

**LANA`I PLANNING COMMISSION
REGULAR MEETING
JULY 16, 2008**

Approved 08-20-08

A. CALL TO ORDER

The regular meeting of the Lana`i Planning Commission was called to order by Chair Sally Kaye at approximately 6:05 p.m., Wednesday, July 16, 2008, in the Lana`i High & Elementary School Cafeteria, Lana`i City, Hawaii.

Ms. Sally Kaye: Okay, I'm going to call the July 16, 2008 Lana`i Planning Commission meeting to order. Let the record show we have quorum with Commissioners Rabaino, de Jetley, Endrina, Mano, Ruidas, Castillo, Gamulo, and Kaye. First up is the approval of the minutes for June 18th. Do I have a motion?

B. APPROVAL OF THE MINUTES OF JUNE 18, 2008

Mr. Matthew Mano: I make the motion to approve the minutes of June 18th.

Mr. Dwight Gamulo: Second.

Ms. Kaye: Okay, it's been moved and seconded by Commissioner Mano and Gamulo. Are there any additions or corrections to the minutes?

Ms. Alberta de Jetley: Madame Chair? Could we amend that to read approval of the minutes with the changes submitted by email – with the proofreading corrections submitted by email previous to this meeting?

Ms. Kaye: Sure. Any objections?

Mr. Mano: No.

Ms. Kaye: Discussion? All in favor?

Commission Members: "Aye."

Ms. Kaye: Okay.

**It was moved by Commissioner Matthew Mano, seconded by
Commissioner Dwight Gamulo, then unanimously**

**VOTED: To approve the June 18, 2008 meeting minutes with
amendments.**

Ms. Kaye: Before I turn this over to the Planning Department for our orientation, Vice-Chair Stanley Ruidas and I got together a while ago to go over some of the Robert's Rules of Order, and wanted to suggest the following rules to keep things running smoothly. First of all, the maker of a motion, after it's seconded, has the first opportunity to address the motion during discussion. Each Commissioner may speak for or against the motion once, after which other Commissioners may speak before anyone gets a second turn. All Commissioners should at all times remember to address the issue and address the person. Members of the public as well as Commissioners should focus remarks to the agenda item at issue. If for example, a solar farm is being discussed, we don't stray to a discussion of a wind farm unless it's relevant.

If we want to impose a three to five minute limit to public testimony, we must do so from the beginning, not after the first person has gone on too long. So, we suggest that we think about doing this a meeting at a time. Testifier can always ask for a second opportunity to speak. Finally, I would just remind everyone that all these meetings are recorded and every word we say appears online for the world to read. So we always want to think before we talk. Okay, now we turn it over to Clayton? Yes?

C. ORIENTATION WORKSHOP

- 1. Roles and Responsibilities**
- 2. Discussion of Boards and Commissions Booklet Distributed by the Office of the Corporation Counsel**
- 3. The Sunshine Law**
- 4. Ethics**
- 5. Ex Parte Communications**
- 6. County Policy Against Discrimination**
- 7. Rules of Practice and Procedures**
- 8. Land Use Regulatory Framework in Maui County**
- 9. Hawaii State Plan**
- 10. State Land Use Law**
- 11. Zoning**
- 12. Special Management Area Rules**
- 13. Shoreline Area Rules**
- 14. Other Related Boards and Commissions**
- 15. Lanai City Design Guidelines**
- 16. Meeting Agenda**
- 17. 2008 Meeting Schedule**
- 18. Flood Hazard Permits**
- 19. Recent U.S. Supreme Court Decisions on Takings Issues**
- 20. Public Access Shoreline Hawaii (PASH) v. Hawaii County Planning**

Commission

21. Topliss v. Hawaii County Planning Commission SMA Case

Mr. Clayton Yoshida: Good evening Madame Chair and Members of the Lana`i Planning Commission. My name is Clayton Yoshida. I'm the Planning Program Administrator with the Current Planning Division, Planning Department. And with me this evening, we have your Secretary to Boards and Commissions, Leilani Ramoran; the Deputy Corporation Counsel James Giroux; from the Planning Department Zoning Division, we have Francis Cerizo; we have our Coastal Resources Planner, Thorne Abbott; and also a Staff Planner, Danny Dias.

Madame Chair, I guess it was relayed to me that the Commission might want to deal with the written response letter to Castle & Cooke Resorts LLC regarding their semi-annual report as listed under item D1 first, but that's up to the Commission if they want to amend the agenda to deal with that draft response to Castle & Cooke regarding their semi-annual report.

Ms. de Jetley: Madame Chair, I saw Shelly Bartfield before this meeting, and because of its location on the agenda, she was coming back to this meeting later. So I don't know, maybe we could ask Kevin if other C&C people are coming back because they were scheduled later. So are they going to be here later? It wouldn't be fair to them for us to move this agenda item when they expected it to be later on our schedule, if in deed they are coming back later.

Ms. Kaye: Well it's an agenda item and of course anyone could speak to it. Last time it was on the agenda, no one spoke to it from the audience. There was no public testimony. We now have a draft in front of us. As we discussed at the last meeting, this is not an action item. What we're working on tonight is approving the way the letter is drafted. So if we wanted to amend the agenda, we'd have to have a motion and a second, and I think it was a two-thirds vote?

Mr. James Giroux: Hi. James Giroux with Corporation Counsel. If you're just going to change the order, I wouldn't worry too much about the two-thirds vote as long as you get consensus from the body as far as moving an item. But if you are going to add something new, then I would follow the protocol of making sure you get the two-thirds vote and making sure it's not something that affects a large amount of people.

Ms. de Jetley: Madame Chair, Ron McOmer who wants to testify on this matter is going to be late. He'll be in later to testify and I think it should be delayed as a courtesy to the people who knew that we had all these other business on first. I move to delay. I move to keep the agenda item in the order that it has been presented to us.

Ms. Leticia Castillo: I second that motion.

Ms. Kaye: Okay, any discussion? All in favor?

It was moved by Commissioner Alberta de Jetley, seconded by Commissioner Leticia Castillo, then unanimously

VOTED: To keep the agenda items in the order as presented.

Mr. Yoshida: With that Madame Chair, the Department thought it would provide an orientation workshop. Usually we do this at the beginning of the Commission year, but because there was a delay in the confirmation of the new members, we thought we would wait until the new members were confirmed to do the orientation workshop. This is something we do annually. We have the power point slides that we circulated if the Commissioner would like to follow along.

The Planning Department consists of approximately 60 employees. We sort of doubled our numbers. Back in 2002, we probably had about 32 employees, but now we have 60 positions. We're divided into three sections. The Long Range Division, they've been handling the General Plan update and they will be handling the Community Plan updates with the Lana`i GPAC, or General Plan Advisory Committee, or the Lana`i CPAC, or Community Plan Advisory Committee. We have the Current Planning Division, my division, and my division deals more with the land use permits which comes before this body, such as Special Management Area (SMA) permits, Zoning changes, State Land Use Commission Special Use Permits. We also do some administrative approvals for Comprehensive Signage Plans (CSP) and also landscape planting plans. And then the third division, Francis' division, is the Zoning and Enforcement Division. And basically they review building permits for the consistency with the Community Plans and Zoning, different regulations as far as setbacks, building heights are a concern, as well as the comments for the Department of Subdivision applications. They also help out the Board of Variances and Appeals. If someone comes in and wants a variance from the Zoning Code, they probably would come in to the Zoning Division for a variance.

Basically tonight, this is the agenda as set forth. We'd like to talk about the Planning framework and provide an overview. Then we'd like to talk about Title 19 in the Maui County Code (MCC), which is often referred to the Zoning Code. We'd like to talk about the Coastal Zone Management (CZM) law, Chapter 205A, Hawaii Revised Statutes – Thorne will be talking about that as our Coastal Resources Planner – also about the shoreline setback laws. And then Francis will be talking about the flood hazard districts and also the County policy against discrimination which includes the policy against sexual

harassment. And then the standing clean up is your attorney James Giroux who will talk about the sunshine law, ethics, and some court cases relative to land use.

This is a nine member board, appointed by the Mayor, approved by the Council, serving staggered five-year terms. So every year we have two or three – one, two or three new members, so that there's continuity amongst the board. Five-year terms, unless you're filling out the term of someone who had vacated their position. We meet on the third Wednesday's of the month. Typically we met at the Senior Center, but since that's going under renovations, we've been using this cafeteria. And we meet at 6:00 p.m.. Though when the Commission was dealing with the Countywide Policy Plan, we had to sort of double up because there was like a 120-day time frame to review the plan. So we were meeting, the Commission was meeting twice a month, on the first and the third Wednesday of the month. Yes?

Ms. Darlene Endrina: The Senior Center is not going to start to be rebuilt until probably April of 2009.

Mr. Yoshida: Yeah, so we have this kind of temporary. I mean, historically, we started out with the Library, but then they didn't let us use the Library after hours. So we lost the Library. Then we went to the Senior Center for a number of years. And then the County said that they were going to start work on the renovations at the Senior Center, so we've been having meetings here, I would say, from about February or March of this year. Because, I mean, it's difficult to find a public meeting place on Lana`i.

As far as the Planning resources, you are the Lana`i Planning Commission. To assist you, we have the Urban Design Review Board, which reviews project designs and provides recommendations. The Lana`i member on that board is Kay Okamoto. You also have the Arborist Committee, which reviews plans for trees within a proposed subdivision and proposed right-of-way and parks. It also nominates exceptional trees for protection, and could provide recommendations on a project. We have the Maui County Cultural Resources Commission which reviews applications in the historic district. I think everybody read about the Halloween, in Lahaina, permit, in which they approved uses and architectural designs within the – we have two historic districts in Lahaina and also one historic district in Wailuku around Kaahumanu Church, the Wailuku Library area – the Old Courthouse which the Prosecuting Attorney Office occupies. And it also provides recommendations on Special Management Area or other permit applications, and Nani Watanabe is currently the Lana`i member of the Cultural Resources Commission.

We also have other Federal, State and County agencies which we send applications to and they provide recommendations to this Commission and other decision making bodies. So we have the Planning framework. We have the State Constitution. We have the Hawaii State Plan quantified as Chapter 226, Hawaii Revised Statutes, which was developed

largely when George Ariyoshi was Governor of the State. It's quantified in Chapter 226. We also have the Maui County General Plan, which was last adopted in 1991, and we are going through a process to update the General Plan and the Community Plans. Pursuant to the Charter from 2002, and what was known as Bill 84, or is quantified as Chapter 2.80B of the Maui County Code. Following the General Plan, we have the Community Plan, Lana`i Community Plan, which was last reviewed comprehensively in 1998, so ten-years ago it was adopted. And then we have individual Community Plan Amendments, which applicants can come in to change their community plan designation or the verbiage of a specific parcel or the verbiage within the plan.

We also have the State Land Use Law which is referred to as Chapter 205, Hawaii Revised Statutes. The law was adopted in 1961 and it divides all lands into one of four land use districts: Urban, Agriculture, Rural or Conservation. So, the Urban lands are indicated in the yellow. And you can notice that Lana`i Airport, Lana`i City, and there's a small area out in Manele where you have the hotels and some of the developments around the hotel.

Ms. Kaye: I'm just going to interrupt you for one second Clayton. The handout I think was copied so that the printing up there doesn't show. So if anyone wants to write that down, we'll take a second and pause here. Is it just mines? Everybody's.

Ms. de Jetley: Madame Chair, may we ask questions?

Ms. Kaye: Yes.

Ms. de Jetley: Going to Planning resources, when you were talking about the Cultural Resources Commission, you said Nani Watanabe is on the Cultural Resources Commission for Lana`i. She no longer lives here. Is there a residency requirement for that Commission? Because we do need to have people who actually lives on this island representing us.

Mr. Yoshida: Yes. This is a professional board or commission where there are requirements under the County Code. You have to have like an archeologist or a person with a historical background, a person that's proficient in cultural resources. There's also, I believe, a residency requirement for a member. One member has to be from the island of Lana`i, and one member has to be from the island of Moloka`i.

Ms. Kaye: Commission de Jetley is correct in that our current member then is not a resident of Lana`i. So how do you folks proceed in that event?

Mr. Yoshida: This seems more like a legal question, and I will call on your legal counsel to advise you relative to that discussion.

Mr. Giroux: I think I was asked about this sometime ago. As far as what we were looking at is seeing if her position actually covered more than her residency. And as far as having a historical and cultural knowledge that's relevant to the board. But that leaves the issue of whether or not – it leaves the basis that we need to find somebody who is a resident – and soon – and fill that position.

Ms. de Jetley: May I suggest that if it doesn't come before us to make that decision that you may consider consulting with Kapa Maly who is the Director of Lana`i's Cultural Heritage Center, and see whether or not he has a suitable recommendation for you, rather than leaving us in this zone where we do not have a representative.

Mr. Giroux: I believe there maybe extra positions open, so they're actively looking to fill a position with somebody from Lana`i. You have to confirm that with the Department. But when they had asked me, that was the understanding that we were transmitting names to the Mayor's Office to try to get somebody from Lana`i. And Kapa Maly's name did come up as far as –

Ms. Kaye: I guess that's our question is how does this particular Cultural Resources Commission function? Is it usually the Mayor appoints –?

Mr. Giroux: Yeah. The Mayor would – when a position is open, then the Mayor would take applications and then recommend a position to be filled and then the Council would then confirm that.

Ms. Kaye: Okay. So anyone we know of should be encouraged then to just apply to directly –

Mr. Giroux: Yeah.

Ms. Kaye: – as much as they would to be on this Board? Okay, thank you.

Mr. Yoshida: I guess as James said, we do have two vacancies on that Commission, currently.

Moving back to 205 – it also defines the permissible uses within various land use districts. Typically the conservation district is governed by the State Department of Land and Natural Resources. The County would govern the Urban areas and it probably shares jurisdiction in the Ag and the Rural areas.

Ms. Kaye: Excuse me Clayton, before you move on, I just wanted to tell our new members and I think there were one of two old members who weren't here last month that our maps were at issue because of a provision to redo the interim zoning, was on the agenda. And

so Joe Alueta brought two maps that showed State zoning and interim zoning, and we're the keepers of the maps now. So we have them here. And I'm going to bring them to every meeting in case anybody wants to look at them. I just wanted to let everyone know that they're on island now.

Mr. Yoshida: So one of the items under Chapter 205 is a District Boundary Amendment (DBA). If someone wants to change the land use district from let's say Ag to Urban. Also, there's a special permits provision where someone wants to do an unusual and reasonable use that's not permitted in the Ag or Rural districts. For the Lana`i Airport, for a number of years, it was permitted to the Special Use Permit. But eventually, it was seen that it was going to be an airport for a long, long time. So the State came in for a boundary amendment from Ag to Urban, and also a zoning change to airport district to zone the Lana`i Airport to an Airport District.

Examples of Special Use Permit, say in the Ag District, if someone wants to maybe do commercial – I think even the sporting place is in the Ag district – that's not outrightly permitted. It wasn't outrightly permitted in the State Land Use District, so they had to come in for a special permit for the sporting clays.

If it's more than 15 acres, the State Land Use Commission is the final decision making authority. For Lana`i, in the late 1980's and 1990's, or early 1990's, there were a number of petitions for reclassification by major land owner Castle & Cooke to change the land use district from Ag to Urban, so they could accommodate the development – the golf courses and the housing around the property. But we haven't had one for Lana`i since I think Manele Residential and that probably was 1996.

The Lana`i Planning Commission would review District Boundary Amendments if it's less than 15 acres. They'd make a recommendation to the County Council. It also would hold a public hearing on Special Use Permits (SUP) for those lands that are greater than 15 and less than 15 acres. It makes the final decision if the project is less than 15 acres. So I believe a couple of months ago the Commission was dealing with the Lana`i Landfill Special Use Permit which is more than 15 acres. So it was making a recommendation to the State Land Use Commission regarding a time extension for use of the property for the Lana`i Landfill.

We also have zoning which is authorized by Chapter 46, Hawaii Revised Statutes, and that's quantified in Title 19 of the Maui County Code. It has the various permissible uses, special uses, and the performance standards for the various zoning districts such as setbacks, height limits, lot coverage, floor area ratio. The Zoning Code is divided into two sections, Chapter 19.02 which is Interim Zoning which has been in Maui County since 1958, and we have Comprehensive Zoning. We'll be talking about some of these items which are in the Comprehensive Zoning section of the Code. The Department did come

in to the Commission back in, I believe it was – 2002 or 2001 – to try to do some Comprehensive Zoning around the Lana`i City area because they faced some problems with Interim Zoning and non-conforming uses and rebuilding in case of a fire – those type of issues.

Ms. Kaye: And then what happened?

Mr. Yoshida: That passed. So a lot of the areas around Dole Park, even Dole Park itself, is re-zoned Park 2 District and the businesses around Dole Park are zoned BCT, Country Town Business District. So before, a lot of them had to come in for a use variance with the Board of Variances and Appeals. But then they would always ask them you have to implement the long term solution which is zone rural. And there was always that fact about what if we have a restaurant today, but then somehow the restaurant goes out of business and then you want to convert the building to a clothing store. Then you have to get another use variance for the clothing store because the use has changed.

Ms. Kaye: If you don't mind, I'd like to ask you a question about a letter that's going to be in our packet and discussed later because it's relevant to this. You're saying that revisions to the zoning came before this body in 2005?

Mr. Yoshida: About 2001 - 2002.

Ms. Kaye: So there's an update? This is a notification that was in everyone's packet that there were two studies that would impact Lana`i, and one of them is the update of the Lana`i Country Town Business Design Guidelines, and that is specifically to address an issue that came up, I think, about a year ago where the design guidelines did not conform with Community Plans.

Mr. Yoshida: Yes. I believe what happened was the design guidelines were adopted by the Planning Commission in 1997. And as stated earlier, the Lana`i Community Plan was adopted in 1998. So there was this inconsistency at least as far as height is concerned, in the guidelines and the community plan policy. So the Department has – we could receive money from the current fiscal year to try and update some of these design guidelines and make sure there's consistency between the two because sometimes people just read one. So they might just read the design guidelines that says we can construct two-story buildings without reading the Community Plan that says no you can not construct a commercial two-story building.

Ms. Kaye: Okay, thank you.

Mr. Yoshida: And we have the Coastal Management Act, Chapter 205, Hawaii Revised Statutes, governing the shorelines or areas near the shoreline and impacts on the near

shore waters, and Coastal Resources Planner Thorne Abbott will be talking in detail about that.

We have your Special Management Area Rules, which is Chapter 12-402; and your Shoreline Setback Rules, Chapter 12-403. And the Planning Commission is the final authority on Special Management Area or SMA Permits, and on shoreline setback variances, so Thorne will talk more in depth. So, they built the Lana`i Canoe Hale that's in the shoreline setback area, so they have to get a shoreline setback variance from this Commission to build the Canoe Hale. And most of Manele is in the Special Management Area, except for some of the more mauka portions. So a lot of the development at Manele would come in for a Special Management Area Permit.

We also have Chapter 343, regarding the Environmental Impact Statement (EIS) and Environmental Assessment (EA.) And basically if you're doing a Community Plan Amendment (CPA) that triggers having to do an Environmental Impact Statement or Environmental Assessment, and the Commission could review some of these documents. Like when the State wanted to build the improvements at Manele Harbor, they came to this Commission for comments on the Environmental Assessment, and the Commission commented on that.

County zoning, very quickly, they are numerous types of applications which may come before this Commission such as zoning changes, Conditional Permit and the like. Moving to the zoning change – if a person wanted to change their zoning designation from, say R2 to B2, this Commission would hold a public hearing and make a recommendation to the County Council. The County Council is the final approving authority on the zoning change.

There's Conditional Permits (CP) for the established uses not specifically permitted within a zoning district. Because similar, related or compatible to committed uses in the zoning district, and the Planning Commission would hold a public hearing and make a recommendation to the Council. The Council is the final decision making authority. This is the picture of the West Maui Federal Credit Union building which is in a residential district. And that got a Conditional Permit. What is more controversial these days is the transient vacation rentals in the residential, Ag or rural districts, and they have to get a Conditional Permit. But the Council is spending a lot of time dealing with regulations on transient vacation rentals these days.

Ms. Kaye: And we would take this opportunity to say once again that Lana`i has consistently asked to be exempted from the prohibitions that applies relative to Maui County.

Mr. Yoshida: There's also the County Special Use Permit (CUP) which allows for uses

identified as Special Uses within the zoning district. And there are specific criteria identified in the Code. Your Planning Commission holds the public hearing and it makes the final decision on the County Special Use Permit, such as a church in a residential district.

Ms. Kaye: Clayton, I'm sorry, can I ask a question?

Mr. Yoshida: Yes.

Ms. Kaye: If church activities are being carried on in a non-church building set in a residential area, does that require a Special Use Permit?

Mr. Yoshida: Well if they have services on Sunday morning. We find instances like in Kihei or Kahului, they use somebody's garage for Sunday morning services. And basically we said, yes, you can do it on a regular basis. You know if they have like a bible study at somebody's house, we require them to get a special permit for that. But if they have a regular church services in a dwelling in the residential district, we typically require them to get a County Special Use Permit.

Ms. Leticia Castillo: The Lana`i use the clubhouse that this Company had given to them, and I don't see the LFCA – the Lana`i Filipino Community Council have been taking care of that building and it's being used as a church every Sunday. Have they requested for a permit for that?

Mr. Yoshida: I'm not sure relative to that specific instance. I probably could know more details.

Ms. Castillo: It's been in use every weekend. They've been used it for parties and wake services when we do have the need for this. But it has been used as a church every Sunday.

Mr. Gerald Rabaino: It seems like they've been using it for three years, but maybe you can answer it, if Lana`i Filipino Association approved it in using the building, wouldn't that reflect the land owner?

Mr. Yoshida: And the zoning is residential?

Mr. Rabaino: It's surrounded by residential. Yes.

Mr. Yoshida: I believe that the church is specifically listed as a special use in a residential district.

Ms. Kaye: Is it a matter, then Clayton, of enforcement? I mean, people have probably been

using lots of properties in way in which is not permitted in areas they're located in. But unless someone complains and there's someone available to investigate, it just continues, right?

Mr. Yoshida: Mr. Cerizo can probably address that better because he's from the Zoning Division. But, yeah, it's primarily complaint driven. Enforcement is primarily complaint driven.

Ms. Kaye: I'm sorry, is he here tonight?

Mr. Yoshida: Yes, he will be providing the talk on the flood hazard district.

Ms. Kaye: Okay, we can ask the question of him later then. Thank you.

Mr. Yoshida: We also have Planned Development (PD), though none are here on the island of Lana`i. But the density, they have to maintain a common open space requirement and they also have to provide recreation and community facilities. The Planning Commission would review and approve any Planned Development applications. An example that we use is the Puamana Planned Development in Lahaina.

There are Project Districts (PH) which allows for a flexible and creative planning approach. They are established in the Community Plans. It's a three phase process. Phase 1, there's a public hearing conducted by the Planning Commission, and the Commission makes a recommendation to the Council. This is for the standards for permitted uses between the subdistricts and any types of development standard, setback height restrictions, floor area ratio lot coverage. I believe there was an amendment that the Company went through back in 1995 regarding irrigation at the Manele golf course. There was a Phase 1 Project District Amendment. There's a Phase 2 which is typically they provide a preliminary site plan and the Commission decides if the preliminary site plan is in conformance with the Phase 1 development standards. This is typically what the Commission reviews whether it's at the Koele Project District or the Manele Project District. And then Phase 3 is an administrative approval from the Department of the final site plan. So on Lana`i you have two Project Districts, one is at Koele and one at Manele.

Ms. Kaye: And what phases are they in currently?

Mr. Yoshida: Well, typically if they do things along the lines of within the existing zoned areas and within the permitted uses, they would come before you for a Phase 2 Project District approval. There's a lot of activity at one time at Koele – permitting – they wanted to build two luxury suites, a wellness center, and so forth. And then there's some activity over at Manele where they wanted to build a swimming pool. And then of course, the State with the improvements at Manele Harbor, part of the lands were zoned Project District.

We also have a Bed & Breakfast (BB) Permits which may come before the Commission. And they're divided into three types depending on the number of bedrooms. Type 1 is the use of one or two bedrooms, and that's approved administratively by the Department. Type 2 is the use of three or four bedrooms, and a public hearing is conducted by the Planning Commission and the Commission decides on whether the permits should be issued or not. The Type 3 is the use of five or six bedroom. The Planning Commission would hold a public hearing and make a recommendation to the Council. The Council is the final authority on the Type 3 Bed & Breakfast Permit. Since the Bed & Breakfast homes chapter was developed in the Code in 1997, we have not have any Bed & Breakfast Permit application for the island of Lana`i.

There's the Country Town Business (CTB.) They're to establish development standards for businesses in rural communities to maintain the country town atmosphere of that area. The Lana`i City Design Guidelines again were approved in 1997 I believe. And the Department administers the Design Guidelines, and we're trying to deal with inconsistencies between the Community Plan because subsequently adopted and the Design Guidelines.

And we have Off-Site Parking (OSP) approval. If somebody wants to put in required parking on another lot within 400 feet of the subject project property, the Lana`i Planning Commission would be the approving authority, and no public hearing is required. We have a lot of these in Lahaina because the older towns like Paia or Makawao which the lots weren't really built for parking. They just had the business building – commercial building on the lot.

We also have Accessory Use Permits (ACC) which are defined in the zoning district, such as the hotel district, and the Lana`i Planning Commission would be the approving authority on Accessory Use Permits. No public hearing is required. If there aren't any other questions on zoning, then I'll hand the microphone over to our Coastal Resources Planner Thorne Abbott and he can talk about the coastal zone management law.

Ms. Kaye: Commissioners any questions for Clayton?

Mr. Yoshida: Thorne? (*Changed cassette tapes.*)

Mr. Thorne Abbott: Thank you Clayton. Aloha. It's always a privilege to come to Lana`i. Thank you very much for that. Feel free to ask any questions along the way. I'll talk to you a little about your Special Management Area Rules and Shoreline Setback Rules. Under the State Constitution we have the Hawaii Coastal Zone Management Program, and there's a Federal Law called the Coastal Zone Management Act, the Hawaii Coastal Zone Management Act. And the Governor designated all land in the State of Hawaii as part of the coastal zone. So everything is regulated by this Act. So anything, for example, Up-

country that's done by a government agency is actually regulated by the Coastal Zone Management Act. What the State have also done is delegated, through special management areas, the jurisdiction and authority to implement the Coastal Zone Management Act to each Planning Commission for each island. And so your special management area basically follows the shoreline and runs through 300 feet inland. So you have two rules, two sets of rules. One is the Special Management Area Rules and then the other one is the Shoreline Setback Rules.

Now if you look at this map, you'll see these are your State Land Use designations – Agriculture, Conservation, Rural and Urban – and then right along the edge of the island is the Special Management Area. So the vast majority of the island is not within the SMA. The boundaries were accepted in 1979. And the State and Federal government subsequently approved those boundaries as well as the program. And anything that meets the definition of development in the Coastal Zone Management Act requires an SMA Permit. Now the previous Chair had asked me to come and look at some areas to see if your SMA should be expanded. For example, the island of Molokai is proposing to expand it to the whole island. The Commission there also reviews all exemptions. I would strongly encourage you to not want to put the whole island in the SMA. The SMA is really a management tool. It's to reduce impacts to coastal resources. Your other land use tools that control development and regulate development are things like your Community Plan, your Project District, your zoning, your Country Town Business, Design Guidelines. So for example, deciding whether something should be two-stories or one-story wouldn't fall under this Special Management Area Rules per say because really that doesn't have a nexus or a clear connection with the coastal resource. Coastal Resources are things like protecting endangered monk seals, protecting your historic fishing grounds, and things like that. Or regulating drainage that would be discharged into the ocean that would cause pollution, and that pollution would end up on a coral reef, and it would kill the coral reef, which would in turn affect fisheries in that area.

What you may want to do, however, is in areas that you think there is the potential in the future of the development, particularly things like single-family houses that maybe of a larger size than your more of like a plantation style home that you would find here in Lana`i City, those can have an adverse impact when they're close to the coast line. So in some areas you may want to expand the SMA based on some ecological criteria.

Ms. Kaye: I'd like to ask you a question at this point. I've heard that also about Moloka`i. And actually I have several questions. First, how far along are they in that process? Second, what steps would they or we or any other body take to expand to island wide? And third, just react to this, the Coastal Zone Management was basically designed for the mainland where you couldn't possibly go further inland. That does not, in my mind, apply to Hawaii where islands are so small, and what happens Up-Country directly impacts what happens on the coast line and vice versa. So I don't really see the disadvantage of making

the whole island an SMA.

Mr. Abbott: Okay. Let me answer those in reverse. I agree with you that Hawaii is very different than the mainland. And in recognition of that, the State declared the entire State, all land masses within the coastal zone. So all activities are regulated under that law. Now if something is happening Up-Country, that's actually regulated by the Office of Planning, the State Office of Planning, which is in Honolulu. And what they'll do is make a consistency determination. So for example, well I'm not absolutely certain about this, but I would imagine that the proposed solar farm which is clearly Up-Country is clearly outside of the SMA, but it's within the coastal zone, that would be subject to the Hawaii Coastal Zone Management Act. And so the Office of Planning would make a determination if that proposed use is consistent with the law. They don't give the authority to this Commission, or through home rule, they don't give it to each island. Each island has their authority within the SMA. Those boundaries were established quite a while ago and you can expand them at anytime you want. All you have to do is determine you want to expand it, revise the maps, provide a justification to the Office of Planning, and if they find that's consistent with the law, then you can expand the boundaries.

Now there are some concerns with doing that. If you ever want to contract those boundaries, you have to prove that your existing regulatory regime achieves the same purposes as the Coastal Management Act in the special management area. So, when you go to contract those, if you're expanding them – and this is the problem on Moloka`i – they're expanding them so they can regulate up-country development. If they ever want to contract them, they're going to have to show that existing zoning and existing community plan land use tools achieve the same thing as the SMA Rules, and they're going to have a very difficult time doing that. At that juncture, you become non-compliant, and the Federal government or the State can actually take over regulatory authority. And I don't think that anyone wants the State or the Federal government to regulate what happens on Lana`i especially up-country and I'm certain that the Moloka`i Planning Commission doesn't want the Federal government regulating them. So that's the down side of expanding the SMA boundaries.

You also have to realize that basically you review permits to allow something to occur. But the SMA has kind of morphed into a land use tool and it's really not. It's to manage coastal resources. Permitting something to occur is not managing it. Permitting it and then putting conditions on it so it avoids, minimizes or mitigates any negative impact on a coastal resource – say fish, or habitat, or monk seals or coral reefs – that's managing. That's actually managing. So I would not encourage you to expand the SMA. However, if you do, I'll be the first planner to sign up to come and work for you.

Ms. de Jetley: I have a question. Along the area that we call the slides at Kanalu, a fish farm wants to establish a ten pod farm out in the ocean where it is going to re-impact the

coast line and Lana`i fishers. Instead of expanding the SMA inward, can we expand it outward?

Mr. Abbott: No. It's the simplest question of the evening. We're the County of Maui. You're a Commission under the County of Maui. Your jurisdiction ends at the shoreline. That's State, and so you don't have jurisdiction. However, they would have to get a Conservation District Use Permit, and when they do that – and they'll also have to get a Corp. of Engineers Permit – when they do that, they'll have to, by law, ask us to comment on that proposal, and this Commission can draft a comment to that end. And those comments are recognized very, very strongly.

Ms. Kaye: How would we know when it's appropriate for us to make those comments?

Mr. Abbott: They'll actually send us a copy of the application soliciting comment. We would probably bring that to you. I know, I'm actually on the mailing list for Maui Fresh Fish, so they have us in the loop.

Ms. Kaye: Great, so we can rely on you for that. Thank you.

Mr. Abbott: I believe you can rely on the Department for that, not the Planner.

Mr. Rabaino: I have a question for you.

Mr. Abbott: Yes, please.

Mr. Rabaino: You see the area where it says Federation going down to Keomoku Road?

Mr. Abbott: Yes.

Mr. Rabaino: There were a lot of turtles over there, as well as, once in a while, we have monk seals over there, how would that affect the shoreline management?

Mr. Abbott: How will that affect –

Mr. Rabaino: If we wanted to protect that area from development.

Mr. Abbott: I personally think that stretch of area you probably might want to look at expanding. I would not want – currently, a single-family resident which is not part of a larger development – it's exempted – as long as you can show you're not going to have any negative impacts on coastal resources. So you may want to change what your definition say. You know, what is a single-family residence? Clayton can tell you of a situation where on Maui we had – what was it Clayton – a 2,100 square foot single-family residence, and

the gentleman came with his family, and he had sufficient family to fill up 2,100 square feet. He was a –

Mr. Yoshida: It was a plan for a 4,300 square foot house at Kaweha Point. He was sort of a rich person from the far east and brought his family and his nannies, gardener and so forth. But under the house, it had an area of 4,300 square feet.

Ms. Kaye: Two comments to that. I don't know that you're aware of this Thorne, but we had a public hearing and suggested that the rules change for us just as they did for Moloka`i so that all exemptions will now come to the Planning Commission. And actually had Joe been here tonight, I was going to ask him what the progress of that is. Because I know it had a public hearing and it's been changed. But whether the Mayor signed off on it or not, I'm unaware of that. Perhaps you know?

Mr. Abbott: For Moloka`i yes.

Ms. Kaye: I know Moloka`i is, but we're waiting for –

Mr. Abbott: I don't know what the status on yours is, but I would encourage you not to review every exemption.

Ms. Kaye: Thorne, it's too late. That ship has sailed. We had them do the homework and they came back with exactly five exemptions over the last 10 years for Lana`i, so it's not going to be like Moloka`i where you have a lot of activity which was their main argument to us. But that's already done. That's pau.

Mr. Abbott: Okay. I won't speak to that, but I will speak in context of considering planning – planning for the future. And the intent of planning, I don't really do anything. I just plan things. Really, I went over to that area, it's just gorgeous. And there's nothing to prevent someone to come in such as the well funded gentleman from the mid-east proposing such an item. And currently, we would generally have to exempt that. And so I think it's very prudent for this Commission to want to expand your SMA and expand your regulatory authority over that kind of thing if that's not something that's fitting with what you perceive as a single-family resident than what the law allows. Now what you could do is not necessarily change the definition of single-family resident because that's actually defined in the law. But it does say single-family resident that's not part of a larger development. So you could describe what part of a larger development is. For example, anything that's within – let's just take a number – 150 foot of the shoreline has the potential to have an adverse impact – potential. So that might be something you change in your SMA Rule definitions. And those kinds of what is now currently exempted you would review as an SMA Major. So it's just a thought that I wanted to plant the seed. You've already been thinking about it. Obviously the previous Chair also thought about that. And I do think it's

worthy of discussion.

Ms. Kaye: I wonder, Commissioners, if we might want to think about putting this on a future agenda? To devote a discussion on how we would proceed and use the maps and figure out what areas it would apply to. I looked at the regulations that apply to single-family residences, and my sense is that they were really written for areas that were already subdivided – grading is done, and whatever – and you’re just coming in to a lot and you’re going to build. There’s no where along that coast line where that’s going to be true. There will be grading because it’s wild. It’s completely wild. So I would argue that anybody coming in saying I only have a single-family resident, I’m exempted. By the regulations as written right now will not be exempted and will come here anyway. But I didn’t understand that we could change – we could spot change, and I think we would like to consider some more information.

Mr. Abbott: You can write something that’s more restrictive than the State law, but that does not contravene the State Law. The State Law says you’re allowed to build a house for your family – that’s what it says – as long as it’s not part of a larger development. I think I would caution you to say, well, anything beyond 5,500 square foot – that’s too big. Well, maybe it isn’t. This gentleman that came to us, he had a family and he needed 20, 30, 40 thousand square feet. What I tie it to and what you need to think about – and same in Moloka`i, and we did a study for Moloka`i to look at where is the nexus – where’s the connection between what you want to regulate and true coastal impacts. And that’s what you should key on. Part of a larger development would imply some kind of negative impact along the shoreline.

Ms. Kaye: Okay, I don’t think we can settle this tonight. Clayton, can we rely on you to file it away. Over the next several months if there’s an opportunity to have Thorne come back and give us a workshop on how we could start thinking about this, you plug him in? Thank you.

Mr. Abbott: And I’ll only add one more comment. On Moloka`i, we did do a study. We sought funding for that from the State Office of Planning. And at the end of the day, what our recommendation was, a lot of the areas that were in the flood zone, in Moloka`i, are not within the SMA. And to me, flooding and the impacts of flooding that any structure can create – even though that’s regulated by Francis and FEMA – there is a connection there. If a flood came in and it got your septic and your septic overflowed or was washed out and went into the ocean, you could prove a definite water quality connect with re-health. So those are the kinds of things that we’d want to look at.

Ms. Kaye: Okay, and I’m just going to point out one final thought. My understanding is there is no flood – FEMA has not prepared a map for Lana`i. Is that correct?

Mr. Abbott: I'll let Francis speak to that.

Ms. Kaye: Oh, good. Francis is here now?

Mr. Abbott: He is here, and he'll be giving a presentation. Now that I've made my boss cringe, onward and forward. There are actually 11 things that the Coastal Zone Management Act and the Special Management Area Rules regulate. This Commission provides coastal recreation opportunities to the public; here to protect, preserve and restore Hawaiian and American cultural and historic resources; conserve aquatic natural resources for sustainable development; reduce risk to new structures and enhance public safety; protect, preserve and restore coastal views, open space and scenery; enhance public beach access and minimize beach loss due to erosion and site hardening with sea walls or rocks piled along the shoreline; minimize adverse impacts and protect coastal ecosystems which would include fish ponds; provide and co-locate coastal dependent facilities while minimizing negative impacts. Now what that mean is, you want to take your – there are things that are going to have a negative impact – a harbor or port has a negative impact on coastal resources. So you want to co-locate all those things together. You don't want to have six different ports on island. You want to focus all that together, all your infrastructure together. And as you know, you just recently, Dobors spent a lot of money on improving Manele Bay, and that comes under this clause. That was a coastal dependent facility, your transport facilities are tied up there, so let's improve that. Let's not look for another spot. Let's improve that spot. Streamlining the permit process – that means go faster – do more with less. And enhance public awareness and participation as well as stimulate public awareness, participation and education.

So we have Majors, Minors, Emergencies, Exceptions, and Denials. Majors are anything over \$125,000. They require a public hearing. Everybody within 500 feet has to be notified by certified mail. We put an ad in the newspaper, of one, when the public hearing date is. The applicant has to put an ad in the newspaper when they actually make the application. And this Commission can put conditions on there to avoid, minimize and mitigate adverse impacts. An example of minimizing an impact would be if you're going to any grading, you have to use silk fences, and you can also do grading during the dry period of the year. You can't do it in the middle of the wet season.

A Minor Permit also can have conditions, however, there's no public hearing and that's for projects under \$125,000. The dollar amount is just an arbitrary number that the State Legislature picked and they're not going to change it anytime soon.

You can get an Emergency Permit if there's some immanent or substantial harm to public welfare or to prevent substantial physical harm to persons or property. The Director can give an oral approval right over the phone or by email, but he has to submit a report to this Commission upon final determination. That permit expires in 180 days from that approval,

and again, there are going to be conditions to avoid, minimize and mitigate adverse impacts.

If you find something is not a development, ie; a single-family residence and it doesn't have any adverse impacts, for example, they use silk fences so they're not going to have a negative impact on drainage; they're not going to hurt any views from a public roadway to the ocean; they're going to have an archeological monitor on site so that if they're doing any land or ground alternating or excavation and they run into any reverent or burials they're going to stop. Those are mitigation measures and so that project would be found to not have an negative impact. And because of that, it's not a development, so therefore, it's exempted. We do do an assessment, but it basically is a permit that says you don't need a permit.

And finally you can deny a project if it's inconsistent with its State Land Use, General Plan or Community Plan or Zoning, or if it's going to have an adverse impact on the coastal resource.

There is some decision making criteria in your rules. I mention again to have an adverse impact, the affects has to be minimized in light of the compelling public interest. For example, for the recent harbor improvements, they have a very large area that they're paving for parking, and there's no trees in that area. Well, there's no trees because if you had a sailboat, those tree limbs might get in the way of your mast. You're trailing your sailboat with the mast, and all of sudden the big tree limbs smashes your mast. So you could say, well, the affect of having that big open area with no trees, no shade, is minimized because the compelling public interest is that you want boaters to be able to use their trailer their sailboat down there without having damage to the boat.

It also has to be consistent with the General Plan, Community Plan and zoning, and consistent with the SMA Guidelines. Those guidelines, you have to provide adequate access to publically owned beaches, recreational areas, wildlife and nature reserves. You have to have adequately and properly located public recreation areas. You have to control, manage and minimize impacts of pollution. You have to minimize adverse effects to water resources and scenic and recreational amenities and minimize risk of coastal hazards to proposed structures. And that's where Francis' FEMA standards come in and your shoreline setback rules.

Finally, you can do reasonable terms and conditions – reasonable. You can't ask someone who's building a house – you can't say well you're down there at Lopa Beach and we'd like you, as a condition of approval of house, to put in a paved road all the way down there. That's not reasonable. You do have to seek to minimize for a reasonable dredging, filling of any coastal areas; any reduction in beach size; impediments to beach access; any loss of coastal view plains; any adverse effects to water quality, fisheries or wildlife habitat; and

any loss of existing or potential agricultural uses.

One other thing I'll mention about exemptions – you can't condition an exemption. It's a permit that says you don't need a permit. So the applicant can make representations such as I'm going to have an archeological monitor on site, and we may get a letter from SHPD, the State Historic Preservation Division, that says, we've reviewed your monitoring plan and that monitoring plan is acceptable. The applicant is making a representation. That representation is fully enforceable. So if I got out and said I was going to build a house in Lana`i City, and I said I was going to make it plantation style, paint it green, and have a copper brown roof. If I build a house and painted it pink, and that was in the SMA, then you could come back and actually site me for a violation.

Any other questions on SMA's? Nope. Okay. A little bit about your shoreline rules. They were adopted in November 16, 1995. I don't think they've been updated since then. They regulate use and activities on land within the shoreline are to protect health, safety and welfare to the public by providing minimum protection from coastal natural hazards; ensure public use and enjoyment of the shoreline resources or preserve and protect for future generations. They're applicable to all lands that abut the shoreline, and lands that abut a beach preserve. There's one method to calculate your setback and that's based on your average lot depth, and that is how deep is your lot?

For coastal erosion as you see on the right hand side. You see how there's a nice beach there? Well that's unstabilized and coastal erosion is a natural process, for shoreline retreat over a long period of time, from sea level rise, wind and water and wave action. And while the shoreline is retreating, the beach width is maintained from sand which is naturally released from sand dunes and other sand reservoirs behind the beach. On the left side, we have a stabilized situation. That's where you have that nice house and you have a rock wall there. And what happens is the beach erodes, and it erodes because there's a loss of sandy beach width as the sand reservoirs are depleted. The sand transport is hindered, or the sand reservoir is held behind that wall. So you kind of have a choice. You can either lose the land on the right hand sand and keep the beach, or you can keep the land but you lose the beach. That's what you see on the left hand side. Those are your options. There's nothing else. That's Mother Nature. Lose the land, keep the beach. Keep the land, lose the beach.

Ms. de Jetley: Madame Chair. May I address the Chair please?

Mr. Abbott: Sure.

Ms. de Jetley: Madame Chair, it's already 7:20 p.m. and we still have seven or eight more pages of this to do. Would it be possible to postpone this until after we finish with our business so that people who are waiting to testify can go on with their evening and we can

move the rest of this presentation to after the Director's Report? Or take care of the unfinished business so people who are waiting to testify can leave instead of sitting through the rest of this presentation.

Ms. Kaye: Thorne, how much longer do you think your –?

Mr. Abbott: I think this slide will conclude.

Ms. Kaye: Really? Okay.

Mr. Abbott: About three more slides.

Ms. Kaye: Why don't you finish then, and before you –

Mr. Abbott: I'll try to be brief. I apologize for going on for a while. Just so you know what your setbacks are, it's 25 foot if your lot is less than 100 foot; 40 foot if your lot is 100 foot to 160 foot; and 25% of the lot depth after that; 40 foot setback for all other lots. The only thing else I'll mention is you do have variances. There's criteria for approving a variance. And I will mention that very quickly. This is a list of things you can approve under the variance. And I won't mention all of these except one in particular regarding the Canoe Hale which is any kind of private facilities or improvements that are clearly in the public interest, you're going to approve as a variance. In fact, if it's a water sport recreational facility which in this case, the Canoe Hale is, you can actually delegate that approval authority to the Director of the Planning Department who will subsequently report it to you - but just so you're aware of that.

Ms. Kaye: I'd like to ask a question. You're saying – we're on the same page – that these that we're looking at right now, if somebody required a variance to conduct one of these activities, they would come here, to the Planning Commission?

Mr. Abbott: They would come here and this basically is the list of things you can approve for a variance.

Ms. Kaye: And does it have to go anywhere else?

Mr. Abbott: No.

Ms. Kaye: Okay. Then, if you look at the third one, moving a sand within a beach. We had a huge storm a couple years ago, and a lot of sands was moved and somehow there was this, Lana`i grapevine, that nobody could move the sand – that the State had to approve it because it should've been put back where it was.

Mr. Abbott: It depends on whether it's – everything mauka of the shoreline is within this Commission's jurisdiction. Everything makai of the shoreline is the State's jurisdiction.

Ms. Kaye: This was definitely mauka.

Mr. Abbott: Mauka of the shoreline. The shoreline is the highest wash of the waves during –

Ms. Kaye: Right, it was like –

Mr. Abbott: Okay, so you could've approved it –

Ms. Kaye: Thank you.

Mr. Abbott: – based on my understanding of the rules. Thank you very much for your time.

Ms. Kaye: Before you run away, Thorne, let's not rush through this. Is there any questions from the Commissioners for Thorne? And you're going to be here all night so if we come up with something? And I believe it would be most prudent since we don't want to keep people waiting, to take care of the item that Commissioner de Jetley thinks people are going to testify on. And then we will go back to our training and then we'll do Director's Report. That would be the only change to the agenda. Is that acceptable to everyone?

Mr. Abbott: Thank you very much for your time.

D. UNFINISHED BUSINESS

- 1. May 7, 2008 Semi-Annual Report submitted by Jon Shimizu, AIA, Vice-President of Development of Castle & Cooke Resorts, LLC regarding the project irrigation demand associated with the Residential and Multi-Family Development at Manele, TMK: 4-9-017:001, 002, 004, 005, and 4-9-002:049, Manele, Island of Lana`i. (95/SM1-015) (95/PH2-001) (Letter was distributed to the Lana`i Planning Commission prior to the May 21, 2008 meeting.) (Last discussed at the June 18, 2008 meeting.) (D. Dias)**
 - a. Draft written response letter from the Lana`i Planning Commission to Castle & Cooke Resorts, LLC.**

The Commission may authorize the sending of the letter with or without modifications.

Ms. Kaye: Now we're going to depart from the agenda and deal with unfinished business. Each Commissioner got a letter in their packet that is a draft that our Planner Danny Dias help put together for some background for our new members –. For our new members, this letter that you got as a draft from the Planning Department, was a result of months of deliberations last year when a five year extension – and I think it was the third five-year extension – was requested from the Planning Commission to proceed with the development at Manele. One of the conditions that had been put on the original application was to continue to develop non-potable sources of water. And try as we could, we couldn't find the records to who, or how or why that had been imposed. So going forward, we thought with this next extension period, we voted to impose condition #14 which is set forth in that letter. That is the extent of what is on the table tonight and what this draft letter is in response to. Castle & Cooke very kindly complied and put together a lot of information. We struggled to understand it, so we deferred it for a month and last month came up with some of – as you read the minutes – you saw some of the issues we had with it.

So really what's on the table tonight is a discussion of this draft. If anyone wants to make any changes or suggestions to it, now is the time to do it. And then what we will do is open it up for public testimony. And after that, we'll just move, second, and approve; and the Planning Department then on behalf of Mr. Hunt, will send a letter to Castle & Cooke. Any questions on that process so far? Do any of the Commissioners have any comments on this letter before we open it up for public testimony?

Okay, I'm just going to comment on the very first paragraph. I struggled with this because it seemed to run counter to the intent of the condition itself, which is not that they get to wait five-years. And if they finish everything, they don't get to do the well. As I just explained, the fact that they didn't do, develop non-potable sources of water with the last extension period, is what caused this condition. And then I read the minutes and realized that's directly in response, I'm assuming, from a comment that was made by Commission Zigmond. So with that said, that's the only comment I have on the first one, number one. So, if the Commissioners have no questions or comments, we'll open it up for public testimony.

Mr. Ron McOmbler: Good evening. My name is Ron McOmbler. It is my understanding that you put a letter together to the Company or are we responding to this? To the original one from Jon Shimizu?

Ms. Kaye: Actually, what's on the table tonight is the draft letter that Mr. Dias, the Planner, has drafted in response to that Ron. You can provide whatever comment you want.

Mr. McOmbler: Without seeing it, I'd be making comments on the – which one?

Ms. Kaye: Go ahead.

Mr. McOmbler: I need to read this. I haven't seen this so I don't know what this says.

Ms. Kaye: Well if you want to add comments to the original letter that came in, that's what we're trying to do tonight, is respond to that original letter. So if you have something to add to that, that's fine.

Mr. McOmbler: Well as a member of the Water Working Group and a person that receives the monthly water reports, as I said before at another meeting, I do not understand on the second page where he – project irrigation demands – and he makes a statement in here right on the third line down – at build out, it's estimated 400,000 gallons a day usage. And I would assume he's talking about irrigation because that's what it says in here. If that's the case then there's something wrong with the figures in the water report because we're not seeing 400,000 gallons a day being used. We're seeing closer to a 1,000,000 gallons a day that's disappearing and being used down there. There's something erroneous about this. This is really scary to me that he's making a statement of 400,000 and writes it down here a little later that right now the project area is only using 151,800 gallons per day, as the 13th periodic report of 2007. Well, I don't know where he's getting that number from because if he's just taking it from the water report, there's a line strictly for irrigation, but it's not coming out of any particular well. They're pumping it, but we don't know where they're getting those numbers from. Because the end numbers, we're missing 50,000,000 gallons a year from the water report. So some where these numbers aren't working out. And I think you folks need to get a clarification on that from the Company.

I've gone over these things. I've gone over these things with other people that aren't in this position, and I've given them the water report to work on as a worksheet, and everybody comes up with the same thing. There's a lot of water missing and it's unaccountable for. I gave a testimony in February to the Water Working Group and the Council – Michelle Anderson – I got a terrible letter. I didn't get the letter, but Michelle Anderson got a letter from Harry Saunders saying that I had no right to give my own personal opinion on this. Funny thing is, is that this report came out a day after Harry Saunders sent the letter to the Council. And I think that's really funny. The letter to Council was May 6th, this is May 7th. I don't know what's going on here, but there's something that's not right. And I have every right, as an individual on the Water Working Group, to go and talk to the Council when I have a concern about our water use and development plan. And that's what it was all about. And the damage control that they did – the letter that came out said that there would be a cc to the Water Working Group. We have, as a Water Working Group, has never seen that letter. The only reason I got it is because Michelle Anderson sent it to me.

Now let's go back to this again. At build out, it was estimated at 400,000. We're exceeding that already folks. So you need to pin Mr. Shimizu down better on what his numbers are. And if this letter that you're drafting doesn't ask that question, you need to put that in there.

Ms. Kaye: Perhaps you could –

Mr. McOمبر: Can I go back and read it? And come back and make a comment on it?

Ms. Kaye: That would be fine. But for right now, thank you Ron. Do any of the Commissioners have a question for Ron, on what's been testified to so far? Any other public testimony?

Mr. Steve Bumbar: Good evening Madame Chair and members of the Lana`i Planning Commission. My name is Steve Bumbar, Senior Vice-President/General Manager for Castle & Cooke Resorts. I'm the newly appointed, head of the Water Department of the Lana`i Water Company, and we look forward to receiving the comments and the letters that you've prepared for us. We ask that we get a firm understanding and specifically what everybody is looking for. There's been a lot of discrepancies or misunderstanding or misinterpretations and what we're trying to do is work together with everyone to make sure that we try to put Lana`i and Lana`i Water Company in the best possible light as possible with everybody. So, again, if we could be very specific and clear, this will help us to be able to put together the information that everybody is looking for. And hopefully this could clarify and minimize future conflicts that we might have.

Ms. Kaye: Thank you. Any questions for Mr. Bumbar Commissioners? Observations - perhaps Mr. Bumbar you would like to take a draft. I don't think that we'll be removing anything from the draft that's before us tonight. But if you think of anything from your unique perspective that would aid both sides in gaining a better understanding because I think that is definitely our common goal here.

Mr. Bumbar: That's fine, and if I could have a draft, we would like to just look at it to make sure we specifically understand it.

Ms. Kaye: Sure. Okay, any other public testimony?

Mr. Fairfax "Pat" Reilly: Good evening members. Fairfax Reilly. Pat Reilly. I did submit a letter and I gave a letter to Mr. Bumbar. And I hope this letter – this becomes a public record – your letter that you're sending because I haven't seen that – or put it on a website or something so we all can see it eventually.

Ms. Kaye: Pat, it's a draft. That's why we're here tonight.

Mr. Reilly: I understand, but I'm requesting that the final be made public. That's my request. Besides that, congratulations to the new members and all your work which I know you're going to put in, in this business.

My concern was – it's part of a broader context – is that, whether through your water workshop or through this process and maybe not for this letter, that in light of what's happening on Moloka`i, that you get a better picture of what the capital investment and operational budgets for this water system. Five years – and this is not to imply that I don't think the Corporation has invested millions of dollars over the last 25 years in developing the water system. However, we also know that it takes a lot of money to keep a water system up, and to improve the water system. And we know that there's new wells to be drilled, new pumps to be placed, so I'm not sure under a public utility and a private water company, what the legal requirements are. But it would seem to me as a public utility that, that should be open information – what the capital investment program is for this water system for the next five-years or so. Thank you very much.

Ms. Kaye: Commissioners, any questions, comments for Mr. Reilly? Pat? One second. We had – everyone just got this letter tonight – and we are actually – I'm not sure if you'll still be here, but we're going to put it on at the end of the Communications and schedule it for next month because it's not within the purview of Condition #14. So I'm glad you spoke to it now, but I'm just letting you know that we are going to put it on at the end of the evening. Thank you. (*Changed cassette tapes.*)

Mr. McOmber: Ron McOmber. The short time I had to look at this – the only thing I'm really concerned about and I think you pretty well covered or tried to make sure that the subject is covered is the five-year to get that well, that non-potable well, up and running. I understand that there's been two permits that have been pulled.

Ms. Kaye: Are you talking – are you addressing. I'm sorry, Ron – Excuse me – are you addressing #1?

Mr. McOmber: Yes.

Mr. Kaye: Okay.

Mr. McOmber: #1, and he even said that in his report that he would have it done in five-years, but I don't think they can wait five-years. First of all, there's two wells that they've just pulled permits on – that the quorum has told us about. One is for like well #3 and the other one is to redo that one and to do a new well out by the piggery somewhere. That's the brackish well. I understand that they aren't going to do this for five-years, but they've already pulled the permits, and then that permit will go void. They only have one year to start that process, so they're going to have to turn around and do that all over again. They can't pull a permit and hold it perpetuity for five-years. And it doesn't take five-years to develop a well and get them in there and dig the wells. So they must not think that well, the brackish well, is as important as other wells. And they're both equally important. If we're looking at water pumpage and water heads, well heads, dropping, and when they

start dropping and if they go as bad as well #9 has done – if #14 does – they’re in serious trouble. And it all affects our upper drinking water wells. So this is fine. And like Pat said, I’d like to see this go public when you do it so we have it posted on the bulletin board somewhere. I’d like to see, also this report, sent to the Water Working Group. We’d like to see this because we’re the ones that’s sitting there talking with the Company month after month. Thank you very much. Thank you for your time.

Ms. Kaye: Thank you Ron. Questions, comments for Ron? Okay any additional public testimony? Okay, public testimony is closed. Commissioners, questions/discussions on this letter? Well I’d like to make one addition. The original letter, Danny, referenced two documents – I’m sorry, and you do have it in here. You asked for the County of Maui Department of Planning’s Staff Report that estimates irrigation demands at 400,000 gallons per day, and also the original application. The intent of this is to try to understand where the water is going down there. This does not include golf course, which is, right now, permitted by ordinance. It’s being litigated, but it’s permitted by ordinance. We tried to break out the areas that we thought would help us to understand. And so this is to go to Castle & Cooke to help them to help us to understand with their next report which will be due in November. And each time, we may have new questions, and try to revise this a little further. But for now, I would want Danny to address, if you wouldn’t mind, the requests that we’ve heard now to make this public. I don’t know how that would happen.

Mr. Danny Dias: I’m not too sure how that would happen either. All of these documents are public records, so if people request them, we’ll give them a copy. But as far as us posting it on our website and so forth, I’m not sure how that would work. I’d have to talk to Clayton.

Ms. Kaye: Okay. So can we just assume that if we – and we’re going to act on this in terms of like adopting your draft with any recommendations or changes anybody wants – then it will come back to us next month as a final as they always do. Colleen always sends out the letter in our next packet – to put us on notice that it’s been sent from Jeff to –

Mr. Dias: Yeah.

Ms. Kaye: Okay.

Ms. de Jetley: So Madame Chair, would a request for it to be sent to the – a copy to the Water Working Group – is that going to be appropriate? Can we do that?

Ms. Kaye: I don’t know that is appropriate, quite frankly. I think that’s a Planning Department decision. I think the Water Working Group can request a copy of it, but I don’t know if it’s the Planning Department’s responsibility to make that happen. I think it’s easy enough to get a copy. If they want it formally, then I think they’ll have to request it. Does that make sense, Clayton, to you?

Mr. Yoshida: Yes. Once the letter is issued, it's a public document.

Ms. Kaye: Okay, last call Commissioners. Anything you want to add? Any other questions you have about this draft letter? I'll entertain a motion that we adopt it. I can't move. Someone has to move and someone has to second.

Ms. Endrina: I move.

Ms. Kaye: Can you state your motion in full please?

Ms. Endrina: I move to adopt the letter in draft – as drafted by the Planning Department.

Ms. de Jetley: I second the motion.

Ms. Kaye: Discussion? Comments? All in favor?

Commission Members: "Aye."

Ms. Kaye: Oppose? Okay, the motion is adopted. Thank you.

**It was moved by Commissioner Darlene Endrina, seconded by
Commissioners Alberta de Jetley, then unanimously**

VOTED: To approve the draft letter as presented.

Ms. Kaye: How about we take 10 minute break and then go back to our orientation?
Everybody up for a break?

*(The Lana`i Planning Commission recessed at approximately 7:40 p.m., and
then reconvened at approximately 7:55 p.m.)*

Ms. Kaye: And now we have –

Mr. Francis Cerizo: Francis Cerizo.

Ms. Kaye: Thank you Francis.

Mr. Cerizo: I'm with the Zoning Division of the Planning Department. We handle the approval and review of permits. Normally the permit is for issuing a building permit, flood permit, sign permits and we also process banners. My presentation today is on flood hazard districts and how we handle that district in our Zoning Code. I'll be reviewing with

you our ordinance and how it was adopted. And how we implement the district standards through the flood maps. I'll show you how we develop our flood maps. Also I'll be giving you a preview of maps that we are working on for Lana`i. And the Community Rating System which is a rating system that we have, where we can reduce our flood insurances by doing a higher than normal standards. And finally, I'm going to some what give you what role that you have and in providing a more flood resistant community.

On the picture we have here in front of you is a photo of a 1995 storm damage in Louisiana. And this property was near the shoreline. And as you can see there is a sandy beach there. But it's slightly higher than what the flood heights suppose to be. But what happened here is with the constant wave action, it undermined the footing and the footing gave way. It pulled down the house. The wind came by and it tore down the rest of the house. So what you will learn today is, you know, what can we do as a Planning Commission where we can reduce these kinds of risks for the County and to the people that live here on Lana`i.

The Flood Hazard District Ordinance was adopted in 1981, and it's main purpose is for the protection of life and property. And secondly, it's for the reduction in public cost for flood control, rescue and relief efforts. In the past we've seen many examples of flood damage. Most recently in – was it Cedar Rapids, Iowa – where they had a lot of rain and flooding. We also saw it in Katrina – more recently – and I think that was a \$100 billion in losses and it affected more than 150,000 properties. In Hawaii, we had Iniki in 1992 where it was \$2.8 billion worth of damage, and nearly 90% of the residents were affected and nearly 14,000 structures were damage during that time.

So we started with a flood insurance rate map. On Lana`i, we have, recently it was given a – flood maps – proposed flood maps for the coastal waters of Lana`i. And let me just –

Ms. Kaye: Prepared by whom?

Mr. Cerizo: I'm sorry?

Ms. Kaye; Prepared by whom?

Mr. Cerizo: By FEMA. Okay, I'm going to give you a little example of that. The maps are now in draft form. We'll be having four panels that covers the island of Lana`i. And we have an example of the coastal area on Manele. And so we're looking at Manele Bay, down at the hotel. That's not you guys? Kaluakoi. Okay, this is a draft map, so this is an area that we have them fix. So, this is the harbor and here's the hotel. Yeah, that's probably off. Yeah. But this is just a draft map. Yeah, here's the hotel down at Manele. So one thing, the maps are going to be, even on the south side of the island, we're having a hurricane map study that was just finished, that's going to be also incorporated into the

flood maps. And we'll have areas that show – right now, what you see here is tsunami flooding and it's very minimal since this is all cliff area. And we have less tsunami influence on this side. On the northern side of the island, Ship Wreck Beach, we're having currently a new study being created along the whole coast, the north and eastern coast where the tsunami will be – a new tsunami study is currently being done. So it's going to cover the entire island on the peripheral of the island.

Ms. Kaye: Okay, hold it. You said that you're doing – and I would assume through FEMA – a hurricane study for the south part of the island?

Mr. Cerizo: Yes. Correct. Yes.

Ms. Kaye: What about the City? Has that been done?

Mr. Cerizo: The City is – they're starting – right now, it's only on the coast.

Ms. Kaye: I see.

Mr. Cerizo: We have not done any studies on the City and that's something that they'll be working on.

Ms. Kaye: When might they be doing that? There's a greater population impact, obviously up here than down on the other side.

Mr. Cerizo: We have some studies made down in Manele that's going to be incorporated because that's where we had some damages in the last five years – we had some flooding.

Ms. Kaye: Flooding.

Mr. Cerizo: Yeah, flooding that occurred there. And Lana`i Company, themselves, they actually, they did the study on their own. And what we're going to do is we're going to have that incorporated into the flood maps. But as far as Lana`i City, we will – that's something, in the future, we're going to budget for and make a request for FEMA to upgrade that area.

Ms. Kaye: Can we assume that will be done in the next annual budget?

Mr. Cerizo: We haven't looked at Lana`i as far as – we spent our last budget on the northern coast for the tsunami studies. We spent nearly – with our monies that we've put in – \$50,000 – we leveraged a study that is worth \$300,000.

Ms. Kaye: I'm sorry. Say that again.

Mr. Cerizo: Our participation is \$50,000 as a matching, and they've provided a \$250,000 of services.

Ms. Kaye: They, who?

Mr. Cerizo: That's FEMA. So FEMA study – there's two study areas that they did with the monies – on Lao Valley Stream and the other was for the northern coast of Lana`i, where the tsunami occurs.

Ms. de Jetley: – Madame Chair, I have a question?

Mr. Cerizo: Yes?

Ms. de Jetley: Why are we studying places where our population is almost zilch? If we have flooding, it's going to come from the mountains rather than from the ocean. In Maui County, all of our major floods have been from the mountain to the sea. And if you remember the flooding that occurred in Kula recently, and the flooding that occurs in Hana from heavy rains, washing down to the ocean, our chances of being hit by a tsunami in this area and being impacted is almost zilch. So why are we wasting all this money studying this area?

Mr. Cerizo: Well some of the studies were – as far as the hurricane study, that was done State wide. It was a study that, based on hurricane Katrina, they felt that we should have studies made if we have direct hits on the islands.

Ms. de Jetley: What I'm saying is our population base is here in the middle of the town. Our population, we have almost 3,000 people living right within a two mile radius here, compared to less than a 100 people living there. So why are you studying there when you should be concerned about hurricane study and flood study within the town. In December when we had 22 inch rain here within the town, we had severe flooding. So I don't understand why the County is going the route it's going.

Mr. Cerizo: Well, one thing, as far as the hurricane study, that was done through the State. It was not a study that was initiated by the County.

Ms. Kaye: Could you clarify for us then, if that study has been done, and it's been done State wide, then it should be available somewhere so that we could read it and see what the study results were, correct?

Mr. Cerizo: That's correct.

Ms. Kaye: And so who's website would that be on?

Mr. Cerizo: The study just came out. It came out within the last week – in fact, the last month.

Ms. Kaye: Timing in everything.

Mr. Cerizo: So there's two studies that came out within the last month. They're like several weeks apart. One was the hurricane study and the other is the – well, the tsunami study is actually –

Ms. de Jetley: – So where is it available – on what website?

Mr. Cerizo: It's not available yet. It's in draft form. It will be available within the next month. We'll be having a presentation here – just to have a meeting to have the public view the report and if you have any questions. And right now, it's going to be the coastal areas. We're not doing anything on land. This is what was available, and this is what FEMA said that they could provide, matching funds to care on the coastal. And as far as in land –. Before this, Lana`i didn't have a flood map so we're moving incrementally – we're going to get the coastal area. And that's something that, as far as, the inland areas, we have lidar that we took several years ago so that we can actually study the upper reaches of the island. It provides us with a topographic information so that we could study.

Ms. Kaye: Believe it or not, I've been on this Commission long enough to know that this serious progress because we've had no maps at all. And what I'm understanding you to say is that these are not all one study. There's a tsunami that obviously going to look at coast line. And there's hurricane which is going to look at everything once it's available, so that's good to know. And the flooding is, yet, again another issue. It's different, right?

Mr. Cerizo: Yes.

Ms. Kaye: Thank you.

Mr. Cerizo: Okay, so moving along to the flood study portion. We'll be coming in within the next two months to visit with you on that. The appeal period is for 90 days and it starts in about a month, so we expect to get back here within a couple of months. And so we can actually give out, or if you would like to appeal or have comments to the study, we would like to have that prepared before the 90 days time limit.

Actually, this map here is very, very brief. It doesn't have enough detail. As far as the photos, they just show along the coast that there is what we call the V-Zones – let me just show that area to you.

Mr. Rabaino: Out of curiosity, if you have a full 50-foot wave coming into Hulopoe Bay,

what is the damage for that area?

Mr. Cerizo: On these maps here, we have no information yet. So once the hurricane study comes up – this is just the base maps that shows that in some areas along the coast, you'll have, if it's a V-Zone, it shows that you're subject to a coastal flooding with velocity. And being a V-Zone with no suffix, there's no detail to it. For insurance purposes, if you're going to build in that area, we would expect you to either get studies to show how high it's going to be or wait for the study that we're going to be making within the next year.

Mr. Rabaino: So is this screen right now is just referring to flood zone?

Mr. Cerizo: Yeah. This is the V-Zone, and I'm going to explain that later. It's a coastal flooding with velocity.

Ms. Kaye: So you're talking tsunami or flooding?

Mr. Cerizo: Coastal flooding can be either by tsunamis or by hurricanes.

Ms. Kaye: Okay.

Mr. Rabaino: You have Lana`i City there?

Mr. Cerizo: No. It's shown, but there's no flooding occurring. There's no studies in that area.

Mr. Rabaino: Thank you.

Mr. Cerizo: Okay. In our flood maps, we also have what we call the flood boundary maps. And the flood boundary maps – this is typical of all maps that's going to be provided in our flood study. And it shows in areas where you have heavy flow of water. The gray area is a flood fringe area. And the white just stimulates the flood way. This is where the majority of the flooding would occur.

Ms. de Jetley: Excuse me. I don't think this is the right map. We don't have a Kamehameha Highway.

Mr. Cerizo: No. This is just an example. We don't have any maps of Lana`i. This is actually on Molokai. So this is an example of a flood way map that we have on the island. We have several maps on Maui and so fort, but this is just an example of what a flood way looks like. If you would like to look at different flood maps, when it becomes available, all of these maps will be available on line. And you would look for the Lana`i maps. The maps will be on appeal for the next 90-days. After the 90-day appeal period, there's going to be

several months before, I think, to clean up the appeals, and they project that the maps will be finalized by October 1, 2009, next year. It's some what a long process. So this is an example of a flood way map.

Ms. de Jetley: I have another question. When they're preparing these flood maps, are they taking into account – are the people preparing them, taking into account local knowledge of different areas?

Mr. Cerizo: When the maps are prepared, just like any other flood maps, it will be brought to the community and you will have an opportunity to review and comment on the maps. The maps are done – it's an engineering study by hydrologists and civil engineers where they will evaluate the area based on the local terrain and the soils. And typically they use an engineer that's from Hawaii, that would evaluate. And the Engineer that has been working on this island is, one of the more recent ones are RM Towill Engineering, and they've done a lot of work on this island.

Ms. Kaye: Excuse me, I'd like to clarify. RM Towill did extensive drainage studies, but I understand that they're no longer active on Lana`i. Are they back?

Mr. Cerizo: Well the studies have been made and they've been filed with the County.

Ms. Kaye: The work they've done previously is what you're referring to?

Mr. Cerizo: Right.

Ms. Kaye: Okay.

Mr. Cerizo: So we're trying to incorporate those studies. If the standards are up to FEMA standards, FEMA will accept those flood zone areas and incorporate that in the report.

Ms. Kaye: Thank you. Because the extensive work was done, and there's a drainage plan for the City, but it's not scheduled to be, even started I don't think, for another two years. Is that the study?

Mr. Cerizo: The study that I have is a study that shows the rainfall and the flooding that would occur because of the rainfall. As far as what action is going to be taken to mitigate any flooding, that is something that's not part of the study.

So this is a copy of a flood map. And on the flood maps we have different zones that are identified. The A-Zones are zones that are associated with riverine flooding, and the V-Zones are the coastal flooding. So you can see here, we have A-Zone. This is the A0-Zone. We have A4-Zone, and these are caused by these streams. This is in Kihei where

we have a lot of flooding. And Waipulani Stream, I believe, is somewhere around – I think it's this stream is – that's where we had that heavy flooding from Kula. It came down through this area here and it did a lot of flood damage, along this stream area.

So how do we handle riverine flooding? In our standards, we have, that's noted in our Title 19, Zoning Code, we had minimum standards. Basically, it's to elevate structures to the base point elevations. And the base point elevations are those elevations that we take off the flood maps. We designed the structures to withstand the flood forces. Sometimes, the buildings are allowed to flood, and usually these are storage areas or garages. It's allowed to be flooded, and they have openings to equalize the flooding, the flood forces, and it's made of materials that would resist flooding. The rest of the house should be elevated above the base point elevations, so the flooring and their contents won't get damage. We also protect the utilities so that utilities don't get damage so sewage would go either into the water or the water doesn't get into our water system. I mean, the storm water doesn't get into the water system. So that's the protection of the utilities.

As you know, flooding doesn't affect or damage houses, it also damage boats. It causes areas to be cut off from other areas, affecting commerce and emergency services. I think, your road on Lana`i Avenue sometimes that overflows and it cuts that part of the island off whenever you have high floods occurrences.

This is a map of the potential stream flooding on your island, and a lot of these areas are uninhabited but you do have some flooding up in the upper reaches, but the only other area that's of concern is near Manele and the Harbor area.

The other type of flooding that we have is coastal flooding. And coastal flooding is typically done, like I said previously, from tsunamis and the other one is from hurricanes. In the case on the right hand side, this is South Kihei Road and this is when we had a small storm system. We had a full moon and we had a higher than usual high tides. Typically we don't have this flooding, but probably once in a 50-years that we've had this type of flooding occurrence where you have a flight storm coming through, and it's not even a hurricane, and you just have high tides.

Coastal flooding standards are a little higher than your normal riverine flooding. We still elevate the structure to the base point elevations, but one thing we do is that the elevation – that you have to elevate your structure so you have to clear the entire underneath of the building. Like the lowest structure member under the building has to clear the flood height. We also designed a structure to withstand the flood forces, not only from the water, but also from high winds, which is just as damaging. Protection of utilities is the same as riverine flooding. So this is a schematic on the tsunami. On the V-Zone side, we have, so you clear the water. But then it totally clears the water, when you hit the A-Zone. Our A-Zone are here, along the coast, there's a point where when the water is less than three feet, it's

a lower velocity. It's like when you stand on the edge of the beach. If you stand in ankle deep water, it doesn't drag you out. Try going to waist deep, it can actually pull you into the water. So it's the same effect on the structure.

The Community Rating System Program is part of the National Insurance Program, and the County has adopted several higher standards where we provide a higher level of protection. And because we have adopted these higher standards, FEMA has provided reduced flood premiums. Some of the higher standards besides – we're looking at the minimum height of your building being – it's suppose to be at base point elevation, but we're saying it should be a one foot higher than the base point elevations. So you have the extra free board, the extra protection.

So what are your roles? How can you help in the protection of the community so that we have lesser damages to the coastal properties or inland properties where you are subject to high winds and wave actions? There's two provisions or areas that you can help in, and one is the designation of open space. Open space, this use, is intended to limit development on certain urban and non-urban lands which may be inappropriate for intensive development due to environmental or physical constraints such as shoreline buffer areas, drainage ways, flood plains and tsunami areas. In other words, in the near future, you'll be reviewing your Community Plan, and in some areas – and you probably know it better than anyone else – there's going to be a drainage way that gets flooded, people's houses get threaten. It may, right now, the house – as your town grows, it will go into areas that's not developed now. But one way of protecting your community is to designate open space where you have flood plains. Same as flood plains, not only by riverine flooding, as in Lana`i City, but also your tsunami areas. Areas that are subject to hurricane damage. Those areas should be looked at. We should be able to provide you that information, that when you look at these maps, you should ask where are the tsunami areas? Where are the areas that you may get damages? That information should be available, and that's something that you may want to decide. Let's make a big buffer area so that we can keep our homes out of the harms way.

Ms. Castillo: Excuse me. But when we had a big rain, quite some time ago, we got flooded from the water at the fill, especially when my house is down below, and my rain is all the way to my knees. And the drainage over here at Lana`i Avenue is not appropriate enough for all the water that does down.

Mr. Cerizo: Okay.

Ms. Castillo: Even in the cafeteria was flooded too at this time.

Mr. Cerizo: There's two types of drainage systems. One is a drainage system that handle your normal urban flows, and these are like in town. If you have a certain amount of rain

that falls in the City, the roads are designed to handle a certain amount of water. Usually, they look at as the ten-year storm, which is like a heavy storm. When you have storm levels that exceeds that, you will have some flooding. If it gets way higher, like when we say it's a 100-year storm, then you'll have flooding that can not be handled by your normal drainage systems.

So, how do you protect yourself against that? One way is to give out flood maps that will show the flood zones. And that's something that we're going, in the future, to develop. If there is examples or records of persistent flooding, that's something that should be brought up to the County and say we have flooding here, like, every year, or we have flooding here when there's a big storm. And it's good to know that we have these examples so you can screen yourself up to the forefront. Because being on this island, I know that the drainage areas from the City up to the mountain is a short way. It's not like in Kula where you drain from Haleakala all the way down to Kihei. Once you accumulate that much water, it can be very damaging. But your drainage area length is shorter but it can be just as damaging if you have a very hard rain and it lasts for a few seconds or a few minutes – it just peaks and then it goes away. It's not that will just flow away and do a lot of damage, but it can be damaging – just the same.

So if we have word that we have this flooding in what areas. We rarely have reports from here saying that we have these damages here. If you folks have information, you should talk to Public Works. And we'll be – I don't know if Lana`i Company has a study – we'll try and get that also into the flood maps. So that if we know that your area gets flooded on a regular basis up to your knee level, what will happen is that like in these area here, if you look at this flood zone area here, your map would show a gray area. And what we would have is base flood elevations. So when there's a new development or when you rebuild your house or you improve your house to more than 50% of the value of the house, we will require that you elevate the house so that you don't get flooded. And at least you'll know, I'll be safe at this level. Right now we have no information as to how much flooding. If you asked me what frequency flood that was or will it happen again, until we have a study made –

Ms. Castillo: And when there's big rain, it's always coming up from the hill, running down to the street and it goes down to the back street of my house. And it goes at the edge and the County is called to pave – re-pave it – but I don't know what they doing that when the rain comes again, the thing is washed off again. It goes down to the next house.

Mr. Cerizo: Well my suggestion is if you feel that the County can do improvements – see one way is the prevention or during construction, we can only give you guidance as to raise up your house so it doesn't get flooded. But on the other perspective, if you want a more structural means of prevention where they provide a new drainage system so that there's no water that comes down the road. Or they divert the water to somewhere else so you

don't get flooded. Those structural improvements will be handled by – if it's – well one way is going to ask the County if it's because of the County roadway, you can ask the County can you improve the roadway so you don't get flooded. So you would have to go to Public Works – you could talk to your Councilmen – can we have some improvements in this area. I mean, that's working with the system to improve the area. That's the second way.

One other way is that if that area is a natural area, and then it's going to be redeveloped, one of the requirements for a redevelopment of an area that's mauka of the area is to make sure that the drainage that is coming through that property, after it's developed, it's not increased. So they have to, let's say, there's a new subdivision that's above you, they have to put in improvements that will not make it worse. And it's even better if you can make it so that you guys can improve it.

Mr. Rabaino: I hear you. But the thing is Lana`i City is surrounded by private owners. Okay. Where she lives, the main highway is Lana`i Avenue. Where the log cabins use to be, they filled it up. That was a natural drainage during the heavy rains through the pineapple era. Where she lives, there's a slope coming down from Hotel Lana`i. That road going all the way up to Queen Street and all the way up to where the new housing are, it's all Company land. County don't have any jurisdiction up there. So that's what she's trying to get at. So even if we tell our Councilmen, we still got to go to the land owners.

Ms. Kaye: Again, I think we've strayed into an area where we're not going to settle anything tonight. I'm not sure that's Francis' role to talk specifically about Lana`i City because he doesn't know. Suffice to say for the record that the flooding that you're hearing tonight, it's traditional. It's been going on for years. And my understanding is and I don't want to put Shelly on the spot, but my understanding is that Castle & Cooke has gone through a great extent to develop a drainage plan for the City. And to speak to your first suggestion, I don't know that roads will get re-done until the drainage system is in place because that would not make sense.

And secondly, there isn't any development going on in the City. These are existing homes. The only possible, potential impact – what you're saying would have, would be, if they continue to build up Haole Camp then that kind of anti-flooding provision would come in. But right now we're stuck with a natural drainage that has been flooding for years. And this is the first time tonight that at least I've heard there was somewhere to report it because we had huge flooding. We had 16-inches over three days, and businesses flooded and homes flooded, and school flooded. But anyway, I don't think we can solve it tonight, but let's just say we're on notice. And Shelly I don't know if you have any information on the drainage plan that the Company provided at meetings about a year ago. If you have any information on when that might be worked on. (*Changed cassette tapes*)

Mr. Rabaino: I have one of you though.

Ms. Shelly Bartfield: Shelly Bartfield, Castle & Cooke. The plan has been submitted to the County and it's in for review. However, when I spoke to Ralph (Masuda) that we don't know when that will be implemented. Or I think, when the next budget comes through, so I think it is a couple of years from now.

Ms. Kaye: But there is a plan?

Ms. Bartfield: Yes. There is one for Koele, Manele, and Lana`i City.

Ms. Kaye: Okay, now that we've gotten you up here, any questions Commissioners before she can go back?

Ms. Rabaino: Mines is regarding the school, when we had that flooding that reached the news channel. The question was asked by Mr. Meyers, who owns the drainage over here? The County and State were debating who owns the drainage. And they've got to fix this drainage because it got clogged up, that's why the school cafeteria got flooded.

Mr. Cerizo: Okay, as far as the City drainage, that's something like your Chair said, it's somewhat outside my purview. We're the Planning Department. The department that is typically responsible for drainage is the Department of Public Works. And if they maintain your roads, they clean your street, and if the drainage system gets plugged, then they come out and fix it up. That shows that they have jurisdiction on the roadway. And that also includes for like in areas that needs improvement. Like in Kihei, they go in there – recently they put this brand new road and they put in new drainage systems to accommodate the flooding that occurs on the streets. So being that if that's something that you folks – I see you nodding your head that the County does maintain the road so you can talk to Public Works on that issue.

Ms. de Jetley: Madame Chair, I have a comment for the other Commissioners. You know on this flooding, if you go to Hanalei and Hanalei Bay they have really huge winter surf so they have really, really big setbacks that is left in open space and park, so people can't go there at all. And that might be something that we, on Lana`i, could consider all along the back shoreline before it becomes developed is to have really big setbacks from the ocean. So we never have to face what they're facing on Maui on how to protect houses that were built too close to ocean to begin with any way. So we're at a really prime spot where we don't have any houses there. So we can make the rules and say, well you can't build until you're 400 feet from the ocean. You have to set it way back because the water levels world wide, ocean levels world wide are rising.

Ms. Kaye: I believe we covered that earlier and we asked Clayton to bring Thorne back so we could discuss how to deal with that change – some of the setbacks. Thank you, go ahead.

Mr. Cerizo: Well that kind of hit on my same subject on open space. The Community Plan is going to be coming within a few years to your Commission, and as part of that review, you'll be making decisions. You should have setbacks – 400 feet from the shoreline. You should have setbacks from any streams that run in through town – let's say it's a 100 feet on each side. So that's something – you know what is your role in preventing flood damages? That's how you can play that card.

Another issue we have here, on the SMA Rules, it requires an evaluation. Whenever there's a major SMA project, it requires that an evaluation be made on the potential adverse environmental and ecological effects on sensitive areas such as flood plains, shoreline, tsunami areas, erosion prone areas, and coastal and riverine waters. So, what this says is that when we have a project, our staff is going to provide you what is the impact? And this is a place where you can ask the questions, well, can you give us more detail? How much is it going to flood? How far should we stay away from the edge of the water? Should we just stop on what the flood maps say? What if it gets plugged up? Maybe you should put a little more buffer on there. So, in the SMA Rules, this requires both the staff and yourself to look at projects that may affect these areas.

This is a house in Pensacola, Florida. And as you can see, most of the houses along the whole coast – this is like a mile of coast – all of the houses got thorn down. The only one that was left standing was this house here. It was recently built. It was built up to the right height, and the utilities were kept. So it's like this guy could go back home and live in the house. He was prepared. He had the foresight to built it at the right elevation. And that's what we're here for too – to have some tools so that we can build our houses so that we can withstand a hurricane force event. This concludes my presentation if anyone has questions.

Ms. Kaye: Thank you. Commissioners, any questions? This is a question for whomever. I noticed on the numerical list of orientation items for the workshop, we skipped over it seems to me, meeting agenda, 2008 meeting schedule. Were there suppose to be hand out for this meeting or we're not doing that tonight? Clayton, I would guess that's for you.

Mr. Yoshida: Yes, I believe that James would cover of the discussion – item #2, item #3, item #4, item #5, items #19, 20, 21.

Ms. Kaye: Okay, so James is up next.

Mr. Yoshida: I guess Francis has this short presentation on the County Policy against discrimination. But after that, James can be the clean up person and finish up.

Ms. Kaye: I'm sorry Francis. I thought you said you were finished.

Mr. Cerizo: On that one. Okay, I have a short presentation on harassment. The County has a policy against discrimination and we are mandated to give an annual presentation to the Board Members on our policy on discrimination, retaliation and harassment, including sexual harassment.

As officers or agents of the County, members of the County's Boards and Commissions are also covered by this policy. Harassment is a form of discrimination and is therefore prohibited. What is sexual harassment? It means unwelcome sexual advances, request for favors, verbal physical contact or conduct, and visual display of sexual nature by an employee or officer to another employee, officer or private individual. All personnel must refrain from the following: make an unwelcome sexual advances or requests for sexual favors, making remarks of a sexual nature, using gender base or sexually abusive language and sexual innuendos, visually displaying materials of a sexual nature, physical contact or other similar action .

We have a zero tolerance policy against sexual harassment and will not condone or tolerate this harassment in the work place. So what can you do? An individual who feels she or he has been subjected to a sexual harassment should immediately make a complaint to his or her supervisor. As for our Board Members and Commissions, the complaint should be made to the Chair person. If the Chair person is the alleged offender, a report should be made to the County's Equal Employment Officer (EEO) and that is the Director of Personnel Services. There's several complaint options. You can also make your complaint directly to the Planning Director, to the Deputy Director, to your Chairperson, to the County EE Officer which is the Director of Personnel Services. If those parties have not given you a satisfactory remedies, you can also go to the Hawaii Civil Rights Commission or the Federal Equal Opportunity Commission.

Complaints can be either informal which is verbal or unsigned written statement, or it can be a formal written and signed statement. The County will be investigating the matter in an unbiased, fair and discrete manner. There will be all of this appropriate safeguard to the confidentiality and protection from embarrassment that the law allows. The individual who is found after an investigation to be an offender shall receive the appropriate warning or discipline. Any disciplinary action prior to the implementation will be reviewed by the Director of Personnel Services and approved by the County's EEO Officer. It's against the law to have any retaliation against the individual who has made a complaint, who has conducted an investigation or has acted as a witness and it constitutes a separate violation.

Sexual harassment is not the only kind of illegal harassment. Other types of harassment can be based on sex, pregnancy, breast feeding, race, color, religion, age, sexual orientation, marital status, national origin, arrest and court record, ancestry or disability which is all prohibited. Is there any questions?

Ms. Kaye: Commissioners? Thank you.

Mr. Cerizo: Thank you very much!

Mr. Giroux: I'm perfectly fine to go through this tonight. And like what I've done before is I'm always open to calls and things. Or if you want, we can put this on another agenda item and I can take more time if you want. So I'm open to either. I'm always happy to come back to Lana`i.

Ms. Kaye: Can you tell us briefly what is it that is left to be covered?

Mr. Giroux: Let me do a synopsis of basically what my duties are tonight. I'm looking at the sunshine laws and I have two handouts for you. I have an "Opens Meeting Guide" from the OIP (Office of Information Practices). It's the sunshine law and is that one. The other one is more of a legal requirement from our office to present to you, and this is what we call the Van Dyke memo. And it looks more like a –

Ms. Kaye: Well James, let's see, you were going to do #3, 4, 5 –

Mr. Giroux: Yeah – 4, 5, 19, 20, and 21. So I was going over the sunshine law; the open meetings law; ethics which comes out of our Charter, Article 10; and on #19, a recent Supreme Court decisions on takings are our Noland Doland Cases. It's about nexus and proportionality. And then the Public Access to Shoreline Hawaii, also known as PASH, which is also connected – which was further clarified Ka Pa`akai versus Land Use Commission, which basically defines the duties under Article 12, Section 7 of the Hawaii Constitution to preserve and protect customary and traditional rights to native Hawaiians. And then I was going over TOPLISS, the case which basically defines what the Commission has to do in order to reach a decision of actually denying a permit. So that's kind of my synopsis.

Ms. Kaye: If I could ask Clayton then for the August meeting, my understanding is that we have two. We're beginning our series of educating ourselves on water resources, and we have two individuals scheduled. A representative from the Department of Water Resources and the County Department of Water Supply. I see nothing else, so I would not be adverse. I don't know how the other Commissioners feel to have James come back and finish up that part of it.

Ms. de Jetley: Madame Chair?

Ms. Kaye: Wait.

Mr. Yoshida: We would have three speakers. Some one from the Public Utilities

Commission.

Ms. Kaye: Okay.

Mr. Yoshida: So someone from the Water Department, someone from the Commission of Water Resources Management and somebody from the Public Utilities Commission.

Ms. Kaye: I still think with three presentations and questions and public testimony, if we scheduled them first and then have James do the follow up, that would be a nice meeting.

Mr. Giroux: I don't see my presentation going over a half hour, just to let you know.

Ms. Kaye: Any objections to that? Then thank you James. We love to see you next month.

Mr. Giroux: Anything to accommodate you.

E. DIRECTOR'S REPORT

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

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

Mr. Yoshida: Shall we move to the Director's Report?

Ms. Kaye: We finished Unfinished Business. Now we're on Director's Report. Thank you.

Mr. Yoshida: We don't have anything new to report under item #1, the 65-acres.

Ms. Kaye: No, but I'm glad to see that it comes up every month because sooner or later we'll have something to report on it. So, let's just keep it coming.

2. Open Lana`i Applications Report.

Mr. Yoshida: We have submitted our list of open – under item #2 – we have submitted our list of open Lana`i applications. The only two that I see which will be pending before the Commission is the first one, from Castle & Cooke Resorts LLC for the Miki Basin heavy industrial expansion of the Miki Basin, district boundary amendment, that was submitted

in April. And the fifth item by Castle & Cooke Resorts LLC for the Manele Bay Hotel swimming pool, Phase 2 Project District Approval, that was submitted in May. So those are the only two items that I see on this list that will be coming before the Commission in the future.

Ms. Kaye: For the benefit our new members, this list has been a struggle to pair down to what's open and what's just on Lana`i. And last month, we requested, I think Commission Rabaino, requested that we have a legend that would help us explain what all of these little permit references are. And so I went over it and I used the legend and I still found three of them that are not on the list. So Clayton I'm going to put you on the spot and ask you. Well, let's just go down them. First one, DBA, is a District Boundary Amendment. The second one is a Building Permit. Third one is Electric. Fourth is a Certificate of Occupancy. Phase 2 and Phase 3, is that what that is? They don't appear on the – what is PH2 and PH3?

Mr. Yoshida: PH2 is a Phase 2 Project District Approval. Phase 3 is a Phase 3 Project District Approval. Remember we said that there are three phases for Project Districts.

Ms. Kaye: Right. Okay, and then the Palms, I have a question about that. It seems like they ran out of room, but what is PAP?

Mr. Yoshida: It's a landscape planting.

Ms. Kaye: Okay. And the next is Request for Comment, Request for Comment, Electric, Gas, Gas, Plumbing and Building, correct?

Mr. Yoshida: Yes. It's generated from the Development Services Administration for comments from the Planning Department on flexible design standards for some projects in the Koele Project District.

Ms. Kaye: Okay. Can you just address – now that I know PAP is plans – why is that having to come before anybody for approval?

Mr. Yoshida: It's an administrative approval by the Department. The off-street parking and loading ordinance says that we should have one large crown shade tree for every five required parking stalls. So the Department reviews the landscaping plans to see that there is one large crown stand tree for five stalls. Also the Arborist Committee had adopted a Maui County planting plan which shows which types of trees are more suitable in each areas of Maui County because they receive different amounts of rainfall, and some of them are on the shoreline, and some of them are up-country and so forth, so we check the planting against the Arborist Committee – adopted Maui County Planting Plan – and we see that there is one large ground shade tree per five stalls.

Ms. Kaye: Okay that's interesting because there aren't any parking stalls in that particular area. The Palms –

Mr. Yoshida: I guess for the multi-family, there is a requirement of two-parking stalls for per unit.

Ms. Kaye: Thank you. Any other questions Commissioners on the open project report?

3. Water Workshop No. 1 scheduled for August 20, 2008 – County Department of Water Supply and State Department of Water Resources Management.

Mr. Yoshida: Under item #3, I think we went over that we're going to be starting with our water workshop #1 at the August meeting.

Ms. Kaye: And now we know that we have three people and we know that someone from USGS I believe and – I'm sorry I forget who the second person is – is scheduled for September. And we have several people on the master list who received invitations who haven't responded yet. But again, for the benefit of our new members, this is an issue that has come up over the last two years, just wanting to educate ourselves on the water resources that are available on Lana`i. And so the Planning Department kindly sent out invitations. We have not heard back from I believe the Lana`i Water Advisory Committee yet, nor Castle & Cooke. But we have had some governmental agencies respond.

To that end, I think this might be the appropriate time to talk about Mr. Reilly's letter that he passed out to us tonight. I'm thinking – and I'd like to hear what anyone else has to say – his letter specifically addresses the questions about the infrastructure for the water system on Lana`i. And I think I talked to James that it might be appropriate that we put this on the agenda for – at least have it as an agenda item and then decide how to go forward with it. He actually did the same thing in past months and it's resulted in this wonderful series of workshops that we're having. So I think this letter isn't something that we need to react to tonight, but if we could keep a note to put it on for discussion next week. There might be within the gamut of people who are going to be coming before us, some opportunities to ask questions relative to infrastructure, how it should be done and that sort of thing. And of course, we could always put it on when Castle & Cooke does respond and assign somebody. This could be addressed to them, so that's all I have to say. Thank you.

4. Agenda Items for the August 20, 2008 meeting.

Mr. Yoshida: I believe we also covered the agenda items for the next meeting. So as I

understand it, we have the water workshop #1, and James will be finishing up on his orientation workshop.

Ms. Kaye: Okay, and the only other thing I'd say is could we please have an update on where we are on our SMA Rule change that Thorne doesn't think we should get, but has already been approved? I just don't know if it's been signed, and Joe would know that.

Mr. Yoshida: I believe that they have them signed off by Corporation Counsel. They have to be transmitted to the Mayor for her signature. Once she signs them, then it's transmitted to the Clerks Office where it lays on the Clerk's desk for 10-days before it becoming effective.

Ms. Kaye: We just don't know where we are on that process. If somebody could tell us next time.

Mr. Yoshida: Yeah, I think it's being transmitted to the Mayor's Office. That's all we have to report.

F. NEXT REGULAR MEETING DATE: AUGUST 20, 2008

G. ADJOURNMENT

Ms. de Jetley: Madame Chair I have a question. On this memo from Jeff Hunt on Lana`i Studies, #1, the architectural and cultural resource surveys, when will those surveys be ready?

Mr. Yoshida: This was generated by our Long Range Division. I think we had mentioned earlier regarding on item #2 on the update of the Country Town Design Guidelines.

Ms. de Jetley: I'm not referring to the Country Town Business Design Guidelines. What I'm questioning is the architectural and cultural resource surveys because that Cultural Resource Commission, when they came over to Lana`i, rejected Castle & Cooke's demolition permit request. So are these buildings that were rejected and they were told that they couldn't tear them down, are they considering them on this cultural resource surveys? Because those buildings have outlived their economic life, and it's all very nice to keep a plantation town style, but if you had to live in a 70-year old building with no closets or bathrooms where it's so tiny that you could touch both walls, you know, I don't know.

Ms. Kaye: I don't believe this has to do anything to do with that Alberta.

Ms. de Jetley: Yeah, but when can we expect to see these reports?

Mr. Yoshida: I would have to check with our Cultural Resources Planner Stan Solamillo who staffs the Cultural Resources Commission as to when the reports will be made available to the public.

Ms. Kaye: Okay, that brings us to the end of tonight's agenda, unless anyone has something else to add, any unfinished business? Thank you very much Clayton. It was a wonderful orientation. You did it in records time. Thank you.

Mr. Yoshida: Thank you very much.

Ms. Kaye: Okay, meeting is adjourned. Thank you everyone. See you next month.

There being no further discussion brought forward to the Commission, the meeting was adjourned at approximately 9:05 p.m.

Respectfully transmitted by,

LEILANI A. RAMORAN
Secretary to Boards and Commissions I

RECORD OF ATTENDANCE

PRESENT:

Sally Kaye, Chair
Stanley Ruidas, Vice-Chair
Dwight Gamulo
Alberta de Jetley
Matthew Mano
Gerry Rabaino
Leticia Castillo
Darlene Endrina

EXCUSED:

Beverly Zigmond

OTHERS:

Clayton I. Yoshida, AICP, Planning Program Administrator, Current Division
Francis Cerizo, Staff Planner, Zoning Administration & Enforcement Division
Thorne Abbott, Coastal Zone Resource Manager, Current Division
Danny Dias, Staff Planner, Current Division
James Giroux, Deputy, Department of Corporation Counsel