

**LANAI PLANNING COMMISSION
REGULAR MEETING
APRIL 17, 2013**

APPROVED 05-29-2013

A. CALL TO ORDER

The regular meeting of the Lana'i Planning Commission (Commission) was called to order by Chair John Ornellas at approximately 6:02 p.m., Wednesday, April 17, 2013, in the Lana'i Senior Center, Lana'i City, Hawaii.

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

B. INTRODUCTION OF NEW MEMBERS - Kelli Gima, Bradford Oshiro, and Beverly Zigmond

Mr. John Ornellas: Alright. It's now 6:02. Okay, I call to order the April 17, 2013 Lanai Planning Commission meeting. I also want to introduce our new members on the commission. Ms. Kelli Gima. I'm glad to see a younger, younger, real young. Okay. Yeah, we have a lot more women on this board. Brad Oshiro. Brad, I guess this is your second time on the Planning Commission? Alright. Well, hopefully, hopefully you bring a wealth of knowledge to us. And then also for the second time is Beverly Zigmond. Welcome aboard. We – I look forward to –. Oh, and also, we haven't seen her a while, Priscilla Felipe. Yeah, that's what she looks like.

C. ELECTION OF OFFICERS FOR 2013-2014 COMMISSION YEAR

- 1. Chair**
- 2. Vice-Chair**

Mr. Ornellas: Alright then we're gonna go straight into C, election of officers for the 2013-2014 commission year. Can I have, can I have nominations for chair?

Ms. Beverly Zigmond: Mr. Chair?

Mr. Ornellas: Yes sir. Yes, ma'am.

Ms. Zigmond: Thank you. Even after that huge faux pas, I would like to re-nominate you for chair.

Mr. Ornellas: Thank you for your confidence. Can I have a second?

Mr. Stuart Marlowe: Second.

Mr. Ornellas: Second by –

Mr. Marlowe: Second.

Mr. Ornellas: Second by Stuart Marlowe. Anybody else? Hearing none, we'll close the, we'll close the nominations for chair, and we'll, I guess, since there's nobody else then –. I refuse. No. I'll, I'll accept. Thank you.

Ms. Zigmond: Do we vote?

Mr. Ornellas: No, there's nobody else. Use the microphone. I open the floor up for nominations for vice-chair.

Ms. Zigmond: Chair?

Ms. Joelle Aoki: Chair?

Mr. Ornellas: Beverly?

Ms. Zigmond: I'd like to nominate Stacie.

Mr. Ornellas: Thank you. Stacie.

Ms. Aoki: Mr. Chair?

Mr. Ornellas: Yes, ma'am?

Ms. Aoki: I would like to nominate Shelly Barfield for vice-chair.

Mr. Ornellas: Thank you. Anybody else? Seeing none, we'll close the nominations for vice-chair. So Shelly Barfield and Stacie Lee Koanui – Koanui? – Koanui Nefalar. Boy, that's tough. So let's – we'll, we'll take a vote here for Shelly Barfield. All in favor, raise your hand. Yes?

Ms. Aoki: . . .(inaudible) . . .

Mr. Ornellas: Okay, do you two accept the nomination? I guess the answer is no. Yes, okay, to both of them, so moving on. All those in favor of Shelly Barfield being vice-chair raise their hand. Higher. There's three. Okay. That's three for Shelly Barfield. All those in favor of Stacie Lee raise their hand. Stacie, I'll vote for Stacie. So it's four, three, Stacie is the new vice-chair. Did everybody vote? Okay, somebody didn't vote. Alright, let's go back. All those in favor of Stacie being –. I'm sorry. All those in favor of Shelly, raise their hand.

Ms. Aoki: Excuse me Mr. Chair I have a question. Is the chair allowed to vote?

Mr. Ornellas: In a tie.

Ms. Aoki: James?

Mr. James Giroux: Yeah, for this purpose the chair voted because the amount of votes that

were available, so –

Ms. Aoki: Okay, one more question then James, please, just for everyone's knowledge, to clarify. So in the case that, whomever is voted in as vice-chair, would that vice-chair have voting privileges as well?

Mr. Giroux: Yeah.

Ms. Aoki: Thank you.

Mr. Ornellas: Any other questions? Alright. All those in favor of Shelly Barfield being vice-chair raise their hand. Higher. Three. All those in favor of Stacie raise their hand. Four. Stacie is the new vice-chair. Thank you very much. Oh, we need five? Stacie. Is that good?

Ms. Aoki: Mr. Chair, for the record please call the vote again. I mean, repeat what the number the vote was for the recording please.

Mr. Ornellas: Okay it's five for Stacie, three for Shelly, and one abstain. Okay.

After nominations were taken and discussion ensued, the following were elected: John Ornellas as Chairperson and Stacie Lee Koanui Nefalar as Vice-Chairperson for the 2013-2014 year.

D. RESOLUTIONS THANKING OUTGOING MEMBERS - Leticia Castillo, David Green, and Gerald Rabaino

Mr. Ornellas: Boy, I'm already tired. Alright, let's go on to D, resolution thanking outgoing members, Letty Castillo, David Green and Gerald Rabaino.

Mr. Clayton Yoshida: Thank you Mr. Chair, members of the Lanai Planning Commission. We have various resolutions thanking the outgoing members, Gerry Rabaino, Leticia Castillo and David Green. Letty and Gerry served on the commission for five years, and Gerry was chair for two years. And David served on the commission for four years. The Mayor has written a congratulatory letter as well as a certificate, a framed certificate that will be presented to the outgoing members, and we would ask that the commissioners sign, or the people who were on the commission last year, sign the resolution and we will forward it to the outgoing members as well as the Mayor and Gladys Baisa, the Council Chair. So, if you could sign those and we will present the – they'll be presented with the letter from the Mayor and the certificate.

We also have in our audience our Director of the Department of Public Works, David Green. I mean, David Goode. David Goode. Too many David's. David Goode, who's gonna be participating in a training workshop. And we have John Stubbart here from Lanai Resorts to talk about the communications, well, be a resource person on the communications. And we have to end the meeting by 8:30 because we have to take off by nine because the pilot needs

his sleep. He's doing a charter for the judiciary early tomorrow morning.

E. APPROVAL OF THE MINUTES OF THE JANUARY 16, 2013 MEETING

Mr. Ornellas: So you done?

Mr. Yoshida: Yes.

Mr. Ornellas: Thank you. Thank you Clayton. Alright, let's move on to E, approval of the minutes of the January 16, 2013 meeting.

Ms. Zigmond: Mr. Chair?

Mr. Ornellas: Yes, ma'am?

Ms. Zigmond: I have corrections. Would you like them now?

Mr. Ornellas: Yes.

Ms. Zigmond: And Leilani, in the future, I'll e-mail them to you ahead of time like we used to do. And I want to say, I'm still amazed at what an outstanding job you do. I think it's all magic. Okay, on page 15, there are several instances of the word, "fisher," and it's spelled F-I-S-H-E-R-S in the minutes, but it should be F-I-S-S-U-R-E, I believe. Page 20, about midway through, Ron is speaking of watering, I think it should be ornamental trees. It says decramental. Is it ornamental? Okay. Page 28 and 29, there are instances of the word basal. It's B-A-S-A-L, not B-A-S-I-L. And since I wasn't here for context that's all I have.

Mr. Ornellas: Anybody else have any questions about the minutes from the January 16th, 2013 minutes? Yeah, I know. Yeah, you're right. Okay, so can I get a motion to, with the – can I get a motion to pass the minutes as corrected?

Mr. Bradford Oshiro: I'll do it. I make a motion to accept the minutes.

Mr. Ornellas: Second? Anybody else is gonna give me a second?

Ms. Aoki: I second the motion Mr. Chair.

Mr. Ornellas: Thank you. All in favor? Nays? Approved.

It was moved by Commissioner Bradford Oshiro, seconded by Commissioner Joelle Aoki, then unanimously

VOTED: to approve the January 16, 2013 meeting minutes with the corrections.

F. Workshop on Permitting 101 (Permits issued by the Department of Public Works such as building, grading, electrical, certificate of occupancy, etc) - Department of Public Works

Mr. Ornellas: Okay, let's go to F, workshop on permitting 101. Permits issued by the Department of Public Works, such as building, grading, electrical, certificate of occupancy, etc., Department of Public Works. Alright, Dave, thank you for coming.

Mr. David Goode: Good evening, everybody, Mr. Chair, members of the commission. It's my pleasure to be here. My name is David Goode, Clayton. I've been called a lot of things but I've never been called Green. I'm the Public Works Director for the County of Maui and I was asked to come, maybe, three or four months ago. So we're waiting for quorum. Glad to have a quorum and the new members here to this presentation. And I wasn't sure exactly what the commission might be looking for, but we'll give a general overview of what our department does. And specifically what it does is relates to, to permit, permit activity.

There's a handout going around that's copies of all the slides I'll present. There's places where you can take notes along each slide. Also, there's a handout of a good and intricate details on how to use our online permit viewing which it was so well put together it was pointless for me to try to recreate it in the presentation. And then finally the last handout is a two pager as it exactly comes from our building code as to what types of projects are, are exempted from the building code. And it's two pages long, so again, rather than trying to put it in the presentation, which I'll highlight some of those, but it hasn't exactly. . . (inaudible) . . . of all of them.

Okay, can everybody see this okay? You've got your stuff in front of you? Okay, the Department of Public Works has three divisions. And it's actually a great name, Public Works. And sometimes people ask me "what do you do?" "What kind of works do you for the public?" And Public Works throughout, throughout the country just does all types of activities, almost always regarding roadways, not always regarding building permits, but sometimes. Some jurisdictions do parks. For Maui County, we're in charge of all the county roads and county drainage facilities. And we also – so we engineer them, we design them, we walk through our building subdivisions to make sure the roads are build properly so we can accept them. We then own those roads, and we also maintain the county drainage facilities. We have a number of retention basins, drainage ways, concrete lines, stuff mostly on Maui, and a couple of federally built flood control channels - Kaunakakai, Kohoma, and Iao. So those are the type of activities Public Works does in Maui County.

And our third division – well, engineering designs a lot of stuff, highways maintains it – and the third division is called Development Services Administration (DSA). For us old timers you might remember LUCA, Land Use and Codes Administration. It's now called, it's been called DSA for quite a while. And we handle all kinds of permits within DSA.

Alright, let's see if I can get this. Do it the old fashion way. Hang on. Okay, so DSA, these are the types of permits that we issue within DSA. So we have building. You know, anytime you

do a structure you pretty much need a building permit. Plumbing, obviously for plumbing, it's also called plumbing and gas, technically, so if you had a gas line. Electrical permits. Grading, also known as grading and grubbing. So if you're moving earth, or you're taking out vegetation, you may be required to get a grading permit. Work in the right-of-way. This is our roadways, and if someone wants to connect, say the water line, that means you've got to dig up our road, you have to get permits to do that because we want to make sure you put it back properly. And then you have traffic control so that you don't hurt people.

Driveway, so a driveway is typically in the county right-of-way up to the property line. It has to be built to certain standards. And subdivision – so if someone is interested in subdividing or consolidating parcels they come to us to coordinate that process and eventually issue the final plat which then creates new lots.

So I'll be going through each of these. And I don't know Mr. Chair, if you want to have questions at the end of each one of these or maybe ask at the end of the whole presentation?

Mr. Ornellas: Yeah, we'll wait until the end of the presentation. Members?

Mr. Goode: Okay, so when is a building permit required? Basically you can do anything with a structure. So this list shows, I mean, if you're constructing, if you're destructing, if you're altering, if you're changing the occupancy of a building – and for us occupancy under the building code is – so if you're changing from an office to a hospital type use, it's a change of occupancy and that's under the building code. You need to have to first come to the building official and obtain the required permit. And I'm officially the official, but I don't review the plans. We have the staff that does that. So if you – so it's often times people ask, well, do I really need a permit? Right, if I'm doing something really small, do I really need a permit for that? If I'm painting my house, do I need a building permit? No. Okay. But if you're changing out windows you might.

Okay, so let's go through some of the commonly exempted things. Now in your handout has the two paged list, I think there's 28 separate items that are specifically exempted. One-story detached accessory buildings used as storage sheds, playhouses or similar uses not exceeding 120 square feet. So often times like a shed could be 10 by 10. Okay, it doesn't need a building permit. It still may require Clayton's department to make sure it meets setbacks. Alright, so how far it's set back from a building, your neighbor's property. Okay, so it doesn't need a building permit.

Mr. Ornellas: David, excuse me, can I make sure everybody's cell phones are off or vibrate. Robin, I mean, everybody.

Mr. Goode: Thanks Chair. Ag buildings are a little different. So if you're in the agricultural district, you can have up to 200 square feet in floor area, so long as it's not a dwelling. So it's like a storage shed or horse barn, small though. Moveable cases, counters and partitions not over five feet nine. So if you're adding cabinets like these over here, it doesn't need a permit. A partition is often an office space and so five foot nine is the magic number. If it's over five foot

nine or the surface goes all the way to the wall, it's needs a, you need a permit. Five foot nine, however they determine this I'm not certain, but it allows for adequate ventilation because typically in a building like this you may have ventilation systems, your airs gotta circulate, people need to stand on their tippy toes and see if there's a fire or something like that.

Retaining walls, so long as it's not three feet or less of retaining earth, so if it's retaining more earth than that, typically it needs, it does need a building permit, and it's usually stamped by a constructional engineer to make sure it doesn't fall down. So you can build a small wall, two feet high of retaining earth doesn't require a building permit.

Fences up to seven feet. In our recent change in the building code last year we went up to six feet to seven feet, and this helps in a lot of cases especially the pre manufactured fencing that comes at six feet. You know, if your lot slopes a little bit, it's really hard to keep it at six feet because you kind of go like this. And if you measure it from the ground there might be one spot that's like six foot three. And believe it or not we had neighbors who had all kinds of beef with each others, they bring it to us and they squabble over their six feet, so we moved it to seven feet. It's perfectly fine and safe. Eliminates a lot of headaches for us too.

This is a good one – repairs. So you can do what's called repairs, so you're fixing something that's broken. You're not adding, you're not changing out, you know, from one window to another one. But you could have dry rot wall, you could have some termite damage. But you can do up to \$5,000 worth in any 12 month period without a permit.

Temporary construction. So yeah this is job site, you need a tool shed or you need an office trailer. Temporary tents. This came up – there's a lot of non profits, they have a big function and they've got a whole big, the big tents, they need a building permit before. And often times, they need the building permit like the day of the event and so it's a big humbug. So as long as you have a tent up and down in like 72 hours that doesn't need a building permit. If it's a large tent, it might need a permit from the Fire Department to make sure it's not flammable. If it's up over 72 hours it needs a permit.

State and Federal projects. So if it's a project done by the State or Federal government, they can basically write us and ask or tell us we're not gonna pull a building permit. So they have that ability. They don't always do it, but they often do it. So, actually I'll can pull up an example later for Lanai High & Elementary where they did pull permits. Sometimes they don't. And the reason being primarily is that, you know, they hire architects to design the plans. They have their own inspectors. So typically DAGS has inspectors, the Federal government has their own inspectors, they don't need our inspectors. And the other half of that actually was on DHHL lands and state conservation zoned lands, building permits are not required. DHHL typically wants their leasees to get building permits. So they have the power to exempt, but they don't always exercise it. And then we finally see the handout of the complete list. So that just tells you, even though certain activities will require a permit, there's a lot of specific exemptions. So you might see work going on from time to time, it may not need a permit.

We actually have two building codes. One is called – and they're both adopted in March of last

year – they're the 2006 International Building Code and the 2006 International Residential Code. International Building Code is kind of hierarchy. It's the mother of the codes if you will. Residential Code is primarily for single-family and duplex dwellings. So if someone is designing a building can design a house under either code. They can't design a commercial building under the residential code. And primarily, it's – residential is a lot easier. You have a lot less agencies that review than commercial. There's a lot less stringent requirements. You can imagine the code requirements for a hotel or a hospital, is a lot of more stringent than for residential.

And so this last part about reviewing agencies, apparently, as being the next slide. I won't be testing on this. But what's important to note is that the plans come in to our department, then to DSA. And we ask first, if they've ever submitted for a building permit. Actually, a show of hands, who's submitted for a building permit? A couple. Okay, so you didn't submit one plan, right? There's like six plans or eight plans or whatever it is. That's because they go to all these different agencies simultaneously. So we review for the building code. Our review is it meets the building code. We also look for the driveway type thing. The Fire Department will get their own set, and they review for the fire code. We send a set to the Planning Department on most permits, and they're gonna look at it for their zoning requirements. They might look at it for flood requirements or SMA. We send it to Wastewater for sewer. We send to Water Department for water. All these agencies there's kind of a loop here. We don't issue the permit until every body says yes. Okay, so you might get a yes from us on the building code side, but you're not done with fire. Or maybe there's some issues that you've got to workout and fix the plans. So until all the agencies has said yes, then we say, call up and say, it's ready, come pick it up. Pay your permit fee and come pick it up. So we're what we call the central coordinating agency. We coordinate the activities and we issue the permit, then we review for just the building code portion, but not the other codes. That's done by the other departments.

Okay moving on to Plumbing and Electrical. Basically almost all work requires electrical and plumbing permits. We also require in those two specialties be done licensed contractors and journeyman, journeyman electricians and plumbers. So a general contractor who doesn't have those license, theoretically, is not suppose to be doing the work. That's a State law, it's not a county ordinance.

We follow the Uniform Plumbing Code (UPC) 2006. That was adopted in April of last year. And we follow the International Electric Code (IEC), also, the 2006 version which was adopted, I think, in 2010. And these permits are actually issued through our electrical and plumbing sections. They're pretty straight forward. Usually the contractor applies for them after the building permit is received. They go down, they get their electric and plumbing permits. Our code requires an issue within 30 days, and they vary. You can usually get a permit in like two days to a couple of weeks. Three weeks if it's a complex project. So those are typically done the electrical contractor and it's pretty straight forward.

Inspections are done by our county plumbing and electrical inspectors. I don't know if I mentioned it on building, but on building, we have our building inspectors. Our inspectors come to Lanai, and admittally not very often. So while we're on the subject of the inspectors I got this,

this morning. Our building inspector makes a regular inspection on the third Wednesday of every month. Electrical and plumbing come on the second Tuesday of every month. We usually have at least one to two of each those disciplines come out during the rest of the month on a contractor request and there are specific items in our budget to allow for them to make special requests and then pay for the added cost to take a boat and a small per diem. So that's how the inspections work.

Mr. Ron McOmber: . . .(inaudible) . . .

Mr. Ornellas: Excuse me, Ron, can we wait until after, please? Thank you.

Mr. Goode: Good question, we'll get to that. So that's how our inspectors work. I think that covers, covers plumbing and electrical. And we have exemptions too. Same kind of things, State and Federal projects, DHHL, conservation lands. For plumbing if you're just replacing a toilet, you can do that actually now without a permit under the new code. Under the old code you couldn't. So the basic rule of thumb in plumbing at least is if you're working on a fixture and you're staying on the fixture side of the valve and not replacing the valve or going into the copper or other plumbing, you don't need, you don't need a plumbing permit. And electrical has a handful of exemptions as well.

Okay, grading and grubbing. Basically if you're excavating or you're filling, you're temporarily storing material – often on times on job sites, you might see a big pile of dirt for a while, depending on the size of that pile, you might need a grading permit. A grubbing permit is any time, it's basically, I think it's one acre or more. If you're removing the vegetation it requires a grubbing permit, and we'll get into those. So a grading permit, any project over 100 feet cubic yards of fill or excavation or both. And that requirement gets tighter in the SMA district. So if you're working in the SMA district – I think everybody here knows that is. So basically near the shoreline – it's 50 feet cubic yards or if you're going down two feet then it would trigger the need for a grading permit. Our grading permit requires a plan. It requires approval. They have SHPD review because you're into the ground. You have the potential to disturb archeological and cultural remains or assets. The – and then we have best management practices, which typical best management practices includes – you see dust fence, you see silt fence. That's the low fence along the edge of the property that help the rains to keep muddy water from entering the roadway or drainage way. And then we have other things can get more complicated like some projects if it's actually in a really windy area, we have, you have temporary sprinklers set up around the site that mists the site. They have large rocks that go in and out of the site so when truck tires go in and out of the job site it takes the muds off the tires. Often times the job site needs to be re-grassed before having that spray on – forgot the name of the stuff – that mulch that stabilizes the area. You know, they might disturb it again. Those are all typical best management practices that have to be approved by our department, our engineers, prior to initiating work. We also make sure, especially if we're doing roads that are gonna be dedicated to the county that those roads are tested as they're built that they meet compaction, they're strong enough. That the asphalt that goes on there meets a certain quality. And then we have another set of inspection staff, our county construction inspectors. And our construction inspector basically comes out here on a as needed basis. So as the need arises,

whether it's a – we got a call on a complaint or we have a contractor request, an inspector will be out here.

Okay, the work on the right-of-way. I mentioned this before. Basically you're digging up a road to get the utility, typically, or filling a sidewalk. You need to be a Type A contractor's license. That's an earth moving type contractor. Excuse me. Again our same inspectors that do the grading work also inspects work on the county right-of-way. Those permits need to be reviewed by our department. They typically go to SHPD because you're digging and – well, the concern obviously that the thing gets put back nicely, the way it should be, and also that, you know, traffic control is properly implemented. The traffic control for Lanai is a lot different than traffic control on Kamehameha Avenue on Maui, but you still gotta have it, yeah? Don't want people getting hurt. And for driveway, driveways are basically the responsibility of the owner. They're in our right-of-way so this is when it's from the road edge through the county property to the property edge. That's the part we control. Once it gets on the property, you know, we don't care what you do with the driveway. But that portion of the driveway has to meet certain standards. And typically it's concrete, unless it's in ag and et cetera. And again our same inspectors that do the grading and the work performed on the county right-a-way also do these, these inspections.

And our last one is subdivision. So again these are people who are desirous of subdividing lands or consolidating parcels together. Often times people are trying to adjust a lot line between two properties to meet, you know, I think my neighbor, oh, you know what he used this part and I used this part of my driveway and what have you. We get a lot of those, and so it's called a consolidation re-subdivision because you take the two lots consolidate them into one and subdivide them back out. Essentially all you've done is move the lot line. I see a quite a few of those. Sometimes you get rather complex, but we do see quite a few of those.

So in a subdivision process, again, we're the central coordinating agency. We accept the preliminary plats. And a preliminary plat is basically the property owner is saying this is what we want to do. We want to make six lots out these, this one lot. And as long as they meet certain minimum requirements we accept that, and within 45 days they get what's called a preliminary approval letter. It doesn't mean you have a subdivision, it just means you have a letter. Because we approved this preliminary map subject to all the conditions and so we attach all the conditions from all the other departments that we send it to. So we send it Fire, and we send it to Planning, we send it to Water, we send it to Waste Water, Department of Health, DNLR, Real Property Tax. So they all take a look at it, and say here's our requirements to do what they ask them to do. Once the applicant receives that, it's really up to them to proceed how they want to proceed. If they require roadways need to be fixed up, then the second item here, under the first item – second item – they may require construction plans. So that means they're gonna build something and we need to see plans for that. So then they've gotta prepare construction plans. Those need to be submitted to us. Again, we receive them, we review them, we send them to Water Supply, we send them to Wastewater, anybody that has jurisdiction under the road. So there's another approval process.

If they met – they have approve construction plans. If they need construction plans and they've

met the other requirements, then they're ready to submit their final plat. Say okay we think we've meet everything, here's our final plat. I mean here's the final map, corrected, depending on what changes they had to make. And we send that final plat to all the agencies. If everything is good to go, they get final subdivision approval. They have a - they've met technical requirements relating to any construction. If they have construction – not all projects have construction and they've meet their requirements as it relates to the layout for the land. They get final subdivision approval, and I sign it. It gets recorded. It get sent to all the agencies include Real Property Tax and lots are typically created. So again it's a process. It's under the Public Works Department. It's a multiple agency process, including the Planning Department. It has a pretty significant role in reviewing that.

I think I just covered all this. And again the same inspectors would inspect any construction that happens in those subdivision. And typically there's also grading permit so they're gonna be there anyway.

Next I want to talk about is KIVA Net. This is a great tool. I use it all the time at work. I don't know how much you folks have used it. But KIVA Net is an online feature of our County website that anybody can go look at any permit that's either been applied for, is active, and construction work is going on, and the ones that's even pau. And you can track using all kinds of different ways. So that other handout I gave – it's kind of five or eight pages or something like that – gets in the nitty gritty of what field we hit and all that. But I'll just find an example for you that I just did the other day. I picked, I found a project here on Lanai and I got some information off of it.

But if you have an address, the type of building, the type of permit you're looking for, maybe for building or electrical, you can look under the contractor if you happen to know what the applicant, if you happen to know the project name which I never happen to know, but you can almost always find it.

Okay, so I said okay let's find one for Lanai. So I thought, okay, I'll find something on Fifth Street. So I just typed in Fifth in the address field, then used a, I think it's a percentage sign after than, and it found all the permits on Fifth Street. And now I found this one that said there's a building permit. Actually here's an example of the Department of Education, a State project, pulling permit instead of using their exemption. There's building permit, B, building, in 2011, number 966. Now because I happen to know we probably issued out 1,400 permits, that probably came along in September or something like that, and it said on it it was for trash enclosure. I don't know how many people know about the trash enclosure, but it was big enough that it needed a building permit. So I clicked on that permit and you know a couple of pages come up, but the first thing it does is a summary of the permit. So it tells me all about it. Even how it was submitted. It was submitted in 2010 under a different number. It was issued under the number I said earlier, and it talks about the scope of the work, where it is, and where it will be to be occupied as. So if there's a house, it would say single-family dwelling, et cetera. And then if you scroll further down the screen, this is a screen shot of, okay, how are the agencies who had that permit initially how do they review it? So here it shows you all the agencies that have reviewed it, and when you see A is approved. So an agency may have

looked at it more than once, and you may have seen P, for pending, because they had some issues, they had some comments. It just wasn't right. It says resubmit. Okay, they fixed it, so they approved it. So you know there's some P's there that were subsequently approved.

If you have a permit that's in process, you haven't been issued, this is where you go. And I do this all the time. People call me, how come my permit is not issued, I've had it over two years? And I look it and I say, well, it says the Water Department sent your consultant a letter a year ago saying they needed some additional information and no one's provided it, for instance. So it's a get check to find out, hey, what's the status of things? Where's things at?

In this case it's already been approved, so it's still on the screen. And then they had the inspections. So as our inspectors come out, and they inspect and they pass or fail, that information goes into that database. It's online. It's public. So in this case, it's just foundation or framing so it's just a trash enclosure. It shows you the day it was at least entered in, and here's our guy Neil Nicholas. He works for us in DSA. So on that project you get a complete status of what's going on.

And that's what our plan room use to look like. But now we have scanners and we scan in all of our plans so we're in the process of figuring out a way to make that a public feature as well. And that's, that's it Mr. Chair.

Mr. Ornellas: Thank you Dave. Audience, any questions for Dave? Go ahead John? Do we have a microphone for him? I would appreciate it. Thank you. I don't want you to hurt yourself or anything like that.

Mr. John Stubbart: I have a question for the Director. You mentioned on right-of-way permits if we're working in the roads, the utility department, water, and you mentioned it requires a Type A contractor license. The utility often does it's own leak repair and we don't have a licensed, A contractor license. Can we still do that work or do we have to sub that out to a contractor?

Mr. Goode: That's a good question. I'm gonna give you a slightly longer answer than a yes or no. I actually should tell you I don't know, I'll find out. But there are no exemptions for utility or even the Department of Water Supply, County's water supply. I know you have private water here. So actually last year or so I personally was not happy with our Water Department's trenching. They good pipe fitters. They're not good road patches. So we set up a, we call it a general permit. We got the Water Department in and we said, you know, you're really not exempting this work. We want you to fix the leaks. We don't want you have to go through the humbug of a permit. We're gonna give you a general permit which basically means that this permit is good for a year and, you know, fix all the leaks you want, but we want to know where they are and you have six to – I think we gave them six or nine months – to fix them properly. So things didn't linger. Because what happens they start caving in, they become reverse speed humps you know, and that's worked out real well. So we're now taking that process. Now we're working with Maui Electric. Usually Maui Electric works above ground. We've got a couple of projects right now on Maui that they're working underground. And sometimes they get permits, sometimes they don't. So we're gonna pull them into the same process. As we

refine this a little bit, the Lanai Water is a PUC controlled company right so the reason I said I don't know the answer to your question it may be that because they are PUC regulated they may not have to have the A license. But in any case we want the utilities to be able to fix their stuff right away, without having to, you know, go to Maui, get permits and all that. They're doing this type of work all the time. So what we want to do is we want to be able to know where they're doing the work, be able to monitor it and make sure it gets put back properly at a later time.

You with Lanai Water?

Mr. Stubbart: Yes.

Mr. Goode: I'll give you my card.

Mr. Ornellas: Please use the mic.

Mr. Robin Kaye: In reference to the number of exemptions from permits, are there – and they have to do conservation lands, do you need a – is there an exemption for a grading and grubbing permit if it's on conservation land? For example if somebody was going to build a road, a temporary construction road in conservation land, would they need a permit?

Mr. Goode: I don't have the exemption list with me. I, I, I believe they do not need a permit from us. They would need a permit from the DLNR. The DLNR, Office of Conservation Coastal Land, OCCL, regulates all activities in conservation district. Sometimes their permits might state, yeah, get a permit from the County. So while it's a blanket exemption doesn't mean they always have to pull it. So my recollection is they don't need a permit in conservation because I'm pretty certain that we regulate like next to nothing because, in a conservation district, because OCCL has full regulatory power.

Mr. Ornellas: Leilani, did you get John Stubbart's name and Robin Kaye? Okay, you got them? Okay. Any other questions, Butch, Lynn, John? You okay? You didn't sign up. Okay. Thank you. Okay, so we'll open it up for commission members. Any questions? Joelle?

Ms. Aoki: Thank you for coming and providing us that informative workshop. I do have a question. How does the permit division ensure that the estimate provided by the contractor or the landowner at less than the \$5,000 ceiling to avoid a trigger for historic review? How do you ensure that the landowner or the contractor is not submitting a permit for less than \$5,000 to avoid triggering a historic review? So let's say –

Mr. Goode: I got it. I got it.

Ms. Aoki: Let's – yeah.

Mr. Goode: Yeah, I think I'm a little aware of this issue. Well, I can tell you one thing, historic side, I think, would probably be more Planning than us. So we would only look at the value of

the work of \$5,000. If we had reason to believe that it was over \$5,000 our inspectors – also our inspectors are from the trades. They know what it generally costs. If there's reason to suspect it was more, I guess, our inspectors will probably tell them, hey, I think that's more than \$5,000. Or they may, I don't know, somehow ask for receipts. It doesn't come up very often, the 5,000, but ultimately our inspectors have the, I think they have the call.

Ms. Aoki: Okay, thank you.

Mr. Goode: Yeah, I'm sorry I can't answer the historic side. I don't know – I don't know the historic district laws or building if it's like you can't touch, you know, you can't fix a paint chip without getting a permit. I don't know how, how far down that goes, so I'm sorry I can't answer the historic side.

Ms. Aoki: Thank you.

Mr. Ornellas: Any other members go ahead. Any questions, members? Members? Okay, I've got a couple here. For the subdivision, what is the average time for somebody to get a – if somebody was going in for a subdivision permit? What's the ball park?

Mr. Goode: Yeah, it's actually a subdivision approval. It's not really a permit. Average is I'd say probably a couple of years, and that's mainly due, the County's side of it is fairly short. It's how long the applicant and their consultants or surveyors or engineers, you know, take to put the things together. If it has a lot of construction plans, it could be three years, four years. They can be done in about six months if it's straight forward and the applicant stays on it. So we give you the comment letter. We don't sit on it. They move. We respond.

Mr. Ornellas: And also for SMAs, do you guys issue permits in an SMA?

Mr. Goode: All the permits I've listed can be in the SMA district. We don't issue SMA permits. That's – SMA Majors obviously is your guys purview, Minors.

Mr. Ornellas: Right.

Mr. Goode: And all that's Clayton guys.

Mr. Ornellas: Alright. Now if somebody was gonna do some grubbing in the, within the SMA district, they would have to come for a permit. I mean –

Mr. Goode: They would need a grading permit.

Mr. Ornellas: Grading permit.

Mr. Goode: They may need an SMA – a look on the SMA side, I would have to defer to Clayton on that.

Mr. Ornellas: Wait, speak into the mic.

Mr. John Dela Cruz: It shows in the chart if you're in the SMA and you're removing more than 50 cubic feet or going more than two feet into the ground, then you need a permit.

Mr. Ornellas: Yes, but it also says if you remove trees and shrubs and all that other stuff too. Yes.

Mr. Goode: And I think, yeah, that's grubbing. And if my recollection is correct, it's one acre or more. So if you're doing less than an acre, you wouldn't need a permit from us. If it's in the SMA, I'm gonna defer to Clayton as to what kind of permits you might need.

Ms. Aoki: Mr. Chair?

Mr. Goode: On the SMA permits that is.

Ms. Aoki: I'm sorry.

Mr. Ornellas: Go ahead Joelle.

Ms. Aoki: Mr. Chair, I thought it was within 300, the boundary was 300 feet to determine the SMA area. Is that correct, Clayton?

Mr. Yoshida: For the most part it's on the, determined by the Special Management Area map. But the minimum is, boundary, is 300 feet from the shoreline.

Mr. Ornellas: And I think in the 1998 Community Plan, I think, we moved it to 500 if I'm not mistaken.

Mr. Yoshida: That may be so, but the official, the map that stands is the 1979 map. It would take an action by the Commission to amend the SMA boundaries.

Mr. Ornellas: Okay, that's it. Thank you David. Anybody else? Oh, yes, go ahead Robin, one more.

Mr. Kaye: What's the process if a permit was required but wasn't applied for, and grubbing and grading, for example was done, either within an SMA or not, but in an area where they should have a permit and was not applied for and the works pau. What's the – what happens? What's next?

Mr. Goode: It's a good question. I didn't cover that all. Actually in all of permits that happens. And in the case of a grading and grubbing permit, and in the case of all of our permits, (a), there's gonna be a fine initially. You gotta get the permits. And in the case of the grading and grubbing, our inspectors will go out, our engineers will go out and make sure that it was, more or less, done as best can, and then there might be remedial work, you know, to protect

neighboring and down stream properties.

Mr. Kaye: . . . (inaudible) . . .

Mr. Goode: Yeah most of our, most of our violations are community initiated. Now if our inspectors are driving by something, and they see something as blatantly obvious, they have a duty to do something. But for the most part, it's not, they're not, they don't have enough time to go running around and look for stuffs. But we get calls all the time. We get calls, you can actually through the County website do what's called a Request for Service, you know, where you say, yeah, I think this is an illegal activity. Within a day that comes to our department. Within two days we have an inspector there. And so we, we deal with a lot. Oh, I mentioned the fence issue, right? So you've got two neighbors beefing. We often find ourselves in that situation. We'll often find ourselves in a situation of someone renting from someone. Maybe they weren't so happy, they left, they turn in the owner and say, you know, he's got . . . (inaudible) . . . running on the ground and there's puddles. And you know what, they're right. So we fine them, we have to issue an electrical violation. So those are called after-the-fact permits, ATF. We do a lot of those. So you have to pay a fine. You have to apply for a permit and you've got to correct the work or take it out. We don't care. Just do one or the other. Either get a permit and do it right, or take it out. You don't need a permit to take out unpermitted work. So if you don't take it out, that's fine with us. So we do a lot of ATF and most all of it's based on community request.

Mr. Ornellas: David, I've a couple more here.

Ms. Aoki: Mr. Chair, excuse me.

Mr. Ornellas: Go ahead.

Ms. Aoki: Just on that note if I could please. So you did say the special requests form on the website?

Mr. Goode: It's called Request for Service.

Ms. Aoki: Request for Service.

Mr. Goode: Yeah.

Ms. Aoki: Is it part of the process when filing a complaint under that form online, that once it's executed, the investigation is executed, the individual that would be reporting the violation or making a complaint would be exposed to the individual that they're complaining about.

Mr. Goode: Yes. Yes. They have a right to know their accuser. And it also helps us to –

Ms. Aoki: Alright. I just want to make sure that's on the record for people to know.

Mr. Goode: No, that's really important, and –

Ms. Aoki: Thank you.

Mr. Goode: – it helps us eliminate a lot of bogus requests. I understand people don't want to necessarily have their name out there for fear of retribution, but in fairness, that's, that's the way we've done it.

Ms. Aoki: And one more question. And am I correct that the fines begin at \$100,000?

Mr. Goode: No. The fines differ by permit. Actually for a building, plumbing and electrical, they're all the same now. We have an initial fine of \$500 or double the permit fee, whichever is higher. That's to issue the permit. If you're gonna remove the stuff, you know, we're not gonna fine. Just get rid of it already. But if you're gonna apply for a permit, it's \$500 or the double the fee whichever is more. And then they have generally a 180 days to correct it. After 180 days, the clock starts ticking at \$100 a day for the first month, \$200 a day for the second month, \$400 a day and then \$1,000 a day. So the time pressure cooker starts going, and so that's our real, that's our real, you know, stick in this thing.

We do have in our permits at least the capability of waiving a lot of those daily fines, you know, provided they're trying their best, they're making their best effort, you know. Everyone has a story, so it's really about effort and getting it done. And but so, and we're not even close to \$100,000. The SMA fines are different and Clayton could address those. Those I think are typically more value.

Ms. Aoki: Maybe we can address this after Mr. Goode is done.

Mr. Yoshida: Well, I guess the State statutes allows for initial fine of \$100,000, up to \$100,000, and \$10,000 per day, up to.

Mr. Goode: So that's where the \$100,000 comes from, in the SMA.

Ms. Aoki: One more quick question. So if you stated that the violator would have to make an effort to reinstate and to correct what was done. But if there was a removal then it would be difficult to do that. So –

Mr. Goode: What do you mean "difficult?" What would be difficult?

Ms. Aoki: So if removed all of the, the, the foliage to reinstate it might be very difficult.

Mr. Goode: Oh, you mean like on a grading or grubbing permit?

Ms. Aoki: Yes. Yes. How would you correct that?

Mr. Goode: Yeah, in a situation like –. That's why I say each of our permits are different. In that

case you can't restore. You can't restore vegetation. You could actually restore the lay of the land. You know, if you cut a bench and this to the land, we could say, come back and restore it. But typically they get a, they get, in a grading situation, they get a permit.

Ms. Aoki: Thank you.

Mr. Ornellas: David, the KIVA system, how – I mean how far behind are you in updating the system? For instance if somebody was to submit a permit or get a permit, how long does it take to get on the KIVA system, usually?

Mr. Goode: I mean it should be almost instantly, within a day. Once a permit is issued – actually once you apply the information, the clerks take in the information, basically they're entering it into KIVA as they enter the permit information.

Mr. Ornellas: Okay, and then if there's a complaint or question, who does that, who does that go to? Who, who gets called if there's a complaint or a question about a certain permit like we've had, we've had our fire, I mean, our police station and some of the other things that were done without permits. At least we didn't, at least we didn't see it on the open, the open report until months passed, so –

Mr. Goode: The –. Let's say we get a complaint. We think there's a – you know somebody's adding a room to a house or a structure. Well, that could be building, plumbing and electrical, right? They've got plumbing in there. So we'll probably send the building inspector first. Now I'm thinking out loud here, you know, coming over to Lanai, we've got to make a special trip or we're gonna have to wait till our regular trip. Typically the building inspector would go first. The building inspector can say there's electrical and plumbing here, I'm gonna call my co-workers in electrical and plumbing, and they're gonna come and inspect. So often times we have all three, especially on the new, especially on an addition or something like that, so all three are in there. So they have to come back and get a –. They're gonna have to pay \$500 on their building or double it, they'll pay \$500 on their electrical, they're gonna pay \$500 on their plumbing.

Mr. Ornellas: And they can call the Planning Department or you guys, Public Works, to file a complaint?

Mr. Goode: I think, yeah, you can call just about any where. But using the RFS system, it goes through, I think, through our IT Department and then they send out to departments. Again, our building inspector might go out there and say, wow, this looks like, this could be a zoning violation too. So then we refer it as well to Planning, and their inspectors will come out.

Mr. Ornellas: Okay.

Mr. Goode: So it's not unusual to building, plumbing, electrical, and zoning all show up at your door for illegal construction activity.

Mr. Ornellas: Okay. Thank you. Anybody else have any questions?

Ms. Zigmond: I have a question.

Mr. Ornellas: Go ahead.

Ms. Zigmond: Sorry, is that on? Is the online process the only way for the Request for Service?

Mr. Goode: No, you can write us a letter, you can send us an e-mail, you can, I think, there's gotta be a way to do it by phone. Get somebody to take all the information. They're probably gonna call you back to verify that you are the person that made the request. We have to verify, yeah, before we go out and inspect, so we wanna make sure that whoever – because all that information is, like, Ms. Aoki was saying is public, we also verify. You know someone calls and says, yeah, this is Richard Nixon calling and gives us a weird phone number. We're probably not gonna follow up.

Ms. Zigmond: And how do you verify?

Mr. Goode: We call you back. We don't ask for I.D. or anything like that.

Ms. Zigmond: When you do it online is there a verification process?

Mr. Goode: Yeah, I think we ask, there's a field for you to give us a phone number because we want to call you back and tell you results of your inquiry.

Ms. Zigmond: So I could disguise my voice and still say I'm Richard Nixon then.

Mr. Goode: Yeah.

Mr. Ornellas: Okay.

Mr. Goode: That go very – it won't last very long.

Mr. Ornellas: Yeah. Maybe not Richard Nixon, but Madeleine Albright maybe. Anybody else? Thank you Dave. We appreciate it. We appreciate it.

Mr. Goode: Alright. Thank you very much for letting us come.

Mr. Ornellas: Thank you for coming to Lanai. Then we'll go on to item G on our agenda, orientation workshop no. 1 Do we wanna take a short break? Anybody need to take a break? Hello? We'll take a five minute break, 7:10.

(The Lanai Planning Commission recessed at 7:05 p.m. and reconvened at 7:10 p.m.)

G. Orientation Workshop No. 1

- 1. Opening Remarks**
- 2. The Planning Framework**
- 3. Zoning**
- 4. Bed and Breakfasts and Short-Term Rental Homes Permitting**
- 5. Environmental Assessments (EA) and Environmental Impact Statements (EIS) Chapter 343, HRS**
- 6. County's Policy Against Sexual Harassment**
- 7. Legal Issues**

Mr. Ornellas: Alright we're gonna go to item G on our agenda, orientation workshop no. 1. Mr. Yoshida on deck.

Mr. Yoshida: Thank you Mr. Chair, members of the commission. Like the chair said this is workshop no. 1, and at the next meeting we'll have workshop no. 2 which will be on coastal zone management and shoreline area SMA. Basically I'll be going through the planning framework, county zoning, Chapter 343, the County's policy against sexual harassment, and then James, your attorney, will be talking about legal issues.

Okay, planning in Hawaii is the most regulated of all the 50 states, with an average of seven to ten years to go from raw land to project completion. The Hawaii State Constitution is the ultimate document for outlining the structure of state and county government and from which government authority extends and personal liberties are protected throughout the state. State and County agencies are guided by two statewide planning documents. The first is the Hawaii State Planning Act which was signed into law in 1978 to improve the planning process in this state, to increase the effectiveness of government and private actions, to improve coordination among different agencies and levels of government, to provide for wise use of Hawaii's resources, and to guide the future development of the state. Hawaii is unique among the 50 states in having converted its state general plan into a statute to Act 100 which made Hawaii the first state to enact the comprehensive state plan. State plan is divided into three parts. Part one the overall theme, the overall theme, goals, objectives and policies. Part two, planning coordination and implementation under which the 12 functional plans and county general plan fall. Part three which is priority guidelines.

All lands in the state are divided into one of four categories – ag, rural, urban, conservation or ag, rural, urban or conservation. And most of the lands are either in ag or conservation. About 95 – they total about 95% of the total lands in the state. About 5% is in the state urban district so there's been an increase in, from 1961 when the state land use law was first developed till now, increase in the amount of state urban lands from 3% to 5%.

There are basically two types of actions that occur under the state land use law. The first is known as the Land Use District Boundary Amendment where you want to reclassify land from district to another, say from ag to urban. And the second is the State Special Use Permit that

allows for the establishment of a use that is not permitted within the state ag and rural districts. This use must be deemed unusual and reasonable based upon the five criteria listed. Common type of application is the use of ag land for short-term rental home or a bed and breakfast.

The State Land Use District Boundary Amendment greater than 15 acres are processed by the State Land Use Commission. The Maui Planning Department is a mandatory party to any District Boundary Amendment involving lands located in Maui County. So say for example a few years ago the Department of Housing and Human Concerns petitioned the Land Use Commission to convert lands for the Lanai Affordable Housing 201H Project. So that was more than 15 acres and the State Land Use Commission was the authority and the Planning Department was a party. For State Land Use District Boundary Amendments less than 15 acres they are processed by the County. The Lanai Planning Commission conducts the public hearing and provides recommendations to the Maui County Council for District Boundary Amendments located on the island of Lanai. The District Boundary Amendments are processed by under Chapter 19.68 of the Maui County Codes. Let's say for example the Council was here last month for the Miki Basin Expansion District Boundary Amendment. That was the case where they wanted to change the State Land Use designation from State Ag to State Urban.

State Special Use Permits greater than 15 acres require approval from the State Land Use Commission. However the processing is done by the Planning Department. The Lanai Planning Commission conducts the public hearing and then provides recommendations to the State Land Use Commission. So an example is your landfill which is more than 15 acres where the Lanai Planning Commission would make – conduct a public hearing and make a recommendation to the State Land Use Commission. And the State Land Use Commission would be the final authority. For State Special Use Permits less than 15 acres located on Lanai, they are acted on by the Lanai Planning Commission after conducting a public hearing.

So there are various resources available to the Planning Commission. They're like at the center but you do have advice from the Maui County Urban Design Review Board which makes recommendations on design related to project designs located within the Special Management Area. The board also makes recommendations on other areas related to design such as the Comprehensive Signage Plans, Design Guidelines for Country Town Business Zoning District, and other areas that the department deems necessary for input. This board is comprised of nine members and four alternates, with four members having an interest in design and remaining members being design professionals such as architects, landscape architects, and civil engineers. Additionally the board is required to have members from the islands of Molokai and Lanai. The board is staffed by the Planning Department so David Green is our new member on the Maui Urban Design Review Board. And they did comment on, I think last year the commission dealt with a Council resolution on Country Town, revised Country Town Design Guidelines and Standards for Lanai. And so the Urban Design Review Board provided their comments to you and to the Council regarding those proposed design guidelines.

We have the County Arborist Committee which is advisory and makes recommendations relating to trees within subdivisions and landscaping for parks and other public places. They may nominate exceptional trees for protection such as the banyan tree in Lahaina. It is staffed

by the Department of Parks and Recreation.

We have Maui County Cultural Resources Commission and they have decision making authority within the historic districts one, two and three. This includes approval of uses and architectural design, and they provide advisory comments and recommendations to the appropriate planning commissions. They also prepare nominations to the Hawaii or National Register of Historic Places. The committee is comprised of nine members with disciplines of archaeology, planning, architecture, architecture history, Hawaiian cultural and ethnic history. The CRC is required to have members from the islands of Molokai and Lanai, and it's staffed by the Planning Department. Warren Osako from Lanai is the current member on the Cultural Resources Commission.

So you get advice from all of these boards plus other Federal, State, and County agencies. Moving to Zoning.

Mr. Ornellas: Clayton? Excuse me. On the, on that planning resource, what is ROW? Thank you, Clayton.

Mr. Yoshida: Well a lot of times say for the Special Management Area Permit they do consider design, comments on design as part of the review, so it goes to the Urban Design Review Board and they provide their comments relative to compatibility of the design.

Mr. Ornellas: Our pine trees on Lanai, do the Arborist Committee have anything to do with our pine trees?

Mr. Yoshida: No, unless they're exceptional trees, like the banyan tree. But –

Mr. Ornellas: The one at Koele could be an exceptional one.

Mr. Yoshida: Well, other than that they do, they do provide or come up with the Maui County planting plan as to what kind of trees and landscape shrubbery are appropriate for certain areas.

Mr. Ornellas: Alright, thank you.

Mr. Yoshida: Moving to zoning. Zoning represents granting to local governments the right to exercise some control over the use of privately owned properties, provides some order and consistency in the use of land. Zoning limits and restricts the use, uses of land in order to shape land use patterns. So we have Chapter 46, HRS, which is our Zoning in the County level, and we have Title 19 in the Maui County Code which consists of Article 1, Interim Zoning, which was adopted in 1958 which created for the purpose – it was created for the purpose of providing interim regulations pending a formal adoption of a comprehensive zoning and map. And although it was created as a temporary measure we still have Interim Zoning in place today.

We have Article 2, which is Comprehensive Zoning, which was adopted in 1960. It was created in order to regulate land use in a manner than encourages orderly development in accordance with State Statutes, the County Charter, the General Plans and Community Plans. Comprehensive Zoning involves a number of zoning districts which most of you are familiar with such as residential and apartment districts, commercial and industrial districts, and public/quasi-public and park districts. Zoning is the tool used to implement the General and Community Plans.

What will come before you is a, say, a Change in Zoning request where someone wants to change the zoning from one zoning district to another, say from residential to business. The Commission would conduct a public hearing on the applicant and make a recommendation to the County Council. The Council is the final authority on Changes in Zoning. So, again, last month the Council was here for Miki Basin Expansion Change in Zoning, and basically they are the final authority on the Changes in Zoning. So Changes in Zoning are, are powerful tools for land use management, and must be reviewed in the context of the Community Plan.

We have the Conditional Permit as provided for in Chapter 19.40 of the County Code where the applicant wants to do something on a piece of property that isn't allowed in the zoning district but doesn't want to permanently change the zoning designation of that property in those. So the intent of the Conditional Permit is to provide the opportunity to establish uses that are similar or related to those uses permitted within the given use zone and is for a limited period of time. The Commission would conduct a public hearing on the application and makes the recommendation to the Council. The Council is the final authority on the Conditional Permits. Conditional Permits must demonstrate that the proposed use is similar, related or compatible with the given zone area. So an example is the State Department, Department of Land and Natural Resources wants to build an additional boat parking area at Manele Harbor. It's in the project district. They had to get a Conditional Permit to do that.

Mr. Ornellas: Clayton? Conditional Permits extensions, that is done by who? The Director?

Mr. Yoshida: According to – well, there's several things. One is a number of years ago or maybe two years ago, or three years ago, the Commission reviewed the Department's streamlining package. One of them was for Conditional Permits. So on time extensions the applicant has to notify the neighbors within the 500 foot radius. If there are no protests by the neighbors, the Director can issue the time extension. But if there are protests then the matter has to go to the Planning Commission first and then to the Council.

Mr. Ornellas: Can –. Okay, so the Conditional Permits that are in effect now how do we get to see these things if, if by chance nobody complains within the 500? How do we get to see this? I mean, I mean, I talked about this two years ago about him signing off on stuff without us – us just seeing the paperwork that it's been done. I mean, can't we weigh in on this why is it taking so long? I mean, we should be able to ask questions of the, of the Conditional Permit, the applicant.

Mr. Yoshida: I think it depends on how the condition, the time condition of the Conditional

Permit is stated. If it's stated can be renewed in accordance with Chapter 19.40, and if 19.40 allows for this streamline process, they can do the streamline processing. If the condition says it can be extended upon review by the Lanai Planning Commission and then Council, then that's the way it has to be.

Mr. Ornellas: And we can change the rules.

Mr. Yoshida: No, because the Council has changed, amended 19.40, to allow for the streamline method. Unless you, again, amend 19.40.

Mr. Ornellas: And the Council gotta do that, not us.

Mr. Yoshida: Well, ultimately any change to Title 19 has to go to the Council. Like in January you folks were considering a resolution regarding the time period for Conditional Permit, the five year max. And, you know, the Council was seeking comments from the Planning Commissions based on the public hearing, and then the matter was transmitted back to the Council. This Commission recommended that they leave things the way they are. That was the ultimate recommendation of the Commission.

Mr. Ornellas: Thank you.

Mr. Yoshida: Okay, moving on to – moving on to County Special Use Permits. These are identified as special uses in the Code. There are specific criteria established. The commission would hold a public hearing, and the commission is the final authority. There's a higher level of review to study impacts to local neighborhoods. An example of this is T-Mobile came in last year to locate two antennas, one at Manele, one at Koele, in the County ag district, and they needed a County Special Use Permit. So they came to this commission for a public hearing, and the commission made the decision on the County Special Use Permit. An example, this is a Molokai example, but this is for the Hale Mahaolu Adult Day Care and Senior Center in the Apartment District.

Okay, Bed & Breakfast. The newer ordinance was adopted in 2009. It allows for short-term rental within residences in the rural and residential district, not agricultural district. Up to three bedrooms total between two dwellings. The owner must live in one of the two dwellings. There's a requirement for a one 4 square foot project sign, a one square foot permit sign with the number and phone contact, and it requires the Lanai Planning Commission approval. So far we haven't received any bed & breakfast permits for the island of Lanai. This is a picture –

Ms. Zigmond: Sorry. Clayton, excuse me, so this would be different than a short-term rental? Because I noticed a house recently that was rented out to people over the years, and now there's a notice that says permit or application or whatever pending for short-term rental.

Mr. Yoshida: Yeah, we'll get to that. There's a difference between a bed & breakfast home where the owner has to – the owner operator has to live on the site – and a short-term rental

home where the owner doesn't have to live on the site. So we're talking about short-term rental homes which is Chapter 19.65 of the County Code that was adopted in May of last year. And there are five triggers for commission review. Three exceptions on Lanai. And so far we've only received one application on the island of Lanai for a short-term rental home.

Ms. Zigmond: So that must be the one that, that I'm thinking of and so how long does an application generally take to get approved?

Mr. Yoshida: Again, you know, like the question about building permits and subdivisions, it depends on how complete the application is because it's kind of this back and forth with the applicant to try to get a complete application. So it could be – well, it would have to be at least maybe about two months on the short side, but it could be longer if the application is incomplete.

Ms. Zigmond: And, and they have to have it publically posted that they've applied for that? Because I was surprised to see it.

Mr. Yoshida: Yes, they have to have an application sign that I have applied with Maui County for a short-term rental home permit, and they have to notify, at some point, they have to notify the neighbors within a 500 foot radius if they want to protest. If the neighbors want to protest. And again, looking at the criteria if, for bringing it to the commission, the application up to the commission, because primarily it's an administrative permit unless there are two or more adjacent owners who have filed written protest; if 30% or more of the neighbors file protest when there's more than 40 lots, or 15% or more when there's less than 40 lots; if there's another approved operation within 500 feet; this is waived for applications received before December 31, 2012, or if a variance is required. So if one of these triggers is met, then it comes to the Planning Commission.

Ms. Zigmond: I have one more question please. Sorry, if you already did this on a previous slide, it said three exceptions on Lanai. What, what do you mean by that?

Mr. Yoshida: The three exceptions?

Ms. Zigmond: The previous slide.

Mr. Yoshida: I believe – I think they can only rent again up to three bedrooms for the short-term, for the short-term rental. Whereas in other locales, they can rent up to six bedrooms.

Ms. Zigmond: And what are the other exceptions?

Mr. Yoshida: I believe that it cannot be conducted in the State Agricultural District. Then the third, the third exception, I think the sign can be slightly smaller than the four square feet. Any other questions on short-term rental homes?

Ms. Aoki: Clayton, I see one here where it says each permitted dwelling unit on a short-term

rental home property shall be rented to one group with a single rental agreement except on the island of Lanai, or any short-term rental home where the owner resides on an adjacent lot. So I also saw in here something about that they had to possess a real estate license as well, or is that an or?

Mr. Yoshida: Well, I guess you have to pay the transient accommodation tax, and the G.E. tax.

Ms. Aoki: Right, but then doesn't – that's separate, a separate issue from possessing a real estate license to manage a short-term rental.

Mr. Yoshida: Well, we would want to have, we'd wanna have a property manager, somebody to call if the guest . . . (inaudible) . . . because the owners may not necessarily live on the property, but there should be a contact person that people can call if they have complaints.

Ms. Aoki: Okay. Yeah, because the rules, here, that I'm looking at does not say "or" so just a quick question. Is that alright Mr. Chair if I can make a quick question?

Mr. Ornellas: Yes.

Ms. Aoki: Thank you. The short-term housing, was this – and forgive me because this is prior to my being on the Planning Commission – was there a request from the community that when Mayor Tavares had approved this ruling in 2008 that Lanai would be able to have the opportunity to make up its own conditions and rulings toward short-term rentals and bed & breakfasts because of the structures and the rural settings of Lanai? Because also included in these rulings I see that the special – that this permit must be applied for within the five year, within five years of construction of the unit. It doesn't say "and," "or," "if" acquisition of the property so I was just curious.

Mr. Yoshida: Well, I think the short-term rental home has to be at least five years old. You can't just build a new house and then say, "I'm gonna do short-term rentals on this house."

Ms. Aoki: I see. Thank you.

Mr. Yoshida: Yeah, I believe the commission in 2008 the department did introduce the proposed legislation for bed & breakfast and short-term rentals. And I think the comments from the commissioners at that time was they wanted the unique situation that Lanai has with hunters and so forth, using, meeting those types of accommodations because it would be difficult for them to stay at the hotel. To have their own set of rules. And that was passed forward to the Council, but the department's legislation didn't really go any place after it was transmitted to the Council. And in 2011, Gladys Baisa introduced a proposed bill that was heard by the three planning commissions in June of 2011 that became this ordinance that was adopted in May of last year.

Ms. Aoki: So, to continue the conversation with the request from the community to have accommodations or – not accommodations but rulings appropriate to Lanai's unique

circumstances, is it, is it possible or appropriate for the Lanai Planning Commission to make recommendations once CPAC, or through CPAC, so that way when CPAC is complete, their process is complete, we can look at making those rulings for Lanai. Is it possible to do that or is this set in stone? So, I guess my question is – and forgive me – my question is the community was not heard or their request was not recognized when this bill went through because as I'm looking through the rules of the short-term rental I see that there's specific items listed in the rules only to Maui, but it doesn't apply to Lanai. And then there's specific rulings exempting Lanai, but not Molokai. So I'm just wondering if that was an open door for the continued discussion or what is your opinion?

Mr. Yoshida: I believe the Council spent six months in reviewing this bill from June of last year – well, no, from early 2012 to – well they spent six months on it. And one of the – they realized that it wasn't necessarily perfect and there is a provision in the bill, in the ordinance that the department review it after two years. So we would then take our recommendations to the commissions, and then to the Council. And they'll take a look at their short-term rental home ordinance again at that time.

Ms. Aoki: So Clayton, just for the record, when is that two year point?

Mr. Yoshida: The bill, the ordinance, was adopted on May 23rd of last year, so we're looking at May 23rd of next year.

Ms. Aoki: So now would be the time to maybe begin getting those recommendations so come that two year period we're ready with a maybe a package or recommendation from each community?

Mr. Yoshida: Yeah, we could make the department aware that when it takes a look at the ordinance in May of 2014 that they consider this issue about Lanai wanting to have its own set of rules.

Ms. Aoki: Thank you. I just wanted clarification on that because it does generate \$3 million in revenue for Lanai, right here from many, many homeowners, so I just wanna make sure we don't allow that to go unheard. Thank you.

Mr. Yoshida: Again, we're going through the Chapter 343, which is the Environmental Impact Statement, Environmental Assessment law that was adopted in 1974 to encourage conservation of natural resources, enhance quality of life, and assures public participation. There are nine triggers that requires some – would trigger having to do an EA or EIS. There are two types of actions – an agency action say the State Department of Transportation wants to build a new road, or an applicant action where a private entity wants to take an action that triggers, meets one of the triggers. There are also ten exemption classes. Here are the nine triggers. And then there's issues about whether an EA or a more comprehensive environmental document, an EIS, should be required. Taking a look at, take a look at impacts, mitigative measures and alternatives.

And then finally, I guess, we have to do the refresher that the County does have a written policy against sexual harassment. This is the definition, and that all personnel including board and commission members must refrain from that conduct. That the County has a zero tolerance policy against sexual harassment. And that the policy is applicable to board and commission members as well as County officers and employees. An individual who feels subjected to sexual harassment should immediately make a complaint to his or her supervisor. Boards or commission members who feel subjected to sexual harassment should make the complaint to his or her chairperson. If the chairperson is the alleged offender, the report should be made to the County's Equal Employment Opportunity Officer who is the Director of Personnel Services.

So complaints can be filed with anyone of the following, but people are encouraged to first seek internal remedies before using outside agencies. Complaints can be informal in terms of verbal or written and unsigned allegation, or a formal, which is a written and signed allegation. An investigation will be conducted in an unbiased, fair and discreet manner. And if an individual is found after an investigation to be an offender, they will receive the appropriate warning or discipline. Any questions? Okay, with that, I'll turn it over to your legal counsel, Mr. Giroux, and he can talk about some do's and don't's from a legal perspective.

Mr. Ornellas: Thank you Clayton.

Mr. Giroux: We're ready to go on this now. Hi. Most of you know me, I'm James Giroux. I've been advising the planning commissions and the Board of Variances and other committees that deal with land use. I'm with Corporation Counsel and basically what I'm gonna do today is go over the Sunshine Law – I think we gotta get out of here by 8:30 – Sunshine Law, Ethics, and then there's a couple of legal issues, Takings Issues and Native Hawaiian Rights Issues. If we can get to them today that will be great. But if not, we can – I'm also got other training available that I can do in the future regarding contested cases and things like that. So the mandatory things we have to get done today is the Sunshine Law and the Ethics, so we're gonna try to get through that.

What is the Sunshine Law? It's found under Hawaii Revised Statutes 92, and it's Hawaii's open meeting law. It governs the manner in which all State and County boards must conduct their business, and this board is, is under that law. And what is the general policy and intent of the sunshine law? It's to open up government process to public scrutiny. It's to conduct business as openly as possible. And the sunshine law is to be liberally construed in favor of open meetings. Exceptions to sunshine law are to be strictly construed against closed meetings. Absent a specific statutory exception, board business cannot be discussed in secret.

Open meetings – 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 items. All interested persons shall have the opportunity to present oral testimony on any agenda item, and board may make reasonable time limits of oral testimony. And I'm not sure if Lanai if we have a three minute rule. As long as if you are gonna give a limitation it has to be done at the beginning of the meeting, and most of the boards on Maui give a three minute, but Honolulu boards have actually gone down, to some of them, to one minute,

and they haven't been chastised. But it's up to the, the call of the chair and, and also the review of the board as far as, I mean, if you have packed room, you know you have a lot of business to do, it's probably something that should be discussed before, you know, before the meeting gets going, before anybody testifies that you are gonna be setting a limitation so that it's, it's equally distributed.

Mr. Ornellas: And that's what I do. I, depending on the topic, as well as, the number of people that sign up then we'll hold it to three. But I usually give everybody the opportunity to speak their mind so –

Mr. Giroux: And as far as notice, it's mandatory, written public notice of at least six calendar days before the meeting. And the notice has a list of items to be considered at the meeting. It has to have the day of the meeting, time, and place. And no additions can be made to the agenda once it's filed unless two-thirds vote of all members to which the board is entitled vote. No item shall be added if it is of reasonably major importance and action thereon will affect a significant number of persons. So it's really important that if you're going to actually add an item, not if you're going to switch the order, but if you're going to add something, that you get two-thirds vote of the members who are entitled, not present, entitled. So nine are entitled, you gotta get two-thirds of the people, so it's six votes. I don't know the math, but I'm pretty sure that's the number. We call that the super majority. Even after you get that vote, you should discuss with your attorney whether or not I'm comfortable with the fact that what you're going to put on the agenda is gonna affect anybody. If it's something that I, I think that the public would reasonably believe that they would want to have three minutes to talk about it, or they would have decided to come or not to come to the meeting based on what you're gonna talk about, or if somebody's property is being talked about or being affected, then I would advise you to put that on the next agenda and then we would have a duly noticed meeting regarding that. So you could take action, and the public could have active participation.

Another mandatory thing is your minutes. In a minimum, you've got to have your date, time and place of the meeting; members of the board recorded as present or absent; substance of all matters proposed, discussed or decided, and a record of any votes taken; any other information requested to be noted by members; and the public record is to be made available within 30 days of the meeting. You guys have verbatim minutes so you don't have to worry too much about that because we've got pretty good minutes from Leilani. So the fact that you are reviewing it is just to give you a chance to, you know, make corrections. It's not a chance for you to change what you thought was said, but just to make corrections. And if you're not able – if you're not able to adopt or, you know, go over your, your minutes within 30 days, they are to be made available to the public. It's just that they'll be noted that you haven't accepted them yet, or haven't, you know, gone over them for review.

Okay, this is really important for understanding the sunshine law is what is a meeting? And HRS 92-2 defines a meeting as a – a meeting means the convening of a board for which a quorum is required in order to make a decision or to deliberate toward a decision upon a matter over which the board has supervision. More than two members of the board cannot gather to discuss board business, and there's exceptions such as your investigative exception.

In order to understand that last definition, you gotta understand this definition, what is board business? Because that, that is really is determinative of whether or not you're having a meeting. Matters over which the board has supervision, control, jurisdiction or advisory power and that are before or reasonably expected to come before the board. The tricky thing here is that the planning commission, you guys have such broad powers of supervisory, advisory, all of those things. What's important for you to understand is that if you're discussing something with two or more members, is that subject, is it reasonably expected to come before you? So if you can imagine that, oh, you know, so and so is opening up a TVR on the corner, it's okay for you to talk with another member about it, but you can't be entering into, you know, oh, are gonna vote for it? Are you gonna vote against it? I want you to vote against it. You can't have that type of discussion because it's gonna reasonably come before you as part of the review process. So you wanna be aware of what types of permits you review and where these permits are in the process in order to understand whether or not you're violating the sunshine law or not.

The permitted interactions, what I like to do, I mean, if you read the law, I gave you a copy of the law, but what I like to do is break it down as to how many board members are present during a conversation and that kind of helps out. Because there are permitted interactions with two board members. Two board members may discuss board business outside of a meeting as long as no commitment is made or sought. Never less it would be contrary to the sunshine law for a board member to discuss the same board business with more than one other board member through a series of one-on-one meetings. So what that's saying is that two people can talk as long as you're not saying, trying to get a commit to vote, and you can't go and talk to one member, then go visit another one at their house and go, oh, well John's gonna vote against this, so you should vote against too. And then you go to somebody else's house and you guys have, you know, coffee, and, oh, I just talked to John and so and so, and you know what we're gonna do, we're gonna vote against it. That would be a violation. It's called a serial communication. Just because everybody isn't in the same room at the same time, that, that ongoing conversation would be seen as a, as violating the spirit of the sunshine law.

Another exception –

Mr. Ornellas: Excuse me? Excuse me? Just a quick one. Recently we had a workshop for the, for the CPAC. They came over and they did it, and there were some confusion as far as CPAC members showing up at the workshop to be part of. I mean it was –

Mr. Giroux: Right, that's –. Yeah, we had some discussion about whether or not –. Yeah the participation, you know, when you, when you are on the board and you are gonna be making those decisions already, to be part of another workshop can raise problems if there's more than two members show up at that workshop. So you have to be aware of, you know, who's on your boards, and what kind of activities you're gonna have. Normally I, I'd say, well, you know, if you don't want to – we don't want to curtail your First Amendment Rights which is to participate in public activity. However, as a board member you have to look at how would this affect your ability to perform your duties as a board member. And that's a different analysis than sunshine law. So, it's, it's, you know, you're weighing what is the benefit of participating in one part of project as opposed to being a voting member at the end of the project. So it's a, it's a balancing

act. But what we don't want is to have, you know, three or four members of a board showing up to a non agendaized board business. Because if you are working on that document and it hasn't been agendaized and the other members aren't participating, then it starts to create problems.

Mr. Marlowe: . . . (inaudible) . . . by-laws that would prohibit an executive session that would not involve the public.

Mr. Giroux: No, that's one of the exceptions that I'll get to. Yeah, in fact, I think it's right after the investigative exception.

Mr. Marlowe: . . . (inaudible) . . .

Mr. Giroux: Right. Right. The investigative exception is the number to look at is two or more but less than quorum, and quorum is five, so we'll be talking two to four people who would be put on an investigative committee. And the scope of investigation and scope of authority are defined at a meeting of a board. So it would be on your agenda that you're going to actually create an investigative committee. All findings and recommendations presented to the board of the meeting of the board – and that's after they've done their investigation – and deliberation and decision making on the matter investigated, if any, occurs only at a duly noticed meeting of the board held subsequent to the meeting at which the findings and recommendations of the investigation were presented to the board. So basically at the next meeting after the presentation, at that meeting, there's no deliberation. There's no decision making. It's agendaized at a subsequent meeting that you're going to be doing deliberation and decision making based on the investigative committee's work. So that way the public actually does have a chance to participate meaningfully after hearing what the investigative committee has come up with.

Some boards think that, that doing the investigative committee would, would hurry things up, and in actuality seeing in process, it actually slows it down because you can go out and you can do a certain amount fairly quickly, like if something, if you need to do a site visit. But the problem is that you can't take the whole board with you, and then during the presentation, you know, then whether or not the whole issues have been vetted or looked at. So it really, a lot of times, it's, it's a lot better to have everything with you. If you want to do a site visit just schedule another meeting to do that site visit so everybody can go. And the only problem would be if the site visit would be if the site visit would be dangerous or liability issues and things like that. But if that occurs we can discuss that too because there are ways to get around that. I'm not talking loop holes.

Let's see, this is a new one. The Legislature just passed this one because they found that, that our local boards and commissions were having problems with quorum, but acceptance of testimony at cancelled meetings. And I think some of us have been involved with, with these situations where we've shown up, the public shown up, we didn't get quorum and so we told everybody go home. But they fixed that because where there's a lack of quorum, board members present can receive testimony and presentation of agenda items. They may ask

questions as long as no deliberation or decision making are made at the cancelled meeting. And you must create a record of the meeting. At a next duly noticed meeting there can be deliberation and decision making after the members receive copies of the testimony and presentation and receive a report about the testimony and presentation from the members who were present. So it's kind of like the investigative rule.

And here's another new exception is the attendance at information meetings or presentations, and this is kind of what John was talking about where two or more but less than quorum can attend an informational meeting, a legislative hearing, conventions, seminars or community meetings, and it's not specifically directed at the board. And no commitment to vote on a matter is made or sought. And a report, at the next duly meeting, is made. So there are, there are requirements that need to be met even though you're using this exception.

The executive meeting, and this my favorite because it's all about me. You know, I can ask for it. But it's a closed, it's closed to the public. A vote has to be taken at the open meeting of two-thirds vote of the members present. That's a different number than the last one. It was the members who are entitled. This is for the members who are present. So if you've got a certain amount of people there, then you gotta still get a two-thirds vote in order to get into the executive meeting. And there's a lot of reasons why you can go into an executive meeting, but the main one is to consult with the board's attorney on questions and issues pertaining to the board's powers, duties, privileges, immunities and liabilities. And, you know, usually if somebody goes hey if you don't give me my permit I'm gonna sue, my reaction is going to be Chair, can we go into executive session to discuss that and to see what our liabilities, powers, duties are. And sometimes if you're, if you're doing something that's quasi-judicial like you have to do an order or there's a requirement that you might make certain findings, I can ask that if I don't feel that we've met that legal threshold that we go into executive session, discuss that, and then come out of the session and then get certain things on the record which will make sure that you've met all of the legal requirements so that your decision can stand in the court of law. And those are confidential when we go into executive meetings. The key with that is that in order to, to maintain the confidentiality you have to state on the record why you're going into executive session and the conversation has to be narrowly construed to stay on that subject. You can't wander off into another area of substantive discussion that should be done on the record. So it's very important, and, you know, part of my job is to guide you through that, and I'll, I'll be, you know, reminding you, you know, these are, these are the parameters that we're working with in order to make sure that we're within the sunshine law.

Another exception is contested cases. A board exercising its adjudicatory function is governed by HRS Chapter 91-8 and 91-9. The only exception to this one is basically because the Special Management Area is technically a contested case. However, within that law there's policies and objectives that encourage public participation, so we encourage the deliberation and the fact findings to be done on the record so that the public understands the decision making process. Also the Land Use Commission cannot use this exception. They're one of, one of those bodies that are specifically mentioned in the law that they cannot use that exception.

So as far as enforcement and, you know, I told you this before, I'm not the sunshine law cop.

I've never arrested anybody, but there is enforcement. And one of the main things is, as Corporation Counsel, is the voidability. If there's a violation of the sunshine law, somebody makes a complaint, it's found to be true, the decision making of the board can be cancelled out by the court and they can void your decision. We don't want that to happen. We want to make sure that anything that needs to be said, discussed is on the record, it's discussed, and your decision will stand if the sunshine law is followed.

The public, if they think that there's been a violation they can go to the courts. If they think there's imminent harm by you giving a permit in the violation of the sunshine law, and a judge can put an injunction on the permit, actually stopping all work orders. So that's a, that's another thing we wanna avoid because that, that hurts the community, it hurts the, you know, the applicant, and it's not good for the board to have decisions that are then stopped. We want, we want to see fluidity in the process. If worse comes to worse, the Attorney Generals would get involved if there's this blatant violations of this, and a person could be found guilty of a misdemeanor, and if found guilty, can be removed from the board. So those are the, the consequences of a violation of the sunshine law. So any questions about the sunshine law?

Mr. Ornellas: Representation to the community from board members, from commission members, in testifying and other issues, can, can they go up and say that they represent the, represent the Lanai Planning Commission? They sit on the Lanai Planning, this was our vote, and this is the reason it was voted?

Mr. Giroux: Yeah, I understand the question. What's, what needs to be understood is that if a person from this board is going to go to another meeting or another agency meeting and testify, they have to make it clear that they're doing it as a, as an individual. That what they're saying is not authorized or the position of the board. If, if you want somebody to go and do that, you can put it on the agenda, authorize the person to go to a meeting and put the position on the record at that meeting, come back and do a report saying that, you know, I was authorized to do this, and this is what I said, you know, so the board knows what the activities of the board and what positions are being put out there as far as what are the board's positions. I think – I advise the Maui, the Water Board, on Maui, and they do comment on legislative, you know, things. And so what they do is they put three people on investigative committee, give them the authority to go to a meeting because they don't know when those meetings, legislative meetings, are going to be made. And then they're authorized to restate the position that was come to at a duly noticed meeting. So we want to, we want to have those protocols followed in order that it doesn't cause confusion. And also you don't want to be putting your neck out there to be, you know, why are you presenting yourself as representing the board, you were not authorized to do that. So it's, it's again between the sunshine law, Robert's Rules of Order, you know, ethical consideration.

Mr. Ornellas: Okay, thanks. You have more for us?

Mr. Giroux: I'm gonna see if I can get the Ethics in here.

Mr. Ornellas: We have no ethics.

Mr. Giroux: I hope my computer does.

Mr. Ornellas: Oh, speaking of, speaking of ethics, everybody turned in their, their financial statements? Thank you. If not, they're gonna send you a nasty letter. I should know.

Mr. Giroux: Yeah, found it. Okay, so this is Ethics. This is coming from your County Charter, Article 10, and it governs this board. There's certain prohibitions that you have to be aware. One of them is the prohibition of accepting gifts, the other one is prohibition of having business transactions or activities, or have a financial interest which may tend to impair the independence of, independence of judgement in the performance of official duties, and a failure to disclose your financial interest.

As far as accepting gifts, it's not that you can't have Christmas anymore. Is that you – when somebody gives you a gift, the question in your mind should be "why?" Why is somebody, you know, –? So your daughter gives you something, okay, because she loves you, of course. But does she have permit in, you know, coming before you? Anyway, you don't have to be super paranoid, but be aware that if somebody is giving you a gift, why are they giving it to you? Because on the second level of that is that you have to think if somebody from the outside were to see me receive this gift or knew that I received this gift, would they have a tendency to think that it was for the purpose of influencing my work as an officer of this boards. You gotta do, you gotta put the thinking cap on and work through that. If you have any questions, if you get a mysterious gift, if you want to discuss it with Corporation Counsel, call me, talk to me, I want to know about it before the press hears about it. I wanna help you through it, talk to you about it. If we can't figure it out, then we can go to the Board of Ethics and get an opinion of whether or not this is going to be violating Article 10. Okay?

And the other thing is that, you know, especially in smaller communities, everybody is doing business with everybody, but it's just, it's the failure to disclose that interest which is more damaging than the interest itself. So if you have any doubts just say, hey, you know, Joe comes to my store all the time and buys chips, whatever, you know, I just want to let everybody know we've done business, you know. And with, with super minor, you know, types of stuff where it's obviously, it's not the kind of thing we're worried about. But if it's on the table, then nobody has to worry about it. You don't have to worry about after you vote, somebody comes in and says, hey, but, you know, those guys are in a hui and they've partnered that property and he owns two-thirds share of that subdivision. Oh, snap, you know, that's the kind of stuff we don't wanna, we don't, as attorneys, we don't want to hear about after you voted. Because then, you know, then the house of cards fall, and then there's a lot of problems. So we just want everybody to be just using that, that thinking cap. There are penalties. There could be a fine and a person can be removed from office if they violate those, those provisions, and we don't want that.

Your rules, your Lanai Planning Commission Rules have a specific rule, 12-401-25. It says wherever a conflict of interest or other ethical question is raised by anyone regarding any member of the commission, the affected member shall promptly make a full disclosure of the circumstance to the commission. If the commission member has a financial interest in any

matter that may be affected by an action of the commission that member shall be disqualified from voting in all actions relating to such manner. What the rules doesn't say is that you have to recuse yourself from actually participating. If you have technical or ability to add to the conversation, as long as you're disclosure is on the record and everybody is aware of that. What you want to avoid is advocating. If, if there's questions that you as a member of the board are able to help in the discussion that's fine. But at the end of the day, you're not gonna be allowed to vote if you have a financial interest.

When in doubt, get an advisory opinion from the Board of Ethics. And the reason is is that if any officer obtains an advisory opinion from the board and acts accordingly, or acts in accordance with the opinions of the board, the officer shall not be held liable for violating any of the provisions of this article. So basically that's your safe harbor. If you're in doubt, if you're wondering, and the board reviews your case and gives you a written opinion that says as long as you do A, B, and C, you're fine. And later on, some other, you know, thing happens and people are like, wait, you weren't suppose to vote, blah, blah, blah. If you have that opinion, that's gonna protect you from any liability of any of your actions. So it's really important. When in doubt, really, get that opinion so that there is no question after, after the action is taken. Any questions?

Mr. Ornellas: Anybody, any questions? No? Alright, are you finished?

Mr. Giroux: Yeah, we're cutting it kind of close, yeah? You know what, I'm gonna – I have two others, but I'm gonna wrap that up into another training.

Mr. Ornellas: Into the next meeting?

Mr. Giroux: Yeah.

Mr. Ornellas: Okay, can we add that to the agenda at the next meeting, Clayton?

Mr. Giroux: We will do the contested cases.

Mr. Ornellas: When is our –? Well, we haven't gotten that far yet. Sorry. Communications.

H. COMMUNICATIONS

- 1. January 2013 Semi-Annual Report submitted by Lanai Resorts LLC regarding the project irrigation demand associated with the Residential and Multi-Family Development at Manele, TMK: 4-9-017:001, 002, 003, 004, 005, and 4-9-002:049, Manele, Island of Lanai. (95/SM1-015) (95/PH2-001) (J. Prutch)**

The Commission may provide its comments on the report.

Mr. Yoshida: Mr. Chair, we've circulated the January 2013 semi-annual report submitted by Lanai Resorts LLC regarding the project irrigation demand associated with the residential and multi-family development at Manele. Mr. Stubbart is here to answer questions.

Ms. Zigmond: Mr. Chair?

Mr. Ornellas: Go ahead.

Ms. Zigmond: Are we doing questions or you saying something John?

Mr. Ornellas: Yes.

Mr. Stubbart: I can say, I can say something first so that some questions might be answered.

Ms. Zigmond: Okay.

Mr. Stubbart: Every six months there's a set of conditions that we have for the Manele District Project Area, and there's a number of items that we report on. One of those items I give the information to our Maui Office to include in the report. And they include the water use and so you have a copy. If you turn to the – I don't know if you have the whole report, but if you turn to the section that shows your, the water use, there, I just report the water part so –. And it gives you the Manele brackish semi-annual report. What I'd like to mention is that since we've started from my reporting back in 2010, there has been a drop in the units for single-family of 43%. So back in 2010 we were using amounts of, for single-family, of 2,346 thousand gallons. And before that it had been 2,246. Actually the period before was 3,859, so a 3,500 gallons drop, and it continues to drop in 2011. The last half, it was 2,346. That's what I mentioned earlier. And in the report that you have we're down to 2,179, so 1,700 gallons per unit. I'll try speeding this along.

The other part that we report there that's of interest is the multi-family and it shows you how many units are there. And that's been really consistent. Over the last four years with the recession, we didn't have any construction. So when you look at the numbers, you'll see, I think, one additional single-family unit. What we're trying to do is we have instituted a conservation rate that started in 2009. And our conservation rate is a punitive rate which increases as you use more. And so there's three tiers, and a lot of people thought that the people down there wouldn't care, they did.

We also are putting out a conservation plan this year that will help. We're doing, we're working with single-family owners, and we're working the multi-family owners on zeroscoping.

Mr. Ornellas: Excuse me John.

Mr. Stubbart: Yeah.

Mr. Ornellas: Can, can you come back at our next meeting because you know the information

that you gave out to LWAC, I'd like to, I'd like everybody to have that over the next so many weeks. And then you come back, and if they have any questions pertaining to this, then we can go over that as well as that.

Ms. Zigmond: Yeah, Mr. Chair?

Mr. Ornellas: Yes?

Ms. Zigmond: Because I do have questions about this report.

Mr. Ornellas: I do too. And I know they're hurting for time, so I'd like to put this back on next agenda, that what's he's discussing plus the water use and development plan provisions dated 3/22/13. Leilani, I think I gave you a copy of that. Okay, John, can you, do you think you can do that? We'd get you here next time?

Mr. Stubbart: Yes.

Mr. Ornellas: And we'll go over this as well as the thing that you're talking about now.

Mr. Stubbart: Yeah.

Mr. Ornellas: Alright. Thank you. Clayton? We're gonna go to director's report.

I. DIRECTOR'S REPORT

1. Open Lanai Applications Report

Mr. Yoshida: Yes, thank you Mr. Chair, members of the commission. We have circulated our list of open Lanai applications. Any questions on that?

Mr. Ornellas: Bev, go ahead.

Ms. Zigmond: The last time I was on the commission we had gotten a cheat sheet of the initials, and I was wondering cause I'm not sure which of the many boxes of materials that I have that that is in. Would, would we be able to get another one of them? Like I'm not sure what SMX is, and it would prevent us from having to ask each time what is that, what is that. Is that possible?

Mr. Yoshida: Yes, we can provide a –

Mr. Ornellas: Clayton? Clayton, can you just put it at the bottom? These, the definitions of what you've written here, just put it at the bottom of the page?

Mr. Yoshida: Yeah, what the initials stands for.

Mr. Ornellas: Yes. Yeah, that would be great. I mean, every time.

Mr. Yoshida: We can do that.

Mr. Ornellas: Every time. Every time we get one of these.

Mr. Yoshida: What does CTB means?

Mr. Ornellas: Yeah, so every time we get one of these you'll have it down here at the bottom. Thank you. Anybody has anything else on the projects?

Ms. Aoki: Mr. Chair, I just want to verify, you have a copy of the SMA map on hand?

Mr. Ornellas: Yeah, it's in the tube.

Ms. Aoki: Okay very good. Just want to confirm. Thank you.

2. Agenda items for May 15, 2013 meeting

a. Orientation Workshop No. 2 - SMA, Shoreline Area, Community Plan Update process

Mr. Yoshida: Okay, if there aren't any other questions on the list of open Lanai applications, for the next meeting we have the orientation workshop no. 2 on SMA and Shoreline Area, and the Community Plan Update Process. And then we have James doing the continuation of his session on legal issues and the Lanai Resorts doing their – well the semi-annual report regarding project irrigation demands for residential and multi-family at Manele, as well as information that was distributed to the –

Mr. Ornellas: Yeah, it's the, it's the Lanai Water Use and Development Plan provisions action items dated 03/22/13. And then can I also add – there's a couple of things I want people to read as far as, of course, that one, the Water Use Plan, as well as the handout on IDE. That is the company, the company that is pursuing to look at the desal project. So go online and pull up IDE Technologies and, and then we'll discuss. Can we put that on? We'll talk about that as part of the water.

3. Rescheduling of the May 15, 2013 Lanai Planning Commission meeting

The Commission may act to possibly reschedule the May 15, 2013 meeting to another meeting date.

Mr. Yoshida: There was a question at our November meeting when we had distributed the

meeting schedule for 2013 regarding a meeting on May 15th because of concerns about –

Mr. Ornellas: Graduation?

Mr. Yoshida: Any objections to making it on May 15th? Do we want to do it after graduation or do we want to do it before graduation? We'll do it before. Can you guys be here the week before?

Mr. Yoshida: Well again, you know there's the CPAC. CPAC is meeting like May 8th and May 22nd. We checked with the Lanai Senior Center, I think this room is available on Monday, May 13th. It's not available on Thursday, May 16th. It's available on the 15th.

Mr. Ornellas: 15th and 13th?

Mr. Yoshida: 15th is the regular Wednesday. It's available on Monday, the 13th.

Ms. Zigmond: Mr. Chair? Can you see, take a vote, and see how many people are going to be here on the 15th?

Mr. Ornellas: Okay. Who's going to be here on the 15th? I'll be here. Who is gonna be here on the 15th? Priscilla, you gonna be here on the 15th?

Ms. Felipe: . . . (inaudible) . . .

Mr. Ornellas: Okay. Five is quorum. I don't think, I don't think there's any, anything we're going to be voting on. This is basically just information, providing, right, we don't have anything to vote on, Clayton?

Mr. Yoshida: I guess this is the, the department thought this was the opportunity to bring that issue that was raised in November up because this is the meeting immediately proceeding that May 15th meeting. So if we're going to make any changes then we have to secure the facility from the Lanai Senior Center.

Ms. Stacie Koanui Nefalar: Can we, since the building is available on the 13th, can we take a vote to see if the 13th, two days earlier, is better?

Mr. Ornellas: Who can make the 13th raise their hand. Okay, we'll make the 13th, Monday, the 13th. You'll check and see if that fits into your schedule, Leilani? Clayton?

Mr. Yoshida: Yeah, I think Leilani did check with Maggie, and it is available on the 13th.

Mr. Ornellas: Okay, what about your department? You guys are okay with that?

Mr. Yoshida: Yeah, I think it doesn't conflict with other boards and commission meetings.

Mr. Ornellas: Okay, you'll let us know?

Mr. Yoshida: Yeah. We'll let all of you know.

Lanai Planning Commission will determine whether to scheduled the May meeting on either May 13 or May 15 at a later date, pending availability of staff.

Mr. Ornellas: Okay. Thank you. And then also there's one more thing. American Planning Association has memberships and I think it's important that maybe we should become a member of this and that way we can find out what's going on in the United States as far as community planning with planning commissions and so forth. I'm going to present this to Clayton and then Clayton will go talk to the director and you'll let us know at the next meeting?

Mr. Yoshida: Yes.

Mr. Ornellas: Okay. Thank you. That's it for me.

J. NEXT REGULAR MEETING DATE: MAY 15, 2013

Ms. Aoki: Mr. Chair, I have one quick question. I'm sorry.

Mr. Ornellas: Go ahead.

Ms. Aoki: On the agenda items, maybe not for the next meeting, but in the future, I just want to be sure this is on the record, I'd like to request that we have maybe a discussion on the agenda about SMA boundaries. I want to know about 300 or the 500 boundary for the SMA, and we had breezed on through that but I'd like to continue that discussion please.

Mr. Yoshida: I'll mention that to the director also and I'll get back with the commission.

Ms. Aoki: Thank you.

Mr. Ornellas: Thank you. Okay. We have workshop no. 2 is SMA. Isn't that?

Mr. Yoshida: That's correct.

Mr. Ornellas: Okay, so that discussion can happen at our next meeting.

Mr. Yoshida: We'll you're talking specifically about amending the boundaries or –? This is just, the workshop, is just more informational on what your rules say about SMA permits, Minor permits, Exemptions.

Ms. Aoki: Yes, and please, I'm not clear about – we kind of skipped around earlier – so we had

talked currently the boundary for the SMA is 300 feet, and that it was proposed to have it extended to 500 feet, and that that conversation had not had a conclusion earlier. Is that correct, Clayton?

Mr. Yoshida: I recall that we did have a session, maybe it was last year, where the Deputy Director there and our GIS people kind of showing the different – if you go by elevation contour, or you just go horizontal distance from the shoreline, what kind of areas that will cover.

Mr. Ornellas: Okay, we've got, we've got four new members that wasn't privy to that, maybe even five, so can we get that scheduled to have them come back and do that again?

Mr. Yoshida: I can talk to the Deputy Director.

Mr. Ornellas: Alright. Thank you.

Ms. Aoki: So, and just to clarify, not for next agenda, but possibly the one proceeding that.

Mr. Ornellas: Sure.

Ms. Aoki: Just so we don't forget about it because I do, I do, I am aware that that is an outstanding discussion prior to my being on the Planning Commission.

Mr. Ornellas: Okay, that might be December you know.

Ms. Aoki: At least it's on the schedule.

Mr. Ornellas: Okay, is that, is that it for you Clayton? Okay, anybody else have any parting shots before we leave? Before we cancel, stop? None here. All in favor of adjournment? Okay.

K. ADJOURNMENT

There being no further discussion brought forward to the Commission, the meeting was adjourned at approximately 8:40 p.m.

Respectively submitted by,

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

RECORD OF ATTENDANCE

PRESENT:

Joelle Aoki
Shelly Barfield
Priscilla Felipe
Kelli Gima
Stacie Koanui Nefalar
Stuart Marlowe
John Ornellas
Bradford Oshiro
Beverly Zigmond

OTHERS:

Clayton Yoshida, Planning Program Administrator, Current Planning Division
David Goode, Director, Department of Public Works
James Giroux, Deputy Corporation Counsel, Department of Corporation Counsel