

**LANA`I PLANNING COMMISSION
REGULAR MEETING
SEPTEMBER 17, 2008**

Approved 10-15-08

A. CALL TO ORDER

The regular meeting of the Lana`i Planning Commission was called to order by Chair Sally Kaye at approximately 6:10 p.m., Wednesday, September 17, 2008, in the Lana`i High & Elementary School Cafeteria, Lana`i City, Hawaii.

Ms. Sally Kaye: . . .Lana`i Planning Commission meeting. Let the record show we have quorum with Commissioners Rabaino, Zigmond, Ruidas, Kaye, Gamulo and Castillo. We don't have any minutes to approve, so with that we'll turn it over to Joe who's going to help us understand an amendment to Council Resolution No. 08-55 pertaining a bill for an ordinance section 19.530.030, Maui County Code, pertaining to administrative enforcement.

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

1. **MR. JEFFREY S. HUNT, Planning Director transmitting Council Resolution No. 08-55 containing A Bill for an Ordinance Section 19.530.030, Maui County Code, Pertaining to Administrative Enforcement to the Lanai, Maui, and Molokai Planning Commissions. (J. Alueta)**
 - a. **Public Hearing**
 - b. **Action**

(Due to mechanical problems with the tape recording, sections of the meeting, about the first 35 minutes of the meeting, was inaudible to transcribe. These sections are noted as inaudible.)

Mr. Joseph Alueta: Thank you Madame Chair. The resolution came down from County Council pertaining primarily to, originally, environmental revision, environmental management section. As you know the Department of Public Works split off, and has two departments now. That is the Department of Public Works and then Department of Environmental Management that handles solid waste, waste water and environmental management. The functions of Public Works, and you add them, as well as, the Planning Director to this administrator enforcement for violations. And you basically add another department to us as well as a section of the title in which you received – 19.530 applies to – it was in your packet. What I handed out to you are agency comments.

And the main point which you should be concerned with, as far as comments, is the Department of Environmental Management wanted amend it to include a section which was – they forgot to add the title – the title is 8.04. And as we were sending out for review,

interestingly enough another department realized that they should also be probably included in this administrative enforcement, and that was the Department of Water Supply. And we got that letter today. They sent it over to us today. And so they're asking for an amendment also to be included with that – to add the Director of the Water Supply. And you can see their proposed amendments of the Water Department, as well as from the Environmental Management.

And because the Department of Planning is responsible for Title 19, even though it makes reference to other sections of this code, the administrative enforcement falls under Title 19, and that's why as the administrative sign off that I'm responsible for bringing it around to the three planning commission for their comments. Final action will be done by the County Council.

Ms. Kaye: Joe I didn't bring my Title 19. What is Section 8.04?

Mr. Alueta: Actually I don't know. I assume that's waste water or solid waste. I'm sorry I don't have that section. It's being recommended to be added by the Environmental Management – it has to do with either solid waste or waste water provisions that they have. And so basically, accepting one of those waste water provisions or requirements, or with landfill . . . (inaudible) . . . or they maybe feel that enforce code requirements in lieu of that Title – issuing the provisions found within 19.050.30. From our standpoint, it's more like a housekeeping item to clarify some of the ordinances and enforcements.

Ms. Kaye: Can you explain to us this original letter from the Department of Public Works? So if violation occurs, will you, the Planning Department will have to report it to the Department of Public Works and have them enforce it?

Mr. Alueta: It would be a provision of Chapter 16 – Title 16 and Title 19 would be administered by the Planning Department. I'll turn it over to Corporation Counsel.

Mr. Michael Hopper: – the reason before it came here. They're referencing the appropriate Director. Originally, the Public Works Director did administer all of these in the County. When the Charter was amended to create, to put the building enforcement under the jurisdiction of the Department of Planning – and for a while, Public Works was still referencing the Director but by Charter, it was the Planning Department who had the zoning enforcement. So this is why it's being changed right now. You also have a new department created one and a half years ago, which is the Department of Environmental Management, which is responsible for enforcing some of the provisions under 12, 14, 15, 16, 18, 19, and 20, along with Public Works and Planning. So what this does is it's strictly saying that the Director of Public Works to add the Director of Environmental Management or the Planning Director which would basically update the provision to comply with the Charter because the Charter requires that the Planning Director and Environmental

Management enforces certain provisions that are in here. So actually, technically, it's incorrect to have the Department of Public Works the only Director to do the enforcement here. So that's why they have it, the Environmental Management and the Planning Director, where appropriate throughout Code. The initial changes, I think, were proposed by the Director and justified by the wording in your letter. But I know you really . . . (inaudible) . . . updated and make sure that the right Director is listed.

Ms. Kaye: Okay, just for practical purposes. Does this add enforcement responsibilities to the your department or what's already there, without changing the Code, to reflect that?

Mr. Hopper: By Charter, the Planning Department has to enforce it. I believe they've been under the enforcement. It's been under them. The Department of Public Works is not really involved with zoning enforcement . . . (inaudible)

Mr. Alueta: Correct. And the Charter administers the responsibility. However the rules of the administrative procedures for the Department still accepts the Public Works Director. And that's why this came down administratively. Sorry I forgot to make that clear. And since that time, as pointed out by Corporation Counsel, the Charter recently, in the last vote, split up Public Works into two departments creating the Environmental Management Department. And therefore they need, also, to be added and that's one of the reason for the Charter Amendment. And again, when it was out for agency comments, Water Department also wants their administration to be added in that.

Ms. Kaye: Could you reflect a reasoning why section 020, . . . (inaudible), . . . ?

Mr. Alueta: I can only give you a history of how and when. We use to have prosecutions for the zoning violations and it was constantly thrown out by the courts as being "manini." Violations that I find are violation and it was taken as criminal. And so we followed the more civil method as a more appropriate and effective. But I can't – as to whether – they can change, but I remember when it was changed over that . . . (inaudible) . . .

Ms. Kaye: Questions? Any questions for Joe? I know I'd like to read this Joe, from the Water Department. Because we received this tonight, I'm not comfortable. Does anyone have any questions?

Ms. Zigmond: How do violations come to your attention?

Mr. Alueta: By complaint – either written, email or phone call or walk in.

Ms. Zigmond: By commission members or the public?

Mr. Alueta: Yes. It will be . . . (inaudible) . . .

Ms. Zigmond: So like that castle house that's being built here in the town. If someone thought that was in violation we can contact you?

Mr. Alueta: Yes. We have an effective on-line – you go on line, you just tell us exactly what they're doing down there. That is one of the more effective ways.

Ms. Zigmond: Madame Chair, would it be . . . (inaudible) . . .

Ms. Kaye: Commissioners, what's your pleasure? Should we take a couple of minutes to read this through with discussion or put it off for next time?

Mr. Alueta: It's at your pleasure. Again, I'm going to ask that you take action on it because, I mean, obviously, we support it, but also we think it's more on the procedural and administrative correction to the Code to reflect basically what's in the Charter now. And we're just updating – it's kind out of date.

Ms. Kaye: I think we get that Joe. But this is a three page thing from the Water Department. And I did notice that one of it – in compliance, they want to put in, doesn't include section 8.04 that's on page #2, fourth paragraph down. They're recommending that additions be made to Title 8.04, so –.

Mr. Alueta: That's because 8.04 is being added by the Department of Public Works, Environmental Management. And that letter came in prior to you and separate from the Water Department. So the Water Department's comments will remain comments to add their name to only the Code. Whereas the Environmental Management, they're adding – they're in support of that change, but they're also adding one section that . . . (inaudible) . . .

Ms. Kaye: I get that too, but in fact, we've always . . . (inaudible) . . . that we approve this, we approve this, we recommend this –.

Mr. Alueta: I understand. I totally understand.

Ms. Kaye: Commissioners?

Mr. Gerald Rabaino: Madame Chair? 8.04 – we got our packet, I was looking at the wrong picture of the black folder, as far as 12, 14, 16, 18, 19 and 20, and when this three page came out, I understand that this is including Public Works and Environmental Management and the Planning Director – it have to break down 8.04. I think we should – I believe the proper word – defer to the next meeting until we get more clarity on the items 12, 14, 16, 18, 19, and 20.

Ms. Kaye: Like I said, except 8.04 and I think Joe explained that this includes the environmental management section code. But if anyone is uncomfortable, I mean, we can put it off till next month. My question would be because of this letter, would we want to take any kind of public testimony or defer that as well?

Mr. Alueta: I recommend that you do take public testimony and you close public testimony. And then the next go around, we do not have to do a re-notice of this public hearing. You hold your public hearing tonight and then all we're going to is come back as unfinished business as a communication item.

Ms. Kaye: Okay. So commissioners, any questions up to the point of where we are, this communication from the water department and regarding other questions for the Planning Department regarding the critical issues?

Ms. Zigmond: I have a question on something Joe. If we defer this then it would be on the agenda for next month. It's not going to be an item on the agenda that requires public hearing?

Mr. Alueta: Yes. You're required to take public testimony on any agenda item. What I'm trying to get at is whenever you do an amendment to Title 19 or hold a public hearing, we are required to do a notice requirement. We publish in the paper and do all those legal requirements to hold public hearings. And therefore if you hold the public hearing tonight, and then you close the public hearing – I do not – and you just defer the action, the final action, all we're going to do is just have a communication item when we come back. If we don't, then the County has to make sure that our next meeting is at least 30, or 40 days, because we then need to re-post and waste County tax dollars to publish in the paper. And that's what I'm trying to avoid. That's why we published it. We met our legal requirements. We want you to hold the public hearing tonight, but I would want you to be able to close the public testimony.

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

Mr. Alueta: Yes. It's the County.

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

Mr. Alueta: Every agenda item, we're required to allow for public testimony.

Mr. Hopper: What Joe means is the difference between public testimony and public hearing. A public hearing is something like code or other reason that you should have. That means you have to post it in the paper. Public testimony is that you have to allow the public to testify. You have to allow public testimony now, and you have to allow it later.

And likely you have to have your public hearing now. You don't actually have to close it. I don't think you have to re-notice it but we typically usually have your public hearing opened and at closed you -. There are certain situations where you close the public hearing if you have to finish your review. That doesn't actually happen. I think, the Planning Director proposes change - yeah, it's a resolution. Yeah, I think the Planning Director changes that when to close the public hearing. But if you take public testimony now and say public hearing is open - you take the public hearing and close the public hearing - the next meeting, you still have to offer public testimony, but you don't have to open to a public hearing.

Ms. Kaye: Thank you Michael. Okay. We'll have public testimony. Again, we'll allow three minutes.

Mr. Fairfax Pat Reilly: Fairfax Pat Reilly. 468 Ahakea Street. Resident. Thank you. I empathize with the Commission. I heard over the news that - I don't know about the packet that you received - so my impression is that this would be okay, but I'm not sure what's going to happen next week - to conform to their request from the Water Department and it would be reasonable to have some enforcement from the Water Department. So it wasn't clear to me on the process that this was coming back in an amended form to conform to some your questions at this time. In fact I'm not sure. I need clarification. Thank you.

Ms. Kaye: Pat, I had a question for you. Did you get copies of what was passed out tonight?

Mr. Reilly: I got a copy of the proposed resolution.

Ms. Kaye: Did you get the Water Department letter?

Mr. Reilly: No I didn't.

Ms. Kaye: Commissioners, any questions for Pat? Any other public testimony? Public hearing is closed. Next item on the agenda is -

Mr. Alueta: You need a motion and a second.

Ms. Kaye: So sorry. I'm moving too fast.

Mr. Hopper: Could you be clear on what you want either Joe or myself - what we're changing? If you just want extra time to read it that's fine too. But if there's some information you'd like to go on, if you could let us know that will be very helpful.

Ms. Kaye: At this point in time, I haven't thoroughly – mine would be more time to read it in conjunction with what you said previously. Commissioners any additions to that? Now, if over the course of the month, if there are some questions, it's appropriately appropriate that we can simply email them to you?

Mr. Hopper: Okay.

Ms. Kaye: Commissioners a motion?

Ms. Zigmond: I move that we defer action on Bill No. 08-55 contain a bill for an ordinance section 19.530.030, Maui County Code, pertaining to administrative enforcement.

Ms. Kaye: Do I hear a second?

Mr. Rabaino: I second the motion.

Ms. Kaye: Any questions? Okay, all in favor? Motion passes.

It was moved by Commissioner Beverly Zigmond, second by Commissioner Gerald Rabaino, then unanimously

VOTED: To defer the Bill to the next meeting.

C. LANAI WATER WORKSHOP NO. 2

1. United States Geological Service (USGS) Representative

Mr. Alueta: Your next item is your Lana`i workshop.

Ms. Kaye: Yes. We have Gordon Tribble tonight, our expert, this evening. He's going to give us some insights, so we're going to get out of your way.

Mr. Tribble: Good evening Commissioners and thank you very much for the invitation. . . ***(Due to mechanical problems with the tape recording, approximately 10 minutes of the beginning section of Mr. Tribble's presentation was inaudible to transcribe.)*** . . .As that Kona depression goes down, it causes a mirroring upward movement in the transition zone. And after a prolong period time, basically you get a new equilibrium. So the Kona depression is now stable. The transition zone has risen. And in this case, you can see that the transition level is below the level of the well. So the well is still pumping portable water – water of an acceptable salinity.

So what this drawing is basically showing is just another way of looking at that same factor where you pump a well, you get a zone of brackish water that comes up towards the well, and you can see that little rise right there. Now if the well is pumped too much or the well is drilled too deep, or the lens is too thin, you can actually get brackish water into the well. And that's called typically referred as salt water in upconing.

Okay, moving on. The other thing and this is also important is that pumping one well can cause with the entire transition zone to come up so that when a second well is pumped, it's cone of depression and movement effects the original well. So let's say that you have this well here, and this has been pumping water with a transition zone say coming up to right there, and that's been going on for years and years and years, and everything is (phonetics) and working well, and then another well is put in and starts pumping water and that water is basically – to use one of my grandfather's term – cockroach the water that otherwise would go to this well. And so the person using this well all of sudden will say hey how come my water is salty? This is not real rocket science actually. This all kind of makes sense if you think it through. I hope it's making sense. Am I on track so far?

Another thing that happens when you pump a well is that the water that's in the ground which would otherwise go to the ocean. All that water, it's a closed – it's just a flow through system. So the water that falls as rain up mauka, goes into the aquifer and it flows through the aquifer and eventually it comes out in the ocean. The amount of water coming out into the ocean is equal to the amount of water that's recharging the aquifer. That's a very simple concept. When you pump a well, you reduce the amount of water going into the ocean by the amount that you pump.

Okay, now, I'm going to show you a couple of examples from Maui. And I'm using Maui not out of any lack of respect for Lana`i, but I didn't have the data for Lana`i. I have this on our web page for Maui, so I hope you'll forgive that. But I want to talk about pumping from two different kind of wells. This is a well in lao area called shaft three and it's a very large well that was put in, I believe in the 1930's – I'm sorry, after World War II – to provide water for sugar and it's now a major domestic supply. About five million gallons of water per day is pumped out of the well. That's what these blue things show. So they're pumping an awful lot of water out of one well. The well, as you can see is sort of dynamic. If it's not pumped, the water table goes up to about 14 or 17 feet above sea level. When it's pumped it tends to drop down on the order of eight or ten feet. And depending on your feeling and how you look at things, you can say, the water level on this well is going down, and bad things are about to happen. Or the water level in the well is going down, and now it's starting to level off.

Okay, the point is you have a relatively small changes in elevation of water in the well, and a lot of water is being pumped. That's from a basal well in the lao aquifer. Now, further mauka into the dyke compartments of lao is a well Kepanwai. This well pumps quite a bit

less water – about three-quarter of a million gallons a day. And you can see that the water table here is 100's of feet above sea level. And the interesting thing is that when that well is pumped, the water table has been changed 40 feet. So when you pump from a dyke compartment, you tend to get much larger changes in the water level because you're basically coming from a smaller – you're pumping from a smaller compartment.

This morning I contacted my friend Roy Hardy and asked him what he had in terms of pumpage data for Lana`i, and he sent me this. He said that he presented this when he was here last time. And so basically just the round numbers. You folks are using about two, going up toward 2-1/2 million gallons per day. And that's fairly reasonable. That's as of April.

So the question I think that Chair Kaye really wanted me to address, and I hope I hit it, is how do we put these pieces of information together because you know you can always throw a bunch of numbers on a graph and really the question is what does that mean? Here's some ways that people go about managing aquifers. The simplest thing, in a coastal setting, is to monitor a salinity. Or in the case of dyke compartments, the water level, at the pumping well. That's pretty straight forward. It gives you a fairly reliable picture of what's going on. The problem is it's not predicted to any trends. You can maybe pick out a trend, but it doesn't tell you what's going to happen in the future. Another step is to have wells that are dedicated to monitoring. The State has an approach to look at regional estimates of sustainable yields using an analytical model. Basically it's an algebraic equation that says for an area that has x-amount of recharge, we're going to figure out the sustainable yield as y. Where we're slowly moving across the State is where we call numerical simulations and numerical models. And this is basically a computerized tool where we simulate the physical properties of the aquifer where we estimate across time, and in some cases, across time, how much recharge is getting into the aquifer. And then we come up with the best digital representation of what's going on in the aquifer. And then you can do things like simulate – okay, how is pumpage affecting this aquifer? And the fun part then becomes, if we put a well in here, what will that do? Or if we decrease pumping from this well, how will that affect things? And so you start to have a very powerful planning tool to play "what if" kind of questions.

And then on the green here, the more you do, the more it costs. This is the easiest thing to do. This is the most complicated. Predicted values increase as you go down this list. But no matter where you are in your world of tool of water management, unless you have information, unless you have real data, you're stuck because you can't calibrate a numeric model without real data. And if you don't have monitoring data, you're just basically stuck.

So to talk a little bit more about the modeling. You can do them in a variety of ways – one-dimensional, two-dimensional – we're now doing three-dimensional models now and we can handle salinity. Again, to build a model, you'll need an estimate of how much water is

getting into the ground. You need to understand the physical characteristics of the aquifer which is basically the geology. And then any information you can have on the pumping, the water level and the salinity. That's the data part. And again, I can't stress this point enough. A model is just a representation of reality. You can build a model to show anything. So you have to really sit back and think, okay, what am I going to use this model for? What is the most this really honest representation of this aquifer that we can come up with to represent what the information we have tells us. And then how do we test it? How do we determine its accuracy, its strengths and its weakness. And once you understand where you are with that model, you can start using it for management.

These are the places where we did generic models. I know Roy Hardy obviously did a model for the island of Lana`i many years ago. Actually, he was working in our office and that's where I first met Roy. But I want to draw your attention to this list because models can really do a lot of things. You can see through tests your understanding of the aquifer. If you build a model based on certain beliefs and it just doesn't work, then that tells you that maybe my whole understanding of the nature of this aquifer is wrong. It's not a very happy place to be, but it's an important thing to know.

You can use models to look at salt water intrusion. Reduction in stream flow – that is really not a concern to this island. And I'm not aware that reduction and coastal discharge has been a big consideration. But also you can do drought scenarios either by changing the pumpage or altering the recharge with the different pumping distribution. And in some cases, we've used models to look at how long it takes water to flow from one area to another. We've used them to evaluate plumes of waste water injections. Some of the waste water wells on Maui – one of the waste water wells on Maui – and then also the capture zones of wells. That refers to the area mauka of the well where it's actually supplying the recharge that the well, as I say, capturing.

Sally also asked me to talk a little bit about water budgets, and again, I have to apologize, this is all drawn from work – just wrapping up the head and shoulders of Maui. But a water budget basically can be as simple or as complicated as your patience and your information permit. What we're doing now is basically relying on what are called geographic information system tools, where we take the amount of rain fall over an area. And this is just cut outs to represent this lao part of Maui. We take the amount of rainfall. We then apply an estimate of the amount of evaporation. We look at the amount that runs off. In the case of Maui, we look at agriculture irrigation. And then how the different soils affect the storage of water. And out of that – each one of these – think of them at each point, there's an algebraic relationship. And basically at the end of it, of some very long fore-trend program that operates each little point in here, comes out an estimate of how much water is entering into the aquifer. And we typically do that on a daily basis. The water budget for Maui goes back many years. This is a summary. And I just throw this up. Again, not to bombard you with Maui pictures, but just to show that in that area, they're

working about a billion gallons of water a day. About 80% of it is rainfall or precipitation, and then the balance is what is imported from East Maui. Of that water, about ½ of it evaporates, about 12% runs off, and slightly over 1/3 recharges the aquifer.

This is probably the hairiest slide I'm going to show you, so I'm not a consolation or not. What I'm showing you here is different time periods. And we ran this all the way back to 1926. So this is 1926 to 1979, and I think we'll just skip some of these. But these all had to do when there were changes in either strictly dry periods or wet periods when sugar cane switched from thorough irrigation to drip irrigation. So we just broke it out. And up here are the inputs. So this is the – the dark blue is the rain. This is what came in from the irrigation. And then this red is what's called fog drip or cloud weather interception. And I think you folks have heard how important that is to your mauka areas up at Lana`i Hale. This is the total amount across the entire head and shoulders part of Maui. And then at the bottom is where the water goes. This is what goes to recharge. I've done this presentation from start to finish. This is how much of it evaporates. This is how much of it runs off. And this is what goes to recharge.

So we did that for the different time periods. And if you just look at the recharge, what we see is that between the period up until – just before the 1980's until the recent period, there's been a significant decrease in ground water recharge in the Central Maui area. Well, not just Central Maui, including Lahaina. And there's several reasons for that. One is the long term drought. It's no secret for anybody that has lived here. Another one is the change in irrigation practices – going from thorough to drip. And also the decrease in agricultural irrigation. Those are the kind of changes that you can actually get from recharge.

And because fog drip is important on Lana`i, I just wanted to touch on that for the folks that may not be familiar with it. It goes by many things – cloud water, fog drip – anybody that's ever been hiking up in the higher elevations knows about. It's how you can get wet when you're walking and it's not raining. And this is a collector that we set up on Maui. I know that Jim Juvik has a suite of these up there. Everybody has different designs. And basically when the wind blows the water collects on the screen. It goes into this – there's a funnel and bucket down here. And here's another type.

In some of the areas in Maui, it was basically equal to the amount of direct rain fall. That's the good news. The bad news is it's a real pain to measure. It's not just expensive to measure. It's hard to measure. And it's particularly hard to measure in a way that is not dependent on the design of your collector. So that's a challenge. Because what we really want to know is what actually is being collected by the water shed? We know from working on the Big Island that pristine water sheds, those with good tree canopy, tend to get more fog drip. And we're also learning from work being done by Tom Giambelluca at the University of Hawaii that plant communities eat our forest areas – that fern and Ohia as

their dominant vegetation have considerably less evaporation than an area that's very close by and gets the same amount of rainfall, but it's dominated by strawberry and guava. Strawberry and guava – that's the one invasive that we've looked at – it seems to evaporate a whole lot more. What that means is that you have a native forest community, you will get more ground water recharge.

I'm going to skip that slide. To conclude with a couple comments about climate change because it's in the news and just to keep the level of people's conscience and we can start to have a conversation that – “you mean you really believe it?” – I think we've gotten beyond that point. First thing and often, the semantic often gets in the way of rationale discussion. So I think it's important to point out that climate has always been changing. And it's virtually certain – it's not absolutely certain – but it's virtually certain that human kind is causing changes that will warm the planet, it will affect the sea and it will affect the weather. And I can tell you that you have a better understanding on how those changes are going to work regionally and globally and locally. And the reason for that is if these are understood using what are called global circulation models – and they are indeed global. Hawaiian global circulation model is one dot. The Big Island has an elevation of 70 meters. That's about 240 feet. Those models do not do a very good job of simulating the capture of rainfall by the mountains. So we don't exactly know how this is going to play out for Hawaii. I just want to throw this at you in reference to my first comment about climate change. This is some information from a pond out in Ewa. It's basically a sink hole. It's been accumulating sediment for 10,000 years. And with that sediments have been particles of plant that are grown in . . . (*Inaudible. Changed cassette tapes.*) . . . It got wetter, and then over the past 1,500 years or so, it's been getting drier. That's just to point out that the climate that we had 200 years ago, 500 years ago, 5,000 years ago is not the same.

Let me zero in a little bit. This is information from a stream gauge that we run across the channel on the island of Molokai, in Halawa Valley. It's about ½ way up the valley. It's not affected by any pumpage. It's not affected by any stream flow diversion. We've been running this stream gauge since 1918 with a little bit of a gap in the 1930's. And what I'm showing you here is the base flow. It's the flow that happens when it's dry. The water that's coming out of the ground. We filter that out. We filter out the storm water run off because it's so noisy that you'll never be able to see a signal. When you look at just the amount of ground water that's flowing into the stream, for any of it, it's creating that constant flow of water even on dry days. What you see is that in the 1920's and 1930's and in to the 1940's, there was about nine cubic feet per second. And in the late, it's been closer to five or six.

Every stream gauge in the State – we have seven of them – they go back to 1920 – 1909 is our earliest – every stream gauge in the State shows a pattern a decrease in base flow. Maybe not to the same degree. This is one of the more extreme ones. The point is that

it has been getting drier throughout the 20th century and it probably has nothing to do with the human experiment of adding carbon dioxide to the atmosphere. This is a natural climate change. Whether it's part of a long term cycle, whether it's part of something that will spring back in the next 20-years, we don't understand.

This is my one advertisement. I work for the U. S. Geological Survey. We operate a network of data collection sites across the State of Hawaii. Those include measuring stream flow, measuring water levels and some aquifers, measuring rainfall, and then also, where opportunities and funding permit, use that information in concert with some hydrological expertise to interpret the studies. Everything we do is funded in part, with some very small exceptions, with the cooperation with either the State Water Commission, local water agencies or other State, County or Federal Agencies. Strangely enough, my budget is such that I can only spend the Federal funds that I'm allocated if they're matched with another agency. It's a hell of a way to run a railroad, but I knew that when I signed up for it. It's not your problem. What I'm pointing out, though, is that we started measuring stream flow in the State in 1909. By 1911, we had over 50 stream gauges. Well, right there, as of 2008 and 2009, we're going to lose four and we'll probably lose even more than this which is shown today in 2010. So as we head into this era of climate change and uncertainty, we are losing our ability to see and to observe changes. I'm not trying to put fear in anybody's heart. This is something that keeps me up at night and we're doing our best to turn it around. But I just think that everybody should be aware that the network of information we have is no longer as robust as it use to be.

A couple of few more thoughts about climate reliability and I'll conclude. On the scale of the Pacific basin where we have a little bit better understanding from the global circulation models, we can come up with the following inferences, and they basically tell you that things are going to become more variable. We'll have more low pressure tropical storms. When I grew up, before I went to college, and got a PhD, we called these Kona storms. The El Nino cycles which does affect our weather will become probably more extreme. We may be facing – because of this –we may be facing instances of longer and more severe drought. And then there's also some thought that we may actually shift to a more persistent El Nino pattern which again would lead to a more drought like condition. That is information that comes from the people that take it from the global circulation models and look at them very carefully across the Pacific basin.

I mentioned Tom Giambelluca's name earlier. He's a climatologist that works at the University of Hawaii. And for the past 20-years – actually about 25 now – he has been measuring what's called a trade wind inversion. And I don't understand it well enough to fully explain it except to say it has to do with a layer in the atmosphere that taps the formation of clouds. If you don't have the trade wind inversion that you tend to get a thicker layer of accumulated clouds creating ori-graphic rainfall in the mountains – mauka showers basically. What he has determined is that the trade wind inversion has become more

persistent since 1979. So that's reducing the amount of mauka rainfall. And that is consistent with the very fuzzy information we're getting, so far, from the climate models. But the direction that his research has taken us is that windward and mauka areas will likely continue to get drier.

And I think the other point I wanted to talk about was water shed restoration and this is it. This is a picture of Pu`u wa`a wa`a on the Big Island. It's an area that was heavily ranched for many years, and then suffered a tremendous fire cycle. All the trees are dead. This is just buffalo grass. During the dry period, this will dry up and it create fuel for a fire. Several years ago, and I apologize for not knowing exactly how long ago, I believe the State Division of Forestry fenced this area and have actually been watching the recovery. And it's a little hard to see, but these trees are probably 12 feet high now. So within a relatively short period of time, a forest canopy is starting to develop. And I throw this in here because I want to point that we are facing challenges that they can be matched. And that's all I have for you.

Ms. Kaye: I think we'll put the lights on and then I'm sure the Commissioners have some questions for you Gordon.

Mr. Tribble: Sure.

Ms. Kaye: That was very interesting. Thank you very much. Will that power point be available on line?

Mr. Tribble: I've got it on a drive. I can give you a disk and a copy. It's a big file. . .(inaudible. Did not speak directly into a microphone.) . . . I apologize. We don't have this posted on our website, but I can make it available to someone.

Ms. Kaye: Okay, that would be good because we're missing a couple of commissioners tonight and I thought the visuals were very helpful, so I'll talk to you about that after. Commissioners, any questions for Gordon?

Mr. Rabaino: Gordon, you know that Lana`i Hale has a fog station up there – a fog drip station – being that you didn't do any mapping of Lana`i or create a chart for Lana`i – then it says the trade wind inversion from 1980 has been decreased. Just out of curiosity, if you increase the forest in the higher level like Lana`i Hale which is about 3,000 feet – the more trees you plant there – certain type of trees – can not be any kind of trees. Because I know that a lot of the ferns at Lana`i Hale has been dying out and not really be full in growth. Because I noticed when you go under those ferns there's a lot of spongy that holds the water. My question to you is when the fog comes down, have you have any recordation in the past 15 to 20 years? Because we have an existing one up there – has anybody been monitoring, both the State, the Company or wildlife – have they been monitoring any of the

events from there?

Mr. Tribble: My understanding is that Dr. Jim Juvik from UH Hilo is running that station. So I think the answer is yes, but what he's found, I couldn't speak for him. I know he was suppose to be here tonight and I'm always happy to reflect questions his way, but I don't think I can answer that. I can tell you we don't know – having good forest managing practices will off-set – it will only improve the water balance in your favor. But until you get actual numbers, it's going to be very hard to say, well, will increase by managing the water shed at Lana`i Hale – will you increase your water more than what you might lose when you have climate change? I think it would be irresponsible without doing some serious number crunching to go there.

Mr. Rabaino: You mentioned something about the Ohia plant regarding moisture in the ground – if I understood you correctly, you said the Ohia holds more water retention than it evaporates. Is that one type of plant that – I know it's native – but is it one type of plant that encourages moisture or water retention?

Mr. Tribble: What I can tell you is – what I've been told so in some way it's hear say, but Tom Giambelluca at the University of Hawaii has two spots on the Big Island where he's measuring, using very elaborate towers that have a lot of instrumentation. One is a fern and Ohia area – actually remarkably close to (phonetics) lava tube – everybody has been to (phonetics) lava tube. It's a real rich canopy. And then another site, several miles away, outside of Hawaii's Volcano National Park, it's basically heavily invaded by strawberry and guava. And you can see a substantially more evaporation from the strawberry/guava. So whether Ohia is the best thing or not, I don't know. I mean at some point, you've got to get the plant that's going to live the best. But for whatever reason, that fern and Ohia canopy seems to be much better at reducing the amount of water loss by evaporation compared to guava.

Ms. Kaye: If I could just – I apologize for not saying this to the outside, but Dr. Juvik was suppose to be here with Mr. Tribble, and apparently cancelled months ago, and we just didn't get the memo. But I did speak to him, and he's going to re-schedule as is Jay Penniman who is doing much of the foresting up there. So some of those questions, we'll be able to answer them when they come, which should be in the next month or so.

Mr. Rabaino: Gordon, in fairness, I'm just curious. I come Oahu. Hopefully you can relate to Haola, Green Valley, Honolu`u, Waiahole, Waikane – those are the water makers for the island of Oahu. When I was little kids going back there, they have Norfolk Cook Pines deep within those valleys especially in Kahana, Waiahole and Green Valley. Haola one is a little closer to the ocean. And when you walk in those valleys, you can tell by the drip how moist the soil is. In your years of experience, do you know by the size, by numbers of trees, that will bring rain to a certain area? These are valleys I'm referring to.

Mr. Tribble: We've just – I would say within the past five or 10 years, we've started to do the kind of research where you have climatologist like Tom Giambelluca talking with botanist. And so we're not there yet. I think that a lot of kupuna wisdom, tradition knowledge is starting to be collaborated with western science. But I have to work in the later realm.

Ms. Kaye: Commissioners, any other questions? I have a few. I made notes as you went through the slides because I didn't want to interrupt you. You mentioned that dyke confined compartments are drought resistant. If the recharge as you suggested throughout is less, with significantly less rainfall, how does that make it drought resistant if there is less recharge. Or did you just mean by evaporation?

Mr. Tribble: What I was referring to there was – and I think I spoke poorly and I apologize – that because dyke's tend not to be prone to salt water intrusion, that you don't have the thinning of the lens that can happen in a coastal base of aquifer. And so when you have a drought, you're going to get less recharge. And the water levels in the dyke are going to drop. But, in a typical dyke setting, it's susceptible to salt water intrusion. Obviously, if you decrease the amount of recharge, that's going to decrease the amount of water that can be sustainably pumped out of a dyke compartment over a long period of time.

Ms. Kaye: Well, that was actually my second question. You did say that it's not susceptible to salt intrusion, but is that the same as being impervious to it if it's a high level compartment?

Mr. Tribble: The dyke compartments that I'm familiar with are a little different than the ones on Lana`i. And in the case of, as I understand, on Lana`i, you have basically a caldera. The lava that fed the old volcano. The lava that fed the old volcano, as it came to the surface, left these dykes in place. Now, nothing is totally impermeable. So these dykes are thought to go deep, but they do have fractures in them. And if somebody told me that they were pumping water from an elevation of 1,000 feet and that it's high salinity, and they had numbers to demonstrate that, then I would go, that's really interesting. But that's not, I would say, more of an exception than a general truism.

Ms. Kaye: And you also had a slide where you showed the up-coming. And when there is salt water intrusion in a well – and again, I'll assume this is more of a basal situation than the high level we have here – how long typically or maybe it isn't typical does it take to recovery if you just leave it alone? Does it recover?

Mr. Tribble: It will recover. One of the problems when we talk of a fresh water lens, is that in people's mind, immediately it gets them associated with the lenses in glasses or magnifying. A fresh water lens doesn't break. If you get too much pumpage and you get salt water intrusion, then by reducing the pumpage, the new equilibrium will establish itself

with a thicker body of fresh water. And just in round numbers, think of it this way – if you pump a well for 10-years and you get high level of salinity, it may take 10-years for it recover. So there is rough symmetry.

Ms. Kaye: And then the slide where you went over the various ways in which you can – I should have written it down – analytic solutions – numerical simulation. You indicated that was a more costly form of modeling. Is that the right way to say it or not?

Mr. Tribble: Yeah. The analytical solution is a model. I mean, a model is just a representation of reality. I mean, when I go to cook, I have a model of how I want to make my poke right? I mean, I think, what am I going to do? The recipe is the model. So when you go to manage ground water, you have an idea of how that water is in the aquifer. You can construct a fairly simple algebraic relationship that says, okay, we know there's this much water getting into the ground. That's the recharge. And the sustainable yield should be x-percent. That's the analytical model. The numeric model is the more complicated because you have to know all of these other things about the geology conditions, the distribution of wells –. Whatever information you have on water level and salinity you would adjust the factors in the model to come up with the water budget. So it's a more complex level.

Ms. Kaye: That was my question is what factors go into that, and that what you –. Okay. One thing I hadn't thought about when you were talking about drought is reduction – maybe it wasn't just drought – but reduction and coastal discharge is one way to – how do you measure that? Is that anecdotal or do you have to have a gauge?

Mr. Tribble: Well, it's a lot easier on the mainland where you have closed basins. And so at the bottom of the basin you have springs. It doesn't work here. Basically there's two ways. The first way that we know – we don't measure it. We just say it's an input, and whatever goes in has to come out. And then we can use computer models to show how changes in pumping will affect or where coastal discharge will decrease because of pumping. We've done this a bit for the south coast of Moloka`i where there's concern about ground water development that might perhaps reducing the flow – water that then maybe important for the limu on the reef flat and for the fish ponds.

The other way it's being done is, principally, in Kona – there's a text book case of this – is to measure typically the temperature difference in the ocean. You can actually fly a camera around, an infra red camera in Kona, and you can see fumes of cold water coming out. And that water is colder because it's got the pressure water in it. And then you can go out on a boat and see how thick is that fresh water or that fresher water – the brackish water – how thick is it in the ocean. You can figure out how fast is it mixing the other sea water and you can up with an estimate that way.

The oceanographer likes that. The hydrologist and he says, you're better off with a water budget. And we have great discussions between the oceanographers and the hydrologists about which approach is better.

Ms. Kaye: You also talked about the long period of drought. Can you quantify that? I really have wondered how long a professional such as yourself would consider the drought that everyone says we're now currently undergoing.

Mr. Tribble: I would defer that. And the reason I'm not going to go there is because if the State actually has a drought index, and they actually do work with the national weather service and they have specific definitions for when drought starts and stop. And I don't have that on the top of my head. I can find out how to get that for you, but it would be foolish of me to just make something up.

Mr. Kaye: That would be great. Okay, you talked about the base stream. That was a pretty effective slide that you have. And at the end of it you said, you don't know whether this is a long term trend or whether it can bounce back in 20-years. What could cause a reversal of the lowering of the base stream.

Mr. Tribble: When we were growing up, we starting hearing about the El Nino, and people kind of went, what's that? It's something that happened in South America. It's something that happen in Micronesia. What we know now is that El Nino is a whole complex isolation. It moves heat back and forth on the Pacific basin. The meteorologist think of it as the climate is driving the ocean. The oceanographer is saying, no, no, no, the ocean is driving the climate. But it's a chicken in the egg question. Basically you have this five to seven year cycle. It's kind of erratic. It goes on, it sloshes back and forth in the equatorial Pacific. About 10 years ago, people started learning about something else that they call the Pacific Decay Lost Legend. That's something that happens in the North Pacific. And that seems to go over a time span of 30 to 50 years. And we know this from looking at tree core records in the Pacific Northwest. Where they see periods of wetness and dryness that go over decades, and there are other climatic records. But you've got some kind of signal that goes basically 30 to 50 years of wetness, and 30 to 50 years of relative dryness.

We only have records going back 100 or so years in Hawaii. There may be complex interactions between the two that we don't understand. Take it to the other extreme, it's not going to just keep getting drier, drier and drier until there's no rain. That's not going to happen.

Ms. Kaye: Is it possible – I understood the El Nino relationship is more frequent and intense in Kona weather – what we had last winter was really unusual in my 30 plus of watching – it was dry Kona. We had lots and lots of Kona winds and no rain. Could that be a typical pattern that's emerging State wide? Or do you think it's an aberration?

Mr. Tribble: We don't know. Climate is a long term average of weather. And if you want to start talking about climate, you need to start thinking about what's happened over the past five to 10 years as a minimum. Because, you know, any one year doesn't really pertain to anything. It could just be a wet year or a dry year.

Ms. Kaye: A couple more. I saw on your slides that USGS, if not you personally, has done something on just every island but ours. Is that right? A study of some sort?

Mr. Tribble: For ground water models – Kauai, Oahu, Moloka`i, Maui, Big Island – so those five.

Ms. Kaye: Because I've found –

Mr. Tribble: But you know, again, I want to be very clear that when Roy Hardy was doing his modeling work, he was in our office, he was walking down the hallway and talking with the same people that did that other work. And that was back when I was studying the chemistry of ground water atolls in Micronesia. So I don't know what the arrangement was between the USGS and the Water Commission. But for whatever reason, my predecessor and the people at the Water Commission felt that was the best arrangement at the time.

Ms. Kaye: And when Roy was here was when – I think he mentioned that.

Mr. Tribble: He came here last month right?

Ms. Kaye: Right. But I mean, you're saying he did modeling before?

Mr. Tribble: Yes. There is a numeric model for Lana`i and it was written and it was done by Roy Hardy.

Ms. Kaye: Right. He mentioned it but I don't remember the year.

Mr. Tribble: 1988 or 1992 – somewhere in there.

Ms. Kaye: Okay, there's an ordinance from 1995. It's ordinance number 2411. It's in all our packets. He said it's a condition of something that was granted in the Project District in Manele. And I quote "that the applicant shall request a cooperative monitoring agreement with the USGS through either the County Department of Water Supply or the State Commission on Water Resource Management to enhance data gathering." And I just wondered if that came before or after? If you say he did his modeling in 1988.

Mr. Tribble: My guess is that came after the model was done. That's actually what you just said to me is news to me.

Ms. Kaye: Well, lets assume that you could do something on Lana`i, what kind of study would you find the most cost effective?

Mr. Tribble: I think the first thing I would do would be go politely knock on Jim Juvik's door and find out what he's been doing and where he's going and what his plans are. I'd probably do the same for Tom Nance who I believe is the hydrologist for Castle & Cooke and find out what data are available. I would go to the Water Commission and see what information they have in their files and that can take a while. They get the data from Castle & Cooke, but it's on paper forms and they don't have someone there entering it. So all of sudden you've got a great student job project. There's all these information on paper that needs to be put into the computer.

In a bigger picture – I think rather than what USGS could do, I think the steps to be taken would be to make sure you have a network in place to collect information on the climatology. To collect information on how much is being pumped in different wells. What the water levels in those wells and nearby wells are. Any other information like geophysical surveys have been done. And then you can start to assemble the pieces to go into the numeric model – exactly what model you will build, I don't know. I know that Castle & Cooke have talked at one point about hiring someone to do this and I don't know where they are in that endeavor.

Ms. Kaye: They have not come as part of this workshop series yet, so that's a question we'll save for them. But assuming that USGS was going to do this, and you had access to all that data, creating that kind of numerical model that you've done on other islands, takes about how long and would cost about how much?

Mr. Tribble: Well for the island of Moloka`i which we're going to start on in fiscal year 2009, I think we're looking about \$900,000 over four years. A good chunk of that is coming from federal matching funds. But it's still a big chunk of money.

Ms. Kaye: Okay, Commissioners? Letty? Gerry? No? Okay, at this point, we'll see if there's any public testimony from the audience for Mr. Tribble? If not, thank you very much Gordon. It was really informative. I really appreciate it. I appreciate your time. I think we'll take a 10 minute break right now guys.

(The Lana`i Planning Commission recessed at approximately 7:30 p.m., and reconvened at approximately 7:35 p.m.)

2. Professor James Juvik, UH-Hilo

Workshop for Professor James Juvik will be re-scheduled at

another Lana`i Planning Commission Meeting.

D. CONTINUATION OF ORIENTATION WORKSHOP

- 1. Discussion of Boards and Commissions Booklet Distributed by the Office of the Corporation Counsel**
- 2. The Sunshine Law**
- 3. Ethics**
- 4. Ex Parte Communications**
- 5. County Policy Against Discrimination**
- 6. Recent U.S. Supreme Court Decisions on Takings Issues**
- 7. Public Access Shoreline Hawaii (PASH) v. Hawaii County Planning Commission**
- 8. Topliss v. Hawaii County Planning Commission SMA Case**

Ms. Kaye: We're back in order. Next we have Michael Hopper from Corporation Counsel. He's going to finish up our orientation workshop.

Mr. Hopper: Thank you very much. I've been encouraged to be brief – I will try. First issue I want to go over is the sunshine law. It's a State law that applies to all Boards and Commissions including you as the Planning Commission. This law requires that all deliberations and decision making that you have regarding board business must occur in public, at a properly noticed meeting, unless an exception applies. Every meeting you have must have an agenda specifying the business for the meeting. And the business that you discuss is limited to those topics. You can't go off of the agenda. If you read your agenda, you can't talk about things outside of the agenda. That's very important. That's so the public knows what's going to be discussed at that meeting, so they can read in advance and decide to attend or not depending on what's on the agenda.

Members of the public must be allowed to testify on every item on the agenda. You have to let them testify. The Chair can set reasonable limits. Three minutes is a classic limit if there's a lot of people. But you must let everyone to testify on each item. So if you allow a three minute limit, the person gets three minutes on every item.

Very important – more than two members must not discuss board business with each other outside of a properly noticed meeting. Two or more may not – two members may discuss board business outside of a meeting. But they may not make any commitment to vote on the matter in a certain way. There are exceptions to this. I can go over them later if they come up. I can't address every situation now. The basic idea is you can't get together outside of a meeting and discuss board business. These meetings should be open to public. Two of you can – what you can't do is this serial communication where two of you

say one thing, and then you talk to the other person and say we just talked about such and such, what do you think? Things like that. You can't do that. Basically don't try to flout the intent of the sunshine law. The basic idea is your discussion on the items on your agenda need to be happening at the meeting. No emails sent out to each other. No emails sent out to everybody. The County is in litigation in a case with the Council involving allegations that they communicated by email or by letter outside of the meetings. And you need to be careful to avoid that because there may be a legal challenge through action.

An executive session may be called. That is a session that is closed to the public during the meeting. There is a variety of reasons it can be called. One of them is to consult with me, your attorney, on certain matters. For example, if you think that something may have issues of liability for the board, or for the County; or I may recommend you go to executive session to discuss something with you to give you legal advice. There must be a 2/3 vote of the members present to go into executive session.

Aside from the sunshine law, you've got your own rules. You must have a quorum to have a meeting, which means you need five people. You have nine members entitled to the board. You need at least five to have a meeting. If you have less than five you can't do anything. You can't even take public testimony. So that is very important. And all actions that you take, must be taken by a motion approved by five of the nine members. There's some exceptions in Robert's Rules such as taking action by no objections. The Chair can say if there's no objections, we will such and such for unimportant matter or procedural matters such as approving minutes. And if there's no objections, that action can be taken that way.

Ms. Kaye: Michael, just one second.

Mr. Hopper: Sure.

Ms. Kaye: If for example, we lost quorum, and we were having a workshop and there was nothing to vote, we could continue that meeting, correct?

Mr. Hopper: No. You would not be allowed to. There has been some exceptions that were recently passed this year for so-called neighborhood boards that specifically allowed the taking of public testimony as something that could be done without quorum because that issue has come up. But there's actually have been specific advice that taking public testimony is considered an action that requires a quorum. The only thing that can be done – and this is in your packet. You've got a packet dealing with basically the sunshine law in plain English – that the only thing you can really do without a quorum is the adjourn the meeting to a future date and that's about it. And they're pretty strict with that. It seems sort of strange, but that's true. And I've had that issue come up that they've basically tell me you can't have even a workshop if you have quorum or don't have a quorum. It's the same

whether you lose quorum at a meeting of a workshop or if you never have it to begin with.

Also fairness concerns. This is very important. You're in a position where land use in Hawaii is obviously very controversial at times. You're in a position that maybe in a situation to talk to the media, or to talk to people outside of the meeting – avoid making statements or forming opinions on a project before that project comes before you. If a project is going to have an SMA permit come before you, it's very important that you don't form an opinion or certainly make any statement fore or against that project before it comes before you. The reason is that when the project does come before you, you're suppose to sit in an impartial judgement of that project. And if you have biased or prejudice in that project fore or against it, the problems often times come up when someone has made a statement against that project. You may have to recuse yourself from voting on the project. The problem is if you're challenged later on, your vote might be voided. And your vote might not count if a court finds you had a bias against the project to begin with. That deals with due process concerns – everyone is entitled to have a fair hearing is the basic idea.

Also very important is the County Code of Ethics. You're all considered officers of the County when you're serving as part of the Planning Commission, so you're subject to the County Code of Ethics. The Code states that you shall not engage in any business transactions or activity or have a financial interest, direct or indirect, which is incompatible with the proper discharge of your official duties, or which may tend to impair your independence of judgement. An example would be, you sit on a Planning Commission which you do, and your spouse works for a developers seeking a Special Management Area Permit. Basically if your spouse gets that permit, you as a – which she/he realize a financial benefit. Also a situation where if you worked for a consultant, for example, and that consultant has a project before you, you can not sit on the Planning Commission. And there's actually issues that determine whether or not you can advocate as a consultant in front of the Planning Commission that you sit on as well. But be very careful in those situations.

Do not accept a gift if you believe that the intent of the gift is to influence your vote on a project. It sounds like common sense, but just be careful with that. There's no dollar limit on that type of thing. You can accept token gifts of aloha. For example if someone brings donuts to a meeting, everyone can eat the donuts. That's not a conflict of interest necessarily, but just be careful. Use your judgement. If you believe you've been given a gift to influence your vote, then don't take the gift. It's just a good idea not to.

Also, you can not disclose any confidential information that's given to you in your role of the Commissioners for personal gain. That can include, for example, information that we talked about in an executive session where I'm giving you legal advice on a project.

That's about it for the basic laws that apply to you. I just wanted to over go a couple of things briefly. There's some Hawaii case law that I think is important for you to know. Noland and Doland and other Supreme Court cases have determined that when you're reviewing a Special Management Area Permit which is one of the areas over which you have jurisdiction. That's any development within the Special Management Area – and the Planning Department should have given you an over view on that – or any other type of zoning approval or various other approvals upon which you would like to place conditions. You need to be careful that those conditions have to meet certain criteria. They have to be – first of all there needs to be what's called an essential nexus between the project and the condition. So the condition must seek to basically mitigate or lessen the impact that the project is going to have. And if you're giving an SMA permit, for example, the SMA is – the purpose of that law is to protect the shoreline. It's an environmental protection law. There have been cases that have held that a condition relating to traffic without us showing that traffic has some sort of detrimental environmental, ecological or other effect on the environment that conditions related to traffic may not be enforceable. And it may be stricken by a Court if they find that you did not adequately determine that those conditions were related to the purpose of the law which is to protect the shoreline. And also, those conditions must be roughly proportional to the problem that you're seeking to mitigate. So you couldn't allow a single-family home to build a 100 acre park or something like that because that single-family home, there's no way that home could have that impact that would be mitigated by a very large park. This will all come up on a case by case basis when you're dealing with permits. I can't go over every circumstance, but you will learn as you go I believe. And either myself or James Giroux, if we believe that there's issues worthy of discussion when you're placing conditions on a project, we'll call an executive session or request an executive session or advise you accordingly.

Lastly, there's a case law out there that states that based on the Hawaii State Constitution and certain statutes that you, as a Commission, have an affirmative duty to seek as much as possible to preserve what's called customary and traditional Hawaiian rights. Basically this deals with the rights of practitioners of native Hawaiian decent that primarily, although it's not exclusive, deals with rights to access and rights to gathering that were practiced prior to the contact with native Hawaiian in the 1700's – there's a precise date on that. But basically your duty is to look to see if there's any traditional or customary rights that native Hawaiians have exercised on a particular – in a case of an SMA permit – on a particular area that the SMA permit will be granted for and seek to as much as possible, protect those rights through appropriate conditions. It's actually an affirmative duty that's placed on the Commission. The Hawaii Supreme Court is held that that's a valid exercise of your power and has stated that to the extent feasible a Planning Commission must protect the reasonable exercise of customary or traditional rights established in a particular situation. There may need to be some factual hearings in those cases to establish if those rights did exist. They are not exclusive to native Hawaiian of a specific blood, of 50% blood or greater. It does not apply in the case of the Hawaii State Constitution. The Court is held

that deals with anyone of native Hawaiian blood, exercising traditional rights of native Hawaiian in a particular area. So it's very important. The challenge that you'll face in that situation is the conditions that you impose still needs to meet those previous cases that I mentioned which deals with whether or not the condition is a rationale nexus with the impact of the development. And also whether it's proportional to the impact of a development. Needless to say, again, these will vary in case by case situation. We need to look at every SMA permit, observe if there are, if this does have the potential to infringe on the rights of native Hawaiians or native tenants in that particular area. And if they do impose conditions – they can be easements for example to allow for gathering – other conditions that preserves those rights. It's difficult to, again, to come up with a rule that applies in every case. But that is the basic starting point and we can go along with that as a standard when dealing with each SMA Permit as it comes up. This also applies to other approvals that you would be deciding on, and State Special Use Permits would be included in that as well. That's about all I have to say, unless there's any questions.

Ms. Kaye: Thank you Michael that was wonderful. Commissioners, any questions for Michael?

Mr. Dwight Gamulo: You didn't say anything about as far as gathering facts, opinions on subjects that might come before the board, are there any restrictions on that other than forming an opinion based on that?

Mr. Hopper: I would recommend and there is a case law that's involved in this. For example, I wouldn't go on individual site visits to an area if there's a project proposed there. You should go as a board. The issue is whether or not the entire board has access to all of that information. They're sitting in what's called a contested case which requires all of you in that particular case to have the same information before you and to consider it. If one of you has different information, that can be considered a problem because that information wasn't necessarily made available to the whole board. Or that Commissioner has that experience, where the rest of you did not get to either see the site or have that experience. Needless to say, you're going to have life experiences. Maybe you've been to that place and you happen to know it better. So that's not going to prevent you from ruling on those cases. But I would recommend, as much as possible, if you know the case is coming up before you, do that fact gathering at the proceeding yourself. It doesn't restrict you from, as a board, to finding out more about the case – requesting information. But on your own, I would not recommend doing your own side investigation because you can run into problems in that situation.

Mr. Gamulo: I was just asking members of the public what their opinions are on any, just in general, things, like comes before the Board.

Mr. Hopper: Member of the public is a bit different. I thought you were talking about

perhaps visiting a site on your own, off the record.

Mr. Gamulo: Yeah, anything like that.

Mr. Hopper: I recommend as much as possible to keep that on the record. If you want to talk to people about specific cases that are coming up, question them in front of the board so everyone has access to that same information. So I think that's important.

Mr. Gamulo: Thank you.

Mr. Rabaino: Out of curiosity – Commissioner Rabaino – you say site – if you go on a site that you're aware of – for example a development site – and I as a commissioner go by myself, just cruising around and just view the area, am I in violation then?

Mr. Hopper: I would need to look at the specific facts of that case. It's hard to advise in a situation. I'm saying basically, try to avoid that to the extent possible. If you live next to the site or you pass it everyday, there's no way you're going to be able to avoid going there. But this issue came up, for example, on Moloka`i with La`au Point. Some Commissioner wanted to have a site visit there, someone asked can I just go down on my own time and take a look at it. And I said I wouldn't recommend that. I'd recommend going as a Commission because you know this has an SMA permit coming up for it – visit it as a Commission – have a site visit there. It has to be an open meeting to the public. And get the information as a Commission. You can go do it, but I wouldn't recommend each member individually going on their own.

Ms. Kaye: The appropriate point to make here Gerry and I've sat through this a couple of times now, is it's not that you're totally restricted from everything you could do. It has to be on the agenda. It has to be something that's going to come before you. If it's not on the agenda and it's a permit that you're aware of, there's no restriction. . . (*Inaudible. Changed cassette tapes.*) . . . Thank you Michael. Now we're on to the Director's Report. Joe?

E. DIRECTOR'S REPORT

1. Lanai Planning Commission members comments on the 2008 Hawaii Congress of Planning Officials Conference, September 10-12, 2008.

Mr. Alueta: I think there's a discussion on the Planning Commission of those who went – or share your thoughts. This is an opportunity for that. I'm not sure if anybody –.

Ms. Kaye: Yeah, I think we'd go around. We affirmatively wanted to do that. We had the best representation, I understand from Clayton, of any island. And I know I found it to be

an absolutely amazing conference. If anybody want to say something, we'll start with Gerry. We'll go around the table, and I'll go last.

Mr. Rabaino: Yeah, it was very rewarding especially the windmill and the water, as well as the Hale Ballroom where they gave the presentation of E Hawaii. That was excellent.

Ms. Zigmond: First of all I wanted to just congratulate the Planning Department on just an incredible project. It was stupendous. It really was. I went to the mobile workshop on water and that was really fascinating to me even though Lana`i doesn't have any surface water. Just seeing the whole process from mauka to makai. One thing that did strike me though was the lengthy discussion. The lengthy struggle of Na Wai Eha. It's taken so many years for them to – as they fight for their rights – and it sorts of rings a bell our continuing persistence in making sure that our water issues here is kosher.

The documentary – the Canadian women did on the displaced first nation people in Canada was really fascinating. And the key thing that struck me was the importance of getting community buy in for any major project that's going on and having a community benefit's package is crucial.

Other than that, sustainability was the big thing and how important it is again for, especially the islands, to do local stuffs, whether it be farms or businesses, small businesses, and I think about what we could do over here. Thank you.

Mr. Ruidas: Joe was our puku-shell tour guide – excellent job. I did the water mobile workshop – water is life. And we went up to lao Valley right below where the stream ends, actually at the diversion. When I heard about it, but when you actually see it, that stream actually disappearing, that's something to see. And someone said to me after, what are you worried about, Lana`i doesn't have surface water. And I said, and I was thinking to myself, we use to have. And it's still important because it goes back to the recharge of the aquifer and that's going to happen over there. And we should plant more trees here – Norfolk Pines.

Mr. Gamulo: It was very good. I saw the windmills and the jet engines at Maui Electric and it was interesting. You guys did a very good job. Thank you very much!

Ms. Leticia Castillo: I guess I want to extend my thanks to all the Planning Department that had put this together. It's very hard to put something together like that that your staff had put together. I had gone to that windmill and it was interesting. . . (Inaudible. Didn't speak directly into the microphone.) . . . I hope we can do something for the island also. Sometimes we get left out because we are a small island. And thank you again for a very good job!

Ms. Kaye: I will say what I said in a letter that I'm going to reference later to the Planning Department. I thought it was an incredibly courageous thing that you folks did to put on three days of bad news in terms of over use of resources. And it was so prevalent, so clearly spoken and so widely held of an opinion on all the experts that you got together. I'm starting to understand that people on Lana`i read our minutes so I'd like to make it clear that this conference in its entirety will be available on-line according to Colleen, within a month or so. So for those of us who could not attend it, will be able to see the break out sessions. The overarching message was we're in the middle of the Pacific, fuel costs are going up. Everything is going to more expensive. Less people are going to be able to afford to come and we need to become more sustainable. And I thought that was pretty prevalent throughout the entire conference and I give you guys a lot of credit for telling us about it. Thank you so much!

Mr. Alueta: From the Department, thank you very much. We only host this, thank God, only once every five-years. And we start planning in February for this conference. So it was a lot work, especially on Ann, but many hands makes carrying easy. So I don't think there not one person in our department who didn't work on it and didn't do something, whether covering basis. Your thanks are very much appreciated. I guess Maui County has a good rep of putting on a really good conference and I think that showed by the attendance. I think there was probably close to 400 which was probably one of the largest ever. Next year it's on Oahu, so we'll see what issues they come up with and how they handle it.

Ms. Kaye: It could light rail.

Mr. Alueta: That was last year.

Ms. Kaye: They're still working on it.

Mr. Alueta: 20-years. As far as moving on – Chairpersons request – that's your standing item.

2. 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.

Ms. Kaye: Yes, and I'd like to keep it standing because sooner or later someday we will see some progress on this, I hope.

3. Open Lana`i Applications Report.

Mr. Alueta: Open Lana`i applications report. I remember there were some questions on it the last time. I did email Clayton, but I did not get a response. I'm sorry, I'm going to have to punt on that one.

Ms. Kaye: That's okay. We didn't get our minutes, so I don't remember what questions we asked. We can all wait until next month. Is it possible, though, and I'm looking at these and sometimes they just pop up and then they're around for a while and they go away. And we never really know what it's about. For example, the very first one on the list is a Miki Basin Heavy Industrial. Right now it's a permit for a District Boundary Amendment and a Change in Zoning.

Mr. Alueta: I did one long ago. Is there a new one? Because I'm not in current division, I don't see the new applications that come in. Is there a date on it?

Ms. Kaye: Yeah, 4-21-08.

Mr. Alueta: Okay, so it's something new.

Ms. Kaye: Yeah. So, I guess, my request would not be specifically tonight unless someone else has a specific question. But it would be much more useful if we were able to ask questions about them.

Mr. Alueta: Okay.

Mr. Rabaino: Joe, you know, it says project next to the tax map key. Like for example it say Miki Basin Heavy – it says two letters – expansion Miki Basin. Maybe you should give some kind of indication what they're expanding – the area itself with the intent? And the second one it say Miki Basin Heavy Industrial for the CIZ – a little explanation would be helpful. Because we're getting repeated things like this and we're just looking at it – and I go in the book and figure out what they're talking about. And also, the other one, the lower half, where it says Green, David and Caron, new dwelling/garage. What is it, extending the garage or rebuilding the garage? That kind of indication would be nice. And then the last two, it just says dwelling. You have one for P and one for Gas. Is that referring to the gas meaning propane. Or the P referring to something else. A little explanation would be helpful. Because on the status, everything is open. So I assume open meaning for discussion.

Mr. Alueta: So the two that you have on the Miki Basin, as you know you have a community planned area for where you want to see your industrial areas. District Boundary

Amendments is when you obviously a State District Boundary Amendment so you're changing it from Ag to Urban. And the Change in Zoning would be from Interim to Heavy Industrial. And because there's no community plan amendment because you've already seen the community plan for that area, therefore there's no environmental assessment. So it's obviously for a new expansion area. What they're proposing in that expansion area is whatever is listed in the industrial areas. Normally, when it's MECo, it normally would say MECo on it. But if it's an industrial park so any use within that industrial park would be proposed uses. So that's pretty much what they're doing. They're just doing the land use entitlements for the area.

With regards to the other ones you talked about. If you look at it, it says gas. These are building permits, and that's a gas permit. So they're coming in for a plumbing gas permit. P again is for a plumbing permit. So that has nothing to do with Planning or this Commission. And the other one, the gas again, this dwelling, a gas permit. So those are specific to – there's obviously a new house already there, and all they're doing is this person has pulled two gas permits and a plumbing permit. And apparently because it's been since 2006. So obviously there's some kind of – they never came in for final inspection or they stopped mid-way.

Ms. Kaye: Is there a life to permitting? In other words, if I pulled a permit to build and then I just don't.

Mr. Alueta: You need six months to initiate unless you get an extension. And you can continue to get – as long as you request an extension you can get the extension for the most part unless there's absolutely no reason for it.

Ms. Kaye: So after six months, you effectively have to apply again if you've done nothing on it?

Mr. Alueta: Yeah, if you have not initiated the construction.

Ms. Kaye: So there's no – like I do something and then I don't do anything – it dies after six months. Somehow I thought it was two years.

Mr. Alueta: Not for initiation. Maybe after you've initiated and you haven't completed in two years, it can die. And that's for building permits. With regards to land use permits that you tend to get which are the Special Management Area Permit where there's a new construction or development, we tend to do a two-year initiation. So you have two-years to initiate the permit. Otherwise, it expires. And you also do a standard five-years to complete the clause. But I do know that for building permits it's six months. Again, six months to initiate the building – the construction part.

Mr. Rabaino: Joe, you get the one over here, like it say, entry date; and you said six months. So if I'm going April of 2008, and we go six months, and you say completion date, there's nothing registered.

Mr. Alueta: That's for a District Boundary Amendment. Those are your land use permits. And what that means is entry date just means when we took the application in. So we're currently out for agency comments, and generating a staff report before it gets scheduled. That's totally separate. And then again in the case of the building permits, we're a separate function. This is the building permits – the gas, the plumbing – are under Public Works. And that just means when they entered. They did not issue it. If it was closed or issued, that means that they got the permit and again they would have six months to follow or complete this – initiate or complete. But I'll find out if there's any more specifics than just the industrial area for the Miki Basin one. And again, I'd like to also encourage you, you have these Code and you actually have more than most public have, you can go on-line at anytime at the maui.county.gov site and all you would do is go to – it's under citizen. We just updated our new website. And if you go under citizen's links and then you click on-line services, and you'll be able to search – there's another section that you click and search for a permit. And that permit number that you see there where it says DBA and the dates – all you do is put in that number – DBA and 2008 and it will give you all the information on-line so you can self service it.

Ms. Kaye: That will help greatly.

Mr. Alueta: And that will have, obviously, that will have more information. In fact that will have information as far as what agencies were given it. And it will also have what agencies had already commented. And a lot of times they'll have a summary comment, if there is. If there's no comment, it would be no comment. And if the planner is really good, they'll have scanned that comments in and you'll be able to down load a pdf copy of the agency comment. And again for future reference, you can check anything you want. With the on-line services, you'll be able to also go on to staff reports and get copies of that. And also copies of the approval letters. If you wanted to see what the approval letter was for anything. Proposed legislation – whenever there's a proposed Bill or Ordinances – that's also posted on the County website under the Planning Department.

4. Scheduling of the public hearing on the following application for the November 19 meeting:

CASTLE & COOKE RESORTS, LLC requesting a Phase II Project District Approval and a Special Management Area Use Permit to construct an adult pool measuring 29.6 feet by 51 feet, related improvements, and resurfacing existing family pool deck at the Manele Bay Hotel, TMK: 4-9-

017: 001, Manele, Island of Lanai. (PH2 2008/0001) (SM1 2008/0013) (D. Dias)

Ms. Kaye: The last item I think is scheduling something for the November meeting.

5. Future Water Workshops

6. Agenda items for the October 15 meeting.

Mr. Alueta: And again, I'm going to try to finalize you October workshops.

Ms. Kaye: Yeah, I had some. I thought you were going to read that. You don't need to do that. We're just all aware that this will be on the November agenda. I had a couple of house keeping items. One is we have by my account four people that have been contacted or maybe not, and needs to be scheduled over the next couple of months. And I don't want to over load us. So October looks like a good time because the only thing we'll have on it is the resolution you presented tonight which we deferred and dispose of right? And then there's Dr. Juvik and ex-Chair Gima who was going to come and represent the Water Advisory Committee, and Joe Kaakua from Castle & Cooke, and Jay Penniman. Those were the four people. And I think you had everyone's contact information, correct?

Mr. Alueta: I believe they either emailed me or that Colleen had contact them.

Ms. Kaye: I can email you all four of them. I talked to Dr. Juvik yesterday only to find out that –

Mr. Alueta: I confirmed with Butch that he will be on for next month.

Ms. Kaye: Okay, good.

Mr. Alueta: I'm assuming that Dr. Juvik said he –

Ms. Kaye: I told him that somebody from the Planning Department – he was on his way to the mainland.

Mr. Alueta: Then I will contact him.

Ms. Kaye: And Jay has been trying to contact you guys for a couple of months. And it might be an email problem, but I think we've managed to make that connection now.

Mr. Alueta: It's actually kind of good that people haven't been contacted.

Ms. Kaye: Yeah, I know, you were too busy. I understand that. And Commissioners, we're not going to discuss it tonight, but you all were cc'd on a letter that I sent to the Planning Department regarding the Special Use Permit. And that, I would like to see on the agenda next month for discussion please.

Mr. Alueta: Okay.

Ms. Kaye: The Senior Center status – that has not been permitted yet as far as I understand it. If anybody has anything to the contrary then we'll leave that one alone. I was asked to inquire on it. Okay.

F. NEXT REGULAR MEETING DATE: OCTOBER 15, 2008

G. ADJOURNMENT

Ms. Kaye: That's all I have. Anybody else have anything? Okay, thank you very much. Good work everybody!

There being no further discussion brought forward to the Commission, the meeting was adjourned at approximately 8:15 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
Beverly Zigmond
Gerry Rabaino
Leticia Castillo

EXCUSED:

Matthew Mano
Alberta de Jetley
Darlene Endrina

OTHERS:

Joseph Alueta, Administrative Planning Officer
Michael Hopper, Deputy, Corporation Counsel