

**LANA'I PLANNING COMMISSION  
REGULAR MEETING  
JULY 20, 2016**

**APPROVED 08-17-2016**

**A. CALL TO ORDER**

The regular meeting of the Lana'i Planning Commission (Commission) was called to order by Chair Kelli Gima at approximately 5:00 p.m., Wednesday, July 20, 2016, in the Lana'i Senior Center, Lana'i City, Hawaii.

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

Ms. Kelli Gima: OK, it's now five o'clock. Brad is not here yet, but we do have quorum, so let's go ahead and get started. It is now 5:01 p.m., it's July 20<sup>th</sup>, 2016, Lana'i Planning Commission meeting. And we have everyone here except Brad Oshiro and Medigale Badillo. So I'm going to start and open up public testimony. Is there a sign in sheet that has been --? Thank you. Okay, so we have one person signed up and that's Margaret Peary. If you want to come up, please state your name for the record.

**B. PUBLIC TESTIMONY - At the discretion of the Chair, public testimony may also be taken when each agenda item is discussed, except for contested cases under Chapter 91, HRS. Individuals who cannot be present when the agenda item is discussed may testify at the beginning of the meeting instead and will not be allowed to testify again when the agenda item is discussed unless new or additional information will be offered.**

Ms. Margaret Peary: Good evening. My name is Margaret Peary, and I'm wanting to make a request to the Commission to have the Pulama Lana'i jet fuel tank permit put on the August agenda. And if I may I'll just give you a little background. So one month ago, a 6,000 gallon above ground tank appeared at the fleet yard. On 6-21-16, we were told at a community meeting, by Lynn, that it would be used for jet A fuel storage to fuel Ellison's jet and other aviation vehicles that come to the island that have need of refueling. Subsequently I've been gotten correspondences from Maui County Planning Department which clearly showed the intended use was for gasoline storage to refuel fleet vehicles; an obvious difference in use. Yesterday I was advised in writing by the Planning Department that jet fuel storage is not a permitted use. They're calling it BCT zone. I've heard it called CBT zone, but the County Business Town Zone, and it re -- it requires a special use permit, so I've attached that correspondence for your review. Then today I received further confirmation that Maui Fire Prevention Bureau will not approve the jet fuel installation until the special use permit has been granted. So I've also attached that correspondence.

I believe this project has been terribly mishandled, and the Lana'i Planning Commission and the community has the right to know what mistakes were made by those entrusted with overseeing the permit process in an effort to ensure it doesn't happen again. We were told by Lynn, last night, at the community meeting, that the empty 6,000 gallon fuel storage tank in the fleet yard would be moved to Miki Basin once Pulama Lana'i receives permit

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approval...Miki Basin or the airport. Yet, as recently as this morning not only was the empty tank still there, but an aviation fuel tank -- that's what it said on the side, in black letter -- on wheels was delivered to the fleet yard and parked next to the existing empty tank. Later, the tank was moved around 11:20 a.m., to Miki Basin, where I took pictures of a jet A tanker truck that's already there, a rust colored fuel storage tank, and today's tank all parked side by side. Zoning Enforcement has been notified and it is up to them to determine if the necessary permits for Miki Basin has been granted. I know many of you on the board are diligent and you really do have Lana'i's best interest at heart, and I really do want to thank you for the many hours that you have invested on our behalf. And, I sincerely hope that my request that this matter be put on the agenda for August would be considered and granted by the Commission. We need to know what permits were applied for, what permits were already signed off, where did this thing go array. It started as gas storage, and ended up as jet fuel to be used off site, and now we're told that isn't even a permitted use in our town, in that zone. So I hope you're as concerned as I am about the process. It's the process that seems terribly flawed. And where it went array, I do not know. Thank you.

Ms. Gima: Margaret, so you're requesting an update from Planning Department as well as Pulama Lana'i in regards to this specific permit?

Ms. Peary: Yes.

Ms. Gima: OK. To be on the August agenda?

Ms. Peary: Yes, if you will.

Ms. Gima: OK. So we will talk about that when we get to that item for the August agenda.

Ms. Peary: OK. Thank you.

Ms. Gima: No, thank you. Commissioners, any questions for Margaret at all? Anyone else who hasn't signed up that is wishing to give public testimony at this time? OK, so I am going to close public testimony, and go next to Item C, approval of the April 20<sup>th</sup>, 2016 and May 18<sup>th</sup>, 2016 meeting minutes.

**C. APPROVAL OF THE APRIL 20, 2016 AND MAY 18, 2016 MEETING MINUTES**  
***(Commissioners: Please bring your documents from the June 15, 2016 agenda packet.)***

Ms. Beverly Zigmond: Madame Chair? I have a correction. There are some little typos that I don't think are worth it, but I think the Catiel's in the April minutes would like their names spelled correctly, and that is C, A, T, I, E, L. And that's the April minutes, and it starts on page 3.

Ms. Gima: Any -- anything else Bev?

Ms. Zigmond: No. I'll move that the April minutes be approved with that correction.

Ms. Gima: Do I hear a second on that motion?

Ms. Stacie Koanui Nefalar: Second.

Ms. Gima: OK, so it's been -- motion has been made by Bev to approve the April 20<sup>th</sup>, 2016 minutes with the correction on page 3 to testifier's last name Catiel to the correct spelling as noted. And also to approve the May 18<sup>th</sup>, 2016 minutes.

Ms. Zigmond: Well, I'll add those. Sure.

Ms. Gima: OK, and Stacie has second that motion. Any discussion? All in favor of the motion please raise your hand. OK, it's unanimous, so that passes.

**It was moved by Commissioner Beverly Zigmond, seconded by Commissioner Stacie Lee Koanui Nefalar, then unanimously**

**VOTED: to approve the April 20, 2016 Lana'i Planning Commission minutes with the correction as stated; and to approve the May 18, 2016 Lana'i Planning Commission minutes.**

**(Assenting: M. Baltero, S. Ferguson, S. Marlowe, S. Koanui Nefalar, B. Oshiro, B. Zigmond)**

**(Excused: M. Badillo)**

#### **D. COMMUNICATIONS**

- 1. MS. LYNN P. MCCRORY, Senior Vice-President of Government Affairs, PULAMA LANA'I submitting the 2015 annual report dated June 1, 2016 regarding water usage at Manele pursuant to condition no. 24 of the Special Management Area Use Permit and Project District Phase 2 Approval 5-year time extension for residential and multi-family development at TMK: 4-9-017: 001, 002, 003, 004, 005 and 4-9-002: 049, Manele, Island of Lana'i. (95/SM1-015) (95/PH2-001) *(Commissioners: Please bring your documents from the June 15, 2016 agenda packet.)***

**The Report is provided to the Lana'i Planning Commission for its review.**

Ms. Gima: OK, let's move on to Item D, Communications, Ms. Lynn McCrory --. I'm sorry. Ms. Lynn McCrory . . . *(Chair Gima read the above project description into the record.)* . . . Lynn?

Ms. Lynn McCrory: Hi, Lynn McCrory, Pulama Lana'i. This is a report that you see or have

seen every year for a few years now. I'll answer any questions that you have on it. It shows the usage for both potable at the hotel and for non-potable brackish.

Ms. Zigmond: Lynn, I have a question on the...the page with the graph showing the potable water at Manele Hotel. So for the third period, it shows a significant decrease, I guess that's because the hotel is closed?

Ms. McCrory: That's correct.

Ms. Zigmond: And for the graph below it, the golf course as well had a significant decrease but the golf course was open, wasn't it?

Ms. McCrory: It was.

Ms. Zigmond: So why was there such a -- because I mean it's really substantial decrease.

Ms. McCrory: And it can be as simple as it rained enough.

Ms. Zigmond: OK.

Ms. McCrory: It's that weather can make that difference. That would be my very quick guess on it.

Ms. Zigmond: OK.

Ms. McCrory: It didn't use as much water. There was either enough of the R1 water to make up any different, any irrigation that they needed.

#### **E. ORIENTATION WORKSHOP NO. 1**

***(Commissioners: Please bring your documents from the June 15, 2016 agenda packet.)***

- 1. Opening Remarks**
- 2. County Policy Against Discrimination**
- 3. The Sunshine Law (Chapter 92, Hawaii Revised Statutes)**
- 4. Ethics**
- 5. Contested Cases**
- 6. Property Rights**
- 7. Rational Nexus and Rough Proportionality**
- 8. Special Management Area Rules**
- 9. Shoreline Area Rules**

Ms. Gima: Commissioners, any other questions for Lynn? OK, thank you Lynn. Moving right along to Item E, which is the orientation workshop no. 1. Before we start this I just had a question for the Planning Department because I know orientation workshop is for new

members?

Ms. Richelle Thomson: . . . (inaudible) . . .

Ms. Gima: It's for everyone. And the reason I, I bring this up is I would actually suggest to defer this item being that Medigale Badillo, who is our newest commissioner, is not here. All of us -- Marlene, you've done the workshop, correct? When you first started? I mean, we've all done it, and I, I feel that if the newest commissioner is not here, as well as we're in the process of getting appointed a new commissioner, I feel it would be more valuable to defer it until Medigale is here and the new commissioner is appointed. So -- I mean, do we need to take a vote on this, or if there are any objections from anybody that really want to have the orientation workshop?

Ms. Zigmond: Madame Chair? I totally believe that we all can benefit from another iteration of it, but I have to agree with you that with one and possibly two new members who could benefit the most that we defer it at this time.

Ms. Gima: Are there any objections? Oh, Clayton.

Mr. Clayton Yoshida: Yes, thank you Madame Chair. I guess we would ask that because we have some staff members who are here especially for this meeting that if we could do some of the training, at least on Coastal Zone Management portion, and which would lead into the status update on the SMA boundary study. Because the staff are not always here at every meeting. Plus I think it's always a good refresher to have Corp Counsel to talk about the sunshine law and ethics, and possibly new case law that's constantly developing as time goes on.

Ms. Gima: OK. So, yeah, I mean, we can definitely move forward with those that would be beneficial for all of us here. OK, so we'll go ahead and get started.

Ms. Zigmond: So are we doing just the coastal zone management today and leaving the other ones until the new members come?

Ms. Gima: As well as the sunshine law, as a refresher.

Ms. Zigmond: Yeah. Well, we can get that refresher next time. I mean, when the people are here, right?

Ms. Gima: OK, yeah, let's go ahead and just work off of the -- the Coastal -- the SMA Rules, Shoreline Area Rules, then which would lead into Item F, the unfinished business.

Mr. Yoshida: Thank you Madame Chair. We have Keith Scott. He's a staff planner of the coastal management program to provide the department's...I guess discussion,

presentation regarding the Special Management Area Rules and your Shoreline Area Rules. So if we can take maybe a short recess while we change presentations.

Mr. Keith Scott: Good evening Commissioners and members of the audience. Thank you for participation in Lana'i's planning process and your attention this evening. I'm going to talk about the Special Management Area Rules and Shoreline Rules for your Commission.

So this is an outline of my presentation this evening. First we'll talk briefly about Hawaii's dynamic shorelines and shoreline processes. Then I'll touch on the Coastal Zone Management Act which is the basis for your Special Management Area Rules and Shoreline Rules. And we'll talk about your Special Management Area or SMA Rules, your Shoreline Rules and just a couple of concluding remarks.

So there are four types of hazards encountered at shorelines, and I'll very briefly discuss them here. Tsunamis are long wave length, shallow water, progress waves, caused by the rapid displacement of ocean water. They have long periods in addition to long wave lengths. Tsunamis propagate at high speeds and travel great distances with the limited energy losses.

Erosion and sea level rise. The islands of Maui County are experiencing beach loss averaging approximately two inches per year. However, some beaches are eroding at more than two feet per year. Erosions come from several sources: human impact such as sand mining and shoreline armoring have a direct impact. Currents, seasonal wave conditions and sea level rise are more natural eroders of our shorelines. Record show that sea level is constantly rising and is expected to rise as much as five feet year 2100.

Coastal storms can cause episodic erosion which is something we've seen this year especially with this year's, this winter's El Nino. Sandy beaches can disappear almost overnight, however, they often recover overtime.

And then flooding can occur from both wave action and from land based storm water. Certain properties require flood hazard development permits to assure that all habitable structures will protect inhabitants from storm waters.

The Federal government adopted the National Coastal Zone Management Act in 1977 and delegated authority for the implementation to the various states with shorelines. Hawaii adopted its version of CZM law and codified it as HRS 205A shortly thereafter. And the State's CZM law is the State's resource management policy, and covers all lands in the Hawaiian Islands. The SMA permit system and shoreline setback rules are the implementing instruments at the local level.

By statutes and county charters, land use policy making is reserved for three entities. At the broadest level, the State Land Use Commission establishes policies by placing all lands

of State into land use districts -- urban, rural, conservation, and agricultural -- and administers the quasi-judicial process for redistricting them. In the conservation district, the Board of Land and Natural Resources designates conservation subzones, each of which has allowable uses commensurate with its designation. The specific or detailed land use policies are established by the County Councils in every county general and community plans. Permits and approvals, however, are not policy. Instead, they are management tools to assure the allowable uses and activities are designed and carried out in conformance with the applicable requirements; in the case of the SMA permit, the CZM objectives, policies and SMA guidelines.

As you can see from the Planning Framework Chart, Coastal Zone Management is separate from the land use policies and zoning laws of the State and County. And, you can also see where the SMA and Shorelines Rules are located in the lower right hand corner.

Development impact available resources -- to minimize impacts to these resources, the CZM has established objectives and policies to minimize impacts, where possible. There are 10 objective areas of concern as shown in this chart, and you should have a copy of that in front you so you can review it at leisure.

The SMA permit and shoreline setback rules are authorized under parts II and III of Chapter 205A and administered by the counties. The Maui County Charter designates the planning commissions of Lana'i, Maui, and Molokai as the authority of CZM law in the respective islands.

The SMA boundary on each island was delineated by the county authority. The SMA boundaries for Lana'i are dated June 8<sup>th</sup>, 1977. As you may see, the SMA is relatively small and closely hugs the shoreline. By 2/3 vote of your entire membership, you can direct the Planning Director to initiate a review of and amendments to the SMA boundaries. The Director can also initiate a review on his own. Should he decide to do so, public notice is required of his intent to revise the SMA boundaries. You however make the final decision and issue a written order finalizing the revised SMA boundary map. The County must find the revised boundaries consistent with the General Plan, and once the SMA boundary changes are accomplished a revised SMA map must be filed with the State Office of Planning, as lead agency, to review for consistency with the CZM law.

The goal of the SMA Rules is to further the policy of the State through the CZM Program to preserve, protect, and where possible, restore the natural resources of the coastal zone. The SMA permit itself is the most recognized component of CZM; however, its purpose is often misunderstood. Land use policy terms like urban and resort can be confusing. However, the impacts of specific project designs are more easily discerned. This explains why citizens are more actively involved in the SMA permit process than in land use policy making. Moreover, because the SMA permit is the first one required, citizens inappropriately use it to express land and water use policy interests and concerns.

Contrary, the SMA permit is not a land use policy determinant.

As a management tool, the SMA Rules' purpose is to set special controls through a permitting process to assure that allowable developments are designed and carried out in a manner consistent with the CZM objectives and policies and the SMA guidelines.

According to Hawaii Revised Statutes, HRS 205A, the Lana'i Planning Commission, as the authority, is charged with seeking to minimize specific impacts, including dredging, beach reduction, impediments to beach access and recreation, loss of coastal views, adverse effects, and loss of agricultural uses. In other words, minimize the inverse impacts to the environment.

In adopting the SMA Rules, the Lana'i Planning Commission adopted the SMA Guidelines stated in HRS 205-26 which were designed to assure public access, impact mitigation, and minimized adverse effects and risk.

With that background, we can talk about the SMA permit system itself. Unlike the CZM area, the SMA is much smaller and differs for each island. A geographic band around the island, it begins at the shoreline and extends inland as determined by the authority or the Planning Commission, to maintain, restore, and enhance the quality of the coastal environment.

Shoreline setback variances and the SMA Use Permits are decided by you. In situations where there are multiple permits for a specific development, the SMA is the first to be obtained. However, this does not preclude concurrent permit processing.

There are 12 criteria by which to evaluate a proposed action, which we will see in the next slide. Adverse actions are required to be minimized, and activities must be consistent with the SMA guidelines.

These are the 12 criteria I mentioned in the last slide, and by which all actions are to be measured. Note that the first on the list is a concern for loss of natural and cultural resources.

There are three types of SMA Permits. Use Permits require a public hearing and are approved by you. Minor and Emergency Permits do not require a public hearing, and may be approved by the Planning Director. With each of these two permits, though, you are notified that permits have been issued at your next Commission meeting.

Here's an example of an emergency for which a permit was issued. You can see how the situation would be termed an emergency. Not only does it affect public health and safety, it threatens habitable structures.

Two other actions are possible from an SMA application. Exemptions are approved by you. And applications could also be denied for cause by either you or by the Director.

How is an exemption different from a permit? An SMA Exemption has no conditions, and there are 17 different categories of Exemption. SMA Use, Minor and Emergency Permits always have conditions of approval in order to minimize impacts.

And here are some common Exemptions -- single family residences and improvements to them; repair and maintenance of roadways, streams, underground utilities and existing structures; and, and demolition of some structures.

Now we'll talk a little bit about the Shoreline Rules. As stated before, development impacts available resources. To minimize impacts to those resources, the CZM has established objectives and policies to minimize, where possible. These five CZM objectives are the primary focus of your Shoreline Rules: scenic and open space; coastal ecosystems; coastal hazards; beach protection and access; and marine resources.

This is the same chart we reviewed earlier. You can see where the Shoreline Rules fit into the Planning framework.

The Shoreline Setback objectives are to improve public health and safety, ensure shoreline access, and limit the types of structures in the shoreline area. And there are four different actions that may be taken under the shoreline rules. The Director has authority to issue shoreline setback determinations and approvals; you have the authority to approve a shoreline setback variance; and either you or the Director could deny an application for cause.

And what can be built in the shoreline setback area? Minor structures that cost less than \$20,000, do not impede shoreline processes, do not alter the existing grade, and are limited in scope.

While you have the authority to issue a Shoreline Setback Variance, only limited types of structures may be eligible for a variance. And there are also mandatory conditions of approval that must be a part of any variance approval. It must maintain safe lateral access or compensate for its loss; minimize impacts to beach processes; minimize risks of structures failing; comply with flood hazard rules; and minimize impacts to public views to, from and along the shorelines.

Shoreline Setback Rules regulate the uses within the shoreline in order to provide at least the minimum protection from coastal hazards and ensure public use and enjoyment of the shoreline. The setback itself is determined using the average lot depth method and a certified shoreline from which to measure.

If the average lot depth is 100 feet or less, the setback is 25 feet. If it's between 100 and 160 feet, the setback is 40 feet. When the average lot depth is in excess of 160 feet, the setback is one-quarter of the average, with a maximum of 150 feet.

Just a few concluding remarks -- your shoreline is a key to Lana'i's quality of life. The shoreline is eroding at an accelerated rate. Shoreline and coastal erosion need to be more fully understood. And CZM through SMA guidelines, and your SMA and Shoreline Rules seek to minimize adverse impacts to your environment.

Mahalo, and that actually concludes my remarks. Our contact information is there on the screen. Do I have any questions?

Ms. Gima: Any questions for Keith, Commissioners, comments? Thank you, Keith.

Mr. Scott: Thank you.

## **F. UNFINISHED BUSINESS**

- 1. Planning Department transmitting a status report on the Planning Department's study to amend the Lana'i Special Management Area (SMA) boundaries (First presented at the October 21, 2015 meeting and further discussed at the December 16, 2015, January 20, 2016, and February 17, 2016 meetings.) (K. Aoki)**

**Follow-up memo from the Department of Planning was provided for the January 20, 2016 meeting.**

**There may be ongoing community discussion.**

Ms. Gima: We're going to move on to Item F, which is unfinished business. . . (*Chair Gima read the above project description into the record.*)

Mr. Yoshida: Thank you Madame Chair. We have our administrative planning officer, Kathleen Aoki, who the Director said is assigned to this project to provide you with a status update, status report.

Ms. Kathleen Aoki: Good afternoon members. Kathleen Aoki here. Can someone tell me how I can look at my flash drive on this? Do you know how Keith?

Alright, members, thank you for your patience. So the last time I was here, I had gone over a couple of scenarios with you on the tsunami inundation zone. So what I was able to get was a new tsunami inundation maps. So they're coming out, and with this new generation

of maps what they've done is what you see up there in red is sort of your normal, if you will, kind of, more common occurrence of it there was, if there was sort of your...I don't want to say every day run of the mill tsunami, but that kind of scenario. So they've come up with that. But what they did this time around was because of the, the larger tsunamis that we've been experiencing, they decided to do a model which includes sort of your worst case freakish 9.0 earthquake in Chile or in Alaska. So what you see in yellow, up there, is that sort of, that sort of occurrence. Not a huge difference, but they did decide to do that, and put it on there. My understanding is, I guess they would decide where to tell people to go to dependent on what kind of occurrence occurred. But I wanted that because we had talked about sort of looking at the tsunami inundation zone as maybe an idea of where to move the boundaries, and using that as a guideline. And I thought, you know, I would present it to you folks to see the red or the yellow. To me, there's really not that much of a difference, so I would probably encourage just the yellow, just to be -- because it's there and we know, and they've modeled it.

The other question that I had when was I here, last time, from Joelle, previous commission member, had to do with cultural sites. And I did contact SHPD on Maui, and he -- he said, you know what Kathleen use my name, Hinano Rodrigues, which maybe some of you know, tell them that Kepa is your best resource. And he goes, I defer to him, so it was kind of cute. And there are 100's of studies that have been done over the years. Arch plans, arch inventory surveys, and they're all on file. He actually discouraged me from coming down there, and looking at them. Because it's just, it's just -- it's an unfeasible task, you know.

So having said that, I went and talked to our Cultural Planner, Annalise, at the Planning Department and she, I mean, she agreed that, yes, you will often find historical sites in the shoreline area because that's where people lived. That's where they got their food, so you do have a lot of more occurrences of finding, potential of finding archaeological features down on the shoreline. But she said that the company that have owned Lana'i have done a lot of surveys over the years too. Exactly what, I think, Lynn has said that. Hinano Rodrigues said that. So, it's not like we're going to unknown territory. These areas have been explored. They've been looked at. They're documented. And the other thing to consider is that there is Hawaii Revised Chapter 16, which is the means of protecting those sites. So it's not like the SMA is the be all of protecting these areas. I did just get a copy of an archaeological monitoring plan that was submitted for the Club Lana'i area. Kurt had given me a copy of the letter from SHPD so, you know, these areas are in the SMA already and they're being reviewed under State Law, like they're required to be.

So that's my answer for that. It's -- I, I don't -- I can't come back here and tell you I know every single site that's on Lana'i. I'm sorry I don't. I don't know -- maybe -- I don't even know if Kepa would know. He probably would. But just know that the SMA boundary is not the only thing that's going to, to address those sites. Once you start getting a building permit that's going to require grading, those kind of -- the Chapter 16 gets triggered and it gets sent to SHPD for review. And a lot of times Planning is waiting on their comments

before we make decisions, you know, so we actually rely on them under that, that law.

So that's my -- that was what I was tasked to come back here tonight to talk to you folks about. I don't know if there's any other questions that have come up. If -- I still have not come up with a proposal for you folks because I still wanted to talk stories and see if there were any other comments or concerns. What I can do is come back next time with a proposal if you feel comfortable with sort of following --. It won't be exactly -- I don't -- you know we're not going to make jaggedly lines like the tsunami inundation -- yeah -- the tsunami inundation zones. And then as I had mentioned, up on the northwest side you have a lot of sand dunes. You don't have a tsunami zone up there, but you have a lot of sand dunes. So we would look at that because you'd want to protect those. Any questions?

Ms. Gima: Kathleen, I'm sorry, what was Joelle's specific question again? I mean, it's been some time.

Ms. Aoki: Yeah, it was -- it was a while ago. Sea level rise, which -- I'm sorry, I didn't address that. So sea level rise, when I -- what I did was I talked to Tara Owens who's some of you do know from UH Sea Grant, and she -- she said that if we are looking at the tsunami --. Sea level rise doesn't happen too much; so far the studies that they've done on Lana'i because we're blocked. You're blocked from Molokai and Maui. So there's only certain areas where the models are showing some sea level rise potential.

But what -- so when we were looking at the Club Lana'i area, that whole side, she said, well, if you're looking at the tsunami inundation zone, sea level rise pales in comparison to the tsunami inundation zone. So she said it's a non issue. So I said, well, thank you very much, that makes it easy. So that was her response.

I do --. I mean, I did download her power point that's, you know, 40-something pages long, but essentially that's -- that's what's the response was. So sea level rise was one, and then the other question was about the, the cultural historic sites.

Ms. Gima: That's what I wondered, what was the specific question that she asked about the cultural and historic sites.

Ms. Aoki: She was curious about the EA that have been conducted, to check with SHPD, and then Lynn had mentioned that they have, you know, their reports. And that's why when I called Hinano, and he just said, there's, there's tons, you know. You're going to be down here for days digging through this stuff, and I don't know how -- it's not going to really benefit the question. The answer is...there is that level of Chapter 6E that's going to protect those sites regardless. And the good thing is you have a lot of these archaeological inventory studies that have been done. We have monitoring plans on file. Annalise, the planner, the cultural planner, mentioned that...when the pool was being renovated at

Manele that, I guess, they have a monitor onsite and things were being found. And so that's exactly what these documents are there for and the monitor to be there for. So it's all -- you know, it's done on a different level.

Ms. Gima: Commissioners?

Mr. Bradford Oshiro: I might be asking you -- wrong person, but how far does it affect on the east side of the island? From...the SMA, how far does it go back?

Ms. Aoki: Roughly, I can tell you that roughly it runs approximately 500 feet. Between 450 and 500; pretty much all the way around the island except when you get to Manele.

Mr. Oshiro: So if somebody decided to just, on the east side of the island, decided to just grade the land, take out all the trees and stuff, do they have to come for, come back for an environmental study on that?

Ms. Aoki: If they were going to do an entire project, it kind of depends. If they were going to do an SMA, it would probably trigger an SMA Major that they would have to go through.

Mr. Oshiro: No, I not saying that. I'm saying if they just grade, just take --

Ms. Aoki: If they do --

Mr. Oshiro: Maybe on two acres of land, just take, all the trees that was there, they'd take it out.

Ms. Aoki: Public Works is the entity that handles grading permits.

Mr. Oshiro: So if they don't have a permit, they, they would get fined?

Ms. Aoki: No. What I was going to say was what triggers a grading permit, I can't tell you. I'm sorry, I don't know. They might know, I don't know. But not all grading triggers a grading permit. So it depends on the level of what they're doing.

Mr. Oshiro: But if it's in that shoreline, that 100 whatever -- 500 feet -- if it's in that area then --

Ms. Aoki: Not necessarily. I know of a project that was in Lahaina where they wanted to clear out a whole bunch fallow land that the developer had, and we did not require an SMA. So it kind of depends -- it really just depends on the nature of their work, what they're doing and what the impacts are. I mean, you can look at it, like -- and I'm not making this -- it's a very simplistic comparison. Do you need an SMA to plant a tree? Do you need an SMA to pull out a tree? I know, I realize that's super simplistic, so it just kind of depends.

Mr. Oshiro: No, what I'm trying to say is if a person didn't pull a permit or anything, and they grade like two acres, how do they know there wasn't any cultural sites on that?

Ms. Aoki: That's a good point. That's why it depends on the nature of what's being graded. And if you have concerns what I would suggest is to -- you can either call in or create online a Request for Service, and ask the County to look into it, and we'll assign it to the appropriate agency to, to...investigate it. That's your best bet...yeah.

Ms. Gima: Commissioners, any other questions for Kathleen? Thank you.

Ms. Aoki: You're welcome. Any recommendations? Would you like me to come back next time with a proposal?

Ms. Gima: I think that would be...nice.

Ms. Aoki: OK.

Ms. Gima: And for us to review, and then, I think, to start having the dialogue of --. I think maybe from there we would be able to...have, you know, specific recommendations or more specific questions to ask.

Ms. Aoki: OK. So I'll show you where it is now, where we're proposing it and the rationale behind it. OK?

Ms. Gima: Before -- before you sit down I'm going to open up public testimony. So if there's anyone in the audience that, you know, wants to provide testimony on this or be able to ask Kathleen any questions. Anyone interested? OK, thank you.

Ms. Aoki: My pleasure. Thank you.

## **G. DIRECTOR'S REPORT**

### **1. Resignation of Jarrod Barfield as a Lana'i Planning Commissioner.**

Ms. Gima: OK, we're going to move along to Item G, which is the Director's Report.

Mr. Yoshida: Yes, Madame Chair, members of the Commission, the County has received a letter of resignation from Commissioner Jarrod Barfield so I guess we're in the process, or the County's in the process of trying to fill that vacancy.

Ms. Gima: When do you guys foresee an appointment to occur, or what's the timeline for

that?

Mr. Yoshida: I believe the Mayor has sent down a name to the Council. Council has 60 days to act on that nomination or the individual is automatically approved.

Mr. Oshiro: I have a question. For the people that do put in and don't get selected, is there a reason why don't get selected? Because it's not real easy to fill this position up here because nobody wants to sits on it.

Mr. Yoshida: Well, I guess we're just, you know, following process of --. When there is a vacancy the Mayor can nominate someone, and it goes before Council.

Mr. Oshiro: How does the Mayor know who on Lana'i, like, whose been here a while, who hasn't been here, who's a life time resident, or who was born and raised? I mean, this is a lot of things that I can see, you know, where somebody that's been here a while has more knowledge than somebody just coming in -- just coming to, to our island, and has no knowledge of what's going on this island. So, I mean, I, I just can't see because I know about three or four people that put in for it and didn't get pick and you know it's like why, why? These people are really -- you know, they're smart people, they got, you know, got a lot of background here on Lana'i. I mean, I just, I just curious because it doesn't seem fair to me.

Mr. Yoshida: Well I guess, you know, the Mayor goes through this process every year as there are -- you know, you serve staggered terms so every year there's one, two or three vacancies on this commission and the Mayor has to -- has the opportunity to submit nominees to fill those vacancies. Sometimes the Council passes them and sometimes they don't for whatever reason. I mean, that's, you know, their prerogative the Mayor nominates, the Council can approve or disapprove for whatever reasons.

Ms. Gima: I have a question. For those people who apply and let's say they don't get nominated, does their application just get tossed out and never reviewed again, or does it kind of -- is there a pool that then the Mayor would review again and select from?

Mr. Yoshida: I guess I'm not as familiar as the exact working of the Mayor's Office if they retain the names for whenever a vacancy occurs. I would think they have that, that data base available to them that these people are interested, this is their background, they weren't selected this time.

Ms. Zigmond: Kelli, you stole my question, but I have another one. So let's say that Alan has a stack of papers because we don't throw any, any possible candidates away because there aren't all that many, so they're sitting here. Does he say, well, this is on pink paper, I'm going to do this, or is there a group of people who are suggesting to him, you know, this person has a background in this, or this person works for the union, or --? Do you know

how that goes?

Mr. Yoshida: Well, I'm sure he has various executive assistants who work on these matters, but he is the Mayor so I guess he makes the call, I mean, the final call. He'll make the call and say I'm nominating this person and whatever happens with the Council happens with the Council.

Ms. Gima: But ultimately the Council has the final say?

Mr. Yoshida: Well, the Council can approve or disapprove within 60-days or it's automatically approved after that...if the Council does not act. Because sometimes they face situations where for like Hana the Policy Committee actually recommended approval of this person. But between the time that the matter went to the full Council -- between the Policy Committee meeting went to the full Council, the person decided that they couldn't fulfill the responsibilities of being a member of the Hana Advisory Committee, so they submitted a letter of resignation. But the Council had to act, so they ended up disapproving because if they don't act within 60-days, it's automatically approved.

Ms. Gima: What is the reason why they wouldn't act?

Mr. Yoshida: Sometimes they're deadlock. I mean I know that -- well, way back when the Molokai Planning Commission was initially created there was one member and the Council was deadlock at four to four, and Council Member Kawano was out ill for a prolonged period of time, so you have this clock running, the 60-days, but when it went to the, in committee, it was four to four. They were just deadlock.

Ms. Gima: So this 60 days for this, new nomination, when does -- when is that up by? Are you aware of that?

Mr. Yoshida: I would think it would be, the Mayor's nomination is fairly recent. Maybe the end of last month, the ending part of last month or beginning of this month, so 60-days from that.

Ms. Gima: Any other questions Commissioners for Clayton?

- 2. Hawaii Congress of Planning Officials (HCPO) Conference - September 21-23, 2016, Kauai Hyatt Hotel, Poipu, Island of Kauai.**

**The Lana'i Planning Commission may vote to cancel or reschedule its September 21, 2016 meeting.**

Mr. Yoshida: OK, Item 2, we have -- again, a notice before or informed you before that the statewide -- this year's statewide planning conference is being hosted by the Kauai Planning Department on September 21<sup>st</sup> to 23<sup>rd</sup> at the Hyatt hotel in Poipu. Now September 21<sup>st</sup> is your regular meeting date, the third Wednesday of the month, so we were thinking of cancelling. We're asking that we cancel the meeting so some of the members can attend the conference, but possibly rescheduling. I guess we did circulate to you the amendments to the short-term rental home ordinance which was enacted in May, Ordinance No. 4315. Also coming out of that discussion was were two Council Resolutions which the members, the Council Members felt were not properly vetted through the communities, so they referred these two resolutions at their July 1<sup>st</sup> meeting to the three planning commissions for their review and recommendation. So you have that 120-day turn around period as we have with all these other resolutions regarding accessory dwellings, affordable accessory dwellings, etc. So we received the resolutions, Resolution 16-93 and Resolution 16-94, on July 7<sup>th</sup>, so you have 120-days. So we're suggesting possibly if the Commission could defer its September meeting by a week. This would allow the minutes to be transcribed. And if this Council so chooses to deal with those Resolutions, this Council can deal with it. If they want to pass it to the next Council -- because we know we're going to have at least two new members on the next Council because of term limits. But the choice is theirs if we can get them the minutes. So we're asking possibly if you could reschedule your September 21<sup>st</sup> meeting, move it back a week.

Ms. Gima: Any objections on that recommendation to reschedule? So it's the week before or the week after? The week after. Any objections to having it the week after? OK, so September will be September 28<sup>th</sup>.

3. **Open Lana'i Applications Report as distributed by the Planning Department with the June 15, 2016 agenda. *(Commissioners: Please bring your documents from the June 15, 2016 agenda packet.)***
4. **Open Lana'i Applications Report as distributed by the Planning Department with the July 20, 2016 agenda.**

Mr. Yoshida: We have circulated our list of open Lana'i applications for June and July if you have any questions on those, on the reports.

Ms. Zigmond: Clayton, I have a quick question on the...Manele Golf Course, that's a Conditional Permit. Do you what's, what's up with that? It's the last item on the open project's report.

Mr. Yoshida: Oh, I believe the Commission heard this matter back in February. But it's a Conditional Permit so the Council is making the final decision. So on those that where the Council is making the final decision, we do not close it until the Council makes a decision whenever they do. You know, whether it's this year, next year, the year after that,

whatever. Hopefully they'll make it sooner rather than later. But the Commission did have a public hearing back in February and made a recommendation to the Council.

**5. Agenda Items for the August 17, 2016 Lana'i Planning Commission meeting.**

**Public Hearing on the following application:**

**MR. JAMES BURGESS of AT&T MOBILITY requesting a County Special Use Permit for the Manele Bay AT&T Generator project to operate a telecommunications facility with permanent backup generator at 80 Hulopoe Drive, TMK: 4-9-002: 001 (por.), Manele, Island of Lana'i. (CUP 2016/0001) (E. Aako)**

Mr. Yoshida: OK, if there aren't any other questions on open Lana'i applications report, the next meeting is August 17<sup>th</sup>. We do have a public hearing from AT&T Mobility for a County Special Use Permit for the Manele Bay AT&T generator project to operate a telecommunications facility at Manele. I think the Commission remembers maybe four years ago when T-Mobile came in for the same thing. So I guess AT&T is taking over the T-Mobile facility at Manele. But rather than transfer the permit, they want to come in for a brand new permit so that's why -- that's the reason for the County Special Use Permit.

Ms. Zigmond: Madame Chair, I had requested a while back that since the Planning Department has to stay overnight anyway if we could move our meetings back to 5:30 p.m. as we used to have them, or 6:00 p.m. or 6:30 p.m. as we used to have them. But I'll settle for 5:30 p.m., and just wondering where that's at please.

Mr. Yoshida: Yeah, I guess because of the public hearing on the AT&T application, we have to give them a 45-day notice so they can publish notices in the paper, once a week for three consecutive weeks, and they can send out the notice of the hearing to the property owners within the 500 foot radius at least 30-days prior to the hearing. So that's pretty much set that the hearing is at five o'clock because that's --

Ms. Gima: For August.

Mr. Yoshida: For the August meeting. I mean we can talk -- we can talk at the August meeting about moving the time. Hopefully -- well, maybe the Council might act on the Mayor's nominee to replace Commissioner Barfield.

Ms. Zigmond: But again I think that it's our decision. And again because you are staying overnight, that ½ hour will help us tremendously and it shouldn't affect you at all. So I am

requesting again that starting in September we start at 5:30 please.

Mr. Yoshida: Well, I think we can discuss it at the August meeting.

Ms. Gima: And we can't discuss it now because we're just waiting on the potential appointment of a new commissioner.

Mr. Yoshida: I guess, and, if Commissioner Badillo attends the next meeting.

Ms. Zigmond: And if she doesn't? And if the new person doesn't, are we just going to keep waiting and waiting and waiting?

Mr. Yoshida: Then you can make a...you can take an action.

Ms. Zigmond: Darn straight, I'm going to bring it up again.

Ms. Gima: OK, so why don't we have that on the August agenda then to take action on the start time of the meeting, starting in the month of September. So have that on the agenda, and then the Commissioners will be able to take action at that time.

I wanted to bring up one thing to have on our August agenda as well. I've been contacted by the State's Ombudsman's Office regarding a complaint that has been made against the Lana'i Planning Commission that -- it was made back in Summer of 2015 -- about the Lana'i Planning Commission not regularly holding monthly meetings, and I have been advised as the chairperson to have that discussion on record amongst us Commissioners to have a discussion about ongoing monthly meetings. If there are issues that the Planning Department wishes to bring up, then we can talk about it at that time. But this is something not as important and that we need to act on or else it will continue as a further investigation of our Planning Commission. And I don't think we should be held liable for meetings that have been canceled when we haven't canceled the meetings.

Ms. Richelle Thomson: I want to get together with you or get the information from you afterward. I'm troubled that the Ombudsman would contact the Chair directly and not go through Counsel. That's normally how it's done. But I just want to make sure that if they're telling you words like, you know, legally threatening words. OK, that's kind of what it sounded like a little bit, but yeah.

Ms. Gima: You know, they've just been trying to gather --. I mean, they contacted me as the Chair even though the complaint had been made last year, and I wasn't the Chair at that time, to just get some information in regards to why meetings were being canceled, who would be canceling the meetings, and the concern that if it is me as the Chair or us as a Planning Commission canceling the meetings that we're not following the rules.

Ms. Thomson: Your planning rules.

Ms. Gima: Yeah, the Lana'i Planning Commission rules. So I would like to add that as an item on the August agenda so we can talk further, and I can talk with you after the meeting about this.

Ms. Koanui Nefalar: And then also for the next meeting Ms. Peary's request regarding the jet fuel tanks. She requested that be on the agenda.

Ms. Gima: Any objections Commissioners to having Ms. Peary's request? Clayton, any comments?

Mr. Yoshida: Well I guess we have -- we are dealing with Ms. Peary's request from the Department's side. I don't know exactly what the outcome is.

Ms. Gima: So my understanding from her public testimony was to basically have an update from the Planning Department as well as Pulama Lana'i in regards to permits that were applied for, permits that were signed off, and, you know, kind of what went wrong or changed. And being that she came tonight, provided public testimony, wanting to make the Planning Commission aware of this I think we should honor her request so that's not only we're aware but community members as well.

Ms. Thomson: One of the things that I wanted to suggest is to allow the Planning Department's Request for Service process, and the ZAED --. So from what I hear and I don't anything about this matter, but it sounds like a Request for Service was made, and Zoning and Enforcement Division is looking into whether or not there are permits needed and what the circumstances. So my suggestion would be to allow that process to be completed. If there are no actions for the Planning Commission -- not everything goes to the Planning Commission. It's -- there needs to be a trigger for your review of a project, so if there are no permits needed then all as well, then it would go on that route. And the process would be public in that the response to the Request for Service would be given to the individual who made the request. If there are permits needed, then of course, it would come through you if they are within your purview.

Ms. Zigmund: Madame Chair? I, I don't think it's, it's a matter if they're coming before us for review because I don't think that's an issue. I think it's just an update, and periodically and historically we've have had updates on various items in the community, and I think Margaret was just wanting get it to you -- for us to be able to put it on the agenda because we do get to set our agenda and to inform the community; we have done that before.

Ms. Gima: Yeah, we have done it recently. I was asking Pulama Lana'i to provide an update on Miki Basin. I mean, I don't think none of us are saying that we have any authority over this or wanting to take action on anything, but honoring the request of someone who

came tonight, provided public testimony. Obviously I think all of us are a little interested in, in hearing about this. So again it's nothing in terms of us needed to vote on something or approving something, but simply as an update.

Ms. Thomson: It's up to you.

Ms. Gima: Yeah, so any objections to Stacie's request to have that on August agenda for an update? OK. Any other requests Commissioners to have on the August agenda?

Mr. Yoshida: That concludes our report.

**H. NEXT REGULAR MEETING DATE: AUGUST 17, 2016**

**I. ADJOURNMENT**

Ms. Gima: Alright, so it is now 6:10 p.m., and no objections I'm going to adjourn the meeting at 6:10 p.m.

There being no further discussion brought forward to the Commission, the meeting was adjourned at approximately 6:10 p.m.

Respectfully submitted by,

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

**RECORD OF ATTENDANCE**

**PRESENT:**

Marlene Baltero  
Stephen Ferguson  
Kelli Gima, Chair  
Stacie Lee Koanui Nefalar, Vice-Chair  
Stuart Marlowe  
Bradford Oshiro (from 5:05 p.m.)  
Beverly Zigmond

**EXCUSED:**

Medigale Badillo

**OTHERS:**

Clayton I. Yoshida, Planning Program Administrator, Current Planning Division

Kathleen Ross Aoki, Planning Program Administrator, Plan Implementation Division

Keith Scott, Staff Planner, Current Division

Richelle Thomson, Deputy Corporation Counsel