that.

Ms. Kaye: Okay Ralph, let me ask you this then. Is that the only thing that's left out? Is the Palms the only thing? This SMA and PD2 covers everything?

Mr. Masuda: That's right, except for the areas that we haven't gotten permits yet for.

Ms. Kaye: Oh.

Mr. Masuda: The areas outside of this 166 and 54 which includes the Palms and which includes areas that we haven't even planned out yet for the Project District. Project District is 868 acres, so we haven't gotten in the first base yet, except for the zoning.

Mr. Gima: Just to reiterate Ralph, I think what Sally was saying, piggy backing off what I had said earlier, for me it would have been helpful if I got this application request and it said, this application involves 166 single-family units, 54 multi-family units, none of which – I mean, and it's on x-amount of acres. To date, we have built 13 multi-family units and 100 single family units covering x-amount of acres. Should we get this request approved, we have 700 more acres to develop encompassing 30 more multi-family units and 250 more single-family units. To date, we are using x-amount of potable water on what we have built and x-amount of non-potable water. This request, we're requesting this amount of potable water and non-potable water, and we project in the remaining acreage and units we're going to be needing this amount of water. That would give me the big picture to make a better decision on your request. Is that a fair request for future applications?

Mr. Masuda: I think so. Yeah.

Mr. Gima: Thank you.

Ms. Kaye: And as for a to d, I gave you guys little charts tonight that my son helped me do and put it in a big spreadsheet – an Excel spreadsheet – because I spent several hours trying to find exactly where a through d was with the period reports and realized that eight periods wasn't enough so I dug up prior years, and it's just for illustration purposes, but to show you that you can take that kind of data and massage it and get it into a really user friendly format. Butch and Jim, if you think – that if you agree that data is part of the water PWR and we can use maybe this matrix to do it, and we can let it go.

Mr. Gima: So what's #24 looking like now?

Ms. Kaye: I don't remember what I said. Okay, "c" is out if you don't want to talk about the lines. And "g," at this point construction and landscaping irrigation, no one is willing to go to the amount on that so those two are out. And what else was there? "h" – we took "originally" at your – right – your word originally is out of "h." Right, "h," that's the one. Just because it's sort of redundant. And "i," Butch just spoke eloquently to "i" so I don't know if we take any action on that or just keep faith that you guys would try provide us – "i" was all the detailed permit. And that's it. The rest of them we agreed to. Now what I could, because it's late, I could make the wording and email it to Ralph and to Paul Fasi. It's not going to change that much. Just so we don't have to speak it again tonight or would you rather that we did that? Yeah, great!

Mr. Gima: Why don't you say it on the record so everybody can hear, then I'll ask if there's any objections.

Mr. Masuda: Leilani, you have basically everything on record what was said right?

Ms. Leilani Ramoran: . . . (Inaudible) . . .

Mr. Masuda: You've got to talk into the mic. But can you send to Commissioner Kaye the propose conditions?

Ms. Kaye: Maybe Mr. Fasi can take a stab at reading through the record since he's familiar with these.

Mr. Masuda: And then we could probably send a letter to the Commission agreeing to the wordings.

Mr. Gima: Any objections to that suggestion on handling condition #25? Colleen? Condition #24, excuse me.

Ms. Suyama: You need to put it in the record because when you vote on this you need to make it clear as to what you're voting on. And it would be better, I think, to just summarize, you know, what I understand is the changes.

What I'm getting is condition #24 would be that the applicant shall provide an annual report

to the Planning Department and Lana`i Planning Commission for review that should include the following. The original "a" as presented Commissioner Kaye. Original "b." Deletion of "c." Original "d." Original "e."

Ms. Kaye: "a" through "d" is out because the applicant has said that's all in the periodic water report, and I think the Water Advisory Group can forward – can help with that if we have difficulties with it. Original "e" – no – I'm sorry – "e", yes, it's Castle & Cooke's proposed response to "e." Castle & Cooke's response to "f." And I believe our response, yeah, the original wording of "g" with the exception of construction and landscaping.

Ms. Suyama: Okay, so roadside landscaping that was taken out?

Ms. Kaye: Yeah. And "h" was the applicant's proposed language with the exception of removing the word "originally."

Ms. Suyama: "i" was the applicant?

Ms. Kaye: "i?"

Ms. Suyama: Yeah. The applicant's one?

Ms. Kaye: Yes, with a strong plea that Chair Gima's request for additional information would be honored. And "j," "k," "l," and "m," we've agreed to.

Ms. Suyama: Okay.

Mr. Gima: Okay, Commission clear on what's in, what's out and what's been amended? You clear Ralph? All right, I'll entertain a motion to approve condition #24 as amended.

Mr. Elliott: I move we approve #24 as amended.

Ms. de Jetley: Second.

Mr. Gima: Okay, it's been moved by Commissioner Elliott and seconded by Commissioner de Jetley that we approve condition #24 as amended. Any further discussion? Hearing none, all in favor say aye.

Commission Members: "Aye."

Mr. Gima: Oppose? Okay, motion is carried. Okay, what's left?

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

**VOTED: To approve condition #24 with amendments as noted.**

Mr. Gima: Condition #1.

Ms. Kaye: Whatever time period is under discussion, it has to move to November 7<sup>th</sup> because the way it was written was for last month.

Ms. Suyama: I believe the only issue left is actually granting the time extension and it would be subject to all of the original conditions and the conditions – that were amended that would probably be your motion.

Mr. Gima: Wait. Can you say that again? There's no discussion on length of the extension?

Ms. Suyama: I believe there wasn't any objections to the length. It was basically more dealing with what were the conditions that would be attached to the time extension. That was my understanding. And the applicant had requested a five-year time extension which would have made it to October 17, 2012, would be the extended time.

Mr. Gima: On the record. Okay, open for discussion on standard condition #1. Jim.

Mr. Elliott: It's just my understanding that there was some earlier discussion about a shortened time frame, but now everybody is in agreement that five year is the point so that's what it appears to me the motion would be if Commissioner Kaye wants to make to that motion. No. Okay. Is that appropriate Butch? Can I make a motion?

Mr. Gima: Yeah, I think what was on the table – the two things that were on the table last time was the five-year with 12 to 18 months – five year with 12 to 18 months compliance report with the option to suspend if not in compliance, or, and this was Ralph's September 19<sup>th</sup> response, a three-year extension with 18 month compliance reports.

Mr. Elliott: No. No. Can I say –? Commissioner Kaye originally proposed a three-year extension and she has since revised her condition.

Ms. Kaye: I'm sorry, that's not correct. I had no participation in the time frame. It was everybody else disagreeing on the amount of time. I did not participate in that condition, or in that discussion at all.

Mr. Elliott: I'm sorry, I was reading from the wrong document. I guess I thought that was part of what you've already agreed to.

Ms. de Jetley: So Commissioner Kaye, what we have now to do is to make a motion for a five-year? If I made a motion to extend the construction for a five-year period to grant them their request for five-year extension, we got a second, then it would be up in the air, we can take it to discussion, and we can either vote on it or throw it out.

Ms. Kaye: I'm sorry. I want to clarify. I mean I did a lot of homework here, but that was one part of the discussion I did not have anything to do with. I put in a five-year because that is what was originally asked for, but there was a lot of discussion which I took no part if you read your minutes.



Ms. de Jetley: Okay, so I'll raise the flag then and I make a motion to grant the applicant a five-year extension with the amendment as presented earlier.

Mr. Lawrence Endrina: Second.

Mr. Gima: Okay, it's been moved by Commissioner de Jetley and seconded by Commissioner Endrina that the applicant's request for a five-year extension be granted with amendments, and I'll this effective date, November 7, 2007. Okay? Any further discussion? Jim.

Mr. Elliott: I would just like to refer back to our minutes of meeting on October 3<sup>rd</sup> when that issue was discussed, and one of the comments that came up at that point was the potential hardship a three-year commitment would make for the Company based on – I was looking for that specific response. I could find it, but I do think that it puts the Company under a hardship to have a shortened time frame in terms of dealing with bankers and so forth. I think it was like a comment that Ralph Masuda made earlier, and I just think that's something that we need to take into serious consideration.

Mr. Gima: One of the reasons why I had entertained a shorter period had to do with what I felt was a poor preparation of the extension request, and a poor presentation of the extension request. So, I mean, we struggled a lot in the beginning, wondering what this was covering. We had to ask a lot of questions because it wasn't presented to us. So if it's not presented to us in the extension, I mean, how confident can I be that we're going to have accurate information in terms of them complying with these conditions? And I put some responsibility on the Planning Department in terms of what was presented to us too, and I made that clear in the previous meeting. So that would be my rationale for wanting, let's say, the three-year with the 18 months reporting period. And so hopefully, as I suggested earlier, in terms of the packet showing us the whole picture, then I would be more inclined to go with a five-year extension when the packet is complete, thorough and it's presented as such. But because it wasn't, that's why I'm leaning towards a three-year.

Mr. Elliott: I didn't have it ready, but I just wanted, for the record, to read Ralph Masuda's comments in our October 3<sup>rd</sup> meeting. And actually he was responding to my question. I said I would like him to respond to his interpretation of the effects of a 2010 versus 2012 issue. And Mr. Masuda's comments were this – he said, "Basically it boils down to economics and the financing of the projects. Bankers don't look at two or three years, or even one year. They look at maybe five, 10, 15 years down the road. And basically, we found out that maybe five years is the minimum they would like to look at in financing a project because the stake – of one of the project up at Koele is \$35 million. I mean, you know, you can't commit \$35 million in just a two year or three year type of project because it may just take you that long to finish the project. Then you'd have to go through not only Planning Commission review and approvals, but building permits, and maybe even subdivision approvals. I mean, even the five year is a time period that it's very hard to work with. But, you know, we're willing to take the five years rather than three years, or even one year for that matter. It deals with economics." So I just think that we need to take this into consideration. We're talking now about a lot of issues that we are looking at conditions for and now, I think, we need to think about how the project goes forward at

this point. That's my point of view.

Mr. Gima: You're right, money is important, but if money is that important then one of my philosophies is D.Y.F.J – do your job. If it's that important, you do it right, you make a packet, thorough and complete – you present it as such so we don't have million questions. You know, don't present a, what I felt was a kind of a half ass presentation and then expect us to approve it because the bankers aren't going to like a two or three year approval. If it's that important, you do your job, you do it well, you present it well.

Mr. Masuda: What is Butch is saying is okay. For every extension request that we come in from today on, we will provide you with a better report, giving you a status of all the projects that is subject of the extension, and basically rehashing whatever we will include in the annual reports. Okay? We're willing to do that.

Mr. Gima: Thank you. Now this is just one person's opinion on this Commission. Do the rest of you feel otherwise it was thorough report, then vote accordingly. I'm just giving you my position. So we have a motion on the floor. Any further discussion on the motion?

Mr. Elliott: I have a question. I'm not exactly sure what Ralph just said. Are you saying – are you saying you can accept the three-years?

Mr. Masuda: No. I'm saying the reporting when we file for an extension, that the report that we file, the compliance report, will be in much more detail, with much more information that was provided in tonight's request.

Ms. de Jetley: You know, we have spent so much time on this request and thanks to Commissioner Kaye, she's done an excellent job of really keeping all of us on our toes. So now I think we need to figure out are we going to go or are we not going to go so that we can move on.

Mr. Gima: Okay, if there are no further questions or comments, all in favor of the motion, say aye.

Commission Members: "Aye."

Mr. Gima: Oppose? Okay, motion is carried with two nays.

**It was moved by Commissioner James Elliott, seconded by Commissioner Lawrence Endrina, then**

**VOTED: To approve the applicant's request for a five-year time extension with the amendments as noted.**

**(Assenting: Commissioners A. de Jetley, L. Endrina, J. Elliott, M. Mano, D. Gamulo, S. Ruidas**

**Dissenting: Commissioners S. Kaye, B. Zigmond)**

Mr. Gima: Colleen, what's your time frame that you have to work with?

Ms. Suyama: . . . (Inaudible) . . .

Mr. Gima: Well start. Okay, we're on to unfinished business regarding Bills for an ordinance addressing the issues of transient vacation rentals – correct – we're not doing bed and breakfast because we passed that one the last time – isn't that correct Colleen? Okay.

1. **MR. JEFFREY S. HUNT, AICP, Planning Director transmitting the following Bills for Ordinances addressing the issues of bed and breakfast operations and transient vacation rentals (TVRs). (J. Alueta) (Public Hearing conducted on October 17, 2007) (Materials were previously mailed. Commissioners: please bring your copy to the meeting.)**

**The proposed bills can be viewed on line at:**

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<http://www.mauicounty.gov/departments/Planning/pdf/Revised092107TVRBil1.pdf>

- a. **A Bill for an Ordinance to Amend Chapter 19.40, Conditional Permits prohibiting transient vacation rental operations from being established via the conditional permit process.**
- b. **A Bill for an Ordinance Relating to the Permitting of Transient Vacation Rentals.**

**The purpose of the ordinance is to allow transient vacation rentals only in the following instances: (a) in zoning districts where they are a permitted use (currently in the airport and hotel districts), (b) in business zoning districts, and (c) in the destination resort areas of Wailea, Makena, Kaanapali, Kapalua, and Kaluakoi.**

**Action may be taken on the proposed bills.**

Mr. Joseph Alueta: Good evening Commissioners. Welcome Stanley. So what we presented to you the time was a packet of ordinances. Basically it was sort of like five Bills that covered about eight sections amending the Maui County Code which Lana`i is a member of the County of Maui. I do that mostly to remind Moloka`i.

At your last meeting we got through 19.29 which was amending the Rural ordinance which would allow for bed and breakfasts within the rural district. You didn't have a problem with that. No objections was your actual statement.

For 19.38 which would allow the opportunity for bed and breakfast applications within the agricultural districts. The changes you made was with regards to the amount of income

that could be done which we amended to be \$35,000 or 51% of the household income on the property.

And then 19.64 was the actual bed and breakfast ordinance which is an existing ordinance which has been some what cumbersome to some members of the public in obtaining bed and breakfast permits, and so the County was attempting to streamline the permit process in which to make it more of an administrative thing – an administrative process. One of the key things that was a stumbling block on Lana`i was the requirement for lot sizes because there was a minimum lot size for you to obtain a B&B permit. So most of the area, small town such as Lana`i, was precluded from even applying for a bed and breakfast permit.

Mr. Gima: Excuse me Joe. Aren't we just doing TVR tonight?

Mr. Alueta: Yeah I just wanted to make sure – because you have a new member – and to remind you what you did do. So I was just doing a quick overview of what you did do.

Mr. Gima: Okay.

Mr. Alueta: And so we amended that Bill so you could have a B&B regardless of the size of the lot as long as you could make it compatible with the surrounding neighborhood or community. Your only changes was you agreed with the Maui with regards to allowing grass parking; tandem parking; children, minor children of 12 and under. Sally also being the attorney – must be a defense attorney – intentionally provided “and knowingly violated.” Are you sure?

So right now we're – the next thing we had were 19.40 which is a conditional permit, as well as the transient vacation ordinance which is actually a making up of several Bill, or several amendments to Title 19. TVR which creates a new 19.38 would restrict TVRs, and like I said, the way we define TVRs, pure TVRs to the resort destination areas. You do not have any on Lana`i. You have project districts, but not, what the County of Maui or the Planning Department needs to consider is resort destination areas such Kapalua, Kaanapali, Wailea, Makena and on Moloka`i, Kaluakoi. There was discussion of adding some type of language within page #2 of Exhibit #1 of the staff report. That would include language that would basically say “or unless provided as by the Community Plan.” Then you can be more specific by Lana`i Community Plan if you wanted which I have no objections to. I think that would be, as far as, tying the ordinances or land use laws with our community plan documents, I think that's a great idea. That way you can hash out or create more definitions of how you want to regulate transient vacation rentals. I went back and looked through. I do not feel that I can create a geographic region on Lana`i specific for you. That was one of things that we deferred on for me to investigate. I do not feel that's possible because I can't identify what would be considered a traditional geographic region of tourism.

Mr. Gima: Joe, where was the modification on page #2? Line?

Mr. Alueta: Yeah.

Ms. Kaye: And while you're looking, can I just clarify Joe, you're back at us because we deferred on this because you were going to take another stab at it and you only 120-days to get it back to the County or something? Are you under time constraint?

Mr. Alueta: Yes, but, there is a time constraint from the time you close public hearing. I'm not sure if you closed public hearing, if you did at the last meeting. They did. Okay, so you do have 120-days.

Ms. Kaye: Then for clarification, the suggestion was that section 1 have A, B, C, and then an additional section, small D, "and in areas defined," and we originally said by the Lana`i Community Plan. But you've posed a question. If we don't say Lana`i Community Plan, but by individual community plans, does this also take care of the concerns that Hana had and some of the other?

Mr. Alueta: That could be.

Ms. Kaye: Because, you know, it seems like you're being really restricted here but there was some serious concerns similar to ours and other communities. Does Hana have its own community plan?

Mr. Alueta: Yes. And their restrictions are – they go a step forward in which they wanted to restrict it to the urban core as well as to new district called SDR.

Ms. Kaye: But this is the best solution for us then?

Mr. Alueta: I think so, but can you repeat the wording again? There would be small letter D, and it would read?

Ms. Kaye: "Only in the following instances, A, B, C and then D, and in areas defined by the community plans." And clarify then, that means when we do our community plan, we can do what suits the community for now?

Mr. Alueta: Right.

Ms. Kaye: And Colleen, I'm sorry, did you have a concern about that, that I'm not remembering the last time?

Ms. Suyama: We didn't have any concerns. We said that this way of method would at least allow you the opportunity to when you do the Lana`i Community Plan, to take a look at transient vacation rentals and how it applies to the Lana`i community. And then come up with, you know, through the community plan process where you want to see these types of uses to be provided. Just for your information, once the policy plan is through with the Planning Commission, and it's forwarded to the Council, the Department's proposal is that we will then start on both the Moloka`i and Lana`i Community Plan update at that point; and we're looking at probably the later part of 2008 to start that process because we have already contracted it out to a consultant. And we do have a staff planner that's been assigned to do both the Moloka`i and the Lana`i Community Plan update. So somewhere

in 2008, probably in the later part of 2008, the Department will then start, you know, the initiative to get that going.

Mr. Alueta: My only comment is that I do want the tie. I'm just hoping because the way it's being defined here is by geographic region. You're going to be having it done by – in your community plan, you may come up with, hopefully, like a Lana`i Town or some type of –

Ms. Kaye: There isn't any of those.

Mr. Alueta: You never know. But anyway, and then you could set up – hopefully you'll be very clear so like how many permits or – put in language that states you want to see a study done to see how many of these we should allow, and then decide how you come up with your criteria. And then spell out some type of criteria for these to be approved.

Ms. Kaye: And that was the question that I had. When the community plan process starts and there's some grand-fathering language in it, like, you know, we all know where they are and they're all okay, and really what would have to be addressed is going forward if somebody wanted a new one. Would they then fall under the restrictions? I mean, who gets to regulate them because every where else in the County they're limited.

Mr. Alueta: Grand-fathering has to be legal use at the time – so unless you have a permit –

Ms. Kaye: But that's right. So once the community plan – once this language is adopted, it's not going to be legal on Lana`i, and so the Community Plan decides it's legal. Correct?

Mr. Alueta: Right. Unless you leave open the Conditional Permit process. That's where we got to the point where I felt that if you wanted to do that, my advice to you as Chair Gima likes asks, "how does this impact Lana`i?" And so I'm trying to help you. From the language you're throwing at me at the last meeting, it was clear – it was abundantly clear that you wanted to have TVR in some form or fashion on Lana`i given the unique circumstances. And you didn't want to do any harm to those that currently illegally operating. Okay. So, I felt that you need to at least leave the door open for them to apply for the permit which they have never applied for or some have applied.

Ms. Kaye: Well then, didn't we talk about a second revision to the conditional use?

Mr. Alueta: Right. Our recommendation – not really my recommendation – but if you really wanted to keep that open then you would go against our recommendation to eliminate the conditional permit or at least say except for Lana`i.

Ms. Kaye: Well, we did that. I think last time we said – you have on page #2 of Exhibit #1.

Mr. Alueta: No, exhibit #2.

Ms. Kaye: I'm sorry. Exhibit #2, page #2, top of the line, "no transient vacation rental operation shall be established via the conditional permitting process." And we said except

on Lana`i.

Mr. Alueta: Except on Lana`i. Yes.

Ms. Kaye: And I saw reference and I don't know if it's more legally correct to say "except in the Lana`i district." I don't know. There was other mentions of districts. Just say on Lana`i.

Mr. Alueta: Except for Lana`i Community Plan area.

Ms. Kaye: Okay. I don't know how else to discuss this without Corporation Counsel here because I don't know enough how this is going to be regulated.

Mr. Alueta: All I can say is you understand the intent, this still has to go through Corporation Counsel for final review and they will incorporate the changes that were made by – that we agree with, I guess you could say – in the final Bill. And they will draft it as such to meet the intent. How does that sound?

Mr. Gima: Joe, just for clarification. The Planning Department is proposing prohibit using the Conditional Permit process to establish TVRs because they want the transient vacation rental ordinance to be the only method to set up TVRs. Is that the thinking?

Mr. Alueta: Yeah, the thinking is that the Conditional Permit process is an archaic system. It's basically a zoning variance any where you want. So I want to do a prostitution house, a "batu" house or whatever, I come in for a conditional permit, and get it to Council. And what we're trying to say is we want TVRs. If you want to do a pure TVR you do it in the destination resort areas. They have minimal impact because the infrastructure for tourists have already been established. If you want to tap into the tourism economy and have the least amount of impact on the local housing as well as neighborhood and community, you're going to do it through a bed and breakfast permit which is an owner occupied unit. That allows one direct access to the economic benefits of tourism with minimal impacts on the housing because it's you're not losing a house to the tourism industry. And as another carrot, because we recognize the flaws that were in the existing 19.64, we streamlined the permit process for the bed and breakfast, and we made it administratively as well as eliminated some of hurdles that existed in particular for Lana`i, which was the lot sizes as well as some other older town community that has smaller lots.

Mr. Gima: So getting rid of the Conditional Use Permit process then pretty much standardizes the process. Yet, it sounds like it's fairer and it give us a bit more control when there needs to be enforcement.

Mr. Alueta: Correct, and it just closes what we consider to be a loop hole that I can't do it – I don't want to do it in this district, but I still want to do it, and therefore, I can go to Council and apply and go to the Commission and get their recommendation and then go on to Council and try to basically get a variance to what its permitted use is. And I think from that aspect, that's what we're trying to do. That's why we didn't like the Conditional Use permit process. And in the next, like I said, in this master plan of revision the whole

of Title 19 and the standardization of it, we're proposing to eliminate the conditional permit process for everything. Not just for TVRs but for all things.

Mr. Gima: I'd be interested to hear how the rest of the Commissioners felt about leaving it to the community plan process for Lana`i, and standardizing something specific to Lana`i as oppose to Conditional Use Permit process.

Mr. Endrina: I think that would probably be the only way to do that. I mean, if you have a certain district that's not going to apply to Lana`i, leave it for the Community Plan. I think that would probably be the only way. The only thing that I have is what's going to happen to the ones that are operating now? Are they going to go – would they have to apply for a B&B instead of a TVR?

Mr. Alueta: It all depends. If they could meet the criteria. If the B&B ordinance is passed as it's being proposed many of the operators, if they so choose, could apply for a B&B permit if they met the criteria. Meaning if they lived in the structure. If the majority of the ones that you have now are, they live another lot or in another structure, then they don't meet the criteria of what a B&B is. So they would – the only permit that they could seek would be the conditional use permit. And so I would possibly in your – I'm not sure, in this except for Lana`i Conditional Permit, you may want to – except for the Lana`i Community Plan area and maybe set sunset clause so it would be eliminated or set the conditional permit opportunity for Lana`i once you have the community plan adopted.

Ms. Kaye: . . . (Inaudible. Did not speak into the microphone.) . . .

Mr. Alueta: Yeah.

Ms. Kaye: You mean some sort of phase out after a certain start date of when the plan is formally adopted which could be many, many months after it's done here, right?

Mr. Alueta: Right.

Ms. Kaye: It would go to County Council, and sit around there for a while.

Mr. Alueta: Exactly. I mean, so, say what if you – or at least within a year of the community plan – what if you set up a criteria.

Ms. Kaye: A year of County Council adopting it. Correct?

Mr. Alueta: Correct. Yeah, it's not adopted until it's adopted. Yeah, it's not adopted until it's actually signed by the Mayor. But that way, say what happens if you go through your community plan process, you set up a process and say we're going to allow 25 TVRs – I'm just making up stuffs right now – 25 TVR and they're going to be – you have to be owner has to be on the island or whatever criteria. I don't know what criteria you'll set, but there's always going to be somebody that's never going to fit in that box. Whatever box you set, there's always going to be somebody who's going to be outside of that box. No matter what line you draw, and they're going to want to come in through that conditional permit



process.

Ms. Kaye: Can I ask you a question? What if we don't call it a transient vacation rental because you have all these restrictions. What if we go with the local (inaudible) use here of short-term rentals. We can't do that right? It has to fit in this?

Mr. Alueta: Does the short term – when you say short term rental – is it greater than 30 days and less than 180?

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

Mr. Alueta: That's TVR. If it's less than 180, there is some wiggle room in the sense that when I go through the definitions of the Maui County Code and how they define, sometimes for a B&B, sometimes they're using the terminology of less than 30 days. But for long term or short term TVRs it's basically 180. So what I'm saying is if you have short term rentals that are greater than 30 days, but less than 180, there might be room to make something up. I mean, to create a new category for that. But I'm just saying, if the thing is people are coming here for the weekend, you're still not going to make it, then you're not going to make. I don't want to start monkeying around with the definitions that applies County-wide. But I'm just warning you now that you create your standard even if you do in community plan, you're still going to get people who don't meet that standards of whatever you come up in your community plan. And if that conditional permit is still there, for Lana`i, you're going to get people coming in for a conditional permit. And you're going to have to deal with them. And you're going to be going, well, this is not consistent with my community plan. You're going to get the sob stories again. You're still going to get your standard, hard time dealing with a permit on an individual basis. I'm just warning you. That's why I would recommend having some kind of sunset clause so that you don't have to deal – you can say, this is what it is in the community plan and that's all you've got.

Ms. de Jetley: Joe, I'm really concerned about all of this because we only basically right now, we only have one accommodation, one person, doing accommodations that could technically be called a bed and breakfast. Most are transient vacation rental – short term. And we need every single one that we have on the island. So we don't want to jeopardize anybody who is already operating.

Mr. Alueta: The enforcement issue is not related to this at all, and that's why I recommend that if you want to have your community establish a criteria in your community plan, that's fine. But in that stop gap measure between adoption of policies and permit, or some type of procedure for these TVRs, through the community plan process, you keep the conditional permit for Lana`i so that they can still apply for, and obtain, a conditional permit through this Commission and Council.

Ms. de Jetley: So that would be basically for any rental that didn't fit into whatever criteria the community plan established. Is that what you're saying? That they can use – if the community plan sets criteria for transient vacation rentals, and someone comes in and they don't fit into that criteria, they could still go for a conditional use permit. Is that what you're saying?

Mr. Alueta: Well, my recommendation would be to close that conditional permit loop at some point. That's our goal. Our goal is to close that loop hole because it's always like there's no real fixed standards of what people are trying to expect. Someone will always come in. If they don't meet the criteria, they'd come in for a conditional permit. What we're saying is we're trying to plan and say this is where you can do it and this is where you can't do it. And if you want to do it, these are the criteria you have to establish. The conditional permit, you know, just throws it up in the air – throws it against the wall and sees if it sticks as they say.

Ms. de Jetley: Mr. Chair, I see a member of the audience shaking his head at me. Is there any way we can ask him for his opinion on all of this because he is operating transient rentals?

Mr. Gima: Okay, we can open up for public hearing – public testimony now. If there's anyone who wants to testify. You don't have to Ron.

Mr. McOmer: My name is Ron McOmer. I am -- I am a short term rental person. I think I said it all at the last meeting basically. We have a need for this on this island. We've have a need. There's people in this room that live on Maui that have used my short term rental. We use it for hunting. We use it for fishing. We use it for weddings. We use it for everything. I mean, graduation. There's not enough houses on this island to take care of everybody that comes in here that comes back and visits Lana`i. 99% of my clientele are Kamaaina inter-island traveling people. Very seldom do I have somebody that comes from Washington or Oregon or where ever the heck it might be, unless they're a guest of somebody that lives on the island.

I think – I thought when I did my short term rental, TAT tax, that I was following the law. And there was no ordinance at that time saying you had to get a county ordinance, permit or some kind of permit. I pay my 11% to the State. Now I don't if the County is doing this so they can make money. If it's a money thing, it's a tax thing, we don't mind paying our taxes. We'll have to pass it on to our customers. But it is an essential part of Lana`i as all of you know. I guess I'm only speaking for the people that live on Maui that don't understand what's going on in Lana`i. That's why it's passionate that we have this. It has to be done. There are people on here. There's one person in particular that does bed and breakfast. He advertises on the internet bed and breakfast, and the County hasn't come down on him. I have most of mine are word of mouth, and I have one pamphlet at the airport. And I don't need to advertise because I have 35 regular hunting customers that I go to their drawing in Maui for their deer and moose drawing, and I can barely put everybody in the houses as people come. So it's an essential business. And the amount of business it's generating for Lana`i business, which is the gas station, the car rentals, the stores, everybody, the airplanes, the boats, it's essential. How do we do it? I think we need to attack it with the community plan. We can put a restriction on how many there are in the city. There isn't that many really that are out in the open doing it anyway.

Mr. Gima: Let me ask you about your knowledge of maybe some of the other short term rentals in town. How formal is the compensation for using the house?

Mr. McOmber: I pretty much set the standard because I'm right out there. So my price and sock all of you and I'll tell you what it is. I charge \$45 per person per night. And I do not live in the houses. And that's a whole house. Whether it's one person in the house or seven in the house. I've got one house that sleeps eight. There's quite a few people doing it and they're putting 30 people in the house. There's a couple of people that are doing that. And most customers, I usually end up getting them because once they come to my operations, they won't go back to them because it's a different operation. But, it's pretty standard and a lot of it is, when they're not paying me, I'm taking tips. And you know, you say, well, that's fine. Nobody is really fighting those people. We know who they are. And it's a pretty standard price. The only thing that probably not standard is the price of what trucks costs. And there are premium – depending what time of the year and how busted up they all are and who has the best trucks. And it's a hell of a business, but my price, basically is pretty reasonable. And 11% of that goes to taxes to the State. I think the County is missing the boat by not getting a larger percentage or any percentage of that TAT tax because it's being generated in Maui County. Maui County should be getting 60% of that tax at least. That might help some of this. But did I answer your question? I really don't question. Most of the people that I know that are doing it run real close to my price.

Mr. Gima: I wasn't so concerned about the price – more on how formal was it. It's like, just give me what you think.

Mr. McOmber: It's a set price but it's a lot of this. Yeah, there is a lot of – people don't know. Their old friends that they've known for years and years and years, and they come back, but they pay.

Mr. Gima: There's a lot that come over that don't pay. That they just bring a "miyage" or they just – because they're friends – they just let them stay for the weekend.

Mr. McOmber: Yeah, but those guys are pretty generous. Those people that come are really generous because they appreciate having a place to stay. And it's just – again, it's the old Lana`i style. We're here, you know somebody and somebody say, hey "bra," you can come stay my place. And they buy beer for them. They buy food for them. They rent their trucks. They give them money. It's money generated.

Ms. Kaye: . . . (Inaudible. Changed cassette tapes) . . .

Mr. McOmber: My taxes are based on that, so I write a receipt for everyone of mines. And I have County workers, State workers, DLNR, Federal workers – I have all kinds of people stay at my place – tree trimmers. I've got tree trimmers right now at one of my houses. And it's constant. It's not just the hunting season. Now this has gone in to 365. It's a business on this island – that is an essential business. We donate a lot of our houses to funerals. Mr. De Shay's funeral is going to take four of my houses. The whole family is coming. And those are donated stuffs. So it's a give back as much as we take.

Mr. Gima: Any other questions for Ron?

Mr. McOmber: I really believe in my own heart and I'm going to sit on the Community Plan

and it's probably a conflict of interest. But I sit on the GPAC and I'm going to be sitting on the Community Plan, and I'm going to strongly urge that this be dealt with so it satisfies the County and it satisfies the needs in the community.

Mr. Gima: Okay. Thanks Ron. So one of the questions for us is how comfortable we feel about the TVR Bill or ordinance being developed in the Community Plan versus us drafting it? Because we have a lot more the background knowledge and I'm wondering how much information the CAC, the community plan people, will have on the background information of TVR, B&B. What do you guys think?

Ms. Kaye: How does that work? I don't understand our choices as you just said it.

Mr. Gima: Well I mean, I think, we had mentioned about, yeah, let's have the Lana`i GPAC come up with the language, right? That was one of the options. And it just occurred to me they're going to be getting – I mean that's going to be one part of their community plan process that they are going to have to go through. Will they have as much of this background supporting information to make their decision like we have? So I'm not advocating one way or the other, but that's something I didn't consider before.

Ms. Kaye: That's a much cleaner solution. Is that possible? I'm just not sure how that plays out.

Mr. Endrina: Would it be legal for us to do that?

Mr. Alueta: Before my boss answers that. Remember the genesis, the catalyst, for the ordinances that I write, come from the General Plan, as well as the individual Community Plans from each region. And this is what sort of spawned the ordinances, or any ordinance. For your to come up with something that regulates TVRs, I guess, on Lana`i without any foundation, that's my concern. I mean, I personally think that there's – that the Community Plan and General Plans are important and it should be respected, but if that's not the case then –

Ms. Suyama: I think you have also have to look at what the responsibility of the Commission is. The responsibility of the Commission is not to draft ordinances. By Charter that responsibility is placed with the Planning Department and with the County Council. They are the ones that draft ordinances. Your responsibility is to review the ordinances that are being proposed and make your recommendations in terms of how you feel the ordinances should be amended or changed.

I think as what's being proposed by Joe is that there is an avenue in the TVR bill that if your community plan makes provisions for it, it would be easier for those people that have made provisions that it becomes an out-right permitted use based on upon the TVR Bill. But in the mean time, the only avenue that people have to legalize their operations today is through the conditional permit process because there is no other process, and it's going to take a while for even this whole process to go through Council, et cetera, before the final ordinance is adopted. So what we're proposing is that for Lana`i, we leave the conditional permit process open to them, to those people who want to legalize themselves

in the mean time because that's your only method of legalization today. There is no grandfathering in because you're not a permitted use. So if you want to legalize yourself, the conditional permit is the only avenue that you can use today to get your permit to operate legally. But in the mean time, this other TVR bill will still go up concurrently which would at least, at some point in time, once the community plans are adopted, will give people the option that once you've determined where you want your TVR businesses and how you want their standards, at that point in time, once the TVR bill is adopted, is these people become basically you don't need a permit at that point. But until that is reached, you're still going to have some kind of permit and right now it's the conditional permit, or a B&B.

Mr. Endrina: So the conditional permit would be – like you said, the community plan is coming up at the end of 2008 – the conditional permit would be up until that time?

Ms. Suyama: We're proposing that it would be in effect up to the time that the new Lana`i Community Plan is adopted. That sets some of those standards and criteria for where Lana`i wants the transient vacation rentals to be located.

Mr. Alueta: Or one year after the Council adoption to allow –.

Mr. Gima: Okay, so I understand about us just commenting on the proposed ordinance. So that being said, do we want to make any comments about where TVRs can be on Lana`i and how close they can be – some of those things? Or you want to just leave the whole thing up to the community plan process?

Ms. Kaye: The way I understand our position right now is they want to do what they want to do for Maui, and they've limited to four resorts areas. And they've also closed the conditional use – they're proposing the conditional use avenue. So what's before us is there a way to exempt us as the first step from this process, and that was the language that we talked about at the last meeting to leave the conditional use open and also say we can decide this in our community plan. I don't we're at that point yet where we should get to that kind of detail. I think it's just can we get out of this and figure out – and I haven't heard a better solution, at least from Joe guys down the line and how do it except in the community plan. Otherwise, it's going to apply to us whether we like it or not. And as Joe pointed out there isn't any resort area here. It's just the hotel district. And it's ridiculous.

Mr. Alueta: And you guys made it abundantly clear, giving your unique circumstances. I mean, and you'll be best to determine, you know, what that impact is on, I guess housing or consistency. We just don't have – like I said – consistency with the General Plan and Community Plan doesn't exist for us on many of the communities for Maui.

Ms. Suyama: And I think it's important to note that when the Lana`i Community Plan is drafted by the Citizen's Advisory Committee, that plan comes before you. So you are going to be looking at what the standards of that the community came up with. And you're going to have your own input as to whether you feel those standards are correct or appropriate or if you want to add more standards. So you still have that ability through the community plan process.

Mr. Gima: Okay, so we can take action on the proposed bill with the language that you suggested, right Sally? So that's one action we'll be voting on, and the second would be —

Mr. Alueta: 19.40.

Mr. Gima: Denying the proposed conditional use prohibition?

Mr. Alueta: No. Just making — making an exception for the Lana`i Community Plan.

Mr. Gima: Adding language.

Mr. Alueta: Up until one year after the adoption of the Lana`i Community Plan.

Mr. Gima: Okay. Everybody clear on that one?

Mr. Alueta: Do you want me to repeat that? Your ideas are to add on line #17 — page #1, Exhibit #1, line #17, to include a small letter “d” that would say “in areas defined by the community plan.” So that's the first one — for exhibit one — that first bill.

Mr. Gima: We want to take action on that now?

Mr. Alueta: Was there consensus? We can just move on, if there's consensus.

Mr. Gima: We don't have to vote?

Mr. Alueta: I'll repeat all the changes that you guys made at the end. If you all agree, you make one vote at the end.

Mr. Gima: Okay. I thought we had to do it separately.

Mr. Alueta: If there was a consensus on that change, then I can move forward, and then —

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

Mr. Alueta: That is correct. Yes.

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

Mr. Alueta: Yes. Or actually “e” maybe. Add it here? Make it a six, under “b.” “B” would read, “transient vacation rentals shall be allowed in the following additional districts and geographic areas.” And six.

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

Mr. Alueta: I'm sorry. Yes, “d,” okay. So line #2. I think we should also add it again on

line #25. Okay? But I understand your intent so I'll make the corrections as needed. Then for – I want to come back to the – because exhibit #1 includes changes to Title 19, 18. If you look at exhibit #1 on page #3 – actually page #2, page #3, page #4, page #5, page #6 and #7, those are amendments to what we call to business district. So B-1, B-2 and B-3 and B-CT districts as well as the BR, Business Resort, Districts – that would allow for TVRs up to 20 units. Meaning that we are proposing that we would allow for up to a 20-room unit within those business districts – Exhibit #2, #3, #4, #5, and #6 of Exhibit #1 – and this is like on that same area of the TVRs. Like I said, this was drafted by an outside person to help me out, so they decided to make the amendments to the business core in one ordinance bill. So this would allow basically be putting small inns back into the business core. Prior to 1991, small inns were allowed in the business districts. It was removed and what we're basically proposing is putting back in because we believe transient vacation rentals are commercial use, and therefore, it would be appropriate in a commercial district. Previously it was taken out because they built like a 300-unit hotel in the business district, which a lot of people felt was inappropriate. And so we feel we want to scale it down – we feel up to 20 room. This what we allow in Wailuku, in Wailuku town itself, in the redevelopment area. We allow up to a 20-room inn. So people say do you really want to see a 20-room inn? Well most people don't build 20 rooms. They'll build smaller. And in Wailuku, we have the Banana Bungalow. We have North Shore Inn. We have the Happy Valley Hostel. And I can tell you those are packed. They're very popular and a lot of them are not outrightly permitted use. These are small little, kind of hostels more than they are inns, but they operate as an inn. So we think they're appropriate in the commercial use.

The Maui Planning Commission changed “units” to “rooms” because they didn't want someone to build a three-room unit – “or as further limited by the applicable community plan” – that's what Maui put in. Maui wanted to restrict because they felt that the community plans – Kihei or Paia/Haiku or Hana – they have this small town business districts. They may want these, but they may want to restrict them further than the 20 rooms. So that's the language they put in.

Ms. Kaye: I think that's a really good idea because, you know, who knows 10 years down the line, we might not have the same owner and the same control in the business district, and 20 is a lot. Can we?

Mr. Alueta: You can put that in. At the same time, they put in for B-1, B-2 and B-3, they should be subject to the Urban Design Review Board because they felt in the B-CT, in the Business Country-Town, you already have design guidelines. However, in the B-1, B-2, B-3 districts, there isn't. So they felt that would be appropriate for having Urban Design Review Board take a look at these units. So those were the language that Maui added.

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

Mr. Alueta: What's their zoning? So they probably were under the existing – they were built previously when small inns were allowed, and so that sort of – and how many rooms are there? So like I said, that's sort of what we were – on Maui, the same – that's what we sort of have on Maui. And again, if you have a B-CT – so if you're comfortable with that,

that's what we're looking at.

Mr. McOmbler: . . . (Inaudible) . . .

Mr. Gima: Wait, if you're going to say – you should be on record if you're going to ask a question.

Mr. Alueta: If not, then you can declare him out of order.

Mr. McOmbler: No, but, I'm just curious because not only are we doing it, Castle & Cooke is doing it, and putting people in homes in Lalakoa III for short term for their construction people and stuff, and they're paying. And they fall on the same criteria. Does the County still look at that way?

Mr. Gima: That's an enforcement issue. He said we're not talking –

Mr. McOmbler: That's an enforcement issue?

Mr. Gima: Yeah, we're not talking about enforcement tonight.

Mr. McOmbler: Yeah, but it will they have to get a permit like I would? That's what I'm saying.

Mr. Alueta: Yes. Okay, was there a consensus on going with what the Maui Planning Commission had discussed and incorporated which was again limiting – having further limitation by the community plan regions, the community plan document, as well as requiring Urban Design Review Board for B-1, B-2, B-3?

Ms. Kaye: I don't see the value of the Urban Design Review Board for us because they don't meet here any way. That might be very valuable on Maui, but I don't care about adding that in.

Mr. Gima: But we have a Lana`i representative on there right?

Ms. Kaye: There was one remember? There was that big "boo-haa" – somebody was a representative and nobody every heard of him.

Mr. Alueta: So you don't want to include the UDRB?

Mr. Gima: I have no problem leaving it on.

Mr. Alueta: Leave it in.

Mr. Gima: I don't think it hurts.

Mr. Alueta: All right, I'll leave that in as for consensus. And then going back to the last issue which is the conditional permit which would be to add "accept for Lana`i Community



Plan area.”

Ms. Kaye: . . . (inaudible) . . . be consistent and do the same thing as the other community plan so it’s not just for us? I mean I don’t know if Hana wants to do that too. It sounds like a reasonable way to provide a conditional use until people can get – until it’s passed – the community plan is passed.

Mr. Alueta: I think in “d,” you allowed for it. And I think –

Ms. Kaye: No, I’m saying, do we want to limit to Lana`i Community Plan or leave it to community plans?

Mr. Alueta: I see what you’re saying.

Ms. Kaye: It’s the same rationale.

Mr. Alueta: So you’re saying except for –. I think because we have stronger language that prohibits it.

Ms. Suyama: I think we’re making the exception for Lana`i. For your information, this ordinance is scheduled with the Maui Planning Commission to refer it back to the Hana Advisory Committee. And Hana Advisory Committee, if they come up with a recommendation similar to yours, then we can just add it at that time.

Ms. Kaye: Then does that one apply to the first one? The very first one we did back on the TVR? You know where you limited to the four resorts area?

Mr. Alueta: It would apply. We agreed that’s a good language and you would want to incorporate all of that for all community plans, but the exception from the CP – that’s an individual issue at least at this point. And with the language that it’s except for Lana`i Community Plan area and then, you know, shall be eliminated – I’ll put in some language – to eliminate it one year after the Mayor’s adoption of the community plan. Is there consensus on that? All right. And I actually think we’re done. So I can – if you want Mr. Chair, I can go back and summarize all the different changes that you made and adoptions.

Mr. Gima: No, I think you’re did.

Mr. Alueta: Pretty good.

Mr. Gima: I’ll entertain a motion to approve both proposed ordinances as amended.

Ms. Zigmond: I move that we approve – so move.

Ms. de Jetley: Second.

Mr. Gima: Okay, it’s been moved by Commissioner Zigmond and seconded by

Commissioner de Jetley that we approve the proposed TVR ordinances as amended. Any further discussion? Hearing none, all in favor say aye.

Commission Members: "Aye."

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

Mr. Alueta: Thank you.

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

**VOTED: To approve the proposed TVR ordinances as amended.**

#### **F. COMMUNICATIONS**

- 1. October 23, 2007 request from Kepa Maly, Executive Director of the Lanai Culture and Heritage Center requesting that the Lanai Planning Commission conduct a site inspection/ workshop of the Lanai Culture & Heritage Center facility in January/February.**

**The Commission may take action to schedule the site inspection.**

- 2. Discussion on the processing of SMA exemptions.**

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

#### **G. 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.**

- 2. Chair's request to consider the implementation of zoning for properties designated Open Space in the Lana`i Community Plan.**
- 3. 2008 Meeting Schedule.**
- 4. Open Lana`i Applications Report.**

**5. Scheduling of the Council Resolution Bill Banning Superstores - December 19, 2007 (Council Resolution was received on September 10, 2007. 120 day review period ends on January 10, 2008.)**

**H. NEXT REGULAR MEETING DATE: November 21, 2007**

**I. ADJOURNMENT**

Mr. Gima: Okay, Colleen, "pau hana" or we continue to move on?

Ms. Zigmond: Mr. Chair?

Mr. Gima: Okay, Alberta and then Bev.

Ms. de Jetley: I was going to ask Mr. Chair if we could – I make a motion to adjourn – pau!

Ms. Zigmond: Mr. Chair, can I make one quick comment please? And this is for the Planning Department. While I understand how you cannot phone Corporation Counsel if there's only one person, I feel that we've gotten the short end of the stick again in not having our Corporation Counsel here. And I was wondering if that ever appears in the future that our meeting be cancelled. I think it's imperative that we be given the opportunity to have our Corporation Counsel present. Thank you.

Mr. Gima: Okay, there's a motion to adjourn. Just to remind everybody our next meeting is November 21<sup>st</sup>, and we will resume, right Colleen, GPAC approvals and then other agenda.

Ms. Suyama: . . . (Inaudible) . . .

Mr. Gima: Okay. All right. Thank you everybody.

There being no further discussion brought forward to the Commission, the meeting was adjourned at approximately 10:35 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  
Stanley Ruidas (from 7:00 p.m.)

**OTHERS:**

Colleen Suyama, Deputy Planning Director  
Joseph Alueta, Administrative Planning Officer  
Thorne Abbott, Staff Planner, Current Planning Division  
Paul Fasi, Staff Planner, Current Planning Division  
Michael Hopper, Deputy Corporation Counsel (on-call, via telephone conference)