

**LANAI PLANNING COMMISSION
REGULAR MEETING
NOVEMBER 28, 2012**

APPROVED 01-16-2013

A. CALL TO ORDER

The regular meeting of the Lanai Planning Commission (Commission) was called to order by Chair Gerald Rabaino at approximately 6:00 p.m., Wednesday, November 28, 2012, in the Lanai Senior Center, Lanai City, Hawaii.

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

Mr. Gerald Rabaino: Lanai Planning Commission. All commissioners are present except for Marlowe – Stuart Marlowe is not here. He has some unattended business to take care of. On the agenda for November 28th, Wednesday, at Lanai Senior Center –. Is all the commissioners ready? Letty? David?

B. INTRODUCTION OF NEW MEMBERS - PRISCILLA FELIPE, STUART MARLOWE, and STACIE LEE KOANUI NEFALAR

Mr. Rabaino: Alright, we're going to introduce to you –. Oh, where's Priscilla? She's another one missing. So only Stacie and –. Only Stacie is here. How nice. Welcome Stacie. Okay, since Priscilla and Stuart Marlowe are not here, anyone want to congratulate or welcome Stacie to the Committee, Commissioners? Joelle? Okay, Item B, no that was B, yeah. So just for the record, Priscilla Felipe ain't here, and Stuart Marlowe not here.

C. ELECTION OF OFFICERS FOR 2012-2013 COMMISSION YEAR (Action could not be reached at the June 20, 2012 meeting.)

- 1. Chairperson**
- 2. Vice-Chairperson**

Mr. Rabaino: Item No. 6, election of officers, 2012 and 2013 commission year. Action could not be reached on June 20, 2012 meeting because we didn't have a quorum, okay? Again, we go through the nomination process. So anyone would like to nominate chairperson? Commissioners?

Ms. Shelly Barfield: I nominate John Ornellas as chairperson.

Mr. Rabaino: Anyone, any other commissioners? None? David? No? John? Oh, no, no, . . . (inaudible) . . . Okay.

Ms. Letty Castillo: . . . (inaudible) . . .

Mr. Rabaino: Okay, Letty moves that the nomination be closed for chairman. All those in favor

say aye. Can't hear you. Aye. Okay, so be it. John is the new chair. Election for vice-chair.

Mr. John Ornellas: Mr. Chair?

Mr. Rabaino: Yes?

Mr. Ornellas: I'd like to nominate Shelly Barfield for vice-chair.

Mr. Rabaino: Any other nominations? Commissioners? Anyone second this nomination?

Ms. Castillo: . . . (inaudible) . . .

Mr. Rabaino: Letty is closing the nomination for vice-chair. So the chair would be John Ornellas, and Shelly Barfield for vice-chair for the record. Congratulations folks. John, you want to have the mic?

**After nomination were duly taken, the following were elected –
Commissioner John Ornellas as Chairperson and Commissioner
Shelly Barfield as Vice-Chairperson.**

D. APPROVAL OF THE JUNE 20, 2012 MEETING MINUTES

Mr. Ornellas: Okay, I want to thank the members for supporting the nomination. Yes Letty.

Ms. Castillo: I would like to ask that the orientation – I'd like to ask that the orientation be postponed until all the board, the newcomers come in. Thank you.

Mr. Rabaino: I second the motion.

Mr. Ornellas: Any discussion? Staff, you want to weigh in? The motion was to delay, postpone, the orientation because two of the new members that require it are not here. And we have a second. Staff, you want to weigh in?

Mr. William Spence: Chairman?

Mr. Ornellas: Go ahead Director.

Mr. Spence: Thank you. And for the members who – it's been a while since I've been here – I'm William Spence. I'm the Planning Director. So I hope to make it over here a little more often than I have been, now that the Maui Island Plan is nearing completion.

We did bring staff over here this evening especially for this presentation. There's almost nothing on this, on your agenda, other than the orientation, and we would like to proceed if – you know, we're happy to take up different matters with the new members at, you know, another

day, but we should go ahead with the orientation.

Mr. Ornellas: Thank you Director. Any more? Commissioners?

Ms. Barfield: Mr. Chair?

Mr. Ornellas: Go ahead.

Ms. Barfield: I agree with William. We have two of the new members here, and we should proceed.

Mr. Ornellas: Okay. Alright, any body else has something to say? Staff?

Mr. Clayton Yoshida: Yes, I would concur with the Director because we didn't have an orientation session last year because we had, you know, there was a lag. We had Mr. Hera, and then Mr. Hera resigned. And then we got Joelle some months later. And so we have two members who have never been through an orientation session before.

Mr. Ornellas: Alrighty. If I can ask staff, was Stu and Priscilla advised? Did they say they were going to be here or what?

Mr. Yoshida: Yes, I believe that Priscilla said she would be here, and Stuart intended to be here, but there was, like, a death in the family recently so he's unable to be here. But we expected the three of the two new members and Joelle Aoki to be here tonight.

Mr. Ornellas: Alright Mr. Green?

Mr. David Green: Just to clarify, Stu Marlowe's mother-in-law died on Saturday night, Sunday morning, and so they have left the island. They had left the island a week ahead of that or so because it was an expected event, but he intended to be here.

Mr. Ornellas: Alright, anybody else wants to weigh in? Anymore? Okay, we'll close it. So we have second for this, to delay the – to delay the orientation. I'm gonna call for, call for a vote here. All in favor of supporting the motion to delay the orientation raise your hand. Okay. Is that two? All those in – all those wanting to vote in the negative as far as continuing on with the agenda raise their hand. Alright, we'll continue.

It was moved by Commissioner Leticia Castillo, seconded by Commissioner Gerald Rabaino, to postpone the orientation session to another meeting, then motion failed.

(Assenting: L. Castillo, G. Rabaino

Dissenting: J. Aoki, S. Barfield, D. Green, S. Koanui Nefalar, J. Ornellas

Excused: P. Felipe, S. Marlowe)

Mr. Ornellas: Alright, so let's move on to the minutes, the approval of the minutes of June 20th, 2012. Can I get a motion to accept, since probably nobody can remember what happened six months ago.

Ms. Castillo: I move that the – I move that the minutes of the previous meeting is approved as circulated.

Mr. Ornellas: Alright, thank you.

Mr. Rabaino: I second the motion.

Mr. Ornellas: Thank you Jerry. Okay, any discussion? Any revisions? If not, all in favor of those to accept raise your hand. How many is that? Alright the motion passes, so we accept the minutes for June 20th 2012.

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

VOTED: to approve the June 20, 2012 Lanai Planning Commission meeting minutes as presented.

(Assenting: J. Aoki, S. Barfield, L. Castillo, J. Aoki, D. Green, S. Koanui Nefalar, J. Ornellas, G. Rabaino

Excused: P. Felipe, S. Marlowe

E. ORIENTATION WORKSHOP NO. 1

- 1. Director's Comments**
- 2. Powers and Duties**
- 3. Meeting Schedule**
- 4. Land Use Regulatory Framework in Maui County**
- 5. The Sunshine Law**
- 6. Ex parte Communications**
- 7. Discussion of Boards and Commissions Booklet Distributed by the Office of the Corporation Counsel**
- 8. Ethics**
- 9. Recent U.S. Supreme Court decisions on takings issues.**
- 10. Public Access Shoreline Hawaii (PASH) v. Hawaii County Planning Commission**
- 11. Hawaii Supreme Court Decision regarding the Topliss case (SMA)**
- 12. Hawaii Supreme Court Decision in the case of Paulette K. Kaleikini v. Laura H. Thielen, in her official capacity as Chairperson of the Board of Land and Natural Resources, Board of Land and Natural Resources, and the Department of Land and Natural Resources.**

13. **Other Relevant Hawaii Supreme Court Cases**
14. **Lanai Community Plan Update Process**
15. **Special Management Area Rules (J. Buika)**
16. **Shoreline Area Rules (J. Buika)**
17. **Zoning**
18. **Lanai City Country Town Business Design Guidelines**
19. **Chapter 343, HRS, The EA/EIS Process**

Mr. Ornellas: Then we'll proceed right into the orientation workshop. Director's comments.

Mr. Spence: Thank you Mr. Chairman. Not too much comments, but just, again, I want to welcome the new members and I look forward to working with everybody in the future. We do have here tonight Deputy Corporation Counsel, Mike, to do an orientation on the sunshine and other legal matters. We have Clayton Yoshida who will talk about the Planning Department. And we also have two of our planners from the Long Range Division here to tell you what the other part of the Planning Department does, Long Range Division – I'm sorry – yes, and we'll discuss how we're going to proceed with the community plan and everybody is looking forward to that one. Oh, you'll get it. No worry.

Mr. Ornellas: Who gets to come up first, Director? Oh, there we are. The lawyer.

Mr. Spence: Mr. Michael Hopper.

Mr. Ornellas: Mike.

Mr. Spence: Yeah, I'm pau. Thank you.

Mr. Michael Hopper: Okay. My name is Michael Hopper. I'm a Deputy Corporation Counsel here with you tonight. I'm not your regularly assigned Deputy Corporation Counsel. That would be James Giroux. But I'm filling in for James tonight, and I'm giving you an orientation on several important laws that apply to how the Commission conducts its business. A deputy corporation counsel is essentially a fancy term for a county attorney, so I'm basically here to give the commission legal advice. And your laws I'm going to go over tonight – bear with me if you've heard this before – there is, there are some new additions to these laws that are new this year. And if you've not dealt with this law before, I think it's very important to pay attention too for the first time because they govern how you would conduct yourself as a board member in the meetings and also outside of the meetings.

There were a couple of informational packets provided to you with your agenda. One is this Open Meetings pamphlet. It's a, it's kind of a plain language guide to what's called the sunshine law that I'm going to go over for you. It's new for July 2012. And it has a lot of good frequently asked questions about the sunshine law, which again affects how you would do your – preform your duties as a planning commission member.

There's also this sheet entitled New Board and Commission Member Orientation. Again, that

has some frequently asked questions. It goes over rules of practice and procedures and other issues. I'm not going to be able to go over everything in this presentation. You'll be advised over the course of doing your business as commissioners on these laws. But this contains a lot of helpful information for you that I think you could reference. But, again, there's no way I could cover every single aspect of these laws so I'm going to hit what I think are the most important ones.

So starting with the sunshine law. It's the state open meetings law, Hawaii Revised Statutes Chapter 92. It's essentially a law that governs open meetings, and it governs your meetings as a, as the Lanai Planning Commission, and it does affect how the board does its business. This is a law that applies, by the way, to many other boards and commissions, including the Maui County Council. This is kind of a list of the general policy intent of the sunshine law. The general idea is that they want the board to conduct its business in open meetings, in open session, in front of the public so the public knows what is being discussed and how your decisions are being made.

Based on those policies, the legislature determined that every meeting of the board is open to the public, and all persons are permitted to attend. All interested persons shall have an opportunity to submit data, views or arguments in writing on any agenda item – any item that is on your agenda. All interested persons have the opportunity to present oral testimony on any agenda item. But as Chair Ornellas referenced earlier in the meeting, a board may make a reasonable time limit of oral testimony. Three minutes is an example. That's what the Maui County Council typically does. But a different time limits are allowed. But everyone must be allowed to testify on each agenda item.

Notice of all meetings must be given. There must be a written public notice at least six calendar days before the meeting. That notice has to have a list of all items to be considered. A date, time, and place for the meeting. And that's what's on your agenda. You've got this document entitled agenda. It's very important because it's suppose to give everyone in the public, at least six days before the meeting, a notice of what's going to be discussed at that meeting. The agenda is, once it is filed, there may be no additions to that agenda unless there's a two-thirds vote of all members to which the board is entitled. This board is entitled to nine members, so it needs at least six members to vote on an amendment regardless of how many members attend. So it needs at least six members. No item shall be added if it is of reasonably major importance, an action thereon will affect a significant number of persons. Based on that rule which is frankly a bit subjective, we typically advise that unless it's a very, very pressing issue that there's no other way to deal with it, we do not amend agendas to add items. We would just place that on the next agenda. So a general rule is that once the agenda is filed, those are the items that are going to be discussed. The problem is that a member of the public may say, "I didn't know this item was going to be discussed, and therefore I would have come if the item was on the agenda." So that's why there's a strict law regarding additions to the agenda. Yes?

Mr. Green: Where are the notices published or how are they published?

Mr. Hopper: Leilani may be able to give some more specifics, but typically – or Clayton – but

there's a variety of places it's published. I think it's on the county's website. It needs to be filed with the County Clerk, I think, is the formal filing. It's sent out to anybody who requests the agendas to be sent out. And then maybe Clayton can give some more information on where the agendas are filed and who they are given to.

Mr. Yoshida: The agendas are posted with the County Clerks Office pursuant to Chapter 92, Hawaii Revised Statutes. They are also posted on the county website. And also after you approve the minutes, your minutes are posted on the county website under the Lanai Planning Commission. So, those items are all on the county website.

Mr. Ornellas: And if I can – if I can also add that they're at Riki's office over there, on the bulletin board at Riki's office. And I do see them at the stores posted.

Mr. Hopper: It's good to know. The legal requirement under the law is they're filed with the County Clerk. But as you've heard there's a variety of other places that they are – or that the agendas are available. If you want agendas, I think you can ask the county to be on the mailing list, and I think the county will give you those, those agendas, I believe so.

Minutes must be taken of all meetings. They're mandatory. At minimum, there has to be a date, time and place of the meeting, and other relevant information. What happens though is that Leilani records these meetings, and just takes verbatim minutes of the meeting. It's a bit easier than taking a summary of the minutes which, you know, that can actually take more time. So what's done is these meetings are recorded, Leilani types up a transcript, and those are the minutes as you have here. The minutes have to be made available to the public within 30-days of the meeting. They don't have to be final approved minutes. They can still be stamped draft. But, the – they're supposed to be made available within 30-days of the meeting.

What is a meeting? And here's the definition under state law. It means a convening of a board for which a quorum is required in order to make a decision or deliberate toward a decision upon a matter over which the board has a supervision. More than two members of a board cannot gather to discuss board business. There's some exceptions to this, but this is why I said the law applies inside and outside of meetings. More than two of you cannot get together to discuss board business. Again, there are exceptions to that, but that's the general rule.

What is board business? That is matters over which the board has supervision, control, jurisdiction or advisory power, and that are before or are reasonably expected to come before the board. A good rule of thumb is, is it something that's on your agenda or likely to come up on your agenda, things like involving SMA Permits, you know, various land use issues. If, if, you know, if several of you get together and want to talk about, I don't know, local sports or, you know, something that has nothing to do with board business, that's not prohibited. But be very careful discussing, you know, land use issues things like that with more than two of you because that's something that is suppose to be discussed in open session, in front of the board. Typically, though, the rule is, is it something that's on your agenda or likely to come up on an agenda in the near future. That's the general rule there.

There are several exceptions. One is the investigative exception. That, that allows two or more members, but less than a quorum to do several, several different type of things. Essentially it's to investigate an item. It requires that the commission assign who the members of the investigative group are, what their duties are. That group does the investigation. It can get together outside of the meeting. It can, you know, it can investigate the matter. But it eventually has to come back and report to the full board, and then the full board would need to take action after it gets that report back. That's a relatively complex procedure and if the board wants to do that on an item, it has to be put on the agenda and we can go over how to do that. But that's one exception to the sunshine law. And by the way, when I said more than two can get together, two of you can get together and discuss board business. That is allowed as long as there is no commitment to vote made, or commitment to vote sought by either one of you. And once two of you have discussed that board business, you cannot discuss that board business with another member. So then the two of you can't branch off and discuss with two other members. The Office of Information Practices (OIP) which is the state agency that oversees the sunshine law compliance has given an opinion on that. And they say two of you can get together to discuss, but then you can't discuss with anybody else. I'll be honest, I don't think it's a good idea to get together and discuss board business among the two of you outside of meetings anyway, but it is technically allowed by the sunshine law as long as there is no commitment to vote on the matter, agreed to, or you try to convince or someone tries to convince you to vote. Again, this deals with board members discussing things with one another. And it doesn't prevent you, for example, from discussing a matter with Clayton Yoshida or something, or me, Planning staff, but it's between people that, you know, people on the board.

There's a new rule for 2012. I should go over quorum and voting rules before I get into this. But you're required for a meeting to happen, you need at least five members to be here, for there to be considered a meeting of the board. The reason is that you're entitled under law to nine members. You're nine member board. What the law requires is that you have at least five of those nine members here in order to have a quorum to do board business. And in addition to that, in order to take any action on any matter that to, for example, approve a permit, deny a permit, you know anything like that, you need to have at least five votes. That's regardless of how many people show up. So if five people show up, you need five votes. If nine people show up, you need five votes in either case. So if you only have five people show up which is referred to as a bare quorum, to take action it would have to be unanimous. Every member would have to vote the same way.

Now before there was a law change in 2012 you needed a quorum to do anything. Even to hear a presentation like the one I'm giving you today. Now there's an exception for 2012 and it says that testimony, presentations and questions on agenda items are still allowed if a meeting is cancelled due to lack of quorum. However the members must create a record and report back to the full board before any action can be taken. Basically you need to have minutes of that meeting. The minutes have to be produced to the full board before any action can be taken. So, if you, for example, only have four members show up to a meeting, you can still take testimony, you can still have a presentation on, on a permit or something, but you can't take action on that. Not only until you get five members, but until those minutes are produced and the full board has a chance to read the minutes of that meeting, and then you can take

action.

Practically speaking, to be honest because we type up the minutes and those minutes take, you know, usually at least 30-days, it may be difficult to have those minutes by the next meeting to take action, and may actually end up being more efficient not take up that item until you actually have the quorum and then vote at that point because you wouldn't need the minutes to be finalized before the vote. But this does allow taking of testimony. Let's say there is an item like this orientation where you didn't need to take action necessarily and you only had four members show up, legally you could have the meeting. But in the past if you had four members, you couldn't even have a presentation or even hear a public testimony. So that's a new rule in 2012.

And again this is similar – less than a quorum may attend and participate in an informational meeting on items related to board business. But the members attending must report back to the full board before actions – sorry – at the next meeting.

Another exception, and there's several exceptions to the open meeting law, is what's called an executive meeting, or executive session. This is to have a meeting closed to the public. A vote must be taken at an open meeting of two-thirds of the members present. And there's several reasons you could have an executive meeting. One, and the most common, is to consult with the board's attorney which is myself. That's dealing with the issues pertaining to the board's power, duties, privileges, immunities, and liabilities. So the board has the right to consult with me as your attorney in private session, as a private person would have the ability to consult with their own attorney. And that communication is confidential as long as it's on the board's powers, duties, privileges, immunities and liabilities. And the only thing that can be discussed in the meeting like that is are these items. If the discussion veers off to something that needs to be in open session, then that has to happen in open session.

There's also an exception to the sunshine law for it, which is called contested cases. That's if a board is exercising its adjudicatory functions govern by HRS Chapter 91-8 and 91-9. In that case it is not subject to the sunshine law. So to go over kind of the consequences for violating the sunshine law, if there's, you know, if there's a violation found, an action of the board could be voidable, it can be challenged in court and undone. There can be an injunction issued by a court that says, let's say you granted a permit or took some action, a court can say that action is going to be put on hold because there was a sunshine law violation. A knowing violation or an intentional violation is punishable by a misdemeanor. It's actually a criminal penalty for a knowing violation of the sunshine law, and the members may be removed from the board for a violation of the sunshine law as well.

That ends that presentation. I can take questions on the sunshine law. Again, there's a good plain language guide in there. I'm not going to be able to get all the nuances. But a good basic rule of thumb is don't discuss board business outside of the meeting. The idea of the law is to have your discussion on the record here where there's public testimony, the public can attend, and your voting and your reasons for voting are on the record. Any questions? Yes.

Mr. Ornellas: When you mentioned investigations, you mean, also subcommittees? If we generate subcommittees, if there's four members, I mean, they can sit down, or three members, they can sit down and discuss that particular item?

Mr. Hopper: Well, the Office of Information Practices was very specific with us and said you should not call them subcommittees because they're formed, they're not standing subcommittees. They're formed to investigate a specific item, investigate, report back and then they're dissolved. So it's not like the Council Committees which are every two years, as you may know, they have the standing committees and they're there for the entire two year period. Typically it's, you know, let's say, an example would be you wanted to revise your administrative rules, but it's really hard to go through all the manini issues on the rules, you know, on the full board, you could have four members get together as a rules subgroup or investigative group, investigate the rules, recommend changes to the rest of the board, report back to the board, and then the full board can take that report under advisement and then take action at the next meeting after that. That's happened before.

The next item, I don't actually have a slide for this, but the Department wanted me to talk about what's called ex-parte communications. This deals with the situation if someone is before you for a permit, for example, or something like that, that situation is suppose to be treated as if you're a jury essentially. So you should not have a communication with a permit applicant who is before you for a permit outside of a meeting. The communications with that person should be on the record in front of everybody. You can talk to a planner outside of the meeting, but a meeting with that person, it should not happen outside of the context of the meeting. So that, if a person attempts to, who has a permit pending before you, attempts to contact you regarding that permit, you know, you should avoid that and also avoid having that person, contacting that person yourself. If you've got questions, you know, additional questions, at the meeting, you can ask those questions or you can always contact the staff planner assigned to that matter, and that staff planner can gather that information for you and present it at the meeting. The main reason is that they want the whole board to have access to the same information. And if one member does their own investigation on that item, and they say, well, you know, I found out this or that, that can be prejudicial to the applicant or lead to imbalance of information. There's a case law on that, and that should be avoided. That could lead to someone having to recuse themselves. And it's not always intentional. Somebody, I mean, it's, you know, it's a small island and sometimes people may just call the person, maybe they even know them and say hey what about this? And you know, that temptation should be avoided if someone has an actual permit or application before the county. You can ask us if you've got any questions on that. But that's important.

In addition, if there's applications coming up or you know an application is coming up, it's a good rule of thumb to avoid making statements fore or against a project before you get all the information before you. If it can be seen you have a position on a project before it comes before you, or a permit, there's a potential that you may have to be recuse before all that informa – before you have a chance to have the full hearing of the application. That has happened before, so that's just a good basic rule of thumb.

I wanted to go over some other things. I will try to be quick. The sunshine law was probably the most important to go over at this point. I'm gonna go over contested cases as I've discussed earlier. This is the Hawaii Administrative Procedures Act, Hawaii Revised Statutes Chapter 91. It deals with contested cases before the board. A contested case is a proceeding in which the legal rights, duties, or privileges of specific parties are required by law to be determined after an opportunity for agency hearing. There's a case law in this. I won't necessarily go over all of the details of that. The requirements for a contested case hearing – this is different than the sunshine law though – is the parties have to have notice. That's the parties which could be an applicant, for example. If someone files an intervention on that application, it could be the intervener as well. They have to have notice. They have to have the opportunities to submit evidence to the board on the application. They have to have the ability to cross examine any witnesses and present rebuttal evidence. And the party initiating the proceeding has the burden of proof, including the burden of producing evidence as well as the burden of persuasion. And the degree – I won't – in lay man's terms, the degree of proof is more likely than not. This would be, for example, someone has an SMA Permit pending before you. It would be their burden to show they've met the requirements of the SMA law, to show that it's more likely than not they have met those requirements, and they have to be, they'd have to be entitled to notice of the meetings coming up. There's several other requirements as well. These are typically handled by staff, but the board should be aware if you're in a contested case process which I can't remember Lanai having – a commission, having many of these. But be aware there are special rules that apply.

Part of a contested case hearing is that there's a right of judicial review. That means that your findings are reviewable for clear error by the Circuit Court, while your conclusions of law are actually freely reviewable. So if you make a find of fact on a special management area permit or something that, you know, that deals with a factual finding, as long as that's not a clear error, the court reviewing your decision will typically support that unless they find a clear error. If you make legal conclusions, however, that's freely reviewable by the court.

Again, we can go over the difference between fact findings and conclusions of law when you're going through any decisions and orders in these cases. But again, that will come up as we go through the cases. That's essentially what I said. That's right. That's right.

Some tips. If you're dealing with the contested case you're exercising your adjudicatory function. You're acting as judges and juries in those cases. You must remain impartial and not openly make conclusory remarks until all the evidence has been received. Take in the evidence and then begin your deliberations is a good rule of thumb. Your decision must be based on the evidence in the record that's before you, and avoid statements that may be mistaken as an attack on someone's race, sex, gender or religion. I shouldn't have to say that, but that's, that's part of the presentation.

Any questions on the contested case rules at this point? No? Okay. Another thing the Department wanted me to talk about was the Code of Ethics. That's in the Maui County Charter. The Board of – the Code of Ethics prohibits accepting gifts. Now typically, there's technically no monetary amount, but if the gift is being offered to you to, that you believe to

influence your vote or if it would appear that way, then the good rule of thumb is to, you know, not to accept the gift. I mean, if someone brings donuts to the meeting and they're offered to everybody in the entire room, I don't think it's a problem to take a donut or something like that. But, you know, use, use judgement and common sense. There's Board of Ethic opinions that say gifts of aloha are a tradition and can be accepted and are a part of, you know, accepted practice. But if the gift is being given in your view to attempt to influence your vote, obviously, you can't go wrong by not taking, you know, the gift in that situation.

Now a board member may not engage in a business transaction or activity, or have a financial interest which may tend to impair the independence of judgement in the performance of an official duty. In addition, the board member must not fail to disclose a financial interest in the actual, the matter – if the board member has a financial interest in the out come of any application upon which the board is voting, that should be disclosed. A good rule of thumb, if you've got any doubt you can ask me and disclose to the board here is, here is my situation, and if you're going to recuse yourself because you think it's a conflict, you can say why. If you do not believe that it is a conflict that you would need to recuse yourself, it's always a good rule to still disclose it and say this is the situation, I don't believe that it will impair my ability to be impartial, but I'm disclosing it for the record anyway. Penalties include a fine or a removal from office for violation of the Board of Ethics.

Another thing you can do, when in doubt, is get an advisory opinion from the Maui County Board of Ethics. If an officer obtains an advisory opinion and acts in accordance with that opinion, or acts in accordance with the opinions of the board that have already been issued, the officer shall not be held liable for violating any of the provision of this article. So you can always ask for an opinion for the Board of Ethics. They do have a time deadline upon which they need to make their decision. And if they don't reach their decision, that decision in that time, then the activity is deemed to be acceptable. So that is something that the board routinely rules on.

And the last item I will discuss, and I'm going as quickly as I can, is a review of relevant case law. These are cases among Hawaii that do govern how you would do your – preform your duties. This will primarily concentrate on special management area permits, special use permits, and other permits that, from time to time, the Land Use Commission – I'm sorry, the Lanai Planning Commission will be acting upon. There's a takings clause of the United States Constitution that prohibits government taking private property for public use without just compensation. Basically the government is not permitted to force a person to bear a public burden alone, which in all fairness and justice should be borne by the public as a whole. This requires that there be an essential nexus in imposing any development conditions on, for example, a special management area permit or a special use permit.

Now the, the example, there were, there were cases. There's a Nolan case that, that required the dedication of a – of an easement. And in that case, there was a, the decision hindered on whether or not the easement that was required as a condition of the permit, had a rational nexus related to the interest that the state was trying to protect. You also need to have rough proportionality, and that leads to the full test – legitimate state interest, essential nexus, and rough proportionality.

To translate that to you, a legitimate state interest would be, for example, in the special management area law, there's a list of objectives and policies of why the special management area law, what the goals, objectives and policies of that law are. There's several things, for example, protection, preservation, restoration and improvement of the quality of the coastal scenic and open space resources. The designing and locating of new developments to minimize the alternations of existing public views and along the shoreline. There's a list there. That's the starting point. If there's a condition placed on a project, it needs to be related to a legitimate state interest. For an SMA permit, it needs to be supported by the goals, objectives and policies of the SMA law. It can't just be any condition you want. You can't say, donate a million dollars to XYZ. You have to have a legitimate state interest in order for that condition to be legal.

There needs to be an essential nexus between that state interest and the condition. That condition needs to further the interest basically. So, you know, the condition, should in some way help to mitigate the interest, the – or further that interest that you have.

And finally there must be proportionality between, for example the scope of the development and the degree of burden that the condition would have. You wouldn't necessarily have a single family house be required to re-pave an entire long stretch of highway. That's what we're talking about proportionality. That house, you know, may add an impact, but not – it has to be equal to the impact caused by the development.

Again, you're not going to be able to process all of this at once, but when the permits come up, and you're looking at conditions, we can advise you as you go through those permits.

The – I essentially went over this, but there was a case called Topliss versus Planning Commission. They applied that Nolan and Dolan, of state interest, rough proportionality and essential nexus to SMA permits, and essentially said the exact thing that I said. The commission can impose reasonable conditions to minimize the impact of the development that they have to be related to the interest further by the law.

Now another duty that the commission has is that it needs to make findings. It can't delegate its duty to the developer to say in the future you need to do mitigation. The commission needs to look at the impacts that it would have, and that the project would have, and do the mitigation itself. Place conditions to mitigate the impacts of the development.

The commission has an affirmative duty to protect cultural resources, and the commission is obligated to protect the reasonable exercise of customary and traditionally exercised rights of Hawaiians to the extent feasible. This is the case may know PASH. It's the Hawaii Supreme Court. If there are existing gathering rights on property when you're looking at an SMA permit, and those are known to the commission, the commission must provide for the protection of those rights, whether it's through easements, through appropriate conditions. Again, that's when there is evidence that there's, there's – there are either cultural resources or gathering rights going on on a particular parcel, the commission needs to account for that by condition and it cannot delegate that to the developer.

Now there also requirements that if there's information that there is iwi, there are iwi in the area, that the developer can be required to retain an archaeologist, do a report regarding the cultural resources in the area prior to the issuance of a permit. So that the commission can look at that and adequately assess. Again, this is – if there is evidence that there are cultural resources in the area, the commission may require that the developer do their research prior to granting the permit in order to show what the situation is, where the resources are and to allow the commission to protect those resources. So that's essentially what I said. There's a three part step, a three part process that's particularly specific. I'm not gonna go over all of those details again. This is something that would come up if you deal with a permit in the future, and, that we would go over if there was a situation where that test would apply.

RLUIPA is also an important law that you may have to deal with from time to time. It's called the Religious Land Use and Institutionalize Persons Act 2000. It prohibits the government from imposing or implementing a land use regulation in a manner that imposes a substantial burden on the religious exercise of a person including the religious assembly or institution unless the government demonstrates that the imposition of the burden on that person, assembly or institution is in furtherance of a compelling government interest and is the least restrictive means of furthering that compelling interest.

Again, all laws that will come up from time to time, and that we will need to advise you on as they go. If you take anything away from this presentation I think the central points on the sunshine law were very important, and the ex-parte communication issues, I think, were very important as well. Because that again governs not only when we're all here to advise you, but also when you're outside of the meeting. You know, if you have questions, I mean, feel free to ask the Planning Department or myself and we can get back to you on your questions. I know that was a lot, but that is a very large portion of your orientation. Do you have any, any questions? Again, you'll have Corporation Counsel at your meetings to ask as these issues come up.

Mr. Ornellas: How far down the list did you go?

Ms. Barfield: 14. . . (inaudible) . . .

Mr. Ornellas: Lanai Community Plan update, is that next? Okay. Kathleen, you're up. Before we go with Kathleen, can staff provide us with a phone number for the Ethics Board so we can write to them or call them if we have any questions for Ethics. I mean, it doesn't have to be now. I mean, if you can email that to us later at a later date. It's on the county website? Okay. Great. Thank you.

Ms. Kathleen Kern: . . . (inaudible) . . . Good evening Mr. Chair and planning commissioners. My name is Kathleen Kern. I'm one of the planners with the Long Range Planning Division, and I'm here to present to you what Long Range Planning does and talk a little tiny bit about the community planning process.

As you may or may not know the Planning Department is divided into three major divisions –

Long Range Planning, Current Planning, and Zoning Administration. So I'm just here to talk about one of the divisions. And if you don't know already, the Planning Department actually does have a mission statement which is this – to manage growth in a sustainable manner that balances our economy, culture and environment. Quality service is provided by seeking efficiencies and offering consistent and timely information with integrity and aloha.

There's three division. Sorry, I'm doing it at the top of my head. And some of the graphics aren't coming out just as exactly the way I had intended them to. But I think you can still read this. Long Range Planning in essence does comprehensive community planning. It includes both a section of planners as well as a number of GIS analysts. And these are our staff members. From when we talked to you last year, I believe, we actually are missing two staff members. So just to let you know, we do have vacancies and we hopefully will have a new planner on staff next year to help us out.

Long Range Planning essentially works with the community stakeholders, business makers, to manage growth through the use of professional planning principles. We coordinate long range planning activities with other county departments, as well as, state and federal agencies. And our GIS section helps to analyze land development data and prepares maps for the rest of the department.

So we do both planning and a little bit of implementation. Long Range Planning is we are responsible to update the county's General Plan, which the major piece for this now, the Countywide Policy Plan, and updates to the Community Plans. We also do technical studies.

But we also have staff members who do cultural resources management. That's Stan Solamillo for those of you who may know him. We do GIS maps and analysis. And we do special projects to implement the General Plan – special studies, special plans and regulations. Things such as impact fees, development impact fee studies, traffic impact fee development studies, Pali to Puamana studies, and things like that.

Maui County Code 2.80B defines the legal status of the General Plan and the Community Plans. It mandates public participation through, including advisory committees, and it outlines the role of the community advisory committees, the general plan advisory committees, the Planning Director, the Planning Commissions, and Council. And it establishes a process to amend, not only the General Plan, but also the Community Plans. It identifies mandatory elements that have to be included in the General Plan and Community Plans. So as kind of an overall map, if the countywide policy plan is kind of the large document, the General Plan that guides all parts of the county, then the next level down there are essentially island plans. The Maui Island Plan is before Council right now. It has been an ongoing process that is like six, seven, eight years long. And then of course there's that Lanai and Molokai Island Community Plans. Then on the Island of Maui, there are – I loss count – five, six, community plans. Paia/Haiku, Kihei/Makena, West Maui, Hana, Wailuku/Kahului, we're missing MPK – sorry, the Kula/Makawao plan. So we're sort of at the stage of working on the island plans is where we're at in this update process.

2.80B spells out a mandated review process for the general and community plans. And that is that with the community plans, there must be a community advisory committee created. In the case of the community plans which includes Molokai and Lanai, there are 13 members of the community plan advisory committee. Nine members are appointed by Council, and four members are appointed by the Mayor.

That advisory committee, the Community Plan Advisory Committee has six months to review the Director's recommendations for the community plan update. The planning staff then have about 30 days, officially, to incorporate the CPAC's advice into the Director's recommendations for the update of the community plan. Then the relevant Planning Commissions will review the draft plan update, and they have a six month deadline as well. And then once those revisions are done, the County Council has a 12-month window in which to review and adopt the community plan. So there's a two-year time line that's mandated once the Community Plan Advisory Committee – a two year plus time line – once the CPAC starts.

This is just to show you some of the General Plans documents. I think some of you know these already. The goals for the plan, whether the General Plan or the Community Plans, is to be, not only comprehensive, but consistent, to be clear and specific. It includes policies as well as implementation actions. We have in 2.80B, it requires us to financial assess the impacts of all the actions in the plan update, so we have to do a little bit of financially analysis. And it requires that there's actually sort of an open and honest public debate in the community about what happens in the plan.

The Community Plans will include capital improvement priorities and schedules. There's also requirement to look at and assess cultural and historic resources. There's a requirement to provide policy framework for housing and for economic diversification. And we try to describe the direction of the community's future.

The Long Range Planning now, in addition to working on the General Plan and Comprehensive Plan, does do implementation work such as cultural resource management or special studies. Cultural Resources Management – the County of Maui, we are a certified local government so our cultural resources staff member can perform duties that, that in some cases the state does. Those things include processing demolition permits, maintaining an inventory of cultural historic resources for the county, preparing and maintaining a current cultural resources management plan, and conducting research on historical structures considered for preservation or as part of the land use application.

This is just an example of some of our GIS products. And these are the examples of our special studies – Pali to Puamana plan on Maui island, or developing design guidelines for Country Town Business Districts.

Just in terms trying to provide bit of an overview of the kind of planning tools and approach we use in Long Range Planning. We do like to work with the basis of understanding what is actually going on in the community through socio-economic forecast and analysis. We are concerned about how things grow, and smart growth is kind of an overall term for some

contemporary planning principles which try to create towns and cities that are more livable. I'm not going to bore you with all the details. We also are very concerned that we engage the public and we do this through a number of different methods of public engagement – through community meetings, through individual research and interviews one on one, and providing multiple ways for people to provide feedback to us.

There are, of course, many issues and challenges in Long Range Planning. And the biggest challenge is trying to balance different issues, and trying to balance the needs of social needs versus environmental issues, versus economic and trying to make things, at the same time, well designed and beautiful. So the key question really what we try to ask is we do community planning. In Lanai's case, how do we meet the current and future needs of Lanai while keeping what the community values. And in essence, we have to remember as planners and as community members that change will happen, it does happen, and our role in working with the community and doing community planning is to try and manage how that change took place.

And that's just a summary of what we do. We're Long Range Planning, works on comprehensive planning. 2.80B in the Maui County Code is what governs how we're to do community planning in the County of Maui. And if you have any questions, I'd be happy to have them – address them tonight.

Mr. Ornellas: Yes, has a schedule been – has a schedule been developed for the Lanai CAC – I mean, CPAC?

Ms. Kern: A tentative schedule. At this point in time we have a – the first date for the first CPAC meeting is scheduled to be January 9th. We are just – I think a letter is going out. It went out finally yesterday to the CPAC members to ask them if this meeting date works for them. So January 9th hopefully is the first date unless something happens in the next couple of weeks to deter that schedule.

Mr. Ornellas: Commissioners, do you have any questions concerning Long Range Planning, or the CPAC?

Mr. Spence: Commissioners, as we go through this, we'll be posting a lot of things on the website so – like a draft plan of the technical studies, the land use forecast, population forecast – those kinds of things so everybody in this room has access to those. It's not just for the CPAC members. And, you know, we welcome participation by the rest of the community in this.

Ms. Kern: I can say a little more. We're in – looking at the CPAC schedule there's this time limit of six months. The CPAC can, I think, petition to extend that deadline if necessary. I guess we would like to try and do things and get things done. But looking at how much material there will be to go over, I'm anticipating we're going to need 15 to 18 meetings with the CPAC over the course of six months which means maybe meeting every other week or more. So obviously that will be one of the first items of discussion with the CPAC is how often are we going to be able to meet. Whether we, you know, one of the possibilities might to meet – might be to meet two days in a row to try to and move things through faster. I'm just not too sure. There's a lot of

material to cover. 2.80B was revised a few years ago, so – revised since the last plan was completed so there are some extra elements in the community plan that need to be included that weren't, that are not in the current plan.

Mr. Ornellas: And then once that happens then the Lanai Planning Commission has six months also?

Ms. Kern: Correct. And there are some – we do have background material. We do have plenty of background materials. There's a socio-economic study or a land use forecast. There's an economic development study and there's a housing study, and those will all be posted on the web, fairly soon, as well as going to CPAC members, digitally.

Mr. Ornellas: Thank you. I'm sorry, you guys have any questions out there? Chris? Nobody? Okay. This is, this is – we've been waiting for this CPAC for a long time, so if you have – I'm gonna promote the heck out of this meeting and I'm gonna promote it next meeting. We have to – the community has to show up to these, and listen, and give their, give their opinions as far as what's gonna – what's our island gonna look like 20-years from now.

Mr. Yoshida: Good afternoon. I mean, good evening Mr. Chair and members of the Lanai Planning Commission. I'm Clayton Yoshida. I'm the Administrator of the Current Planning Division. And the Lanai Planning Commission was created through a Charter Amendment in 1992. And the first Lanai Planning Commission was empaneled in 1993, and it consist of nine residents of Lanai. Also, your powers are spelled out in the Charter, but largely broken down into, in some cases, you are advisory, and in some cases, you are the final decision maker on certain permits. Advisory to the Council on changes to the Title 19 of the Maui County Code, changes in zoning and so forth. The decision maker on special management area permits, special use permits, and project district, phase two approvals.

I'm gonna go through the – spend a little bit going through the planning framework. This is the – this is the chart for the department as we're divided into basically three divisions – Long Range, Current Planning, Zoning and Enforcement, Administration and Enforcement Division. I think Kathleen talked a lot about explaining what the Long Range Division does. I'm with the Current Planning Division and we process many of the applications which come before you as well as other types of administrative permits – landscape planting plans, comprehensive signage plans. We also have our Zoning Administration and Enforcement Division that does enforcement of the zoning codes, special management area permits, land use commission special use permits, district boundary amendments, and they also review subdivision and building permits as well as staffing the Board of Variances and Appeals. We have an administrative planning officer who works on amendments to rules, and amendments to Title 19 and that is, I guess you're all familiar with Joe Alueta or you will become familiar with Joe Alueta over the course of time.

As far as these resources are concerned, you have, starting from the top, you have the Urban Design Review Board that does review project design such as your Country Town Design Guidelines, design of special management area use permits, and provides recommendations

to this board in your review of SMA permits. The Lanai member currently on the Urban Design Review Board is the chair, Kay Okamoto.

And so, we also have the Arborist Committee that deals more with the, the countywide planting plan, nominating exceptional trees for protection, and they provide, they may provide recommendations to this commission.

You have the Cultural Resources Commission that also may provide recommendations on special management area permits or other permit applications. And the Lanai member currently on the Cultural Resources Commission is the vice-chair, Warren Osako.

You have the other federal, state and county agencies that provide comments to you on various types of permit applications.

Going through the framework on the left side. Of course, we have the state constitution which enables the Hawaii State Planning Act, Chapter 226, Hawaii Revised Statutes which allows for the General Plan and Community Plans to be developed by the county. And then we have, I guess, now part of the General Plan in 2010, the adoption of the Countywide Policy Plan. And we have the 1998 Lanai Community Plan which is – well, we'll be going under the update, hopefully, beginning sometime next year as Kathleen had explained.

We have the state land use law which is Chapter 205, Hawaii Revised Statutes. There are two types of entitlements that come out of this. All the lands are designated into one of four state land use categories – conservation, urban, agricultural, or rural. And if a person wants to, or an entity wants to change the state land use classification then they would apply for a District Boundary Amendment. If it's less than –. If it's greater than 15 acres, then it goes to the State Land Use Commission. Also we have special use permits to allow for certain unusual and reasonable uses in the State ag and rural districts. And if it's more than 15 acres it will come to this commission, and if the commission denies or denies the request then it's denied. But if the commission recommends approval, then it goes to the State Land Use Commission. An example of this is your landfill which went to the Lanai Planning Commission for hearing and recommendation, and then went to the State Land Use Commission for final decision making.

We have the zoning which is enabled under Chapter 46, Hawaii Revised Statutes, and codified in the Maui County Code in Title 19 which is divided into – well, potentially two sections, interim zoning that was created in 1958, but, you know, we are moving towards eliminating or lessening the amount of interim zoned lands that we have. And the comprehensive zoning which sets out the various development standards and uses for each of the zoning districts and the various types of entitlements what we'll be talking about.

And then we have the Coastal Zone Management law which is Chapter 205A, Hawaii Revised Statutes. And from that, you have the Lanai Planning Commission Special Management Area Rules. And because there's a defined map – a map with the defined area which could be called the Special Management Area and that's governed by your Chapter 12-402 of your rules, as well as the shoreline setback area, or shoreline area, which is measured from the shoreline to

up to 150 feet landward. And that's governed by Chapter 12-403 of your rules, and the Planning Commission for the island of Lanai is the final authority on Special Management Area Use Permits and Shoreline Setback Variances. So, but our coastal planner, Jim Buika, I guess, wasn't able to make it tonight, but he'll be coming to a future meeting to talk about SMA and Shoreline Setback Variances, as well as the Sea Grant Agent, Tara Miller, to talk about climate change and sea level rise.

Okay, and then we have the Environmental Statements, Chapter 343, Hawaii Revised Statutes, and the commission may review EA, Environmental Assessment documents, or Environmental Impact Statement documents, EIS.

Okay, we'll talk a little about your involvement with Title 19 on Zoning. Again, this is a slide that we had shown earlier. There's changes in zoning where an individual or entity wants to change the zoning from one zoning district to another, such as R3 to B2, R3 Residential to B2 Business. This planning commission will hold a public hearing and provide a recommendation to the Council. Well, an example on Lanai is that Miki Basin Expansion Project from a couple of years ago where the company wanted to change the zoning to M2 Heavy Industrial. So the commission held the hearing, and the commission made its recommendations to the Council, and the Council is the final decision maker for the change in zoning.

We have the Conditional Permit to establish uses not specifically permitted within the zoning district, but similar, related, or compatible to permitted uses. And in that case, this commission will hold a public hearing and provide a recommendation to the Council. The Council is the final authority. An example of this is shown, is the West Maui Community Federal Credit Union. An example on Lanai was the, I think, the parking lot for, at Manele Harbor where a portion of it was in a Project District, so they got an Conditional Permit. DNLR got a Conditional Permit for that.

We have the County Special Use Permits which is specifically identified as special uses within the zoning district and there are specific criteria that are established. In that case, well, the Lanai Planning Commission would hold a public hearing, and the Lanai Planning Commission is the final authority. An example is if somebody wants to operate a church in a residential zoned area, they need a County Special Use Permit and you are the final authority on that.

We have Planned Developments. This isn't used on Lanai yet, but under – it est – you know, it encourages desirable design and land use patterns, the overall density is maintained and they also have to provide a common open space, a recreational and community facilities. It's a three step process and the commission would review and approve the first two steps because the ordinance has been changed. There's no public hearing required. The example that we have shown is the Puamana Planning Development in Lahaina, outside of Lahaina town.

Of course on Lanai they're very familiar with the Project Districts, which you have two. One at Manele and one at Koele. And it's suppose to provide a flexible and creative planning approach. Rather than specific land use designations, they are established in your community plan. It's a three phase process. In phase one, the commission will hold a public hearing and

make a recommendation to the Council. This is more for the development standards and the uses with the subdistricts. So, you know how Koele evolved it was first the hotel as part of the Project District and several years later they came in for the golf course, Koele golf course, and added that to the Project District. And then several years later, they came in for the residential around the golf course and they added that to the Project District. And similarly that was the pattern at Manele.

And so the phase two, the Commission holds the public hearing, and you approve the preliminary site plan. Say if the company wanted to do an island clubhouse at Manele, then they would come in for an SMA Permit because it's in the Special Management Area, and a Phase II Project District Approval because it is part of a Project District. And this commission would be the final authority on both the SMA and Project Phase II Project District Approval.

And then –

Mr. Ornellas: Excuse me?

Mr. Yoshida: Yes.

Mr. Ornellas: Question. Go ahead.

Mr. Stanley Ruidas: Stan Ruidas, resident. Clayton, on that Special Management Project District at Manele, is the thing – is the – what was I saying – the Project District expired as far as the permit?

Mr. Yoshida: They're talking –. Well, they're different components. They are in, right now, for the time extension for the residential and the multi-family that was approved in 1995, but essentially, you know, it's somewhat dependent on the sales of the lots, which kind of varies depending on this economy. So they are in for a time-extension.

Mr. Ruidas: Okay because I remember, if I remember right, October last month was the time extension, time extension . . . (inaudible) . . .

Mr. Yoshida: Yeah, I believe they applied prior to October so we are processing the time extension request. It will come to this commission for your decision because you're the authority. But it was filed timely prior to the expiration date.

Mr. Ruidas: Okay. I was just wondering because it didn't come up.

Mr. Yoshida: And then we have the Phase Three which is an administrative approval by the Director of the final site plan.

Of course we have the Bed and Breakfast homes legislation, Chapter 19.64 which allows for local business opportunities. In certain areas on Lanai it's up to three bedrooms in two dwellings, and this commission approves the initial permits. Although the legislation is three

years old, we have not received an application yet for a B&B Home Permit on Lanai.

We have your design guidelines. I guess this is your design guidelines. And you all have copies of this that was approved in 1990 – by the – your predecessors, in 1997, and it lays standards for development of properties that are zoning Country Town Business, or BCT. And we had a resolution that was introduced that the commission considered earlier this year about developing – well adopting design guidelines and standards. So that's reviewed by the department. The design guidelines are, well, under the new system, in the 2000 system, the design guidelines are adopted by the Council. The 1997 version was adopted by the commission through your rules. But the Council, in the Country – they did a revision of the 19.15, Country Town Business District, and now updates have to be approved by the County Council. So they come to you, you make your recommendations, and then it goes to the Council and they are the final authority on those.

And then we have Outside Parking Approval if the parking is on another lot within 400 feet, and you are the final approving authority on that. And we use to call them Accessory Use Permits but now we're calling them Use Determinations for uses that are defined in the zoning district that are compatible with the intent of the zoning district, that it would come to the commission for your approval and there's no public hearing on this.

So then we talk a little bit about Environmental Assessments, Environmental Impact Statements, under Chapter 343 as stated earlier. And where you look at environmental, social and economic consequences, allow for public participation, and publications in the Environmental Quality Control Bulletin. There are, for all actions, there are nine triggers. It's divided into agency action such as DOT wants to build a road; or applicant action, Lanai Resorts wants to build – add to, or get a community plan amendment to change the use from, say resident to commercial, by the community plan. There's also an exemption list and there are these nine triggers under the Chapter 343. The ones that the commission would get involved with most directly probably would be the use within the shoreline area. Say they want to build a canoe hale close to the shoreline, they need a Shoreline Setback Variance. They come to this – they have to do an EA and come to this commission. And the amendments to the General Plan which includes amendments to Community Plans such as the company wants to expand, or Lanai Resorts wants to expand the Project District area in the community plan.

So there are, you know, various processes. The Draft Environmental Assessment is produced. There is a 30-day public comment period, and the Final EA is produced and it could be accepted as a Findings of No Significant Impact, or FONSI, and then there's a 30-day challenge period. Also –. If not, if there are significant impacts, perhaps an Environmental Impact Statement will be produced, and there is a process that is identified in the flow chart for that. And it will be accepted, and then there is a 60-day challenge period if it is accepted, or a 60-day appeal period if it is not. And there haven't been many Environmental Impact Statements review, like, I think the last one I remember, on Lanai, was probably Manele Residential, but that was the Maui County Planning Commission back in 1990.

You do review a lot of, well, Environmental Assessments that are done for public projects like

the Lanai School Master Plan for the Department of Education, the Lanai Community Health Facility. So, you know, in terms of Environmental Assessment versus Environmental Impact Statements we're looking at significant adverse impacts, mitigative measures, and also alternatives. And we're looking at all phases of the actions, the types of impacts, and the significance criteria. So we're looking at primary versus secondary impacts; regional – it could be regional versus site specific impacts; short term impacts versus long term impacts; cumulative impacts resulting from the incremental impact of the action when added to other past, present and reasonably foreseeable future actions.

And then these are the significance criteria that are listed in the state statutes that they reviewed as to whether it would have a significant adverse impact. And there are key words. Also, there are quantifiable measures as well as qualitative measures such as for traffic is a quantifiable measure in terms of level of service or noise measured by decibels. But there are qualitative impacts such as the protection of scenic vistas or aesthetics. And there are mitigative measures, best management practices to improve the level or – improve the level of service or reduce the level of significance. And we have alternative analysis, looking at potential impacts, and then preferred alternative which is the least detriment effect on the – has the least detrimental effect on the environment. And the listing of alternative methods.

So any questions from the commission members? I think you'll get more into it as we get into the specific applications, but this kind of provides a broad framework. Again, sometimes you're serving in an advisory capacity, sometimes you're – such as the zoning change – and sometimes you are the final decision making authority. And things like contested cases and so forth that Michael talked about will kick in, or could kick in, at that stage.

Mr. Ornellas: Any questions for Clayton? No? Members? Go ahead.

Ms. Stacie Koanui Nefalar: Who provide the –? Who determines the impacts?

Mr. Yoshida: The impacts. Well there's typically an accepting authority for the documents. Basically the – the way it's done is the applicant produces the document. In the case of agency actions, say DOT does a new road, they would produce the environmental document, have it go through the public review, do the final document, and they would have it – in case of the EA, they would accept their own document. In some of these other cases like the environmental assessment for shoreline setback variance, like they want to build a canoe hale in the shoreline area, that's the, the commission is the final authority of the shoreline setback variance. So the commission will decide on whether to accept or not accept the environmental document whether it addresses the criteria and the mitigation in the – that's required.

Ms. Ornellas: Go ahead. Director?

Mr. Spence: I think part of the reason this commission is a reviewing body for so many EA's and EIS's and maybe not so many EIS's because there aren't many that come to this island. But one of the reasons that you're a reviewing body is because you have special localized knowledge of the island that other people will not. So in like Clayton's example if DOT wants

to build a new roadway, you're gonna know things about that route that DOT is not, that will not show up on their own traffic studies or whatever kind of studies they do, archaeology or something. And so you will have that comment thing, capacity, to say, well, your study doesn't consider this, or this or this. You know, there's arguably – people argue back and forth on who should be accepting agencies, why should like DOT be their own accepting agency for their own document. Of course there's no impact. You know, we get funny looks about that all the time, and we sort of wonder about it ourselves. So when you're the accepting agency, you're gonna look at, you will have had a chance to review the documents, comment on it, and then they have to address those comments. So, and then ultimately you will be the one accepting saying they addressed the comments to my satisfaction or they did not.

Mr. Ornellas: Okay. Thank you Director. Clayton, do you have anything else? Did you forget something?

Mr. Yoshida: No. We'll have – again, we'll have a workshop on the SMA and shoreline area rules at a later date.

Mr. Ornellas: Alright, thank you very much. I think, no. 19, Chapter 343, you just covered.

Mr. Yoshida: Yes.

Mr. Ornellas: Okay, so the next up is the Director's Report?

F. DIRECTOR'S REPORT

1. Approval of 2013 Meeting Schedule

The Commission may take action to accept or modify the proposed meeting schedule.

Mr. Yoshida: Yes. We have circulated the proposed 2013 meeting scheduled which will be the third Wednesdays of the month. So we typically meet here, unless it's a very hot item than we might meet over at the cafeteria.

Mr. Ornellas: Yeah, commissioners, any comments on the schedule?

Ms. Barfield: Just one concern, November 20th, that the Wednesday before Thanksgiving, so –. Oh, no, Thanksgiving is the 28th.

Mr. Yoshida: Well I think the Thanksgiving is the 28th. The fourth Thursday of the month is the Thanksgiving. It just happened that this year was probably the earliest that it could happen, the 22nd was Thanksgiving. And probably the commission meeting in November was probably the latest that it could happen on the third Wednesday which is the 21st. So it's just by coincidence the meeting date was Thanksgiving Eve.

Ms. Barfield: Okay, another one would be May 15th, for me anyway. That's the Wednesday before graduation so I don't know if it will impact anybody, but I know for me, it will.

Mr. Ornellas: Okay. When we get – when we get closer the May – we get closer to that day, I mean, we can change, we can change the date as we get there. Yeah, like, if May 15th is a problem, then on the April 17th meeting we can discuss that and change the date to maybe something later, or something sooner, so this, this is not etched in stone. No? Yeah, go ahead.

Ms. Kern: . . . (inaudible) . . .

Mr. Yoshida: Kathleen, you have to use the microphone.

Ms. Kern: For your information, we polled CPAC members as to what dates of the week – days of the week they would be available for meetings, and Wednesdays night is the best day of the week for CPAC members as well. So we've – you know, we're actually as we – at the office we're looking at trying to schedule – looking at dates, and we're trying to avoid Planning Commission dates certainly. But just that there, you know, we may be having meetings on Wednesday nights as well.

Mr. Ornellas: That's fine. We can – we can – who knows, we went six months without a meeting, so it might another six months before we have another one, so we can work around it. We can, I mean, we're flexible.

2. Report from Commissioners Attending the 2012 Hawaii Congress of Planning Officials (HCPO) Conference, September 12-14, 2012, Ko Olina Resort, Oahu

Mr. Yoshida: The next item was I guess if some of the members did go to the Hawaii Congress of Planning Officials Conference at the Ko Olina Resort.

Mr. Ornellas: Can we go back? As it says the Commission may take, may take action. Do we just want to ride this out, commissioners, or what's your feeling? Let's not put it in – let's not etch it in stone, but just let it ride out. Any problems with that? No? Okay, we'll just ride it out then. Then up is the people who attended the 2012 Hawaii Congress of Planning Officials, HCPO Conference, at Ko Olina. Who went to that?

Ms. Castillo: I did. I was the only that went because David wasn't able to go, and it was interesting to see all the development that happened in Kapolei. And it's almost kind of a second, second Honolulu now.

Mr. Ornellas: Did you bring back any materials, reading materials, from the conference?

Ms. Castillo: The only one that they had provided are the catalogs that they had in there. I didn't bring it with me this time.

Mr. Ornellas: Alright. Well, thank you for going. I hope you had a good time and learn something.

Ms. Castillo: . . . (inaudible) . . .

Mr. Ornellas: Yeah. Clayton, that would be also something maybe we should have too is the upcoming conferences that people, the commissioners, can attend. Is there something available to that effect?

Mr. Yoshida: Well, we try to send, you know, a mixture of board and commission members, as well as staff members, depending on budget constraints. So typically once the host department comes with its package, then the management of the department sits down and portions the – how many they can invite from the different divisions, as well as the different boards and commissions. But this – well, next year, it will be hosted by the Hawaii County Planning Department, like around – it's probably, it's normally held in the fall. September has been a popular month because it's right after Labor Day because then it's a slower period for the hotels so they can probably can get better room rates than during the peak seasons.

Mr. Ornellas: Is a – how many conferences a year do – come up? Two? Three a year that come up that the members are able to attend?

Mr. Yoshida: Well, I think we primarily program for this HCPO Conference because, you know, are kind of meeting with your peers fellow commissioners, from the different counties as well as the state boards and commissions, like the State Land Use Commission, the State Land Board. But as – you know, depending on budget constraints. Again, as opportunities become available, you know, we may offer them to the, to the commissioners – again, the commission – depends how our budget does.

Mr. Ornellas: Alright, great. Thank you Letty for your report. Let's go to no. 3, Open Lanai Applications Report.

3. Open Lana`i Applications Report

Mr. Yoshida: Yes, we have submitted a list of Open Lanai applications. If there are questions, again – if there are questions.

Mr. Ornellas: Commissioners, anybody has any questions about the list of open projects?

Mr. Green: I have a question.

Mr. Ornellas: Go ahead Mr. Green.

Mr. Green: Perhaps it's something different, but I was talking about the Oracle Team USA temporary facility at the harbor. There was, I don't know if it was an environmental assessment

or an environmental impact statement study that was sent around, and that was on our agenda for a meeting and then it was withdrawn. Is this still –?

Mr. Yoshida: Yeah, I guess –

Mr. Green: Is this active?

Mr. Yoshida: No. It should be closed. I guess the company felt they didn't have enough time to, you know, prepare, – prepare the boats and things for the use of Kamalapau Harbor.

Mr. Ornellas: Okay. I was gonna ask that question also. So, so, if the process – if Ellison group wants to do it again, to prepare for the next America's cup because that was the kicker for this stuff, they would have to start from square one. They can't, they can't just jump in and –

Mr. Yoshida: Yeah they would –. Because it's the use of state lands, which is a trigger for an environmental assessment, they would have to comply with Chapter 343 before they could get any kind of permits. So, yeah, they would have to provide another updated environmental assessment – a new environmental assessment.

Mr. Ornellas: And that would come through the county.

Mr. Yoshida: It may come to the county for comment. We may suggest as we have in other instances that they also consult with the Planning Commission as we did with the DOE on the Lanai School Master Plan because that's pretty much only school on the island.

Mr. Ornellas: Okay. So this – so then in our next meeting, this will be taken off?

Mr. Yoshida: Yes.

Mr. Ornellas: Okay.

Mr. Yoshida: It will be closed off. Withdrawn. Because they withdrew their permit. They're not going to do their project as planned.

Mr. Ornellas: Any members have any questions for Clayton concerning the projects? Hearing none, let's go on to –

Mr. Yoshida: I guess Commissioner Aoki had a comment.

Mr. Ornellas: Oh, I'm sorry. I'm too far down.

Ms. Joelle Aoki: Sorry Mr. Chair. I have a question. When it comes to an EIS that is presented to the County of Maui, how – is there a process that the County of Maui utilizes to verify the validity of the information provided in the EIS? So how – how does the – because a lot – there's a lot of – there's science in the information, there's research in the information, there's input in

the information that's provided in the report. Does the county have any kind of method of verifying the validity of the EIS?

Mr. Yoshida: Well, it's probably circulated to more than one department within the county, and each has its own purview. Say, Public Works has purview of planning, environmental management and so forth, so they probably could comment on their purview and hopefully collectively, you know, they could comment on various aspects of the information that's provided.

Ms. Aoki: Thank you.

Mr. Ornellas: Thank you Joelle. Anybody else has any questions? Okay, let's move on to –

4. Agenda items for December 19, 2012 meeting

5. Scheduling of the public hearing on Council Resolution No. 12-111 relating to the Duration of Conditional Permits

Mr. Yoshida: Okay our next meeting is scheduled for December 19th. At this point in time – and that's three weeks away – but we don't have any agenda items, firm agenda items, for that meeting.

Mr. Ornellas: Would you like some?

Mr. Yoshida: Within the purview of the commission.

Mr Ornellas: Yeah, okay. I have some ideas. Would this be the correct time to give you those ideas?

Mr. Yoshida: You can present, I guess, you can present your ideas.

Mr. Ornellas: Okay. First of all, I'd like to invite Kurt Matsumoto to the December 19th meeting. He's the new COO for Lanai Resorts, LLC. It's just a, you know, to share his vision. I mean, yeah, he's only gonna to be – been here for a few weeks, but he is a Lanai boy, but, you know, just share, share his vision and what he thinks. And we'll get the chance to get to meet him again.

And then also John Stubbart. I'd like for him to show up. He's the Director of Water. And I'd like him to present – I'd like for him to give a short explanation of the periodic water report which I don't think most people get. But it is posted throughout the city. Me being an LWAC member gets this, and it's very – but I would also like John to go through and explain each, each column to us so we become more familiar with the process here on Lanai for water. And – there was one more thing for the water – yeah, that's kind of what I'm looking for, for John Stubbart is to give us a workshop on the water, the periodic water use form. I don't know if you guys get a

copy of that. It goes to the Department of Water Supply.

Okay, and I also want – I'm gonna ask John to provide the Planning Department, a copy of the periodic water report from Lanai. And I want that to be part of the packet that we get so that way once he provides us with the information as far as how to read it, read the form, then we, as members, would be able to take a more of, more of a understanding as far as our water. Because it doesn't look like LWAC is going to go through. It's in the – it's back to the water – the water –. Go ahead Director.

Mr. Spence: Thank you Mr. Chairman. We can certainly –. I know at some of other commissions we provide regular information just like we provide like this list of open applications. Perhaps we could provide that the water use information just as part of your packet. It wouldn't – as just general information, there would be nothing for the commission to act on, but just for knowledge. And actually that's –. I'll just give you an opinion. I think it's preferably for the commission to receive that information directly because ultimately when there are applications that use water on the island, you would be the decision making body. So we could, we could, I think we could start including that information.

Mr. Ornellas: I'll have that conversation with John Stubbart.

Mr. Spence: Okay.

Mr. Ornellas: And see if we can – at least he can just send you copy and then you guys can put it out. I mean, plus it's gonna be on the website too, right? So that would help.

Mr. Spence: Yeah. We could do that. As far as the other people, we can invite them. You know, we can't make them show up, but we'll do our best.

Mr. Ornellas: Okay. And I will talk to John about that because in previous meetings John said, "I'll be more than happy to come."

Mr. Spence: Great.

Mr. Ornellas: "But I don't want to be a part of LWAC."

Mr. Spence: Okay.

Mr. Ornellas: So we'll see what he says now.

Mr. Spence: That would be fine.

Mr. Ornellas: Okay. And I'll let you know.

Mr. Spence: Okay.

Mr. Ornellas: Okay. So, and then the fifth item, scheduling a public hearing on the Council Resolution 12-111 relating to the duration of conditional permit. Now, I don't see any reason why we can't do it on the 19th.

Mr. Yoshida: Well, we have a do a notice of public hearing published 30-days prior to the hearing, so we're looking at possibly the January 16th meeting.

Mr. Ornellas: Okay. Alright. Okay, and I guess we can move Kurt Matsumoto and John Stubbart over to the January meeting too because you guys are not gonna allow just one person to sit here and talk stories with us. Make it an official meeting. So, can we do that? Clayton? Director? Put these information on for the January meeting, the agenda?

Mr. Spence: We can certainly try that.

Mr. Ornellas: Yeah, we can kill three birds with one stone.

Mr. Yoshida: Well, yeah, we can try to contact these –. Or you're gonna contact these people?

Mr. Ornellas: I'm gonna talk to them. And Kurt, I rather have a – I'd rather have an official letter from the Planning Department. I'd rather have that come from us guys as a whole to come and sit.

Mr. Spence: Okay. Or on behalf of this Lanai Planning Commission.

Mr. Ornellas: Yes, on behalf of the Lanai Planning Commission. Right. As far as the water and all that stuff, I can go talk to John about it.

Mr. Spence: Okay. Do you want to work with Mr. Yoshida on some of the details?

Mr. Ornellas: Sure.

Mr. Spence: Staff will put it and format it in the letter for me to sign.

Mr. Ornellas: Okay.

Mr. Spence: And because of notification requirements, I think like Clayton saying, it may not, it's probably not – if you want to do that public hearing, it's probably not going to be on the next agenda.

Mr. Yoshida: Yeah, we're looking at January 16th.

Mr. Spence: Yeah.

Mr. Ornellas: He said he needed 30-days, and 30-days is already expired.

Mr. Spence: Yeah. Right, we – and that's by law. We need 30-days notice.

Mr. Ornellas: Sure. That's fine. Then we'll schedule it for the January meeting.

Mr. Spence: Okay.

Mr. Ornellas: The public hearing.

Mr. Spence: Okay.

Mr. Ornellas: Any comments from the commissioners about what we just discussed? Any ideas? Any comments? No? Okay. So it looks like the, the next meeting, December 19th, 2012 may not happen.

Mr. Yoshida: That's a strong possibility. If we don't see you before then happy holidays.

Mr. Ornellas: Alrighty. Then if there's no objections –. Is there any objections on closing the meeting?

Ms. Castillo: . . . (inaudible) . . .

Mr. Ornellas: Any objections? Meeting's closed.

G. NEXT REGULAR MEETING DATE: December 19, 2012

H. ADJOURNMENT

There being no further discussion brought forward to the Commission, the meeting was adjourned at approximately 8:20 p.m.

Respectively submitted by,

LEILANI A. RAMORAN-QUEMADO
Secretary to Boards and Commissions II

RECORD OF ATTENDANCE

PRESENT:

Joelle Aoki
Shelly Barfield
Leticia Castillo
David Green
Stacie Koanui Nefalar
John Ornellas
Gerald Rabaino (from 6:00 p.m. to 6:25 p.m.)

EXCUSED:

Priscilla Felipe
Stuart Marlowe

OTHERS:

William Spence, Planning Director
Clayton Yoshida, Planning Program Administrator, Current Planning Division
Kathleen Kern, Staff Planner, Long Range Planning Division
Mary Jorgenson, Staff Planner, Long Range Planning Division
Michael Hopper, Deputy Corporation Counsel, Department of Corporation Counsel