

**LANA`I PLANNING COMMISSION
REGULAR MEETING
OCTOBER 15, 2008**

Approved 11-19-08

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, October 15, 2008, in the Lana`i High & Elementary School Cafeteria, Lana`i City, Hawaii.

Ms. Sally Kaye: We'll call the meeting to order. It's a little after six. This is the October 15, 2008 Lana`i Planning Commission meeting. Welcome everybody. Let the record show we have quorum with Commissions Castillo, Rabaino, de Jetley, Ruidas, Kaye, Mano and Zigmond. First on the agenda is the approval of the minutes of August 20, 2008. If I can have a motion and a second.

B. APPROVAL OF THE MINUTES OF AUGUST 20, 2008 AND SEPTEMBER 17, 2008 MEETINGS.

Ms. Leticia Castillo: I move that the August meeting minutes be approved with the corrections.

Mr. Gerald Rabaino: I second.

Ms. Kaye: Okay, does anybody have any additional corrections or changes to the minutes from August 20th? Any discussion? Okay, all in favor?

Commission Members: "Aye."

Ms. Kaye: Okay, motion passes.

**It was moved by Commissioner Leticia Castillo, seconded by
Commissioner Gerald Rabaino, then unanimously**

**VOTED: To approve the August 20, 2008 meeting minutes with the
corrections as submitted.**

Ms. Kaye: September 17th minutes. If I could have a motion and a second.

Ms. Beverly Zigmond: I move that the minutes of the September meeting be approved as amended.

Ms. Albert de Jetley: I second.

Ms. Kaye: Okay, any discussion? Any additional corrections? Okay, all in favor?

Commission Members: “Aye.”

Ms. Kaye: Okay, the minutes are approved.

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

VOTED: To approve the September 17, 2008 meeting minutes with the corrections as submitted.

C. UNFINISHED BUSINESS

- 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. (Public hearing conducted on September 17, 2008.)**

The Commission may take action to make recommendations to Council on this item.

Ms. Kaye: Next on the agenda is unfinished business – Council Resolution No. 08-55 containing a Bill for an Ordinance Section 19.530.030, Maui County Code, pertaining to administrative enforcement. We had this on the agenda last month and had a presentation by Joe. Some of that detail was lost in transcription and we deferred because the Department of Water Supply that evening had provided us with a three-page letter. So we’ve now all had a chance to digest it a little bit further and read the letter from the Department of Water Supply. And Joe, you want to briefly go over it again, we’ll move to finding some recommendations.

Mr. Joseph Alueta: Thank you Madame Chair. Briefly, the ordinance that you had – or Resolution – which is an Ordinance to amend 19.530 which is the Administrative Enforcement Rules. Currently, it lists only the Public Works Director. The Resolution coming down would add the Director of Environmental Management, and it would add the Planning Director also. As some of you are aware of there has been a Charter amendments, two Charter amendments. One was transferring the responsibilities of Title 19 to the Director of Planning. Therefore, it makes sense that the Director of Planning be listed in the enforcement of provisions so that he could enforce those zoning provisions of the Title 19. At the same time last year, there was a move to split – Charter amendment – and they split the Department of Public Works and Environmental Management into the Department of Public Works and then another department called the Department of Environmental Management. So therefore, the new Director of Environmental

Management needs to be added to 19.5030. With all standard resolutions and ordinances, or draft ordinances, that come out either Council or the Planning Department, we do transmit to agencies for review and comment. I gave you a packet of comments from the agencies that did review it. Most of them, again, were favorable. Those that did have comments, primarily was Environmental Management who recommended that they add Title 8 in addition to the titles listed. And currently they list only 12, 14, 16, 18, 19 and 20. And then they also sought – the Water Department also seeking since they are already listed in Title 14 – they also would like to be listed. The Director of Water Supply. And that's one of the main crocks that you have.

As some of you are aware of, the Department of Water Supply was sort of a quasi-autonomous agency several years ago in which they were run totally by fees, impact fees, as well as water bill collections and they had their own board. Rate fees were set by the Board of Water Supply and they were administered under that provision. And so they were separate from the current administration.

Charter amendments several years back brought the Water Department back clearly under the control of the administration, but they still have the Board of Water Supply that deals with their rules and rate fees. And they now only make recommendations to Council.

Some of the administrative rules that are set up within the Board of Water Supply have if you want to appeal the Director's decision, of Water Supply, you would go to the Board of Water Supply. In the cases or ideas that would be appealed – say like the Director of Water Supply denied your subdivision because there was inadequate water source, or the Director said you need to put in the eight-inch line. And you felt, no, I think the six-inch line would be adequate because that's the water standard. You're paying for some kind of water standards. Those appeals go to the Board of Water Supply. In this section, what we're dealing with 19.530 deals with enforcement and violations under 19.530. And the language that the Water Department wants made clear is that only violations, not an appeal of their rules or standards, but an appeal of a violation would go to the BVA. And they just wanted to add, if you look under the Resolution, the language would be added at the end of paragraph C of the Charter, and which it would say, "notwithstanding any provision to the contrary, the Board of Variances and Appeals shall be the only County Board or Commission to hear the appeals on the Ordinance issued by the Director of Water Supply pursuant to this section." And the purpose for that language is just to make it clear that violations that are under 19.530 go to BVA and that any other appeals such as Director of Water Supply's appeal of standards or whatever would still go to the Board of Water Supply. And that's pretty much it. That's where some of the other Commissions have had trouble digesting that part – concerning who's got authority with it.

Ms. Kaye: Commissioners, questions or comments? I have a question. Health and safety is added in at 8.04.

Mr. Alueta: Yes.

Ms. Kaye: Okay, and if that's added in, then someone needs to reconcile, I think, language from 8.04.060 and I quote "provisions of this Chapter shall not apply to Lana`i." So it's hanging out there.

Mr. Alueta: Okay.

Ms. Kaye: And Gerry last month you inquired about the various chapter or title of this code that this would impact. Did you get the information you needed from that? Okay, 12 is Street sidewalks and public places, 14 is Water, 16 is Building and Construction, 18 is Subdivisions, 19 is Zoning, and 20 is Environmental Protection. So in addition to what we heard last week and what we've just now heard, I think what the County is asking us – what the Planning Department is asking us to do is to consider and either approve or not recommend that those changes that the Water Department added last minute are acceptable, and that the Planning Director and the Director of Water Supply be added. Does that about sums it up?

Mr. Alueta: Yes, and we would recommend that rather than specific to 8.04 that you just reference 8 because that deals with water as well as solid waste landfill dumping. You follow me on the Chapters? Title 8 actually deals, from what I read, was water and solid waste landfill dumping. And so that would enable – the reason they wanted 8 so they could be able to site people for illegally dumping a car. Rather than calling the cops and going through a criminal process, they could then levy a civil fine against the illegal dumping of cars or breaking the rules on that side.

Ms. Kaye: I don't know where I got 8.04 unless –

Mr. Alueta: That was in the letter from the Environmental Management.

Ms. Kaye: But now you're going to say you're going to revise or suggest 8?

Mr. Alueta: My recommendation is to just be general with 8, and then on Title 12 is Street and Drainage, so that deals with drainage improvements also. 14 is Waste Water. 16 was the Building, Plumbing, Electrical Code, so that deals with Public Works. And then 18 was Subdivisions, as you said, as well as 19 is the Zoning which deals with Planning and deals mostly with this Commission. And then again 20 is Environmental.

Ms. Kaye: Okay, we had public hearing on this last month. At this point if the Commissioners have no additional questions for Joe, we'll see if anyone wants to add any testimony on this. I guess not. Any additional discussion Commissioners? I'll entertain a motion.

Mr. Alueta: Just to be clear, Madame Chair, is that you have a Resolution which would amend 19.530 and the Resolution only covers. I'm sorry it's a Resolution for an Ordinance – and the Ordinance would only amend – would add the Director of Planning as well as the Director of the Environmental Management. So that's with the Resolution – what the Ordinance has. And the comments that we received has that they would like you to adopt that Resolution and Ordinance, or recommend approval of the Ordinance, but in addition to add Title 8, or 8.04 specifically, but we would rather have you say 8. As well as add the Director of Water Supply as well as language to the end of Section 19.530.030 paragraph C which would clarify what appeals go to where with regards to Water Department.

Ms. de Jetley: I can try this. I move that we approve the Resolution for an Ordinance amending Section 19.530.030 as per Joe's explanation.

Ms. Kaye: Actually I think what we're doing is sending over a recommendation.

Ms. de Jetley: Okay, I recommend that we send the recommendation per his explanation.

Mr. Rabaino: I second.

Ms. Kaye: Okay, any discussion? Any further questions? There is one that I wanted to ask you about DBEDT's comment to adopt civil fines for artificial light on shoreline and ocean. I didn't get that one. They sent a letter hoping that when you change this you would adopt their, I think, newly enacted civil fines. I just wondered if you had any comment on that?

Mr. Alueta: I'm aware of it. I'm not –. I know it was a State rule and we can –. I'm not exactly sure where that would fall into because it's a State rule and we normally deal with that through the SMA violations because it dealt with shoreline flood lights. And that was passed about three-years ago. Right now we've been enforcing that through SMA.

Ms. Kaye: Thank you. Anything else Commissioners? Okay, all in favor?

Commission Members: "Aye."

Ms. Kaye: Okay. So the Planning Commission will recommend that those changes outlined by Joe be sent back in favor of this Resolution for an Ordinance. Thank you Joe.

Mr. Alueta: Thank you.

**It was moved by Commissioner Alberta de Jetley, seconded by
Commissioner Gerald Rabaino, then unanimously**

VOTED: To recommend approval of the Resolution for an

**Ordinance to Council as noted and outlined by the
Planning Department.**

Ms. Kaye: Next on the agenda is Jay Penniman. He's Maui Endangered Species Resource Specialist, DLNR. Unfortunately we don't have a power projector for him this evening.

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

Ms. Kaye: Michael, if we need to wait a bit to get a projector, can we just agree to move to one of the later items on the agenda which I guess would be communication?

Mr. Michael Hopper: Yes Madame Chair, as long as no one objects on that.

E. COMMUNICATIONS

- 1. September 13, 2008 e-mail communication from Lanai Planning Commission Chair Sally Kaye to Planning Director Jeff Hunt objecting to the withdrawal of the Land Use Commission Special Use Permit (SUP 2007/0011) to Lanai Sustainability Research, LLC for the solar array project.**

This item is for discussion purposes and deciding on the next step, if any.

Ms. Kaye: Any objections? Okay then. First under Communications is September 13, 2008 email that I sent over to Mr. Hunt with respect to some information I got on the Solar Project that came before us back in April. So you've all gotten a copy of the email. You got it electronically and now you have it in hard copy in our packet. I just want to put for the record a little procedural history.

The applicant submitted to the Planning Department an application for a Special Use Permit in November of 2007. This application was sent out for comments to agencies in January of 2008. And April of this year the applicant came to the Planning Commission after a site visit and we, after much discussion and negotiation, granted the permit with certain conditions. On May 2nd, the Planning Department prepared a letter to the applicant granting the permit. I believe it was for a period of seven years with the conditions appended to it. On May 9th, the applicant asked the Planning Department to reconsider whether this project was considered a major utility. On July 31st, the Planning Department did in fact reconsider. And on August 25th, the applicant asked the Planning Department to withdraw its Special Use Permit along with the conditions stating that the State law had changed and that solar is now a permitted use on ag land. And the County, unbeknownst to us, made a redetermination. So I found this out and sent over the email that you have

in front of you and asked that it be put on our agenda so we can discuss what course of action we'd like to do going forward. I'd first like to ask Joe or Michael if they have any updates for us or any new information on this.

Mr. Alueta: Thank you Madame Chair. As you know it was brought up. Prior to your last meeting, there was some discussions on it. We were not able to add it to your agenda item at your last meeting. I was able to bring over – I did have one set of copies in which I provided you with the letters of the determination that was done by the Zoning and Administration Division which is part of Planning. The only new information that I have is that the applicant has asked – or I should say, the consultant has asked – the Department has asked that the applicant itself concur or submit a letter saying that they are indeed seeking withdrawal of their permit. It is unusual, but it's not unusual. I've seen it in prior cases in which people have withdrawn their application and/or once they've been granted their permit. It is unusual, but it has happened in the past.

I can not speak for the Zoning and Administration Division. In discussions, I guess I'm the one holding the bag tonight, but I will go back tonight, or tomorrow morning, and see if this is still an issue you want to discuss that someone from the Zoning and Administration Division come in and explain, I guess, if there is need for more information beyond what is outlined in their July 31, 2008 letter. The best I can say is that it's poor form on the Planning Department not to advise the Commission that there was this determination made after you had already done your thing. And that, from my aspect, that's poor form and I need to discuss that with the Current Division and to find out why they have not informed you and when they were planning to inform you rather than letting the coconut wireless deal the information to you. I think that, potentially, they were waiting for an official withdrawal letter because up until that point, it's speculation at this point. But I think at the very least that you all should have been forwarded a copy of the new determination with regards to it being considered a minor utility. But like I said, I'll be the one taking – I'm the one here tonight so – but that's all I can say. I apologize for the Department overall. I think it's poor form. We'll try to figure out what happened as far as the communication side of it, and what happened. And I guess, I'll just wait to see what your discussion and deliberation is tonight. Again it's on your agenda.

Ms. Kaye: Have you had a situation exactly like this where conditions were voluntarily agreed to where the potential for a change in the law was right out there on the table and the applicant went forward and agreed to conditions in any event, and then tried to withdraw?

Mr. Alueta: No. Not exactly. I've had people be granted SMA permits and they agreed to the conditions at the meeting. But when they go back and they read the conditions more thoroughly, pencil out the implications of the conditions, they either let the project die or they say, you know what, if they can't get an amendment, they just return the application and start from scratch. And so I've had that happen before. That they just determined that

the conditions are unfeasible. I'm not sure – I've read the conditions – I'm not sure how they play into their financial scheme of things. I just can't speak to that.

Mr. Rabaino: Madame Chair, I have a question. From the time they submitted the application, submitted their request, what was the time frame or is there any set time frame for them to withdraw their permit? Is there a time frame for it?

Mr. Alueta: No, anyone can withdraw your application. You can do it either at the meeting or you can do it if you've been granted a permit, you can then basically give back the applicant give back the permit.

Mr. Rabaino: So in other words you're telling me you really don't have a set protocol?

Ms. Kaye: Gerry, what happened here was that at the time they applied for this, and the minutes are very clear, they really needed the Special Use Permit so they could get their financing because they needed to have the project up by the end of the year, being 2008. The State law changed and then for some reason the Planning Department made a determination that made the County Special Use Permit not necessarily required as well. I think the issue for us is the conditions. The Planning Department put their own – the project planner was Joe Prutch – put a number of conditions on it. What they do with those conditions is not really our kuleana so much as the ones we negotiated at that meeting in exchange for. I'm sorry, Joe, I don't remember. Were you at that meeting? April 16th? You were because you testified, but you probably didn't get a copy of the minutes. I could actually just read to you very quickly – we put on five conditions, none of which appeared to be financially burdensome – that employment associated with the solar array shall be offered to local Lana`i residents whenever possible; that the applicant shall report annually on efforts taken to provide on-going training opportunities for local Lana`i residents; efforts should include but not be limited to funding, training, programs and the applicant's continuing relationship with the Department of Ed.; that the applicant shall appear annually before the Lana`i Commission with a status report of the project and a copy of the annual status report shall be filed with the Department; that the applicant shall appear annually before the Commission to give a progress report on its efforts to implement sustainable resources in conjunction with the community for the Island of Lana`i; and that should the solar array cease to operate or be abandoned, the project site shall be returned to its original or improved condition. Those were the five conditions.

Mr. Alueta: All I can say, Madame Chair, is that I guess the Department is in crocks as well as you are because we can't – right now they still have a permit and they're subject to those things. They haven't withdrawn that permit until we get an official letter to withdraw it. We can, on behalf of the Commission, is to draft some language which we'll try to talk to the applicant or the developer of it to try to see if he would still honor the conditions, at least the conditions coming out of the Planning Commission. Because again if they don't feel that they're too onerous. But that's working with the goodwill of the company who's

doing it. If he does chooses to withdraw it, that would probably be the best that we could hope for at this point in time. As far as how people come in for permits, we're going to have the same situation on Moloka`i with another project where they're hoping for a change in the law. And we've already advised them that they need a change in zoning. And so we've advised them that they should go for the change in zoning in the hopes – not rely that somehow the law will change that will make their use an outrightly permitted use. And so people do that. They'll file for the permit as it is now, and if there's a change in the law, then they'll take either one. And you see it with transient vacation rentals also.

Ms. Kaye: So let me understand this situation. They have not effectively applied for the withdrawal yet. And if and when they do, your course of action will be to what? Come back to us first and tell us what they are asking to have withdrawn? Because from what I'm understanding you to say, their consultant is irrelevant to you. You want it straight up from the applicant. So they could send you the same letter or they can send you a different letter. And I think by now they know that there's some concern. Is that correct?

Mr. Alueta: That is correct, and I can advise the Current Planning Division who is processing the permit or had processed the permit that if the letter does come in that, that be communicated before the Lana`i Planning Commission prior to any official letter being drafted.

Ms. Kaye: That would be very good. Thank you. Now I'll turn it over to the Commissioners. You can express opinions or comments.

Mr. Rabaino: I have a little trouble with this. You're saying that agency took it upon them, which is the State, decided to throw out all of our conditions because the law has changes. Why didn't they pass that or communicate those conditions that was so-called deleted and share it with us?

Mr. Alueta: I believe the Chair had talked about that. During the time that they had applied for their permit, right, it was anticipated or they knew that there was a law moving through the Legislature that could potentially make them a legal use. But it wasn't for sure, you know. As all laws moving through Legislative actions you don't know whether it's going to get enacted. You don't know what form it's going to take and whether the Governor is going to sign it. But because they needed to proceed on a time frame, they said, look I'm going to go for the permit under the existing law, and then deal with whatever happens, if and when the law—. Rather than wait for the government to try to bail me out, they said I'm just going to go and get the permit. And that's what they did when they came before you. After they got the permit, the State law changed that basically made the permit that you granted moot in a sense because the law changed that didn't require them to obtain a permit. It just made it an outrightly allowed use.

Mr. Rabaino: I understand what you're saying. What I'm trying to get is that why didn't they

share that whatever they communicated within the room, and distributed and shared with us that certain things was going to be deleted because they were in a time frame to get the permit moving and what was going to be excluded while the permit was being accepted.

Mr. Alueta: I don't know. I wasn't there.

Ms. Kaye: I think Joe has acknowledged that they fell off the fence on this one. This should not have happened this way. So now we're in the untenable position of having by accident learned that negotiations we went through and a permit we granted with conditions is in jeopardy. So really what I think we need to be talking about tonight is do we want to pursue this? Do we think that these conditions are ones we want to stand behind and fight for?

Ms. Zigmond: Madame Chair, if I could say something? I have to say that I sort of feel a little bit used on this. And one of the reasons why I would like to find out what we can do to pursue this and definitely pursue it is because it's my understanding that even though this phase of this project is going to be finished in the next couple of weeks, at some other point in time, it is going to be enlarged. And if that's the case, then those conditions would still – I would still want to have those conditions. And I don't understand why it's so hard to work with the community and have the community buy into something that we're all behind anyway.

Ms. de Jetley: I like the conditions when we were working on them, but now the State law supercedes what the regulation serves with the County. So I think we should move on because a lot of people are waiting for Jay Penniman's report, myself especially. And I don't think that our Commission now can do anything. As Joe said it's moot. We really can't go back.

Ms. Kaye: Okay, I will have to say I disagree completely with that position and I think that Joe has outlined that there are steps to be taken, and we don't just have to fold on this. So why don't we just wait until you do get a formal letter and we will take you at your word that no decision will be made until you get a response back to us. And I think since this is an agenda item, if there's anyone in the audience that wants to speak to it, we can –

Mr. Alueta: I just want to clarify one position. It's that I'm outranked at the Current Division by their Division Head. I don't give orders to anyone. So my only response is that is what I am going to tell them that is the request of the Lana`i Planning Commission. And when the official letter does come in that it does come before the Planning Commission before any official acceptance of the withdrawal or whatever happens that this Board is consulted on it and a presentation on further explanations on the legal outcomes and determinations was made by the Current Division and/or the Zoning Administration Division. But again, I'm going to take those requests as your advocate back to the Planning Department. But again, I'm not high on the totem pole there, so I will do my best.

Ms. Kaye: We understand. Thank you Joe. I re-read the minutes from that particular meeting and on several occasions it was acknowledged what the state of the law was and what the applicant was willing to go forward in order to, that evening, achieve our approval. So we can detail those promises made on the record if we need, but we'll wait to hear from you. Is there anyone else who would like to speak to this?

Mr. Fairfax "Pat" Reilly: Thank you. Fairfax Reilly. 468 Aahakea Street. Three issues - one, I would write a letter, a formal letter, to the Planning Department subsequent to this discussion, outlining exactly what the Commission expects in return. I feel a little uncomfortable again with the coconut wireless process and I feel that unless the Commission writes a formal letter to the Planning Director and asks clearly that no decision be made prior to this Commission's full understanding of the law. The second aspect I would be concerned about is retroactivity of the law. My understanding is you made your decision prior to the formal signing by the Governor, so therefore your decision – does the law because it was promulgated after your decision, does that make your decision moot? I wouldn't think so. And thirdly, I would agree that the conditions that were established were in good faith. They were negotiated conditions. They weren't imposed conditions. The applicant agreed to them. And even if there were a decision that said well the law supercedes your decision, the applicant still agreed to the conditions. So why shouldn't they continue to uphold their end of the bargain. Otherwise it just becomes a political chess game, like, wow, we out-foxed you guys, which means you out-foxed the community. And that sets a whole precedents for the next round of negotiations on any other projects similar to that. So I have some real concerns about the process of this. So I think you should ask for a formal explanation and a legal opinion about that. Thank you.

Ms. Kaye: Commissioners? Matt? Okay, someone wants to make a motion that we adopt Pat's recommendation and send a formal letter or would you prefer to rely on Joe's promise to us?

Ms. Zigmond: Madame Chair? It is also is not that I don't trust Joe because he does what he says he's going to do if he can do it, but I feel that it would be advantageous for us to draft a letter.

Ms. Kaye: Okay, can we have some advice on how we move forward on that Michael please?

Mr. Hopper: On how to draft a letter that you would send? I would advise that you – well have a letter and approve the letter before you send it. The problem is that you've got a month until your next meeting obviously. That's typically what we have or direct a staff person to prepare for you and then approve the letter itself. What you could do is, I guess, get together the basic points of what you want in a letter; have that letter drafted after the meeting and give somebody, perhaps the Chairperson the authority to draft the letter on your behalf. Be pretty specific what you would want to be in that letter so you're okay with

it. The problem that I'd actually had on other Commissions is that a vote like that is taken, a person drafts a letter, and then some other Commissioners said well that's not exactly what we said we wanted in the letter and things like that. So that becomes a problem when you don't review the letter specifically. Since you can't go outside a meeting and talk to each other, that can be a problem. So I would advise maybe agree on the key points you want to have in the letter, give somebody the authority to draft the letter, and then have that person outside of the meeting, they can act on their own, draft that letter, and then send that on to the Planning Department.

Ms. Kaye: Just a clarification. Since it isn't something that would be discussed publically, we don't need public approval to outline the points we'd want in this letter. Would it be proper to do as you say and whoever gets the authority or takes the authority to write the letter, send a draft to the Commissioners and give them a week to respond to it. And assume that if they don't that it goes out as it is.

Mr. Hopper: I think if you want to send that letter out to the Commissioners and they respond, you are talking about deliberations outside of a meeting. I think there's a sunshine law problem. It makes it hard to draft letters like this if you're on a monthly meeting schedule. So again I'd recommend that you do everything you can here. Perhaps even have somebody draft up a letter, maybe in one of your breaks, and then approve the form of the letter and then have that sent out – or the basic points. But yeah, once you start communicating outside of the meeting, I would generally advise against that.

Ms. Kaye: Got it. So what points – do we want to pursue this?

Ms. Zigmond: Yes.

Ms. Kaye: And what points do we want to have? They can be very simple.

Ms. Zigmond: Madame Chair, I think Mr. Reilly consolidated pretty much everything. One of my main concerns is that the conditions were negotiated and I'd like to pursue that line of thought.

Ms. Kaye: Okay. Any other thoughts? Any additions to that? How about if we agree, since I wrote this extensive e-mail already, I'll use that. And in addition to that, add the conditions that we negotiated and I will add references to the minutes of the meeting where they were negotiated. And conclude with a request that no decision should be made on this until a full explanation is provided to the Planning Commission on how we got to this point.

Ms. Zigmond: Thank you. That sounds good to me. I would like to – if you would be so kind to do that – I would like to make a motion. Do I have to make a motion for that? I would like to make a motion to authorize Chair Kaye to write a letter to the Planning Director, from the Planning Commission, outlining the points that you just said.

Mr. Dwight Gamulo: I second the motion.

Ms. Kaye: Okay, I have a motion and a second. Any discussion? All in favor?

Commission Members: "Aye."

Ms. Kaye: Oppose?

Ms. de Jetley: Nay, me.

Ms. Kaye: Okay, the motion carries. We have one nay, Commissioner de Jetley. And I think that will be all that we have to say on the subject.

It was moved by Commissioner Beverly Zigmond, seconded by Commissioners Dwight Gamulo, then

VOTED: To authorize Chair Sally Kaye to write a letter on behalf of the Lana`i Planning Commission, to the Director of Planning, to include points discussed.

Assenting: Commissioners D. Gamulo, B. Zigmond, M. Mano, S. Ruidas, G. Rabaino, and L. Castillo

Dissenting: Commissioner A. de Jetley

Excused: Commissioners D. Endrina

Ms. Kaye: How about we take about a five minute break and give Jay a chance to set up?

(The Lana`i Planning Commission recessed at approximately 6:45 p.m., and reconvened at approximately 6:50 p.m.)

D. LANAI WATER WORKSHOP NO. 3

1. Jay Penniman from the Hale Reforestation Project, Maui Endangered Species

Ms. Kaye: Okay, we're back in order. Once again, I'll welcome Jay Penniman, Maui Endangered Species Research Specialist from DLNR. Jay if you want to just tell us a little bit about yourself and your work and we'll let you make your presentation. Thank you.

Mr. Jay Penniman: Thank you. Waiting for everyone to return. I am the Maui Endangered Species Research Specialist working with Pacific Cooperative Studies Unit, in association with the Department of Land and Natural Resources, the Division of Forestry and Wildlife.

And we came here three years ago to look for this bird. This is the Hawaiian Petrel. This is an adult bird. These are seabirds. They are endangered. As far as we know, there are no more than 20,000 of them remaining in the world, and they live in the Hawaiian Islands. The main Hawaiian Islands only.

Fern Duvall who is in the room here actually came up with the idea for this project because there's no other birds that were in the area. But until we started this project, really, the only main population known was up on Haleakala. We found that Lana`i is contributing significantly to the life of this seabird.

As I said, I work with Pacific Cooperative Studies Unit out of the University of Hawaii. Duffy is the Principle Investigator for this project and a number of other conservation projects across the islands. I manage the project. Christine Costales has worked with us nearly the entire time I've been on this job, and she manages our office. She's our crew supervisor. This project runs because Christine is so good at what she does. John Mahina Romero is our only crew member at this point. We are looking for two more crew members. We'll be opening up those job positions again in a few weeks, depending on the Governor's passing along all of the paper works which sits on her desk at this point.

The Department of Land and Natural Resources is where this project originated. Scott Fretz is the program manager who directs the funding towards us from the Federal Government and the State Government. And I said Fern Duvall was the person who instigated this project. He's the wildlife biologist for the Maui District, and one of the most eminent biologists in the Hawaiian Islands.

The Research Corporation University of Hawaii manages our Human Resources. All of our hiring is done through them. And Castle & Cooke permits us access to work here on Lana`i, as they own the island.

Here we can see Maui Nui. Until just three years ago, this area of Haleakala, particularly this edge of the rim is where, of the crater, is where the birds were known to nest. They actually do nest all around in this area. And we're not even sure where over in here because it's very difficult to get there, resources are limited for having people up there to find the birds. But we came over to Lana`i and looked on the top of Lana`ihale and we're very, very pleased to, rather than find the 10 or 15 birds that we thought might be there to find, probably several thousand birds living up there.

You, I'm sure, are all quite familiar with your island of Lana`i. This being the forested area, basically the watershed. This is the watershed fence which has been completed. A brief run through for those who might be a little less familiar. These are the facts about Lana`i. It's a small island and really a very dry island – most of the precipitation falling on Lana`ihale. Never had a lot of people here. In fact, there were no people at all when the Europeans arrived. And when the Polynesians arrived, they right of way began the process

of altering the habitat here. Much of the northern area of the island has already lost its vegetation by the time Europeans arrived. The Europeans brought ungulates. That is pigs, cows, goats, sheep and those animals removed much of the rest of the vegetation. The entire Palawai Basin was an Akoko forest. The tree with the succulent bark. The goats loved that bark and they ate it all off. Those trees are gone. Bob Hobby tells me there is one left on the island, but I have yet to see it. I'd love to.

Pigs, and goats, and sheep and cattle – they all arrived here. Their dates when they arrived. Axis deer and mouflon sheep were brought for hunting, and they are ungulates which remain on the island. There are also a few goats remaining over in this area. The status of them are declining. Vegetation you can see. There have been a lot of endemic plants. There's also been a lot of loss. There were a lot of forest birds. We only have one forest bird as far as we can tell. The Apapane is only one which remains. Primarily due predation largely by feral cats . . . (*Inaudible. Changed cassette tapes*) . . . this now doesn't show you the forested area anymore, but rather, it shows you the area which is covered by Uluhe fern. We find that the Hawaiian Petrels are nesting in those areas of Uluhe fern. These birds only come in at night. They fly high in the sky, all the way down to low, above the ground, in the areas where they breed. They breed in burrows in the ground. And we have heard them basically from this point on Munro Trail, to this point on Munro Trail. Wherever we hear them and observe them doing their aerial acrobatics and flying, we presume to be breeding areas. We find burrows under those areas. This is an area here where we know of a concentration of burrows which happens to be also the same place that in the 1980's Peter Connally removed the last of the goats that were on Lana`ihale.

Over here where the fence went up through here went right straight through the middle of the colony area. Bad for the burrows that were there at that time, but good for us because it opened up an area that we can now follow birds in burrows that are reasonably accessible. Here's a little more detail. I think you may have seen this map. It was presented to the Water Working Group, I believe it is called. This is the existing fence, what has been built thus far. This piece of the fence is also have been built down through here, and will be worked on up through here. I'm not aware of Brian Plunkett's progress now and what he is doing, but this will be the second increment of the fence, and then, completed with this piece to go up around here. Which will include all of the area that the Petrels breed within, which happens to coincide with the watershed. And remarkably the things which endanger the Hawaiian Petrels are also the things that endanger the watershed. Both the watershed and the Petrels and all of the endangered plants that are up there need the attention that our project is attempting to give them.

I'm going to run through a few of the things that we did right away just for the Petrels. As soon as we got here and were out at night observing, we heard that they flew into the fence. Fortunately there was a woman on the Big Island who had done research in how to make fences visible to these birds, and this is what she discovered. This is white electric fence tape. No electric in it. Just for the visibility. And since we've put that on, we have

very, very few collisions with the fence. We just don't hear them anymore.

We control predators. The primary one being feral cats up on the hale. As we continue to remove them, we also continue to find predated animals. They're very, very difficult to catch. These animals have been up there since the Europeans arrived on sailing ships. And are actually interestingly kind of reverting to very similar to the original cats from Egypt. They're morphology is being studied by a fellow in England, looking at the size of the cranium, the length of the torso, the coat color, the pad colors on the feet, and he's determined that it's very likely that cats isolated on islands are reverting to the Egyptian ancestral stock.

Here's another little animal that we find up in the forest. We don't have any pictures of it predated the `Ua`u, but these are forest birds, and the rats are terrible predators on all of our birds. And not only the birds, but the plants. They eat the seeds. We go up, we find trees, they just don't have seeds on them because the rats have gotten to them. Or we see them when the seeds are immature and they never make it to maturity because the rats consume them first.

Common barn owls are an introduced bird. The white Hawaiian owl is not a native bird. It's an introduced owl. They hunt at night. The Pueo, the true Hawaiian owl is a native bird, and it's a day time hunter. It nests on the ground. The common barn owl nests in cavities in trees, in boxes if we build them, and we are attempting to remove them as well. We find their pellets, these are regurgitated items that birds can not digest and we find them with Petrel remains in them. We see them in the colony area, hear them in the colony area in the early part of the evening when they're still visible and they're definitely predated the Petrels.

Another threat which arose recently for the birds is the meteorological towers that Castle & Cooke has erected for determining weather and where there is a wind resource to develop on the island. Castle & Cooke has contracted with the Department of Land and Natural Resources to do mitigation for any potential take from these towers. I'm sure you can see the 26 sky wires that support this meteorological tower there. The birds have just as easy time seeing them as they fly by. Fortunately as far as we can tell so far, there have been no birds taken.

We also, and really what we came here to do was to do research on these birds and see what they are doing. We are looking at their breeding chronology. We follow the burrows that we know. We put sticks in front of them so we can tell when the birds come and go. We have a burrow scope so we can look down in and see whether they have eggs and then chicks, and when the chicks fledge we know it. We've learned a number of interesting things, primarily among them, the birds on Haleakala are a full month ahead of the birds on Lana`i in their breeding chronology. They return in February, and they're fledgling chicks right now. Where, the birds here returned in March and they will not fledge until mid-

November to mid-December. We are working with people at the Smithsonian Institution and Michigan State doing genetic analysis on these birds. We've learned that the Lana`i birds are probably more related to the now extinct, as far as we know, birds from O`ahu, rather than the birds on Haleakala which seems to be perhaps more related to the birds on the Big Island. This makes the Lana`i birds even more valuable because they are genetically distinct from the birds on Haleakala.

Stable Isotope Analysis is being done at Michigan and we're looking at a number of different aspects of the birds, and involving a number of researchers in coming to Lana`i for data collection and then doing analysis and write up. We're also doing foraging strategy on chick provisioning adults. This is a bird which we tagged this year on Lana`i. The bird started out here on the islands. It's kind of hard to see at the scale of this map. But in 48-days it traveled all the way around here. This is the northwest Hawaiian Island. This is the Emperor Sea Mounts. It went 15,000 kilometers, all the way around here. And then its tag fell off here. We just received today information that perhaps some birds don't like that tag on there so much that as soon as it falls off, then they return to the burrow and feed the chicks again. The chicks are very capable of staying in the burrow for long periods of time, but it does take without being feed. It takes two adults to feed a chick, to raise it to maturity. If a cat eats one adult, that chick will die. One adult can not do it alone. If this bird – there was a visitation at that burrow the night before last, and we presumed it was that bird that dropped its tag and returned back. It had been heading back in this direction before the tag fell off.

Previous to doing this study, all of the literature said these birds traveled long distances to feed their chicks, maybe 1,000 kilometers. We now know its 10-15 times that. But, the number one threat we have for these birds is invasive plants. And strawberry guava is the major one. You see this mass here? Birds can not fly through that. Nothing can travel through that. Strawberry guava forms a shallow root mass. Actually we'll start right here. Let's say they produce 1,000's of seeds every year. They're easily spread. Every plant reproduces vegetatively. That means when you go up on the hale and you see these masses and masses of strawberry guava along the road, much of those are the very same plant. Up from the roots comes another stem.

Allelopathy is that feature that these plants are very good at, they poison the soil. The roots put out a poison so other plants can not grow. Even other strawberry guava plants. And they have a very shallow root system. They have removed all the other vegetation from the area. There's nothing but these plants left. And then their shallow roots only take up water for themselves and then the rest of the water runs off and does not go down to recharge the aquifer.

So just a little bit of a picture of what we need in a watershed. Here we have our canopy trees. The primary one I'm sure you all know up on Lana`ihale now is an imported tree, but it does very well at capturing the water, and that is Cook Pine. Koa and Ohia also do very

well at collecting water and can be replanted as well. But these trees alone will not provide water for the aquifer. They need to have sub-canopy, a layered canopy and an open canopy so that when the fog which comes across it is caught by the leaves of the trees. In fact, the leaves of the Koa are not even leaves, they are a modified stem called affillo which works extremely well to catch water, drip it down onto the soil, where it is then captured, held and then allows moisture to drip down into the aquifer where it is available for uses by we humans. It is a giant sponge. So you can see you need this entire structure from the top all the way down through the bottom to provide recharge to the aquifer.

Going up and just planting Cooke Pines on the hale will not recharge the water and the aquifer. You need to have that under story. The principle plant in that under-story is the Uluhe fern. There are a couple of different of Uluhe up there, and a number of other plants that built that layer of sponge on the ground. This is also excellent for the birds because if you know Uluhe at all, you know it has many, many stems that are close together and cats don't go through it, people don't go through it. It's a dense mass. But the birds can come down on top on this, it cushions them. They're excellent flyers but terrible walkers. They're extremely clumsy on the ground. They can dig out a hole and burrow into the ground, but walking around on the ground is not what they like to do. So when they fly out in the air, they often crash into this Uluhe, wiggle down through it and get to their burrow. They're long lived birds. They'll come back to the same burrow to nest, year after year, living 30 to 40 years, laying one egg only every year.

This is the north end of where we find the Petrels. Also the north end of where the watershed begins in earnest now. And all of this low plant that you see can see covering this area here is strawberry guava. All of this plant here right below that little area, all that in there, that's all strawberry guava. That's Uluhe fern. There are birds which fly over here at night and nest down in here, all along this ridge. We've done surveys all the way down here. Where there is Uluhe remaining, there are birds. There are a few birds that fly over around here, but they are probably going around here where there's another patch Uluhe. The strawberry guava is an immense problem.

So Castle & Cooke's mitigation for the meteorological tower is that in order to essentially replace seven birds – if they were to take seven birds at the towers, and that means not just the bird at the tower, but if they take one that's breeding, that means they've also taken the chick. So when you calculate seven birds taken – this is a three acre patch that we have figured what the density of nesting often is, although this is a lot of figuring out as we go because there hasn't been a lot of work done on them. But we know that there were birds nesting here 25 - 30 years ago. We have a report of birds crashing in the Uluhe. This is the fog drip station if you're familiar, where the picnic table is, off on Munro Trail. This is Munro Trail. So the birds were crashing into Uluhe over here. I don't know how many of you have been up there since we started working. Previously this was all strawberry guava. You couldn't see anything beyond that road. Now this is all opened up back into this area. It is gone. The Uluhe is starting to come back in those areas and within the next

two years, we will do that three acres. Unless more than seven birds taken, then in which case, we'll take another three acres doing this piece.

We've gone and done a historical and cultural survey across this entire area. We've looked for native plants. Identified all of the native plants. We've preserved them when we cut the strawberry guava, and we encourage them. We plant seeds when we can, and then replant up there. So we intend to restore this to native habitat for the `Ua`u and for the watershed.

This is what strawberry guava looks like. Actually not a terribly thick area. There's areas where it's so dense where you can not take a picture because it's too dark. And this is what we are doing with it – running it through the chipper, leaving the piles of chips, they prevent strawberry guavas from coming back right where they are and allow us then to make new "pukas" where we can put plants that we've grown and we will continue with doing that. This is a patch of Uluhe out in there – one that we will preserve. Actually we've cut around this one already. This is all gone in these areas, and it's expanding out from there. And these are some of the reasons why we want to keep on doing it. This is the 'ama'u, one of the beautiful ferns which grows up there, part of that under-story. This is not up in that area of the hale, but this is a little bit farther to the southeast. It's a Saiania. One of the very rare and endangered plants. You probably all know the Huelo berry. It's quite edible, quite tasty. The berries on Haleakala are no way near as good as the ones on Lana`ihale. The kāmakahala is a native plant. We're hoping to collect more seeds from that now and get it growing in other places as well. I think it was often used in hula.

We're looking at, really looking at – we came into doing this strawberry guava project very quickly. We're doing a clearing in an extremely dense area. There are areas where it is not so dense and perhaps those areas we will work first after we get this one going to keep the strawberry guavas out of areas that are in fact native still. So we'll find that distribution, overlay the watershed area, overlay the known breeding area for the birds, and then determine what our on-going strategy for control is. The restoration that we're doing now is a two-year project. It's kind of a pilot study, really, to see how does it cost? What does it take to do this kind of work? It hasn't been done anywhere else in the State or the world as far as I know to try and do this kind of restoration. And it will involve hiring additional staff. All of the hiring for staff that we're doing for this project is Lana`i based. We are not looking off island to hire people. Training is a critical part of what we do in our project, and we think it's extremely important that we provide these jobs for Lana`i residents.

And if I only can get my computer to make this work. This is actually a video with a feroscope and this cute little guy opens its eyes and looks around, but I can't ever get it to work on the power point. So if anybody knows a "techy" who can teach me how to do that, I'd love to have it. And that is that. I'll take any questions.

Ms. Kaye: Thank you Jay. I think we'll move back to our seats and turn the lights on. And

see what questions the Commissions will come up with and then we'll get some from the public.

Ms. de Jetley: Jay I have a question while people are moving. What kind of deer count have you been seeing up there? What kind of deer population have you been seeing in the area?

Mr. Penniman: So the question was about deer population. I did not mention about more of the plans for once the fences are up. The idea is that the deer would be removed entirely from within the fence. There's one section of the fence completed. There's about 1,800 acres. There are many deers in there. There are a number of people who have signed up with the conservation department to hunt the deer up there. And that is one piece in the strategy for removing the deer from there. I have asked Castle & Cooke for a more extensive plan to see what is the plan for actually removing the deer. Hunting alone will not remove animals. It's been shown throughout the world that you can not eliminate deer or any ungulates by hunting alone. You have to have a concentrated strategy which uses a number of different techniques. And largely you can train people here to work on those kinds of jobs, but it's more a job for professional exterminators really. You're looking to remove a population of animals from there. So that's a question and I would appreciate a response, and I'm assuming that will come shortly.

In the second increment of fence that has been put up, they've closed the gate on that at the existing fence recently. What we're seeing now is the deer are piling up against that side of the fence. When you go up there now there is a beaten path running up along that fence which will cause additional erosion along that fence. It's real critical to get people up there to start removing those animals very quickly. Our staff has signed up with the conservation department to participate and are willing to participate. We are willing to participate with that effort, but it really needs the concentrated organization of somebody who looks carefully at where are the deer, how are they using the habitat, and then figuring out how to get them out. The number of deers up there create trails which opens up paths for cats to get to the burrows. Those deers create trails which creates erosions which removes more of the native vegetation. It allows run-off which you see the effect of run-off on the north end of the island. It's a critical step that really needs attention right away.

Ms. Zigmond: Jay, would you please repeat what you said? I missed something about the seven birds and the three acres. How does that work together?

Mr. Penniman: What happens here is you have to do mitigation for potential take. If you were to kill an endangered species with one of the guide wires, the bird flies into it, it dies out there. Castle & Cooke would be guilty of taking a bird. It's an illegal activity. They would be totally shut down if they did not have a habitat conservation plan in place in which they spell out what are you doing to replace that take that you have? So we're opening up habitat for them to make it so that the birds are able to nest there. And we came up with

this number of seven. In a way it was pulled from thin air. But there's some justification and there's ways that we came up with it. It works. It's a significant piece of habitat restoration, and it will show what really needs to be done to do significant restoration in the area not only for the birds but for the watershed. And then if they were to take that seven birds, then they have a second tier in which they would add more money into what's funding us to do that work, and then do another three acres.

Mr. Matthew Mano: Jay, I have a question with your strawberry guava. On east Haola – we hunt a lot on East Haola. Where the fern ends as you hit the red dirt area, there's a lot of strawberry guava on the lower side. So how extensive are you guys going to start clearing this thing out? Because I know if you guys are clearing where the vegetation is, the berries that's on the bottom will eventually come back with the birds, the deers, the moufflons and whatever else. So that is my concern because we do hunt a lot. And I know that area because we've hunted there many, many times, and we've seen the strawberry vegetation just expanding in that area. We see a lot of run-off. Somehow the strawberry guava, where its congregated, is just red dirt. There's no vegetation. So how extensive are you guys are going to be willing to do the eradication of this strawberry guava?

Mr. Penniman: My vision for this project is we are just getting started, and in your lifetime, my lifetime, my children's lifetime, their children's lifetime, there will still be those jobs. It will take that much effort. That's why we have to come up with a bigger picture plan. We would look at all of the area of the watershed, where the strawberry guava is now, how can we keep it out from those areas. Keep it from being where it's just coming into now. And if we get the ungulates out of there, then the deers are not carrying it up there, not moving it up there. It's still going to move up there, but it's a matter of limiting it and it's a matter of saying this is our mountain, we love this habitat, we love this for the birds, for the native plants that are there, and we can maintain it as a decent watershed. But we will never get rid of the (phonetics). The (phonetics) will be there.

Mr. Mano: One more question. As Alberta de Jetley said about the deer and the concentration. Like I said, we hunt a lot up there. In valleys itself because of the steepness, we've seen deer half way in the valleys, congregating on the side. The problem with that is there's no way to get to them. The second problem is you can see them until they hit the ferns then you won't see them. So you don't know where they're coming out from, you don't know where they're headed. To get experts in there –. Like I said, I hunt up there a lot and the dangers with the fern is you don't know what's beyond when you step if you understand what I mean. Some people have died in the past up in those areas, and we do believe that those areas are very dangerous because we've hunted there since I was in high school. In fact younger. When I was 12 years old. I'm 55 now. So we pretty much know the area. There's a lot of us that know the area. In fact all of the hale. We've hunted all over the hale.

And I know Lana`i Company conservation team, they have one good person working with

them. That's Wendell Sarme. He's a hunter. He really likes to hunt. The only thing that I'm concerned about is the danger part of hunting in those areas. The amount of people that you have out there because of the forestation. Some people tend to just shoot without knowing what they're shooting. Or if there's a game, they shoot, not knowing what's in the back. And I think the first issue is safety and it needs to be taken care of, it needs to be done. And you need to have people who've hunted with each other in the past because they know each other's tactics. They know how to go in the areas. They know what they're looking for, and they know how to watch out for each other. When you have different people hunting that hasn't hunted with each other, they will be going all over the place and that's a danger. And that's one of the issues that I'm concerned about.

Mr. Rabaino: I have a question for you. You're eradicating the strawberry guava. What are you replacing when you take away all of that to stop the soil erosion? And the second one is have you come across the green rose vine? Is that being preserved, the green rose vine?

Mr. Penniman: The second question is easier for me because I'm not familiar with the green rose vine. And as far as – perhaps – Fern are you familiar with this plant? No. Perhaps sometime we can try and figure out if there's some other names for the green rose vine. We can figure out what it is. Is it a native plant? Do you know?

Mr. Rabaino: I'm not too sure but it's growing abundantly up there, behind the fog station. Because Lana`i already lost the wood rose. We use to have wood rose growing in Lana`i City. And when they did a clean up, nobody knows that wood rose exists. And the wood rose no longer exists in the State of Hawaii. And Lana`i was the only island by the Endrina place, going up to Haole Camp, to Social Hall, that existed. That one vine – that every month it would produce wood rose. So my concern is if you guys are clearing and what are you replacing when you clear the strawberry guava. What kind of vegetation are you placing there? You have not mentioned the kukui tree but you mentioned the other trees. You said Norkfolk Cook Pine doesn't do the work to replenish or re-energize our aquifers up there. My concern is what plants are you offering in order to induce more of the fog catching the water to replace and energize our aquifers up there?

Mr. Penniman: The plants that we're putting back are the native plants that are up there. We're collecting seeds from those plants and we're replanting them. The `akia – we've replanted some already up there. The uluhe is spreading out from the patches that were still remaining and growing up. There's kawau that's growing out. There's a number of other trees and shrubs and ground cover plants. The ferns are coming back that will fill in there, and we will bring them from other areas also to fill in those empty spots. So that we're not leaving bare ground where the water is going to run off. We're removing all of the vegetation which is non-native with the exception of the Cook Pines. We're leaving all of the Cook Pines because the Cook Pine do – I did not say they don't bring the water. They definitely do drip water and we are not removing any of them. So they will be there.

We'd like to bring koa up there, to see how it does. Because there's the koa forest here where the seedlings come up underneath the trees all the time. So there's a source to bring out seed and perhaps they will also work. But largely this is untried and we're looking at how can we get this to come back. So far the native plants which we have left – we've gone through and identified all of the plants which are not invasive plants, non-native plants that we don't want there, we flag them and we encourage them to grow back.

Mr. Rabaino: The other plant that I've noticed that is not as abundant up there is the rose apple. Also the purple lilikoi. Have you come across patches of that up there?

Mr. Penniman: The only purple lilikoi that I know is up by the east deer guard – on the enclosure that's already done – right on the outside there's quite a bit there. Other than that I haven't seen too much of it around there. There's a little bit. It also is a non-native plant which doesn't actually help much of the rest of the forest and will over take plants, grow them, smother them. So we would be real hesitant to encourage that in the watershed area. In the area where the birds would be.

Mr. Rabaino: And what types of ferns are you planning? You said you're taking seedling to increase the other vegetation. What about the fern for ground coverage? You said two types were growing up there?

Mr. Penniman: There's a number of different types of ferns. There's two types of ferns that the birds seem to really key in on. It's the uluhe fern. There's the usual – the smaller leaf uluhe and then there's the bigger one.

Mr. Rabaino: Yeah.

Mr. Penniman: Those two species are the most common ones that are forming ground cover that you can see around. There are a number of other fern species which are also coming up in there. There are hapu`u. There are `ama`u. And as well a number of epiphytic ferns.

Mr. Rabaino: The `ama`u. How many have you – within that three-mile of Lana`ihale going down to Awehi Trail, how many of those plants still exist? Because, I think we had a drought, we had one time, and a lot of them were dying off. Is that being feasible for you folks to increase that growth of that plant? Because it does hold –. When the leaves die it acts like a mulch.

Mr. Penniman: Yes, it's an excellent fern to have in there. And our hope is that by removing the guava from around there, that we will get much more of it coming back. We're not moving actual plants from one place to another. We're collecting seed from the seeding plants and growing those into seedling, taking them back up and replanting them. The ferns, for now, we're allowing that just to happen on its own. Ferns reproduce by

spores. It comes off the bottom of leaves. And so they distribute themselves very well. And if things go as they seem to be, they will be repopulating themselves in there.

The Awehi side is much drier, and especially since the vegetation has come off all that side of the hale, it's much harder for the ferns to survive over on that side. Up in the fog drip area is a much wetter area of the hale than the Awehi side, and the ferns are much healthier over there.

Mr. Rabaino: My next one is the `ohia plant or the tree. If I remember correctly, there's two areas where they still have it. Are you planning to increase the `ohia which use to be like the sandalwood during the Kamehameha times that they made money off?

Mr. Penniman: The `ohia is well distributed throughout the hale. And in fact, we find a couple of different ones all through there. Here's `ohi'aha, there's `ohia and it grows up out of the uluhe. It is part of that forest structure.

Mr. Zigmond: Jay I have another question. Your visual with the different layers of the canopy I though was very helpful. And some of our past workshops we've heard about the fog drip going higher and less rain. Can you tell us your experience with that?

Mr. Penniman: My experience with that – you mean, is the fog drip going higher? Well this is the prediction that the global models are showing that the convection layer. That's the area now where this is all that moisture and can come down as fog drip caught by the Cook Pines. It's kind of early to say, really. You know we're still getting moisture up there. It's still very wet at times. But that's a long term question and we don't know the answer to that. We do know that the better forest structure you have, the better that is able to catch moisture. And if it's coming from Maui – It's blocked by Maui – we're in the rain shadow from west Maui here. But if there is moisture in that, if we have the forest here to be able to collect, if we can do that. Whether it's actually going to rise up, I don't think anybody can say for certain. That's a prediction based on models.

Ms. de Jetley: I have several more questions I would like to ask. You said that electrical conduit ribbon or tape is working really well on the fences. Why wasn't that used on the guide wires to hold the met tower because then the wires would be visible to birds.

Mr. Penniman: When the consultants that are working for Castle & Cooke talked with the engineers who put up those towers, they believed that putting that much ribbon up all the way along the wire would not be good for their tower structure or could possibly effect the way anometer reads the wind. There are actually markers along there. They're placed the same type of flagging over the wire and it dangles some times a foot on each side. And they put those every 10-feet or so. And then there's commercially made bird diverters. None of these things have ever really been scientifically tested to see how effective they are. But they do. They've made some attempt to make them visible. And as far as we

know, to this point, there has been no take at the towers.

Ms. de Jetley: That was my first question. Then I see Cathy Carroll is throwing me daggers. What we would like to know is what has your feral cat take on the hale? Obviously you have trapped some cats. We have been working very, very hard in the community to do our spay neuter release to help to reduce the cat population. But what have you actually captured on the hale?

Mr. Penniman: In terms of numbers, I don't have a number on the top of my head. We catch cats periodically. We have some 60 traps out running all of the time. I can tell you that we have put in many, many thousands of hours or nights of trapping – trap nights as we refer to them. And we have many fewer than 100 cats have come out of there. Many fewer than 50. It's very difficult to trap these animals. Traps are not a good method for removing cats from an area.

Ms. de Jetley: So have you seen any domesticated cats because you say that these cats are truly feral cats that are reverting back to their Egyptian roots. So have you seen any of the community's domestic cats there?

Mr. Penniman: I've seen no cats that I would call a domestic cat. None of the cats that have been in there – were the kind that would purr when you put your hand any where near them.

Ms. Kaye: Okay, Matt, I think you had a question.

Mr. Mano: I've got one more question. Besides the strawberry guavas, how many non-native plants that is affecting the native plants, up in the hale, that you guys have found?

Mr. Penniman: Well again, I don't have a number. But I can tell you that there are quite a few. The guavi is far and away – I mean there's no comparison. There's no other plant that's any where near as bad as that. There are some other plants that could become that bad. There's the New Zealand tea. If you've gone on the eastern side. It is more, fortunately, once you cut it, it dies. You don't have to herbicide it. With the guavi, you have to cut it and then you have to herbicide it, but still it tries to come back. In fact, Mahina was up with Fern yesterday and they brought back a piece of chip that had gone through the chipper and it had one little stem growing right out of it. This much of a chip and that's all it took and it's growing still. So it's the worst. But there are a number of others. There's one called Tibachina which apparently went up with one of the Cook Pine planting. Gary Onuma told me. He never saw it up there, anywhere. And now it lines the roads and it lines that paths where the Cook Pines were put in. And of course it has these minuscule little seeds and it gets to go everywhere. So we tried to control that as well, but it's a big challenge. There's molasses grass which is coming in various places. There are a number of other ones, without control, could be a big problem.

Ms. Kaye: I'm sorry, the plant you just referred to, is that Melastoma? The one with the tiny seeds?

Mr. Penniman: Yes. Yes, it is a Melastoma. Same as Miconia.

Mr. Rabaino: On your second phase, going down to Awaloa – you said you're going to work another three-miles of that clearing. Three acres - sorry.

Mr. Penniman: It's not near Awaloa though. This is all right up –

Mr. Rabaino: Up on Awehi.

Mr. Penniman: Well it's not even really the Awehi side. It's at the fog drip station. You know where the picnic table stay. So right there, there's the three acres, and if we were to head toward the hale from there, along the road, that's where the second three acres is. It's contiguous with the first three acres.

Ms. de Jetley: I have another question. You just recently found this colony on Lana`i. What about Moloka`i because they have remote areas. Could it be possible that they also have colonies there. Has that been explored?

Mr. Penniman: Yes. It's part of my job to be over there doing that as well. Fern and I have been over there a couple of times this year already. We've just gotten started, really, on doing those in cooperation with the National Park and private landowners over there. And unfortunately to this point, we have not found any significant numbers of birds. The first time we went, we heard a few calls. Unfortunately on Moloka`i they have mongoose. And there are no mongoose here. Mongoose are a bad predator for these birds because they can really fit into the burrows where as cats would have to wait for the birds to come out for the most part. And they also have pigs on Moloka`i and pigs root and will eat both adults and chicks. But there still could be birds there, and we've had reports, not only of 'ua'u but of the 'a'o the newelli shearwater. And we will continue to go back there and look and try to find where there may be populations and hopefully be able to protect those as well.

Mr. Rabaino: You brought up the shearwater. Do we have them on Lana`i?

Mr. Penniman: The first two years of doing surveys, we heard the 'a'o call up on the hale. But we only call isolated times. Like one night you're up there, and you hear it call three or four times, or maybe five, six or seven another night. But it's not like when you have a colony of these birds, they come in, they fly in one place, they're calling over and over and they're finding a mate. It's more like, they see, all these birds going up there, let me go up too and they check it out and they're not of their kind. At this point, we have no evidence that the 'a'o are nesting up on the hale.

Mr. Mano: You guys had another species up there. You guys showed the rats. So how are you guys eradicating the rats?

Mr. Penniman: US Fish and Wildlife Services just approved the aerial dropping of rodenticides for rats. And we've tried it out on Alau Island on the north shore of Molokai. The burrow petrel – the chick in the burrow. And we've got llama trees. They look like Christmas trees. They've got orange berries all over them. So it's very successful, and we will be in line to propose to do that here. We will have to work of course with Castle & Cooke. We'll have to work with everybody to come up with the appropriate methods for doing this, but right now we will be looking at trying to assess what rats are out there. What are the species and how many of each kind and then move forward with planning that activity.

Ms. de Jetley: When you talked about eradicating wasn't there an uproar on Moloka`i when they were talking about eradicating deer using professional hunters from New Zealand by helicopter. So can you possibly, on Lana`i, use professional hunters, using helicopters in the really remote valleys and cliffs?

Mr. Penniman: I would like to see the deer out of the watershed, but my responsibility, really, is not – it's not part of my responsibility. Castle & Cooke's conservation department is responsible for that, and I am willing to help as much as I can. And I appreciate Mr. Mano's comments, and I think he's very correct. It's a very dangerous thing to do and the best thing to do is to have the people who know each other and can hunt together and work together to work with the Company to come up with what's our plan? What can we actually get done here ourselves? But it takes the community coming together with the conservation department and saying we really need to work on this together. That's where I would like to see this project go and then maybe you don't need to get so much professional help. Or maybe you get them down to a point where, okay, now how would a professional do this? That's what they do, and you ask for more help. But everything he said about the danger and the risk and how that works is very true. And I really hope that the Company is willing to work with the community to realize how important it is to get up there and get those animals out there. . . .*(Inaudible. Changed cassette tapes)* . . . I can not believe we will eradicate them. But we can reduce the problem to where the watershed can restore, where the birds can have reasonable habitat and then we can be vigilant and pay attention and stay on top of it.

Ms. Kaye: I have a question for Matt. Do you have any idea how many licensed active hunters there are on Lana`i? Stan?

Mr. Mano: Well if you include 12-year olds. Licensed.

Ms. Kaye: I take it back – seasoned.

Mr. Mano: Seasoned hunters – hunters that hunt together that does good work together – I'd say many about 300.

Ms. Kaye: So a question for you Jay. Do you know if the conservation department has reached out at all? Have they asked the community to consider talking about this option?

Mr. Penniman: I know that Brian has a list of about 20 hunters, and that's about all I know.

Ms. Kaye: Okay, I had a couple of questions for you. At one point you mentioned a tree that Bob Hobdy said there's one of, but you've not seen it. Could you just tell me what that is? I didn't catch it.

Mr. Penniman: It's the 'akoko.

Ms. de Jetley: Can you spell that?

Mr. Penniman: a-k-o-k-o. And I don't know the diacritical marks so I'm sorry.

Ms. de Jetley: What size is it? I'm sorry Sally. How tall does it normally get, do you know?

Mr. Penniman: Well I've never seen one. I don't believe it's a tall tree. It's probably five or six meter tall tree I would guess. Maybe Fern knows the answer to that.

Ms. Kaye: I'm sorry. We need to put on . . . (Inaudible. Mechanical problems with the tape recorder.) . . . How much did you say Fern?

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

Ms. Kaye: 25 feet. Thank you. Okay, you had all the money in the world, and you had all the help in the world. How long would it take you to do what you wanted to accomplish?

Mr. Penniman: I think that we would have one of the greatest conservation crews working over the next – our life time, our children's life time and –

Ms. Kaye: In other words, a steady source of employment.

Mr. Penniman: That's right.

Ms. Kaye: Okay.

Mr. Penniman: Excellent jobs! Great benefits. Great habitat to work in. We're trying to go into the schools to convince the kids. We did career day last week and tried to convince the kids that this is good work. Get a job. Go and get a college degree in biology or do

landscaping work and then come up here. There are all different levels of work that need to be done and it could be a really wonderful thing for people.

Ms. Kaye: Well, perhaps you could talk to us a little about what's some of those steps might be going forward aside from talking to the kids at school. How do we as an island think about increasing your base of employees so you can – what steps would you take? Grants funding? Volunteers in addition to paid employees?

Mr. Penniman: Yes. When our time avails itself, we will be coming up with more of a volunteer program. We now bring a few people from time to time to the island to volunteer to help out with various projects and I would love to see us get to where we have a regular community group who will volunteer with us to go up and work on the restoration. It takes time to organize those things and then keep them going.

Ms. Kaye: Are we considered a pilot project outside of the island with Fish and Wildlife or any Federal or State agency because of your efforts?

Mr. Penniman: I'm not sure a pilot – yes, in a way, it's a pilot project.

Ms. Kaye: You said it's not been done before to the extent that –

Mr. Penniman: Yes. It's very much understood. I think in order for us to be doing this, we meet with the endangered species recovery committee and they signed off on these plans. All of these people have worked with invasive plants that (phonetics) throughout the islands. They've worked with native plants. They've worked with the wild life. And they're very aware of all of the issues. And they looked at what they're doing there and said this is a huge undertaking and they said good luck. So everybody is enthusiastically looking at what we will come up with. We started out and did an assessment, in a very scientific way – randomly selecting plots and characterize the whole area so that we can write this up as we get it done to say this is what was here. This is the treatment we did to it. This is what it took to do that. And then propose steps to go on to the future.

Ms. Kaye: But we've become a model.

Mr. Penniman: That's correct.

Ms. Kaye: Commissioners any other questions? Maybe we can leave it up for public testimony now? We can always come back. Okay, anybody from the public have some testimony they'd like to offer? Pat?

Mr. Reilly: Yes, Pat Reilly. What strikes me is you haven't really asked – you kind of (phonetics) about money. What I'm hearing here is a close integration between the project to protect the birds and then you've got the watershed. A completely separate issue. To

me, and I'll invoke his name, Ron, and a lot of us have been working to try to get the corporation to work on this for a very long period of time. The hunting advisory committee, the water advisory committee, all the way back from Tom Leppard, when those guys were making agreements on the MOA's. I don't see –. I mean there's some sense that if we had a big surge to use a terrible word that we get this all done quickly. I don't hear that tonight. I agree that this could be, and is, an excellent opportunity for our children to have local employment, given everything that's going on, it's excellent, but it has to be funded. This is not, apparently, a profit making kind of enterprise. It requires Federal, and a very complex relationship between the corporation, Federal, State and County relationships to do all what I see as a complex network of projects to get the aquifer where we need it. So I would ask a very good reason when applications come before you, the corporation, the company, has to put significant resources to protect the watershed. That is the whole purpose of why everybody has been bugging the Commission to have these workshop is to realize this is going to take a whole lot of money guys, and it's over an extended long period of time. And somehow the Commission plays, to me, a vital role. This is a very specific project, but this has to happen in a broader community. Thank you very much.

Ms. Kaye: Thank you Pat. Questions for Pat, Commissioners? Okay.

Ms. Cathy Carroll: I didn't realize –

Ms. Kaye: Tell us who you are.

Ms. Carroll: Cathy Carroll, representing the Lana`i Animal Rescue Center. And I apologize, I hadn't realize that I'd have an opportunity to make some testimony tonight. But I did have some written comments that we submitted previously at the Lana`i Governor's Advisory Council. And with your permission what I'd like to do is restate those comments because they remain the same, if I could.

Just to remind everyone, the mission of the Lana`i Animal Rescue Center (LARC) which was founded in 2007 is to improve the lives of animals on the Island of Lana`i by providing shelter, adoptions, preventive and emergency veterinary care, spay and neuter services and community education. One of LARC's goals is to provide a no kill sanctuary for homeless animals which will help decrease the abandonment of cats on the island which in turn will help to protect endangered bird nesting areas. Over the last four years, LARC members have spayed or neutered more than 500. As of this past weekend we spayed and neutered another 33 cats. So almost 550 stray cats on Lana`i have been spayed and neutered through our program. This is a grass roots program which has already prevented the birth of 1,000 of cats through spaying that many cats.

We employ Trap, Neuter, Return (TNR) method which is used in thousands of communities across America and even world wide. TNR is a nationally proven non-lethal way to reduce and manage the presence of cats by targeting their reproductive capacity. LARC plans to

continue to trap and spay stray cats within the Lana`i City limits and other areas that are not close to endangered birds nesting areas. We want to reiterate that. We are not going into endangered bird areas and returning cats into those areas. We recognize the critical importance of endangered bird species on Lana`i. Accordingly we request an open dialogue with wildlife experts so our continued efforts and non-lethal cat population control can play a role in part of this to successfully protect the endangered birds species of Lana`i.

We urge sitting down with the proper wildlife authority such as Jay and helping us understand – those maps are beautiful – so that we know where those nesting areas are which will be crucial to making sure that we never are returning cats into endangered bird habitats. And to our knowledge we have never done that. There is excellent precedence for this type of mapping where endangered wildlife experts in Cape May, New Jersey, sat down with cat-trap-neuter return people and mapped out the area and said this is where cats would be endangering known nesting areas so we would be knowledgeable about that. We have a document that the (phonetics) Society of New Jersey has provided to us that we have actually shared with Jay Penniman in the past, so we'd be happy to share that with anyone who wants to see that. We believe that working together with the spirit of cooperation and shared purpose to protect the endangered birds could be easily – we can all sit together to do that so those are our comments.

Ms. Kaye: Thank you. Cathy, hold on one second. Let's see if there's any questions.

Ms. Carroll: Sure.

Mr. Stanley Ruidas: Cathy, what would you do with a feral cat if it was given to you?

Ms. Carroll: Well it depends on when and where that cat came into our lives. If we – our goal with Lana`i Animal Rescue Center – and we're in negotiations right now with Castle & Cooke for some property to put a shelter. If it's a feral cat that –. Let's say it came from an endangered bird area, let's say – I know on the hale they're doing a research project and all those cats have to be sent away for analysis – but if someone said this cat is in an area where it's endangering threatened birds, we would relocate that to the shelter and feed the cat, take care of that, and so on. Right now, in town, there are a lot of stray cats. I wouldn't call them feral. People refer to them as house cats without a home so they're domestic. They purr when you pet them and so on. They're not in known nesting areas of endangered birds. So those cats, what we would propose and this is done in thousands of communities, just a homeless stray cat that's being fed maybe by someone who can't bring them into their home, those cats we propose to stay where they are. Don't bring them into a shelter needlessly. Keep them out of there. So it's a case by case by case situation. I don't know if that answers your questions, but –.

Mr. Ruidas: You know I see a lot of feral cats in the hunting area – some of them may be dense or whatever.

Ms. Carroll: One thing that I'm not sure that our testimony demonstrates enough is that long term – and when you talk about children's children and so on – this is a long term thing as well – humane animal population control on the island. But we have to help educate each other. There are a lot of people who have come up to me and say can I borrow a trap? What are you going to do with it? Well, I have one stray cat that's bugging me and I want to go and dump it down – they haven't said the hale yet, but they say I'm going to take it to Shipwreck. I'm going take it to Manele. And that's against the law and it's considered animal abandonment even if it's a stray cat. It's against the law for dumping animals anywhere – any kind of a domestic animal like dogs or cats. So we need to educate people not to be dumping them into these areas – any where in the island. So that's part of it. You're seeing them in hunting areas too because people have dumped them and that's considered actually animal cruelty and abandonment.

Mr. Ruidas: Say you get it, you put it in a shelter, are you going to keep it in a shelter or release it into the environment?

Ms. Carroll: Again, what we are proposing is if it's like an in town domestic cat situation – actually most of the cats that we trap in town people are feeding already. They're telling us about them. There's a stray cat. I don't mind having one or two, but I don't want 20 or 30 at my house or in my yard, can you spay or neuter it through your program? We do that. And then we will return it to that person because if you've owned cats, they don't really roam if they're domesticated, fed. If they're starving and hungry feral cat, yeah, they will be on the move and they'll go. But somebody living under your porch is not going very far as long as there's a can of cat food laying around.

Mr. Ruidas: Thank you.

Ms. Kaye: Just a quick question. Do you have any efforts that could benefit Jay or any of the efforts that you're doing are of value up there? Have you tried to work together?

Ms. Carroll: We've had a couple good cordial meetings. And in some areas, of course, we agree to disagree. But our organization does not dispute at all that cats are dangerous predator to threatened birds. That is just biology working there. So actually Jay did tell us about a colony at the waste treatment plant that his group was going to have to go in and start trapping. And we said why don't you give us a chance to go in first and see if we can get those cats out of there. So we did trap and relocate 22 cats into a very temporary – I'm calling it an enclosed colony where they're being cared for and taken care of. Actually they're quite domestic animals. So in that case, those 22 cats are not endangering that stilt down there anymore. So I think we can work together for sure.

Ms. Kaye: Great! Thank you.

Mr. Penniman: I'm completely supportive of what LARC is doing. The only exception is the

returning animals that you've got in hand to the environment. And as she said, town cats, that's very much less of a problem. So we don't have huge disagreements and I think that the work that they're doing is vital here. And I think it's really important and it should be supported.

Ms. Carroll: Jay can you just clarify, when you say, "return to the environment," what does that mean? Does that mean the wild? When you use the term environment – when people hear that term, they hear different things.

Ms. Kaye: Cat, you really should just offer testimony.

Ms. Carroll: I'm sorry.

Ms. Kaye: I know. We do this all the time. You've asked your question, though. He can answer it.

Mr. Penniman: You'd like me to respond. I mean releasing the animal – if it's a feral animal, a loose cat, to let it go on the island of Lana`i is allowing it, the potential to get to any place where there are birds breeding. And it's not just endangered birds, but there are game birds which are raised for hunting here, the pueo nest on the ground. It's not endangered, but it's a native bird and it nests on the ground. It's very vulnerable to cat predation. I've shared with Cathy the studies that have been done on the big island and it showed cats travel in one night, farther than you can go in a straight on Lana`i anywhere. This is a small island, and a cat can get from any one location to any other location. If it's hungry, it's wanting to go. The cats that she's feeding, keeping in town, it's very unlikely that they're going to go someplace else. They have a life that they know. Cats are animal of habit. But to take a cat, trap it somewhere at Kanepuu and put it back in Kanepuu I would not like to see. I would not agree to releasing back into where they are free to run around on their own.

Ms. Kaye: Thank you. Commissioners, any other questions? Well we thank you Jay very much and if there's no other questions from the audience. I'm sorry, one more.

Ms. Chris Bumbar: Hi. My name is Chris Bumbar. Wow, the whole cat issue. I have a question for Cathy.

Ms. Kaye: I'm sorry.

Ms. Bumbar: Okay, I just want to make one comment. Thanks. I see how they want to have this cat shelter and everything. I agree with Jay that they should not be released outside of anybody's yard, let alone anywhere else on the island. But what happens when the cat shelter is full? And how long can you spay and neuter before – some of these cats that maybe aren't being fed like the ones that were living under my house that were

catching birds as soon as I put my feeders up. It's not that far from Haole Camp to up where the endangered birds are. So I'm wondering, you know, how all that's going to work. And what's to keep them from getting inside the fence. And I'm wondering also the effect of all the work that's being done by Jay with how it's going to help the Apapane and the cats getting where the Black Neck Stilts are and the (phonetics), and you know. I haven't heard. I don't know if everybody knows how many native birds were here just a few hundred years ago, but there's like hardly any left.

And I've worked at a bird museum in California, and I'm working with Bishop Museum now. And it was really kind of sad to see all these – because we lived here before, so when I went back and I worked at the Bishop Museum again, just doing bug check and looking at how many beautiful native Hawaiian, especially the forest birds, are now – you can only see in a drawer. And I just want to know if this project is going to help everything. Is there a chance that birds can be reintroduced like they just did from the birds from Kaua`i they brought in. It was on the news last night.

Another comment that I had as far as this being a pilot project – I'm from Southern California and the Channel Islands had a very similar problem with the Island Scrub Jay which only lives on the Channel Islands of California, and the kid box, and they have the same problems with deer and pigs and you name it, and they've managed over the years to eradicate everything. So now, the only things that are there are the things that are suppose to be there. And so they're finding that the kid boxes and the island scrub jays are not being wiped out.

Ms. Kaye: Thank you Chris. Hold on one second. Just see if anybody has any questions for Chris. It sounds like you two should be working together. Thank you very much for sharing with us. I hope you can work together. Thank you Jay. Anyone else? If not, we're going to take a 10 minute break and then come back, and then we'll have the Lana`i Water Advisory Committee. Butch Gima is here to talk to us.

(The Lana`i Planning Commission recessed at approximately 8:07 p.m., and reconvened at approximately 8:17 p.m.)

2. Butch Gima from the Lanai Water Advisory Committee

Ms. Kaye: We're back in order Commissioners. Butch before you get started, I think I'm just going to take this opportunity since you were part of this process to read a thank you note that was sent over from Colleen Suyama to the Lana`i Planning Commission. Thank you very for observing my recent retirement from the County of Maui. It was a pleasure manning the Commission for the 18 months that I served as Deputy. Thank you for the painting. It reminds me of my plantation days in the town of Waikapu. It reminds me of my grandmother's home. Again, thank you. Colleen.

And now we have Mr. Butch Gima who Chairs the Lana`i Water Advisory Committee. He sent around – he went way beyond the pale and addressed all the questions that Colleen had put together that went out to the invitees to these workshops. It occurred to me today that Gerry and Letty have not seen this letter. So I'm going to ask Joe, or Leilani, to send to the three new Commissioners, Letty, Gerry and Darlene, the letter that detailed the questions that all the people that were invited to the workshops. Okay, if you could sent those to them because I don't have an electric copy or I'd do it. I'll show you after the meeting. Okay. Thank you Butch.

Mr. Reynold "Butch" Gima: Do you guys need one now? I have two copies. Good evening. Thank you for the invite. Just a brief history of the Lana`i Advisory Committee. Back in 1993 when there was a violation on use of water from the high level aquifer down at the Manele Project District at the golf course, that is what kind of kick started all of this. And the Lana`i Water Committee – it was called a different name at the time – was formed. And it was under the jurisdiction of the County Council at that time. I think it was Bob Monden's water committee. Once that period ended, then the Commission of Water Resource Management kind of oversaw our committee and we worked through the Water Use and Development Plan. And when that time period ended, then we came under the jurisdiction of the Department of Water Supply, which we currently remain as a capacity as an advisory committee.

When we were formed back in 1993, it was comprised of two members from Castle & Cooke, two members from Lana`ians for Sensible Growth (LSG,) there was a member of the Lana`i Planning Commission, there was the Council Member from Lana`i, a member from the Lana`i for Economic Growth and Stability, and three at large members. In the past, some of the at large members were Goro Hokama, Elaine Kaupoiki, Ken Sabin, Cindy Arruzzia was the lone legs representatives. Currently, Clay Rombaoa and Joe Kaakua represent Castle & Cooke; Ron McOmbler and myself represent LSG; Sally represents the Planning Commission – Jim Elliott was the LPC representative prior to Sally taking that on; our Council Member Riki Hokama is a member; and our current at large members are Ricky Sanches, John Irons and Edmund Oyama. In addition, we have ex-officio members who staff the meeting. That's Ellen Kraftsow from the Department of Water Supply; Charley Ice from the Commission on Water Resource Management; and on occasion we invite people for resource information. For a couple of years when RM Towill was on Lana`i contracted by the Company, they were an integral part of the Committee as they were helping Castle & Cooke run the Lana`i Water Committee. So we got a lot of excellent impartial information from RM Towill. Unfortunately they're no longer contracted by the Company so it left a big hole for the Lana`i Water Advisory Committee.

We meet monthly – usually on the fourth Friday of each month at Hale Kupuna Social Hall from 11:00 a.m. to about 2:00 p.m. And it's an open meeting. And for the last 10-years, we have been trying to finalize the Water Use and Development Plan. We came up with a draft Water Use and Development Plan in 1997, and we've been trying to finalize it so we

can get it to the Department of Water Supply, and eventually to the County Council for approval. And even at that, we are years ahead of the other districts in the County of Maui in terms of development of our water use and development plan. So I will stop there and take questions and unlike the Presidential debates, I will answer your questions. I vowed that I would do that and not digress. So I don't know if you guys want to just go over this and ask things that need clarification, or you want me to go down one by one. What's your preference? One last thing, at our last water committee meeting all the members were aware that I would be making the presentation and so they gave me kind of a limitations on what I can and can not talk about. It's not only my point of view, it's the committee's point of view.

Mr. Rabaino: Butch, this is regarding to item #13 – excuse me – yeah, describing the procedures and plans in places to protect. Okay, LWC system can pump approximately 3.5 million gallons based on the following pumping configuration of two-thirds of all wells pumping approximately up to 16 hours per day at any given time. Did they give you an exact count of each well that is producing water, I believe, well #14 and – I left my map at home so I'm sorry. I had everything in my head. Did they give you any figure of this 3.5 million gallons based on the pumping figure of two-thirds? All wells.

Mr. Gima: The 3.5 million gallons per day was a figure that the committee discussed because we wanted to know what was the capacity of all the wells. In good management of a water system, you're not going to pump all of the well, 24-hours a day, 365-days a year, and that's why this configuration is based on two-thirds of all the wells being pumped up to 16 -hours a day at any one time would give you 3.5 million gallons per day. Now if they were to pump all wells, 24-hours a day, 365 all at once, that figure would be higher, but that would not be good management of your water system.

Mr. Rabaino: Currently, how many wells are in utilization besides their contents of each well water usage? Like they use salt water versus high in chlorine.

Mr. Gima: Well wells #1, #9, and #14 in the Palawai Basin are dedicated to the Manele Project District. Wells #6 and #8 behind the City are potable wells for drinking water. Well #4 was being repaired, I believe. Wells #4 and #3 – well #3 was being repaired. So about a year and a half ago, I think there were four wells for drinking water, and the other three were for Manele Project District for golf course irrigation.

Ms. Zigmond: Butch, staying on – Gerry are you through?

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

Ms. Zigmond: Staying with #13 – two things could you speak to. It says LWC has assured LWAC that should more water need to be pumped infrastructure changes need to be made to facilitate this. What's going to trigger the fact that more water is need to be pumped?

And then could you speak to the checks and balances that you referred to.

Mr. Gima: Well part of the discussion in coming up with the allocation table for the water use and development plan, we're required to come up with an allocation projection five, ten, 15, 25 years from now. And so the Company in cooperation with RM Towill came up with their projections. You know 20 to 25 years from now, they're projecting to use more than 3.5 million gallons per day. And so, in order to – let's say they're going to use five million gallons a day in 25-years from now. In order to even begin to develop or want to pump that, they're going to have to make some of these infrastructure changes. And what we're in the process of doing right now is how do we ensure that happens. What are some of the triggers that are going to make these, or require the Company to make these infrastructure changes.

Ms. Zigmond: And then the second part of that question was you referred to checks and balances. Can you speak to that at all? On #13?

Mr. Gima: Some of the triggers could be total amount of water pumped for the whole island or it can be a drop in the level of a certain well or wells. It could be a slower –. You know, when you pump the water, the water level goes down. And then when you stop pumping the water, the level goes back up. And if there's a prolonged period of pumping, the water will go down. And then if we find that the water comes back up slower, that may be a trigger. We haven't identified all the triggers that are going to be in the Water Use and Development Plan. The important things is to have those triggers and some protocol on what either the Water Committee is going to do, and/or the Department of Water Supply or the Commission on Water Resources Management should these triggers be met. And if we can have those things in place, that would be the checks and balances I'm referring to in #13.

Mr. Rabaino: Butch, the 1990 MOA involving the CCR, is there anything updated regarding an all-irrigation of golf course, so you use alternative portable water? In regards to that, I'm referring back to the wells. In Palawai Basin, there's two there that's existing as you enter – if you're coming from the city going to Manele – you have one pump station in the corner on the right hand side, and the other that is going through the piggery side. Is those two waters being activated for the golf courses on the lower side of Manele?

Mr. Gima: When you enter Palawai Basin on the right, that's well #9. When you're going to the middle of Palawai basin, turn into the piggery, that's well #14, and then well #1 is up below on the hill.

Mr. Rabaino: . . . (Inaudible. Did not speak into the microphone.) . . . The one prior to the #13?

Mr. Gima: #14 is the one in the middle of the basin.

Mr. Rabaino: And then well #1 is located by the piggery.

Mr. Gima: No. By the petroglyphs, yeah.

Mr. Rabaino: As I've stated, did they give you any (phonetics) or do you have any update from that 1990 MOA – that how much of the non-potable water and I would use the terminology of recycled water or sewage water is used for the irrigation course down Manele. Would you have an update on that?

Mr. Gima: I heard several questions in that question. The sewage plant down at the Manele Project District produces, I'd say, about 80,000 gallons per day. That is used to also irrigate the Challenge at Manele, in addition to wells #1, #9, and #14. I'm not sure what your question is about the 1990 MOA.

Mr. Rabaino: It's regarding – it's some legal case going on – it says that one provision states that the d) ensures that no high level ground water will be used for golf course maintenance or other operation other than human consumption. In other words –

Mr. Gima: That's pretty much the crux of the whole water situation on Lana`i. The 1990 MOA based on the language saying there's no water – well the actual wording is “no potable water from the high level aquifer shall be used for golf course irrigation.” And so I differentiated in that question, in question #3, a legal situation and a legal case. The legal situation involving the MOA is that's what it is. There's actually a legal case that is coming down from the Supreme Court back to the Land Use Commission to resolve this issue about water being used down at the Challenge at Manele. Lana`ians for Sensible Growth, Castle & Cooke, the Attorney's General Office, DLNR, and the County of Maui were in negotiation, let's see, maybe a year and a half, almost two years now, and we could not come to an agreement on how we're going to resolve this. And so all parties had to submit their brief to the Land Use Commission, and to date, we have not received any ruling from the Land Use Commission on this issue.

Mr. Rabaino: Have the Land Use Commission ever made an attempt to come to Lana`i to deliberate any of these items that – I'm just going to run this through – this 20 items that is listed that you just gave me from the last meeting that Sally was referring to earlier?

Ms. Kaye: Let me clarify. That letter that Butch – is that what you're talking about? That was a letter that Colleen Suyama, the former Deputy Director for the Planning Department, put together with input from us to start these water workshops. It has nothing to do with the Land Use Commission. These were just questions that people that came to speak on water issues could pick and choose which ones applied to them and which ones to answer. Okay? To answer your question, Land Use Commission has been here for hearings.

Mr. Rabaino: I guess the bottom line is have they come back because you said it's going

back and forth legally. But have they come back with some kind of resolution to resolve the situation regarding the MOA?

Mr. Gima: The last time the Land Use Commission was here was prior to LSG, Attorney General all meeting together, and that was about two to two and a half years ago. So they were here to take testimony on that issue and they could not come up with a resolution at that time. And that's why the Supreme Court said, okay, you get all the parties back together again to see if you can come up with some type of agreement. So we're waiting the decision of the Land Use Commission.

Mr. Rabaino: So there's no time limit or time frame where you can get a reply or response back from either parties?

Mr. Gima: Not that I know of.

Mr. Rabaino: Thank you.

Ms. Zigmond: Butch I have a question on #5, the second part of it, talking about the infamous 650,000 gallons per day. I just want to make sure I have this straight that reading the last sentence – "however what's in contention is the almost one million gallons per day use of water from these three wells for irrigation purposes." So we're talking 350,000 gallons per day that isn't suppose to be pumped to be used for irrigation is being used now?

Mr. Gima: Well there is that ordinance allowing Castle & Cooke to use up to 650,000 gallons per day based on an annualized average. The wording states that for golf course irrigation and associated landscaping. And so there's a different interpretation of associated landscaping. And a result of that being, from my perspective, unclear and not having any prohibition of using #1, #9 and #14 to water the common area landscaping, that is why there's an additional 350,000 gallons a day for down there for irrigation.

Ms. Zigmond: So who is in the position to resolve that that's not clear?

Mr. Gima: Over two years ago a request was made to Corporation Counsel for an interpretation of that ordinance allowing 650,000 gallons per day. And it was made, I believe, directly to Corporation Counsel and via Riki's Office, and to date, we have not received an opinion. I suspect we have not received an opinion because of the Supreme Court Land Use Commission deliberations. . . (*Changed cassette tapes*) . . .

Ms. Kaye: My understanding from being a member of this Committee is water is pumped from #1, #9, and #14 flow directly to Manele. It's non-potable and . . . (Inaudible. Mechanical problems with the tape recorder.) . . . if it was treated or blended with sweet water it could very well be potable. But for now, the chloride levels are so high that it's

more appropriate for irrigation. #4 - I thought #4 was also dedicated to Manele because we had conversations around how it would take a pump to bring some of that water back if we required it in the City.

Mr. Gima: I believe when #4 is being pumped, most if not all of that water is going down to the hotel for human consumption.

Ms. Kaye: Okay, so then –

Mr. Gima: But it can also be used for the City.

Ms. Kaye: How?

Mr. Gima: I believe it can be tied into a line coming to the City, if I'm not mistaken. But don't quote me on that one.

Ms. Kaye: I have this question for Joe. I just wanted to clarify because I thought you said that something with #2 – I understand is they're working on refurbishing that. They're drilling another #3, a new well #3. But I understood that there were four, and I'll verify this with Joe next month. But from the periodic water report from the sixth period which is the most recent that I've gotten anyways. If you add up those four wells, it constitutes about 74% of water that's pumped on a daily basis correct?

Mr. Gima: Yeah, that's even higher than the 67% that I had figured out at one time.

Ms. Kaye: Yeah, 67% was what Cliff Jamille told at a prior Planning Commission, but it's now up to 74%. So you wouldn't – maybe you do or maybe you don't know that excess would be, without going back – maybe you wouldn't know this – mostly irrigation water.

Mr. Gima: I don't understand the question.

Ms. Kaye: The difference between 67% and 74%.

Mr. Gima: I don't know what percent of that increase is potable and non-potable.

Ms. Kaye: Okay, we can save that then for Joe. Can you clarify one more thing for me? Roy Hardy at a prior workshop said that once planned authorize use exceeded – I think it's a Commission on Water Resource Standard – exceeded 90% of the sustainable yield, a trigger for designation is met. But I think because of the designation proceedings before, our trigger is slightly lower than that, right? Our trigger is 4.3 because 90% of our six million gallons would 5.4. Okay.

Mr. Gima: That's not the only thing that would trigger designation. That's one of four or five

triggers for designation.

Ms. Kaye: Right. I was just – that was your #5. It was a question I had on that.

Ms. Zigmond: Looking at 16 through 20, they're kind of dangling there. Is there any information to go in those?

Mr. Gima: No, I think those were just directing those individuals to be making presentations to the Planning Commission. In this thing, I just didn't want to type out the whole thing because I know you guys have the questions, so that's why I typed a couple of words, and dot, dot, dot. I was kind of lazy.

Mr. Ruidas: Butch, have you seen any violations in the water system recently or since you've been on the board?

Mr. Gima: Well I've been on board since 1993 so violations in terms of what specifically?

Mr. Ruidas: Chloride levels pumping towards the high level.

Mr. Gima: The only chloride levels that have kind of been in contention is wells #1 and #9. Well #9 is the 400's. Well #1 has gotten down to the low 300's and even high 200's. I mean, you're pretty much splitting hairs for well #1. I mean there's other places where chloride levels are much higher and people drink the water. So the issue is with the pumping of wells #1 and #9, no matter what the chloride level is, there is some who view that as pumping or taking some of the sweet water out of that area. But because we're not engineers and geologist, we have to rely on their expertise. And obviously the Commission or the County or LSG may have their own geologist, hydrologist and the Company would have theirs, and sometimes their opinions would cancel each other out. So that's made it tough for us as a Committee to kind of make decisions – you know, not having a definitive opinion about that issue.

Mr. Ruidas: Thanks.

Mr. Dwight Gamulo: Where does the chloride come from the high level aquifers?

Mr. Gima: I don't know. I mean chloride levels is pretty much the salt content. In #1, #9 and #14, and especially in #14 where the chloride level is high, they say that the heat from –. I mean the water in #14, the temperature is higher than the other wells. They say that somewhat contributes to the higher chloride levels. But in terms of how that does it? I don't know.

Ms. Kaye: A question was asked two years ago when Cliff Jamille was the Water Director and he gave a similar workshop to us, and his answer was that, if I recall correctly, it just

picks up chlorides as it goes down closer to the ocean. And no one really knows how or why, but it just becomes saltier the closer it gets to the ocean. And Roy Hardy, last month, or the month before – or Gordon Tribble actually talked about the kind of confined dyke aquifer we have over here and how it's not susceptible to breaking the basal lens and the up-coning that you find in a basal well. So our dykes are pretty high up and therefore pretty sweet until they get further down. Does that jive with your recollection from that meeting?

Mr. Gima: Did that answer your question Dwight?

Mr. Gamulo: How deep are those wells?

Mr. Gima: I can pull out one of the –

Mr. Gamulo: No, I mean approximately. Are they six inches or 2,000 feet or what?

Mr. Gima: They vary. Pictorial would be better. I mean it won't give you the elevations, but you can see relative to the ground elevation.

Ms. Kaye: Does that answer your question Dwight?

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

Ms. Kaye: While he's looking at that, I'll move it along. In #8 you mentioned that in addition to desalinization, increase water storage, increase conservation, you mentioned increase fluent capacity. We had struggled with this notion because a year or so ago when there was an extension permit application there was great reliance on an extended capacity to hold effluent, but nobody ever answer the question where's that going to come from. I mean effluent get produced because there's input. So when you say that, do you have any better idea than I did a year and half ago when this came up of what that would be fed by?

Mr. Gima: Well the only way you're going to increase effluent is more people using the toilet. And so I think there's going to be kind of a one to one ratio on increasing effluent with increase in population. I don't if it will be one to one, but as the population increases, effluent is going to increase.

Ms. Kaye: Okay, and this is a question I've asked last two sessions and I'll just keep going. Everyone talks about drought. There was an article in the paper today or yesterday outlining the drought conditions around the State. And I believe they referred to Lana`i as being in a moderate drought and I don't really know what that means. But I can't get a handle on if there was a drought declared State wide, and we're heading in that direction, who declares it here so that the measures that Roy Hardy talked about his workshop – when it's declared there's certain measures that are taken. Do you have any idea who's responsible for that declaration here?

Mr. Gima: No. And the only thing I can comment on in terms of drought is when both golf courses were applying for water for the golf courses, I think it was the County Council had them – required them to come up with a plan in the case of drought. They would have to prioritize the watering of the golf course if we were in a drought. But I don't believe it specified in that who be declaring whether we are in a drought or not. I don't know who has the jurisdiction on that.

Ms. Kaye: On #14, you detailed that there's not a complete agreement on what the role of the LWAC would be going forward – whether it should be established by ordinance. It's my understanding that every where else in Maui County, when a project is planned, a permit application goes in, it's send out for agency comments, and the Department of Water Supply now with additional teeth in the Show Me the Water Bill would have an opportunity to comment along with every other agency. We're the only place that doesn't apply because we have a private system. I'm just wondering what some members on the committee – because I haven't been on it long enough to know – would object to having a local, separate, unbiased group being able to comment as much as the Department of Water Supply does.

Mr. Gima: I guess I have to answer this is several phases. One difficulty with the Lana`i Advisory Committee has been what I've perceived as been a high turn over Castle & Cooke membership. We've had numerous Water Directors and different engineers and management staff, and so every couple of years it seems like we're having to re-orient a new member. So that made it difficult in terms of a new person coming on and not knowing the history of the Committee. The idea of having the Water Committee be the one that makes the decision on the application is not to add a layer of bureaucracy. We just want to be part of helping the Planning Department make the best informed decision because the community feels we know our water best. The Department of Water Supply knows their stuff, but we know our water the best. We wanted to put that into ordinance so that it becomes institutionalized meaning that there is specific roles and responsibilities of the Committee to make that kind of decision. And we don't believe it's going add an extra layer of bureaucracy, nor do we feel that – I shouldn't say "we" – there are some members who don't feel it's going to add an extra layer nor add an extra amount of time for an application to be processed. My understanding of Castle & Cooke's objections to that has primarily come from their staff attorney. I feel the relationship we have with the current Castle & Cooke members on the Committee, for me personally, has been pretty good because there has been that give and take understanding. And I think if we have the ability to make that kind of decision, also when the plan needs to be amended, it will be done in the Committee not through the Department of Water Supply or County Council which is cumbersome and not in our community. We feel we can make the best decisions regarding our water. So that's where we stand right now. And it's not like I said in here, we don't have consensus on that, and we're probably months away from having to develop the language for an ordinance spelling that out.

Ms. Zigmond: I have one more. Has the Committee been advised of the Company talking about turning off the water on the north end and will you all address that? Will you address it at all or be able to have any input on that?

Mr. Gima: That's come up at the last two or three meetings, and to give you the readers digest version. It basically comes down to what's in the lease agreement. Let's say for the ranch – and I don't know what the lease agreement is with DLNR. In short Joe Kaakua basically says their responsibility is to bring the water line up to the, I guess, the property line. And the big problem is either turning off or decreasing the pressure makes it difficult when the water has to cross Airport Road because it has to go up that small hill and then back down. And so they're brainstorm ways on how to get more pressure to get the water to that north end. And the fireman are concerned too in case there's fire up there.

Ms. Zigmond: Now that's what I think of if we are becoming drier and drier there's always that potential so that concerns me.

Mr. Rabaino: Butch I'm just curious. I'm going by the sections during the pineapple days. By the airport side the stand pipe closest Kanaluu coming over to Kaupili Road – the main lines in those area – has the water company or Castle & Cooke shut off any of those areas where water is no longer is feeding into those locations? And as you said, there's another main line from the airport road going down to north end, towards – what's the area – by three stones side – they cut the main line over there and I think below that the animals or the deers will not have any water feeding that area. And what I mean by the main line is the distribution of the main and then feeding off from the main line into the different location during the pineapple time where the water truck use to take water yeah? Okay. What I'm getting at is from the main line, anything that branches off to smaller outlets, have that all been cut off due to leakage and old age? Because I know the one up by the tank above the piggery has been replaced and installed new lines. Referring to this section, has all that been cut off through the main artery sort of speak.

Mr. Gima: I couldn't tell you which lines have been shut off, which lines have been reduced in pressure. Over all I know Joe and the Water Company are somewhat handcuffed because they recognize that this is an obsolete water system especially the irrigation lines. And so on one hand, they want to provide the water for the users out in that area, at the same time, they risk water breaks. They already have leaks. I mean they know that. And so, okay, do I keep the water on so we have users out there that can use it, but then I risk the leaks and breaks. Or do I shut them down so I can cut my losses and at the same time request, budget request corporate that has not been a priority so they can not upgrade. So that's pretty much the line that Joe has been sharing with our Committee all these past year.

Mr. Rabaino: The next one I have in mind is that, you know, the community gardens above the airport, on the side of the road – they have all of the different variety gardens and

landscaping trees there that's right below the shuttle station. Okay. They have two stand pipes over there. If I remember correctly when Mr. – I hope I say his name right – Ige was the Dole Plantation's Supervisor for the water side. Don't they have maps still existing where all the plantation water lines run through the fields? Because I know I've seen a bundle of maps, but do they still exist?

Mr. Gima: I'm sure they have some maps. I don't know if they have all of them, but they rely on Joe who has a lot of knowledge of where things are and what was done. So –

Ms. de Jetley: Butch can I answer that for Gerry. Gerry, we are finding water lines, you know, in that area – because only three of us are out in that area now. But there are water lines all over the place. And some them are less than four feet below the surface. So we have water breaks all the time. And they can't be corrected because there's nobody, really. Everybody is retired and everybody is gone. So when they have major breaks down there, they have to go dig at the break, find the leak, but they don't know where all the sub-lines are. There's nobody left to know where they are.

Mr. Rabaino: Namato – I know he's still around – he's not around. But there's maps someplace because I remember under the Koele Company time, where Don Rietow them and Swede Desha - especially Swede Desha. There's got to be some maps floating around, probably up in the attic in the Old Dole Administration Office because every time would hear the phrase "we got to look upstairs." You know? But, you know, if there's a map around that turn off when there's breakage, I'm quite sure that, you know, in order for the City to retain water as well as saving water – I mean if you look into those lines that would be helpful. But the other factor too that I'm kind of concerned is – like Sally said earlier and I guess some of the Commissioners here – is who makes the determination if there's a drought? Who makes that call? Your guys committee or is it Castle & Cooke or is it a joint venture to determine, just for the Island of Lana`i, who gets the water? Is it the City versus the Hotels? Because you know the golf course is going to be the first ones to be shut off.

Ms. Kaye: I promise I will pursue with the other three that I've asked. They all said they would get back to me on who is responsible for declaring a drought. And I've heard various answers and I will email them all and ask for a clarification.

I have three – and I'll take them in order – legal documents that I'd like to just read to you and have you react to if you don't mind. The first is an MOA from 1987 that says, and I quote, "the Company shall provide to LSG and the community at large the following with regard to water use: 1. Documentation that there is adequate supply of water for future plantation, community and resort use, 2. Identification of locations of new wells and impacts on existing wells and the aquifer, 3. Review and approval by DOH that pesticide levels and irrigation systems proposed for the hotel and park do not violate Federal, State or County rules, 4. Plans for installation of back up generators on public water system in case of

outages.” To your knowledge, because I’m new on this Committee, have those things been done in terms of communicating directly with the community?

Mr. Gima: I think via Lana`i Water Advisory Committee when they provide the periodic water report, I would say the Company is fulfilling that requirement in that manner.

Ms. Kaye: What requirement?

Mr. Gima: Water usage.

Ms. Kaye: Documentation that there’s adequate supply of water?

Mr. Gima: Yeah.

Ms. Kaye: And in terms of identification of new wells or back up for wells in case of outages?

Mr. Gima: Documentation of new wells – I don’t know if they can actually say that they’ve communicated to the community that we’re going to put in this new well or this new well. Again I think they may say we’ll let the Lana`i Advisory Committee know, so that’s public notification. But that’s never really been brought up in terms of a challenge to the Company.

Ms. Kaye: Were you aware of these?

Mr. Gima: Only when you brought it to my attention. I mean, there’s a lot of stuffs over the last 15-years. We’ve killed a lot of trees in this community.

Ms. Kaye: The second one we talked about earlier so I’m going to move –

Mr. Gima: One last comment, on the back up generators, I don’t know. Some wells are supplied only by generators.

Ms. Kaye: This is specifically back up.

Mr. Gima: Yeah, that’s what I’m saying. Like I think #14 is only supplied by a generator.

Ms. Kaye: So does that mean it has to have two?

Mr. Gima: I don’t know. I mean I think when they wrote that, they were thinking it was supplied by a power line and then you have a back up generator right next to the pump. That was my assumption.

Ms. Kaye: Okay, the other document is Ordinance # 2411, Bill 17, from 1995, and it was an ordinance establishing Project District Zoning, Conditional Zoning. And I asked Gordon Tribble about it because it specifically references the USGS and this Exhibit #2. This is in all of our packet. It came in all of our big books. As a second condition for granting the Conditional Zoning that “2. That the applicant shall request a cooperative monitoring agreement with the United States Geological Survey through either the County Department of Water Supply, the State Commission Water Resources Management, to enhance data gathering and analysis for the island’s water resources.” Gordon effectively said that had not happened, and Charley Ice from the Commission on Water Resource Management essentially said the same thing, so I will ask next month when Joe’s here. But I just wondered if you are aware of that or have any knowledge about it?

Mr. Gima: 2411, Bill #17, what number?

Ms. Kaye: Bill #17, #2. Turn to exhibit #2 conditions.

Mr. Gima: Okay.

Ms. Kaye: It starts at the bottom of that and it goes to the next page.

Mr. Gima: I don’t believe an agreement has been executed.

Ms. Kaye: Okay. Thank you. Commissioners questions? Okay, at this point we’ll see if the public has some testimony to offer. Mr. Reilly is shaking his head.

Mr. Reilly: Thank you. Pat Reilly. One, I would hope you would ask these questions to Castle & Cooke. They need to be here to answer these questions. They are responsible for the water system. And the key, fundamentally, the key is money. How much money is being invested by the Corporation in this water system. How much money do they have to invest in this water system? Those numbers in any meeting – I’ve never seen any meeting and when you ask the question, they will not provide it. Any responsible body which I would say the Planning Commission – LWAC has no authority – you are the guys that have the final authority. You need to know the capital investment of this corporation in keeping the water system in tact. And you need to ask that.

Secondly, it’s the Water Use and Development Plan that you need. You need to see the Water Use and Development Plan. This has been 10-years in the making. And you need to ask the County and Ellen Kraftsow when the hell the Water Use and Development Plan will be finalized because all of your decisions on projects will be based on water. The MOA, the Lana`ians for Sensible Growth were able to acquire our legal MOA that can be taken to court and that’s why it’s before the Land Use Commission. No potable water from the high level aquifer can be used – period – and why did they do that? Why did we do that? To protect the potable water. And that’s why we’ve been bugging people since 1985.

Protect the water. You've got now probably – and this is just off of the top of my head – 75% of your water is going to Manele. You have no water in the reserve. Now the Water Use and Development Plan can put things in reserve. What about ag? What if somebody wants to come here and do ag water, where's the water? Is it all going to golf courses? Is it all going to go to irrigation? And you may have seen in the Maui News a big boo-hoo on the front page about watering the hotels. We need to have these beautiful plants because everybody wants to see Hawaii with all these beautiful greenery when Kihei is in the middle of a desert. Same thing happens in Arizona. Same thing happens in California. Maybe they need to change the concept of what a hotel is in the middle of a desert. You guys perform a very important function and you need to have Castle & Cooke present. Ask them these questions and you need to ask the County where the hell is the Water Use and Development Plan. When will it be done so you can review it and move it on to the Council.

The ordinance that was passed – and somebody said something – I believe the ordinance does apply to Lana`i. But the project has to be at a certain capacity of a number of units before it goes into effect. In other words, the project has to be large enough. That's my understanding when I read the Bill. And you get that from Joe or the County about how that works. But I am just adamant that you guys – that's why we've been bugging you to have your water workshops to get a real good handle on what this Water Use and Development Plan is, and what the triggers are going to be because there is a State drought. It's already been declared. You read it in the paper. The State has declared. The National Weather Service has declared a drought on Lana`i – in the whole State. The whole State is a drought. So it's already been declared. I don't know why we have to wait for anybody else to declare it. It's been declared. Thank you.

Ms. Kaye: Thank you Pat. Commissioners, any questions for Pat? Pat I have a question for you so don't run away. Okay, you talked about requesting information for capital budget, right? So what would you consider the leverage, as a former Commissioner, leverage for this body to ask for that information?

Mr. Reilly: Just ask. You just ask. I mean, to me, it's a private corporation. I understand that. It's a private water company. I understand that. They may tell you it's none of your business. But it's a PUC – public utility – under the PUC. They have to go to the PUC to get water rates. They have to do that. I would want to know, in my community, if it were a public water, like the Department of Water Supply on Maui – you get to know how much money is being invested over a period of time in keeping the pipes repaired and keeping the pumps up to date, keeping the wells repaired. I mean, that's just a public function. When I've asked the question, the response I get is well we don't do it that way. We only go year to year. We don't really know what we're going to do. Holly smokes you're not going to know what you're going to do with your water system for the next five or 10 years? It's critical to me. I mean if they don't give it you, they don't give it to. But I mean, at least you've got to ask. And I'm always surprised that it's part of the Water Use and Development Plan. It would be a logical thing if you're planning a water system to say this

is going to be our allocated budget to accomplish and maintain. Thanks.

Ms. Kaye: Thank you Pat. You'll get your chance next month. Joe Kaakua will be here along with James Juvik who will talk about the fog drip efforts.

Ms. Leticia Castillo: Madame Chair, I just want to let you folks know that the island is so old and all the pipes that are laying around are so old. And all the pipe holders have been working in this water and the plumbing department have all been retired. My husband has been approached – he was a previous plumber and he has been approached by Joe to kind of come back and let these new guys know where all the pipes were laid down especially out in the fields like that. And even the pipes around the City. Most of those pipes have been very, very old, and those needs to be changed. And people are – because they are bringing so many new people around that they don't even know where all those pipes are laid down. And they don't have any maps at all to check where all those pipes were laid down. You might as well re-pipe the whole island so that they know where things are and map it so that future generation knows where those pipes were laid down.

Ms. Kaye: Thank you Letty. Any questions? Any more comments or questions for Butch? Butch do you have something to add?

Mr. Gima: Yes, just a closing summary. I want to re-enforce what Pat said about the Water Use and Development Plan. We've been extremely frustrated over these last 10-years. We've obviously put in a lot of work and we felt we had a good draft document. The latest goal was to have the Water Use and Development Plan completed before the Community Plan starts. And the projected date of the start of the Lana`i Community Plan is the Summer of 2009, and so we still have some time, but it was suppose to be done. The last Department of Water Supply deadline was June 30th of this year. It's been frustrating from a personal standpoint. I thought at times we had some consensus of how to move forward, but we were kind of over ruled by Ellen (Kraftsow) in the Water Department. I don't know how to over come that because we don't have authority over the Water Department. We're under the Water Department.

Lastly, we try to look at the more macro or policy issues of water on Lana`i. We try and not to get into the micro-management of what's happening with the Water Department. And there's different views of projection of water use. There's a lot of discussion in our community about how much water has been used at the hotel, how much has been used in the City, how much has been used at the golf course and so on. My concern is more how much water is taken out of the ground? That's my priority – how much is taken out of the ground? How much they use, how much they lose, how much they waste, how much evaporates is important, but for me, my priority is being able to have on paper, real clear, what limitations we're going to have on how much water we pull out of the ground. That's going to be, I think, more important than whether they use 700,000 or 900,000 down at Manele because when we pull out that's the thing that going to obviously affect our over

all aquifer. And one of the reasons why we're trying to take a more conservative approach in the Committee is we have only one aquifer. I think we're the only island with one aquifer. We have no stream water. With 67% to 75% of the water going down to the Manele Project District, none of that water is replenishing the aquifer. When in pineapple days, we were pumping over three million gallons a day. However with the irrigation of the pineapple fields, some of that water was going back into our aquifer. None of that 67% to 75% going to the Project District is replenishing the aquifer. And it's for that reason I think that a lot of us on the Committee are taking a conservative approach wanting to have checks and balances for those specific reasons I just cited. Thanks again for having us on and we look forward to attending the other water workshops you guys will be having. Thank you.

Ms. Kaye: Thank you Butch.

F. 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.

2. Open Lana`i Applications Report.

Ms. Kaye: Next on our agenda is open Lana`i applications report. Joe?

Mr. Alueta: Is there anything you guys want me to follow up on? Normally that's what you guys – if you have a question that I can't answer, you guys want me to go and find out from the specific planner.

Ms. Kaye: Actually you promised last time and I made a list of what you said you would do.

Mr. Alueta: Okay.

Ms. Kaye: For the open Lana`i applications report last month, the first two items and I can't remember who made the inquiry but somebody inquired about the Miki Basin – Gerry did – and you said you would provide us with the status report. I will say that I tried your little primer on how to get online and do the online services and then permit look up. And I tried it for everything on this list and I got nothing but what's on this list. So your planners as you're pointing out are not putting the – you know there were comment letters on some of them and they just weren't available.

Mr. Alueta: Okay. I'll –

Ms. Kaye: That's the first one.

Mr. Alueta: All right.

Ms. Kaye: So you don't have anything for us?

Mr. Alueta: I do not have anything for you. I'm sorry. I thought I had gotten that one resolved. I believe I sent the information to Clayton and so I didn't get anything from him. So I'll follow up again with him.

Ms. Kaye: Okay. Thank you. Thank you.

Mr. Alueta: Sorry.

Mr. Rabaino: Joe when I asked for this last month – you know why when I look at the past three packets, these are items that's always been repeated. And it says entry date, but how far is this project is going to be carrying on this sheet?

Mr. Alueta: Until it's closed.

Mr. Rabaino: I want to know the end time or how much have they've progressed in there. Because the status is still open, but there's no listing on the completion date. So if I'm looking at this and say, did they get their permit? They may submit it. I'm looking at this phases. One phase is they submit it and it has been entered into the records, but has it moved forward?

Mr. Alueta: It's moving forward, but what happens is even though the system has the ability to track the progress along the way, currently, not all the planners use the system as a permit tracking system. So the only requirement that they, that currently, we make available to the general public, I guess you could say – to know that we received it and when it gets transmitted out. And that's the information that we –. So when it's closed when you receive it, that means we've got it and we're processing it. And the only information that we give, I guess, the Commission that they've always requested has only been when they get a new application and when that application is closed. If the issue is – then I need to take that up with the Current Division Administrator to provide more information on this sheet. This is a standard report that we provide for all three Planning Commissions. So it's something we have to special generate for all of the Commission. It's not the simple task of changing. We'd have to redo the program to re-write the report. But ideally, it would be just so I can go get you the information.

Mr. Rabaino: Yeah, because here you've got entry date from December 1st, 2006. Why is

2006 still listed here when I would be thinking it has to end?

Ms. Kaye: Gerry, maybe we could give you a little history. Just from two years to three years ago, when I first came on this Commission, this report was pages long. And it took them about six or seven months to get rid of the closed and leave it so that all we saw were the open projects. So what you're seeing is a variety. . . (*Inaudible. Changed cassette tapes*) . . . little initials made and we got the KIVA report. So now we know what type of permit it is and we have a number, and we're making great progress because you can get online and look these up. But we're always going to see this. And it isn't really transparent. Unless we ask about a specific project, they're not going to come prepared to know what it is. Some people just take a longer time to get their – this guy on the end may have put in his permit two years ago and never moved on it and so it's still sitting there. That's how that works. Some of them move quickly and some of them don't.

Mr. Alueta: And a lot times, like on this one, it's a gas and plumbing permit. And I don't know why we would be commenting or it's in our project, but obviously there's a hold up. He was asked for additional information. He didn't make an inspection of something like that in Public Works. So until he gets that signed off by Public Works, we're not going to sign off on his side. And it's one of those situations. The whole purpose of having this – I mean I'll tell you the initial reasons you guys wanted this was you just wanted to know what was coming down the line so you didn't hear it through the coconut wireless or if you got somebody in the public that comes to you because they all know you're on the Commission, they go, hey, what's going on with that? Who's doing what? And at least you can say, he's in for x-permit. Oh, yeah, we know about it. And if you see something that's happening and it's not on your permit, you can say, hey, this guy, we don't see him having a permit. That was the initial. Now it's – we've tried to provide you more information as you request it because, you know, knowledge is power and it makes it. But, you know, you've got to give me some lee-way because, again, I don't control the division that generates this report. That's all.

Ms. Kaye: I need to ask you just one – there's one on here that I couldn't find our list. It's the fifth on down, the Palms, and after – it says Palms of Manele – it says PAP. What does that mean? That's not on our legend that Colleen sent over to us.

Mr. Alueta: I'm going to say that's an LPA. Because what happens is if you cross Manele off, it's probably LPAP. So somebody added a little initial – probably pending because they haven't approved it. So it's probably a landscaping permit and they're in and they're being reviewed. So it's either like a parking lot. I think they added "P's" in the tracking system because normally if you have an LPA, that means it's done. So I guess they wanted to track it so that's there's a pending one. They just added a "P" to it.

Ms. Kaye: Okay, Commissioners, any other questions on the open project? Okay.

Mr. Alueta: Leilani, you got that, I have to find out the status for –. Okay. Thanks.

3. Public hearing on the following application scheduled 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: Okay, the next one is the public hearing. On the Director's Report, it's yours.

Mr. Alueta: I guess Planner Danny Dias has the Castle & Cooke Phase II Project District Approval and SMA Permit for an adult pool and improvements down at Manele Bay Hotel. It looks like an SMA Major and Phase II Approval. Phase II typically goes hand in hand with your SMA at that time. And then a Phase III approval would be just the building permit. So you won't see the Phase III – traditionally you don't see the Phase III approval just to let you know.

Ms. Kaye: Okay. Can you clarify for us, if this Phase II SMA, then –

Mr. Alueta: Phase II and SMA.

Ms. Kaye: And SMA then this is our kuleana.

Mr. Alueta: You got it.

Ms. Kaye: For the new Commissioners, this is the zone around the island in which we – unless Michael is going to jump in here and correct me.

Mr. Alueta: Try not to get too far in discussion on it.

Ms. Kaye: No. I just wanted to point that out to them, so that will be on our agenda for the next month.

Mr. Alueta: For the 19th.

Ms. Kaye: Right. So we will have that permit application and we will have –. And at that point it's going to come with Planning Department recommendations and that sort of thing.

Mr. Alueta: Yes.

4. Future Water Workshops

Ms. Kaye: And then we have two presenters and that's it for the agenda for next month?

Mr. Alueta: You have Joe, the other Joe. And then you have –

Ms. Kaye: Juvik.

Mr. Alueta: I have not received anything from Mr. Juvik even though I have called him several times. So if he is –

Ms. Kaye: I thought I got an email from you saying he was confirmed. No?

Mr. Alueta: No, not from me. The only person I have –

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

Ms. Kaye: He confirmed with Leilani.

Mr. Alueta: Okay, he confirmed with Leilani. The real power in the Planning Department. So we have him, but also DOH is most likely – Clean Water – Department of Health, Clean Water Branch.

Ms. Kaye: That's an awful lot for one meeting. Can we schedule that for December? That's three presentations plus a permit.

Mr. Alueta: Well, I've already sent the letter to him indicating that we'd like to schedule him for the 19th. I talked with him today, and he's trying to get approval high up. I can send him another letter or call him tomorrow and see if he wants to schedule for December to give him that option. But if he gets approval for it, I don't want to pull the rug out because we've already written the letter indicating that we wanted him on the 19th.

Ms. Kaye: I have a feeling – I'm sorry, I thought we worked it out with Clayton that you guys would tell us what the agenda was going to be first. That, I think, is too much for one meeting. I have a feeling the Water Company will get a lot of questions because they're further down in the process, and Dr. Juvik I'm sure will too, and the permit is likely to get some attention. So if you give them the option and seeing if they could appear in December. Or at least get an idea of how much time he wants.

Mr. Alueta: He indicated to me that his presentation most likely be like 15 minutes. He

doesn't have very much at all. From my discussions with him, he's pretty much, he's going to provide you a report with what they find in the water and that's pretty much their jurisdiction. And he's indicated you've got really good water. So I will do my best if you really want him in December.

Ms. Kaye: Actually, if it's going a tight one, that's a good arrangement because he is going to say what's required and the Company will be here to respond to how they respond to what's required. So it's probably not too bad.

Ms. Zigmond: Madame Chair, I certainly don't want to make our meetings any longer, but I have a question. Will it be November or December coming up the six-month compliance report?

Ms. Kaye: I believe it's November. . . (Inaudible. Mechanical problems with the tape recorder.) coming to the Planning Department. This was for – Commissioner Zigmond is talking about the six-month compliance letter that Castle & Cooke is required to provide as part of the permit extension. And we were off by a month and had discussion around the last time, and I think the next one is due in November.

Mr. Alueta: I believe if it's a compliance report, they'll submit to the Department, and we'll receive it in November, and then we'll schedule it for the next available Commission meeting.

Ms. Kaye: One other thing you said last month you would check on – one of the Commissioner brought up the Cultural Resources Study that was going to be done, and you said you would check with Stan Solamillo. Okay, add it to your list. And I would also like to ask you to resend – you referenced in last month's minutes, Pat Reilly's letter of July 16th which we didn't address because you got it that night. And you mentioned putting it on a future agenda and I don't have it.

Mr. Alueta: Could you repeat it again? I'm sorry.

Ms. Kaye: Pat Reilly's letter of July 16th. If you can find it, can you send it to us? You referenced putting it on a future agenda and I don't have it in my position.

Mr. Alueta: Do you remember what the topic was?

Ms. Kaye: No. Sorry.

Ms. Zigmond: I think it was something about recharge.

Ms. Kaye: Is that all? Never mind. Take that off. If you could find it Bev and confirm that.

Probably I'm the only one that's missing it then.

Ms. Zigmond: I have it. I'll have to dig through it. But while I have your attention – I'm not suggesting this for next month or anything, but I just wanted to resurrect – we had talked about doing the open space zoning of OS1 and OS2. Did that fall through a "puka" some place?

Ms. Kaye: Actually it did, but that was something we should've –. I'm sorry we didn't bring that up when Butch was here because he actually raised it in one of the last meetings he was chairing this body. And I'm not really that familiar with where he was going with it, whether it was something that he wanted the County to consider zoning before – because the Community Plan process is just stretching further and further out. And maybe you could talk to us about how we go forward with that inquiry?

Mr. Alueta: You could submit a request to your Chair – I'm sorry, excuse me, to your Council Member because I think at one of the last Planning Committee where the GPAC had come up before the time extension, Council Member Hokama was very upset with the way things were slipping and time frames and the length of it. And his concern was obviously – that's given how things traditionally work on Lana`i, and Moloka`i – will probably going to be – Maui is obviously going to go first, and Lana`i and Moloka`i. And so he felt that's going to slip Lana`i further back and he didn't want to see that, so that's the case. And you feel you have a pretty good handle based on your existing open space districts that you either request that – you know that the open space lands be comprehensively zoned to some OS designation. Or you ask for some budgetary study to – a budgeted amendment to try to get a study done to determine what lands should be designated that you have on the current OS, Open Space, split up between OS1 and OS2. Because remember, one of the OS doesn't allow any structure or permitted structures. And if you have, depending on your land ownership, you could technically consider it takings in some areas, and some instances. Maybe on Lana`i it's not such a big because maybe you're dealing with only one land owner. On Maui, it is a big deal because it has to do with all the river ways, all the gulches, and dealing with thousands of land owners, myself included. So it's one of those – it can be a hot case to what's going to be allowed and who's going to get the actual zoning.

Ms. Kaye: Special Use Permits - is the Special Use Permitting process available for open space zoning?

Mr. Alueta: There is no –. Open space is a designation on the Community Plan. There's an open space of OS1 and OS2 in the Zoning, in Title 19. When they created the open space zoning category –.

Mr. Hopper: If you want to talk about things for your upcoming agenda, you've got, I think,

some leeway, but if you're talking about things like open space and the law behind it, if it's not on your agenda at this meeting, I would really advise to have that on the next agenda.

Ms. Kaye: Thank you Michael. Thank you Joe for trying.

5. Agenda items for the November 19 meeting.

6. 2009 Meeting Schedule.

The Commission may act to approve or modify the meeting schedule.

Ms. Kaye: Next is the 2009 meeting schedule, in terms of the agenda, and we may either act to approve or modify it as it was handed out to us. Okay, I guess, we all find it totally satisfactory, correct?

Ms. Zigmond: Yes, I assume those are the third Thursdays of the month.

Ms. Kaye: Wednesdays.

Ms. Zigmond: Sorry. I knew that. Wednesdays.

G. NEXT REGULAR MEETING DATE: NOVEMBER 19, 2008

Ms. Kaye: Okay, that exhausts our regular agenda. Our next meeting is November 19th, at six o'clock right here. Anybody have anything else to add tonight?

Mr. Alueta: Clarity? Did you want to OS discussion on your agenda?

Ms. Kaye: Well certainly not next month.

Mr. Alueta: Certainly not next month?

Ms. Kaye: No.

Mr. Alueta: Okay.

Ms. Kaye: December would be fine.

Mr. Alueta: Okay, thank you.

Ms. Kaye: What we really need is education – more information – that's all. Okay, thank

you very much everybody. Good work. Thank you!

H. ADJOURNMENT

There being no further discussion brought forward to the Commission, the meeting was adjourned at approximately 9:45 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
Matthew Mano
Alberta de Jetley
Gerry Rabaino
Leticia Castillo

EXCUSED:

Darlene Endrina

OTHERS:

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