

## LANA'I PLANNING COMMISSION

PURSUANT TO CHAPTER 92, PART I, OF THE HAWAII REVISED STATUTES AS AMENDED; NOTICE IS HEREBY GIVEN OF A REGULAR MEETING OF THE LANA'I PLANNING COMMISSION

### AGENDA

**DATE:** JUNE 18, 2014  
**TIME:** 5:30 P.M.  
**PLACE:** Lana'i Senior Center  
309 Seventh Street  
Lana'i City, Lana'i, Hawaii 96763

Members: John Ornellas (Chair), Stacie Lee Koanui Nefalar (Vice-Chair), Joelle Aoki, Shelly Barfield, Kelli Gima, Stuart Marlowe, Bradford Oshiro, Beverly Zigmond

- A. CALL TO ORDER
- 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.
- C. APPROVAL OF THE MINUTES OF THE APRIL 16, 2014 MEETING AND MAY 21, 2014 SITE INSPECTION (*Commissioners, please bring your copy of the draft April 16, 2014 meeting minutes which was distributed in the May 21, 2014 packets.*)
- D. REPORT, PURSUANT TO SECTION 92-2.5(D), HAWAII REVISED STATUTES, BY THE COMMISSIONERS PRESENT OF THE TESTIMONY AND PRESENTATIONS RECEIVED AT THE MAY 21, 2014, 5:30 P.M. SCHEDULED MEETING, WHICH MEETING WAS CANCELLED DUE TO LACK OF QUORUM.
- E. UNFINISHED BUSINESS
  - 1. PULAMA LANAI requesting a State Land Use Commission Special Use Permit and a Phase II Project District Approval for the Reverse Osmosis Desalination Facility and Distribution System including the development of reverse osmosis desalination plant facility, administration building, water generation facility, and related improvements within the Manele Project District at TMK: 4-9-002: 001 (por.), 4-9-017: 009 (por.) and 010 (por.), Manele, Island of Lanai. (SUP2 2013/0028) (PH2 2013/0001) (B. Sticka)

The public hearing was conducted on April 16, 2014 and the Commission deferred the matter. (*Commissioners, please bring your copies to the meeting.*)

Site inspection conducted on May 21, 2014.

The Commission may take action on these requests.

2. MR. WILLIAM SPENCE, Planning Director, transmitting a proposed bill amending Section 19.65.080.D of the Short-Term Rental Home ordinance in the Maui County Code concerning Enforcement to be consistent with the Maui County Code Enforcement provisions in Section 19.530 and to ensure appropriate due process. (J. Alueta) (Public testimony was received on May 21, 2014)

The Commission may take action on this item.

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

1. MR. WILLIAM SPENCE, Planning Director, transmitting Council Resolution No. 14-15 Referring to the Lanai, Maui, and Molokai Planning Commissions a proposed bill to amend Sections 19.12.020 and 19.37.010, Maui County Code, pertaining to Transient Vacation Rentals in the Apartment District. (J. Alueta)
  - a. Public Hearing
  - b. Action

G. COMMUNICATIONS

1. February 6, 2014 Third Quarter Report (June to August 2013) submitted by LYNN MCCRORY, Senior Vice-President of Governmental Affairs, PULAMA LANA'I 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 Lana'i. (95/SM1-015) (95/PH2-001) (B. Sticka) (Previously circulated with the February 19, 2014 and April 16, 2014 agenda packets. *Commissioners, please bring your copies to the meeting.*)

The Commission may provide its comments on the report. Deferred at the April 16, 2014 meeting.

2. February 7, 2014 Fourth Quarter Report (August to December 2013) submitted by LYNN MCCRORY, Senior Vice-President of Governmental Affairs, PULAMA LANA'I 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 Lana'i. (95/SM1-015) (95/PH2-001) (B. Sticka) (Previously circulated with the February 19, 2014 and April 16, 2014 agenda packets. *Commissioners, please bring your copies to the meeting.*)

The Commission may provide its comments on the report. Deferred at the April 16, 2014 meeting.

3. Pulama Lana'i's Upcoming Projects Update - Lynn McCrory, Vice-President of Governmental Affairs, Pulama Lana'i.

This is for information purposes only.

#### H. DIRECTOR'S REPORT

1. Open Lana'i Applications Report as distributed by the Planning Department with the May 21, 2014 agenda packet.
2. Open Lanai Applications Report as distributed by the Planning Department with the June 18, 2014 agenda
3. Agenda Items for the July 16, 2014 Lana'i Planning Commission meeting.

Public hearings scheduled:

- a. MR. WILLIAM SPENCE, Planning Director transmitting the Planning Department's Report with comments, recommendations, and proposed amendments to the planning commissions for review and transmittal to the Council relating to Chapter 19.65 of the Maui County Code relating to Short-Term Rental Homes. (G. Flammer)

The Report contains a Proposed Bill for an Ordinance containing the Planning Department's proposed amendments to the Short-Term Rental Home Ordinance No. 3941.

- b. MR. WILLIAM SPENCE, Planning Director transmitting the Planning Department's Report with comments, recommendations, and proposed amendments to the planning commissions for review and transmittal to the Council relating to Chapter 19.64 of the Maui County Code relating to Bed and Breakfast Homes. (G. Flammer)

The Report contains a Proposed Bill for an Ordinance containing the Planning Department's proposed amendments to the Bed and Breakfast Home Ordinance No. 3611.

**Both reports are available on the County website at:**  
[www.mauicounty.gov](http://www.mauicounty.gov) ( <http://www.mauicounty.gov/index.aspx?nid=121> )

- I. NEXT REGULAR MEETING DATE: JULY 16, 2014

- J. ADJOURNMENT

AGENDA ITEMS ARE SUBJECT TO CANCELLATION.

Lanai Planning Commission  
Agenda – June 18, 2014  
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AN EXECUTIVE SESSION MAY BE CALLED IN ORDER FOR THE COMMISSION TO CONSULT WITH ITS ATTORNEY ON QUESTIONS AND ISSUES PERTAINING TO THE COMMISSION'S POWERS, DUTIES, PRIVILEGES, IMMUNITIES AND LIABILITIES, PURSUANT TO SEC. 92-5(a)(4), HRS.

DOCUMENTS ARE ON FILE WITH THE DEPARTMENT OF PLANNING. THE ADDRESS OF THE COMMISSION IS C/O DEPARTMENT OF PLANNING, ONE MAIN PLAZA, 2200 MAIN STREET, SUITE 619, WAILUKU, MAUI, HAWAII 96793.

UNLESS OTHERWISE SPECIFIED BY ANOTHER SPECIFIC PLANNING COMMISSION RULE, ANY PETITION TO INTERVENE AS A FORMAL PARTY IN THE PROCEEDINGS BEFORE THE COMMISSION MUST BE FILED WITH THE COMMISSION AND SERVED UPON THE APPLICANT NO LESS THAN TEN (10) DAYS BEFORE THE FIRST PUBLIC HEARING DATE. (Note: The calculation of time for deadlines ten days or less excludes weekends and State recognized holidays.) THE ADDRESS OF THE COMMISSION IS C/O the DEPARTMENT OF PLANNING, ONE MAIN PLAZA, 2200 MAIN STREET, SUITE 315, WAILUKU, MAUI, HAWAII 96793. The deadline for filing a timely Petition to Intervene for an item where the first public hearing date was on April 16, 2014 was on April 2, 2014.

ORAL OR WRITTEN TESTIMONY WILL BE RECEIVED ON EACH ANY AGENDA ITEM SUBJECT TO THE PROVISIONS OF CHAPTER 92, HAWAII REVISED STATUTES AND THE COMMISSION'S RULES OF PRACTICE AND PROCEDURE.

WRITTEN TESTIMONY AND FAXES SHOULD BE RECEIVED AT LEAST TWO (2) BUSINESS DAYS BEFORE THE MEETING TO ENSURE DISTRIBUTION TO THE COMMISSION. FIFTEEN (15) COPIES OF WRITTEN TESTIMONY ARE REQUESTED IF TESTIMONY IS PRESENTED IMMEDIATELY PRIOR TO OR AT THE MEETING.

TESTIFIERS: Please be advised that applications for Community Plan Amendment, State District Boundary Reclassification, Change in Zoning, and Conditional Permit require the approval of the Maui County Council. In order to be notified of future agendas of the Maui County Council please notify the Office of Council Services at (808) 270-7838 or by mail to the Maui County Council, 200 S. High Street, Wailuku, Maui, Hawaii 96793.

THOSE PERSONS REQUESTING SPECIAL ACCOMMODATIONS DUE TO DISABILITIES, PLEASE CALL THE DEPARTMENT OF PLANNING AT 270-7735 (Maui) OR 1-800-272-0117 (Molokai) OR 1-800-272-0125 (Lanai) OR NOTIFY THE DEPARTMENT OF PLANNING IN WRITING AT ONE MAIN PLAZA, 2200 MAIN STREET, SUITE 315, WAILUKU, MAUI, HAWAII 96793 OR FAX NUMBER 270-7634; AT LEAST SIX (6) BUSINESS DAYS BEFORE THE SCHEDULED MEETING.

**PLEASE NOTE: If any member of the Commission is unable to attend the scheduled meeting, please contact the Department of Planning at least one day prior to the meeting date. Thank you for your cooperation.** (S:\ALL\Leilani\LPC\Agenda\2014\061814\_age.wpd)

**LANA'I PLANNING COMMISSION  
REGULAR MEETING  
JUNE 18, 2014**

**APPROVED 08-20-2014**

**A. CALL TO ORDER**

The regular meeting of the Lana'i Planning Commission (Commission) was called to order by Chair John Ornellas at approximately 5:30 p.m., Wednesday, June 18, 2014, in the Lana'i Senior Center, Lana'i City, Hawaii.

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

Mr. John Ornellas: I want to call to order the Lana'i Planning Commission meeting of June 18, 2014 at the Lana'i Senior Center. And it seems we have everybody here except for Joelle, who's on vacation. Alright, so Item B. We can open up the floor for public testimony for people who are unable to stay until the wee hours of the morning. So if you want to come up, go ahead – yes, hang on – go ahead. Please state your name, and if you represent anybody.

**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. Diana Shaw: Aloha. My name –. My name is Diana Shaw, and I'm representing the Lana'i Community Health Center (LCHC). And basically I just wanted to make sure that the commission's records are accurate, so I'm making some clarifying remarks regarding some comments that were made at the 5/21 meeting, in particular, for page 8 to 11 where Ms. Frank's statements were made. First off, I want to make it clear that there were – there has not been any discussion with, quote, all health center providers, all the health care providers on island. This has – there has not been any communications with LCHC on meetings that we requested and arranged upon hearing rumors about the pharmacy. This could impact both the new pharmacy as well as LCHC as we will likely continue to use Molokai Drugs for chronic medications and other stock, and our stock for urgent medications and medications for the uninsured. No. 2 there has not been any joint efforts to ensure that LCHC patients – almost half the island's population at this point – would not be harmed by the company plan. Clearly starting up a new pharmacy in Lana'i affects our ability to keep the cost of medication affordable for those most need in our community. And three, the lack of planning hurts the integration of health care on Lana'i, and is not aligned with the LCHC's vision statement or mission. Thank you very much for allowing me to clarify this.

Mr. Ornellas: Thank you Diana. Members, any questions for Diana? Hearing none, thank you Diana. Appreciate it. Pat, you wanna come up next? I take it we have a sign in sheet some place. Okay. No, we don't – we don't – I can run with it. Yeah.

Mr. Fairfax “Pat” Reilly: Pat Reilly of 468 Ahakea Street. I'd like to make some comments on Item E1, regarding the desalination facility. I'd just like the chair to clarify for the public the two items I have in your – my letter here is must this application be approved by the Council of Maui County, and two, describe any time limits under the rules upon the Planning Commission for consideration of this application. So when you get a chance, if you can just ask Corporation Counsel or the Planning Department to answer those two questions and put it on the record, I'd be happy.

The second part actually has – I went through my own thinking on this and does the community plan require additional potable water? In other words, to me the desalination and the potable water issue is a determination whether you want any more development on this island or you're satisfied with the current or projected community plan? I think on the Lana'i Water Use and Development Plan it's clear that even Mr. Murdock and Castle & Cooke did not have enough water to build out his projects. So to me, if the Planning Commission is going to approve the community – the upcoming community plan and all the projects, you're gonna need more water. And water is the basis of development. That's really a fundamental issue, and I think you understand that. Secondly is, is the Planning Commission, is the Lana'i Planning Commission the best body to make this decision and to authorize or, or provide oversight. Now, Commissioner Zigmond at one pointed noted that this project is 14.95 acres. If it went to 15 it would have to go before the State Land Use Commission. So you were selected on purpose. This body was selected on purpose to consider this permit because they – the applicant could have taken it to the State Land Use Commission. And, all due respect, that would have cost them a lot of money and time. Because when you go before the State Land Use Commission, you, you're going to spend a lot time, and a lot of money.

So, is it appropriate to be here? In my own opinion, this is the only body we have for home rule, so if you want home rule, and you want to make this decision, then it's appropriate for you to make the decision. Otherwise, you say send it somewhere else. I think my, my C part is, I already answered. If you want development, you need more water, and I think the Lana'i Water Use Development Plan clearly said that. The rumor – and people can tell me it's not a rumor, but I'll just say as a rumor – that Pulama is considering slowing down their developments. Now I don't know what that means, but I would certainly ask how does that impact this project? In other words, if there is a slow down in the investment, capital investment, is that going to effect the desalination project, and I'd like to know the time limits. What are they estimating is new.

And lastly, and apologize to the applicant. You may – I know you're not going to like this, but when you ask for a 30-year Special Use Permit my understanding of that permit is basically to provide the applicant with time to change the zoning. The appropriate zoning for this – my opinion only – is heavy industrial. So to me, this Special Use Permit should be to give the applicant time to zone that land appropriately. The five years, in terms of the limit of the permit that I'm rec – that I think is appropriate is it's gonna come back to you after five years. Now you're not going to be here in five years. But it will come back to this body. Do you want that to happen? Are you willing to let the Planning Commission review? I would want to see what happened to the pilot project. I'd want to see all the test results. And I'd want to hear of any updates in the facility particularly if they're going to expand beyond 14.95 acres. I'd want to know that within a limited period of time. Now I can understand the applicant saying, I'm not

going to invest tens of millions of dollars to start this project, come back five years from now and have the Planning Commission turn it down. That would have been a poor investment decision on my part. But to me, it's a matter of your judgement of oversight – should this Planning Commission be exercising some oversight.

And lastly I know it's a big issue, but it, it constantly comes up in my conversations. If desalination and more water is the basis of development, we need more houses. That would be an appropriate condition to this permit. We need affordable housing here. And my understanding is part of the slow down is based on we don't have houses to house all the workers we need to move forward. It happened in Olopuia Woods. Part of that, Lalakoa, was all part of the condition to get the hotels. Desalination and water is the basis of development. We all agreed to that, and I'm in favor of economic development, a certain structure of economic development. We need that for jobs. We need that if people are going to be able to buy houses. But I, I would be willing to hear from the applicant what they believe – why they believe any of these, my opinions, don't fly. Thank you very much.

Mr. Ornellas: Thank you Pat. Members, any questions for Pat? Go ahead Bev.

Ms. Beverly Zigmond: It's actually not a questions, it's a comment. You asked about who's kuleana it is to review the ext – or approve the extensions. I had done a little bit of investigating and research, and I looked at the Land Use Commission's rules, and specifically 15-15-95 says that the Planning Department does not grant extensions. The County – quote – the County Planning Commission may with the concurrence of the Commission extend the time limit if it deems that circumstances warrant. So as we talked about in the April meeting that was going to be one of the conditions that this body would approve any extensions. So I think that might answer your question, or validate your point there, so thank you.

Mr. Ornellas: Members, any more questions? Thank you. Anybody else want to get up? Go ahead. Tell us who you are Gail.

Ms. Gail Riener: Hi. I'm Gail Riener. I'm a Lana'i resident for the past 10 years. I appreciate the opportunity to be able to testify in front of the Planning Commission about some concerns I have about recent changes in development on the island. There's a property on Ahakea Street, right across the street from me, which has added on a 3,000 square foot extension. Currently when I moved in there were five residents there with two cars. In the past couple of months, there's now seven residents, plus three cars. And in this past month there are now 12 new residents, plus three vans because they're renting it out to contractors. Every night they come at six o'clock, three vans pull up, they all get out, go into the house. Every morning at 6:15 they all get out. I did contact the County of Maui about zoning, and are they illegally renting this property. I had heard from someone who's supervisor mentioned that they were contractors that just needed a place to stay so they were renting these bunk house in town for \$10,000 a month. So my concern is when Olopuia Woods was built it wasn't decided that these houses were going to house 20 people because currently there's 19 people in this house.

The second addition being built on the island is over behind the gas station at 924 Kahana Street. That's either a two or three level structure going on which I believe is another 3,000

square foot addition. My concerns are with the need of housing are people going to be getting permits for additions, and nobody's looking at what these additions are. The houses over by the gas station were built in the 1920. And they're cute little charming houses. One's Pulama has – there was a house across the street from the one on Kahana, they demolished and they renovated it and it looks just like the regular houses. This monstrosity it's now there. I apologize, I did take pictures, but I left them on my desk at home. So I just don't know if the Planning Commission, as Lana'i moves forward, I understand there's changes that have to happen. I understand there's a housing shortage. But is there any way they can work on limiting the size of these additions that are being added on these houses, and therefore try to limit it. I mean, 19 people in the house is a lot of flushes, a lot of water. They're washing their cars, the vans in the driveway. I also had heard that someone from Maui was interested and spoke to a resident about bringing over temporary, a pre-fab construction and having people put, quotes, ohana in their back yard that they could rent out. So I'm afraid that the trend is now going to be people are going to be extending their houses. And my concern is we don't have the infrastructure to start putting 20 people in houses. So, thank you for letting voice my concerns.

Mr. Ornellas: Thank you Gail. Any questions for Gail? Members? We can talk more about this once we get more into our agenda after the desal. Thank you Gail. Anybody else? Okay. Yeah, I'm gonna open it up all night long, so I make sure you get to say something. Sally, do you want –? Yeah, you can, you can do it now. Or, if you want to wait. I think it's – it would probably be better if it's before our discussions on the desal, so you can come up. Thank you.

Ms. Sally Kaye: So if it's appropriate I'm gonna just read into the record what Butch Gima, Chair of the LWAC, put together.

Mr. Ornellas: Great.

Ms. Kaye: And then afterwards I'll just give some thoughts on the suggested conditions that you guys all got tonight. Is that appropriate for your schedule? Obviously, I'm not Butch Gima, but he could not be here tonight and he asked me to read this for, actually, on behalf of everybody at LWAC. We've had wonderful conversations with the Lana'i Water Company who's been keeping us up to speed. And we've had substantial discussion around this project, and – so what Butch did was he broke it down into three areas. And just for the sake of the record I'll read them pretty quickly.

Areas in which LWAC, which I should explain, the Lana'i Water Advisory Committee was created by a resolution by the Board of Water Supply in like 1989. And its task is to help create and oversee the implementation of the Lana'i Water Use and Development Plan. We meet once a month, the fourth Friday, at 11 o'clock. Public is welcome. We take copious minutes. Anyone is welcome to those as well.

So with respect this project LWAC, I think, to a man everyone feels very good that if the desal project was successful it would be an integral part of the comprehensive sustainability plan. The company as I've said has been very transparent about development and plan which is light change from the prior land owner's approach. It's potentially a source of renewed agriculture



economy and it takes the Manele Project District off the current water system grid. There would be no water from the high level aquifer once operational. The baseline data of water quality taken around the injection wells and multiple testing stations is a – is a positive move. Pulama has done what Castle & Cooke did not in spite of their representations which is to develop an alternative source of water for ag and the project district and the golf course. And as – as Pat pointed out I think it's been evident to those of us who have worked for 10 or more years with LWAC that there's no way that the development as it's currently entitled would be able to be built out – this is – without exceeding the sustainable yield.

The areas of concerns, no. 2, were uncertainties about what's injected back into the ground. The criterion consequence for increase salinity around the injection wells. The time table – I'm not sure what he means by this – but I think he's under the understanding that the time table for completion of the source wells may have been pushed back a couple of months. And until the renewable energy – until renewable energy powers the project there's going to be an increase use of fossil fuel. And there was no justification or precedence that we could find for a 30-year permit. Since the plan is projected to be operational by 2016 the five-year permit would run out to 2019 and allow the next Planning Commission to review progress and an extension request at that time. We felt that anything more than five-years would be irresponsible in carrying out LWAC's commitment to the community with respect to oversight of public trust resources, and the – the planning commission's responsibility to protect those resources.

So the third section that he wanted us to tell, to address for you folks is what is unknown about the project. How long will LNG will be used before solar, wind or other renewables such as pump hydro would be the source of power. And CWRM has been – CWRM – a representative from the Commission on Water Resource Management is an ex-officio member of LWAC and has been for years, and has communicated that, you know, there is no known effect of withdrawing up to 20 million gallons and what that might have on the high level aquifer. And what would be contingency plans for break down or natural disaster. So that's what Butch wanted us to communicate to you. Do you have any questions?

Mr. Ornellas: Members, any questions for Sally concerning LWAC? Hearing none, Sally you want to continue with your, your conditions?

Ms. Kaye: Okay, just a couple of general observations, I saw in the minutes and Pat brought it up again tonight that there's some concerns over the proper jurisdiction of this permit request. It's obvious that the Planning Department is staffed to the Planning Commission, so if the Planning Commission wanted to direct the staff to secure a Land Use Commission opinion on the proper jurisdiction you could do that. I -- I think an alternative step would be to tell the Planning Department to include a request for an opinion on the jurisdiction when the record is sent to the LUC. I understand from Corp Counsel that the complete record will be sent to the LUC at some point. Is that correct?

Mr. Ornellas: We'll – we'll answer that. Once everybody gets done talking, then we'll answer some of the questions.

Ms. Kaye: Okay. Okay. So, why are we – why do we do conditions? Why do we even think about doing conditions? I say because I used to sit where you are now, it's your job. The applicant doesn't set conditions and the County doesn't set project specific conditions. That's what the LPC does. Some of the people that had made representations may retire to homes on the mainland before the project even gets up and running. Some may go home to other islands, and the only way we have a record is if you folks apply conditions for the next planning commission. And if this project goes out as long as they think it's going to, you're actually looking at the next generation. So that's something to consider. If you don't make a record, the discussion and promises made can be lost.

The other thing I wanted to point out is condition no. 10 references a Marine Research Consultant Inc testing that was done in March 2014. The only report that I've seen is dated August 2013, so I would make inquiry on whether you have a more recent one. And, and then another question for Corp Counsel that someone asked me to ask on the record and get an answer is what would happen if injection wells are prohibited in the future in Maui County as a result of the earth justice lawsuit that's currently ongoing? What would – what would be the plans for this scenario?

Okay, so the first, the first two just reflect, I think, the concerns that I read in the minutes and that I've heard already tonight that five years would give an adequate time to see if this project succeeds and the use is established, and they can come back for an extension. Yeah, so that's no. 1 and no. 6 in the standard. And then no. 9 – well, 6 and 9, to reflect a role for the planning commission, a little, a little more oversight than what's currently written. I – in red – added the Lana'i Planning Commission. I don't think that too onerous requirement. 23 and 24, on the project specifics, these are just consistent with representations that have been made several times by Pulama at previous meetings and presentations to the community, so I thought it would be good to just put it on the record.

And 25, I thought would be a good one to put on because I've been hearing from the community a lot of concerns and I've read the reports and, and the studies, there's a lot of concerns about the water, the salinity, the particulates, but nobody's really mentioned the species or the food stock of the species that would be impacted by that. And I'm – I just wonder if – I know John, Chair Ornellas brought this up at an LWAC meeting that he would like to see a dye test much as County of Maui is using now and has found out where their injection wells around Lahaina are actually going. Should there be a laboratory study of the impacts of a high salinity outflow on species found in our very precious marine conservation district and near shore waters before actual injection happens. The results would most likely confirm, in my opinion, what the consultants are predicting. But it sure would be good to have it confirmed before injection starts because you can't take it back once, once it's out there.

No. 26 is also the semi-annual update on progress made to replace diesel is consistent with previous representations and presentations made to the community that this would be renewable powered. 27 and 28, the nexus for these comes from experience. There – there were a number of agreements and as a matter of fact – Pat Reilly, is he still here? – actually threw it on the table when I was sitting on that side of the table and the Miki Basin application came up. There were 1994 agreements that were signed off on so that Murdock could get a

change in zoning for the golf course. None of those have occurred. None of the land transfers have occurred. And here we have a project, the desal, that is going to feed the golf course. So I think it's probably a good idea to have some accountability with progress that's been made, some of the agreements that have been lost. The DHHL letter that you folks recently received that clarified that the 10 acres of commercial property somehow just got lost and the CPAC knew nothing about the 94 agreement and it morphed into a park, I think is, is the reason that, that would suggest you folks consider those, those two conditions. There are outstanding agreements that have to do with restoring the watershed and preserving the watershed that have fallen by the wayside and it's just – now, now would be a good time to start making a record of the outstanding – some of these go back to 2000, 2001, and because no one ever put it on a record and there's no recording, then we've lost and we run the risk of continuing to ignore them. And that's it for me. Any questions?

Mr. Ornellas: Members, any questions for Sally?

Ms. Zigmond: Chair?

Mr. Ornellas: Go ahead Bev.

Ms. Zigmond: Sally, thank you for all that food for thought. When you talked about project specific conditions no. – I mean standard condition no. 9, I'm reading the Lana'i Archaeological Committee, I didn't hear you say that. And maybe you did and I just missed that part, but thank you for bringing that up because we had talked about that are the April meeting as well. And I'm glad that, again, just comments that somebody else is paying attention to the earth justice suit because I had some questions on that as it pertains so thank you for sharing that with everybody.

Mr. Ornellas: Members, anybody else? Questions for Sally? Thank you Sally, I appreciate it. Anybody else that want to come up and testify? Okay, if not, then we will continue with the agenda.

First, let's go over some of the questions that was brought to us. I mean, there's a lot of questions that's going to be answered in the discussions as we go forward tonight. Pat's questions, number (i), must this application be approved by the Council, Maui County Council?

Mr. Clayton Yoshida: For the State Land Use Commission Special Use Permit and the Phase Two Project District Approval which are the two permits being requested, no, they require approval of the Lana'i Planning Commission.

Mr. Ornellas: Okay, and then double (i), describe the time limits under rules upon the Lana'i Planning Commission for considering this application.

Mr. Yoshida: I think under your rules you have 120-days from the date of the first public hearing which was in April. So you have 120-days from the first public hearing date to make a decision otherwise it defaults to an approval.

Mr. Ornellas: Alrighty. Yeah, it was April, so we're kind of up against it right now. Alright thank you Stu for that. Corp Counsel, on Bev's quote on the –

Ms. Richelle Thomson: Just to clarify with the condition, the proposed condition that the Planning Director, the Planning Department could approve a permit extension beyond the initial period. The portion of the State Land Use Commission admin rules, it's 15-15-95, it's the last section, subsection (e), what that refers to is that the application is for a certain project and the project must be substantially established by a certain period of time. If it's not substantially established the Land Use Commission or the Planning Commission in this case, can consider revoking the permit, or they can extend that initial period of time for development. So it's not related to the term of the permit itself, but it's related to the establishment of the years.

Ms. Zigmond: But that's not saying that we do not have jurisdiction to approve extensions.

Ms. Thomson: You could retain jurisdiction to approve the extensions.

Ms. Zigmond: Thank you.

**C. APPROVAL OF THE MINUTES OF THE APRIL 16, 2014 MEETING AND MAY 21, 2014 SITE INSPECTION (*Commissioners, please bring your copy of the draft April 16, 2014 meeting minutes which was distributed in the May 21, 2014 packets.*)**

Mr. Ornellas: Okay, so let's start into the agenda here. Get back to the agenda. Do you have any – anybody has anything? Members? You're okay. Okay. So then we'll move on to C, approval of the minutes of the April 16<sup>th</sup> meeting and the May 21<sup>st</sup> site inspection. Any objections or any comments, corrections? Hearing none, all in favor to approve say aye? Huh? Yeah, we can – you can do a motion, yeah. Okay, somebody going to do a motion to accept?

Mr. Stuart Marlowe: So move.

Mr. Ornellas: Second?

Mr. Bradford Oshiro: Second.

Mr. Ornellas: Alright. Any discussion? Hearing none, all in favor say aye? All against?

**It was moved by Commissioner Stuart Marlowe, seconded by Commissioner Bradford Oshiro, then**

**VOTED: To approve the April 16, 2014 meeting minutes, and the May 21, 2014 site inspection minutes as presented.**  
**(Assenting: S. Barfield, K. Gima, S. Koanui Nefalar, S. Marlowe, B. Oshiro, B. Zigmond**  
**Excused: J. Aoki)**

**D. REPORT, PURSUANT TO SECTION 92-2.5(D), HAWAII REVISED STATUTES, BY THE COMMISSIONERS PRESENT OF THE TESTIMONY AND PRESENTATIONS RECEIVED AT THE MAY 21, 2014, 5:30 P.M. SCHEDULED MEETING, WHICH MEETING WAS CANCELLED DUE TO LACK OF QUORUM.**

Mr. Ornellas: We go to D.

Mr. Yoshida: The Commission had a meeting scheduled for the evening of May 21<sup>st</sup>, however it did not have a quorum. It did accept public testimony and that is included in the report that is attached to your agenda packet as to public testimony that was received. There was a public hearing that was noticed for that day, and public testimony was received on that item.

Mr. Ornellas: Okay.

Ms. Zigmond: Mr. Chair?

Mr. Ornellas: Go ahead.

Ms. Zigmond: I have a comment on that please.

Mr. Ornellas: Go ahead.

Ms. Zigmond: I would like to set the record straight regarding the lack of quorum. I believe that the comments that were made were inappropriate and incorrect. Shelly, Kelli and Stacie gave ample advanced notice that they would be absent. Joelle gave ample advanced notice that she would be late. I unfortunately had a late day work crisis that could not be resolved before 5:30 and so those, I think, our record shows our commitment, and so I want to set that record straight.

Mr. Ornellas: Noted. Alright, so E, unfinished business, no. 1, (*Chair John Ornellas read the project description, Item E1, into the record.*) Mr. Sticka.

Mr. Yoshida: Yeah, I don't know Mr. Chairman if the Commission – I mean it's up to the Commission if they want to consider Mr. Alueta's two items first or they want to consider this item first.

Mr. Ornellas: Members, your – what do you want to do, desal or the housing one? Desal? Okay we'll stick with –

Mr. Oshiro: John?

Mr. Ornellas: Yes, go ahead.

Mr. Oshiro: The desal going take a long time. If it's not going to take a while just – let's get rid of the short, short things and let's get them out of the way and we get to the meat of this

because you know for a fact the desal going take a long time.

Mr. Ornellas: Okay. There's item no. 2. Yeah, item no. 2, it's transmitting a proposed bill 19.65 for short-term rental homes. Joe needs – we have to take action on that tonight. Yes sir? Right Joe, am I correct? Okay. Yes, you're right we do. Yes. Alright. So you want to make a motion, Brad, on moving those two items before desal?

Mr. Oshiro: Yeah. Let me make a motion just move these two items and then let's get on with the meat of this meeting

Mr. Ornellas: Do I hear a second?

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

Mr. Ornellas: Second by Bev. All in favor? Any against? Okay, so we'll go to – we'll go to – Item no. 2. Joe?

**It was moved by Commissioner Bradford Oshiro, seconded by Commissioner Beverly Zigmond, then unanimously**

**VOTED: To amend the agenda and move agenda Items E2 and F1 prior to agenda Item E1.**

**(Assenting: S. Barfield, K. Gima, S. Koanui Nefalar, S. Marlowe, B. Oshiro, B. Zigmond**

**Excused: J. Aoki)**

## **E. UNFINISHED BUSINESS**

- 2. MR. WILLIAM SPENCE, Planning Director, transmitting a proposed bill amending Section 19.65.080.D of the Short-Term Rental Home ordinance in the Maui County Code concerning Enforcement to be consistent with the Maui County Code Enforcement provisions in Section 19.530 and to ensure appropriate due process. (J. Alueta) (Public testimony was received on May 21, 2014)**

**The Commission may take action on this item.**

Mr. Joseph Alueta: Thank you Commissioners for taking me out of order on the agenda. I appreciate it. I will be brief. My name is Joe Alueta. I'm your administrative planning officer. I handle amendments to Title 19 as well as the rules for this commission as well as the other commissions. There are two methodologies that you can amend Title 19. One is via the Resolution and the other which happened by the County Council, or it can be done by the Administration which will be either proposed by me or the Director for amendments.

The first item that you have before you is dealing with 19.65.080D – excuse me – and it deals with enforcement. Both the bill that you're going to see – excuse me – are basically administrative corrections or clarifications to the code. 19.65 is a short-term rental. It was – again, I did not draft this bill so I can't take credit or blame for it. And therefore, the way Council had drafted it and the language that was approved, it would make it appear as if there is a separate enforcement provision. Basically the Council made it clear that you cannot operate a short-term rental home without proper permits within the residential district. They also made it clear that you cannot advertise for a short-term rental on the internet. And that basically if we find an advertisement for a short-term rental or we find a card for affordable rentals at the airport we could theoretically – we would say you're guilty. The commission – the planning department would say you're guilty and you can't apply for a short-term rental permit for five-years. There is no due process laid out. It just – there's no methodology in which you would have the enforcement or a methodology to appeal because there are some people who, I didn't put that ad up. Or you have, you know, vindictive people who put up false ads for people. It's possible. Sometimes it happens, maybe, but we're given the benefit of the doubt. So basically the department in its administrative of 19.65 it said look it's not clear and there's basically a lack of due process, and we did not want to have a separate enforcement provision in another section. 19.530 already is the enforcement section for all of Title 19, and we follow that provision. That, 19.530 has a notice of warning, it has an investigation, it has the ability of the applicant being, who is, if we give them a notice of warning to appeal or a notice of violation to appeal that. Basically all this amendment does is clarify that a person would not be banned from applying for a permit unless all of his, all of his appeals have been exhausted.

And so basically the one amendment that was approved by the Maui Planning Commission, as well as Molokai, if you look on Exhibit 1, of the 19.65, of our memo report dated April 17, 2014. On Exhibit 1, you'll see the underlying sections is what's being added. The bracketed sections is what's being deleted. So, what's being – we are basically adding the – or clarifying that 19.530 is the enforcement section. We're also set up the standards, notice of violation for unpermitted rental homes, and the violation is not overturned, and then the following period of five-years shall not accept – the County shall not accept an application for a short-term rental.

Both the Maui Planning Commission and the Molokai Planning Commission voted to also include as evidence, if you see a list on section D, as evidence of operations include guest testimony, rental agreements, receipts. It also included complaints by neighbors as evidence. Secondly, on the second paragraph where it says if the County issues a notice of violation, after the word violation is not overturned, they wanted to add, and all appeals have been exhausted because a person can appeal to the, either the – and appeal to the commission as well as –. So that is – that is basically the small amendment to the existing language that you have before you. And so again this is just putting in writing in the code how we're basically operating now. And we wanted to make it clear that the County was – or the Council when they adopted this and made these changes was, one, not stepping up a separate enforcement provision or separate process just for short-term rentals. Also, two, they were not denying anyone in the public of their right to due process. So that's why we're making those additions. If you have any questions, I can – I'm happy to take them at this time.

Mr. Ornellas: Members, do you have any questions for Joe?

Mr. Marlowe: Not a question, but a comment. I'm very familiar with the law. I've done my own research for reasons that led us to do so. And I find what the County has put forth is comprehensive, it is legal, and it is also very fair, and I would recommend strongly that if the rule comes before us to amend it or vote for it or whatever that we just adopt it as is.

Ms. Zigmond: Mr. Chair?

Mr. Ornellas: Go ahead.

Ms. Zigmond: Just a comment. I find it interesting that Lana'i's Council person, Riki Hokama, was the only person who voted against that.

Mr. Ornellas: Any other questions, members? Joe, you heard – you heard Gail's testimony where there's 19 people living in one house, okay? I'm her neighbor so I see it too. Alright, so she filed a complaint, and the County basically said, tough luck. Gail – Gail, why don't you come up and have a seat, grab the mic. Because this is – I mean 19 is over and beyond, but this is stuff that could happen or have happened.

Ms. Riener: Last year I filed a request for service with the County of Maui because we would be having six to seven people coming and going, and two or three cars dropping people off on a regular basis. The County came out and their permits were –. My concern was they didn't have a certificate of occupancy. The County told me for a residential property you do not need a certificate of occupancy, and they cited them for having expired permits. So when I filed the complaint when the 12 contractors started showing up on a regular basis, the County gentleman told me that unless there's a written advertisement online, or on the bulletin board or in the paper, the County cannot do anything. And you had just said a couple of minutes ago, neighbor's testimony. I have video and pictures of these gentlemen coming and going, and the cars and everything. And I was told that unless there was any kind of written advertisement for money for rental, they, they would assume that it was just friends or family members in the unit. And they told me, the County told me that these workers are trained to tell people we're friends of theirs. So when you were talking about enforcement, I was told that unless there was a written advertisement the County couldn't do anything.

Mr. Alueta: Yeah, there's two different enforcement sections. One is – well, I mean, there's several enforcement sections. The Planning Department is responsible for Title 19 which deals with short-term rental permits. We – we potentially would get dragged into the housing issue, but it sounds like building permits is, is primary the person that came out. Planning doesn't necessarily come out that often. We tag along once in a while. Our inspector for Lana'i has been ill. She is back in the office now, and so hopefully we'll be doing a little more proactive. It's more harder, I guess, it's harder for the department to enforce, again, when someone is sort of doing a long-term rental – they could be doing – what they're doing is a long-term rental but they're violating the housing code by having more than what is deemed to be a family. Okay, because you can have – but a family can be up to six unrelated people, so it can be a very large family if they – if a lot of them are related. And so, again, you'll get the lines, no, that's my cousin, no that's my other cousin, and, you know, I mean, you'll have 20 people because they're all related. So it is a difficult thing when you have that type of situation.



Again, you can only – all you can do is file the complaint, but if it's a – you probably want to – when you send the RFS it depends on who it goes to. Your initial complaint most likely went to Public Works and never came to Planning. Your second complaint may have come to Planning. And then there's the Housing Department that may enforce also for housing codes. So that's – we're all enforcing different sections of the code. This bill today is dealing primarily with short-term rental homes, or vacation rentals, so –

Mr. Ornellas: Joe, how does – would Gail call the Planning Department directly and talk to who?

Mr. Alueta: Yeah, she would file – she would either –. Well, I wouldn't call. I would write a letter to the Director.

Mr. Ornellas: Okay.

Mr. Alueta: That would be the most –. And then from that we'll determine whether or not it falls within the Planning Department. Because the RFS that you submitted online, correct? A lot of times that goes to the Mayor's Office, and then the Mayor tries – the Mayor's Office is trying to figure out which department best handles it.

Mr. Ornellas: Okay. Gail?

Mr. Riener: I spoke to a gentleman in the Zoning Enforcement Department.

Mr. Alueta: That would be our –

Ms. Riener: I'm sorry, I can't remember his name.

Mr. Alueta: Okay. Kai or Jay Arakawa?

Ms. Riener: I think it was Kai.

Mr. Alueta: Okay. Yeah, Conklin is one of our –

Ms. Riener: That's the one.

Mr. Alueta: Conklin. Conklin Wright, he's one of our inspectors. And again, so there's a way of getting through evidence that we have go through. And if you've got no evidence it's very hard to make a case. It's one of those things.

Mr. Ornellas: Okay Gail? I'll get you the address for Will Spence.

Mr. Alueta: So is there any specific questions on this, Title – 16 – yeah 19.65.80? And again the department is – the amendments that was made were to add that two sections. One is complaints by neighbors is being additional – acceptable evidence. And then the other one was that the violation is not over turned and all appeals have been exhausted. Another portion that's –

Mr. Ornellas: Alright Joe. Anymore questions for Joe, members? Okay, thanks Joe, appreciate it. Now I open the mic up for public testimony. Go ahead Ron. Pass the mic.

Mr. Ron McOmbler: Okay this is where we've been asking for years that the Lana'i Planning Commission set our own rules on Lana'i about this topic. The . . . (inaudible) . . . – the rules that they have in Maui County is you've got to notify everybody within 500 feet of your property which makes no sense on Lana'i. That's to start out with. Who are you impacting? You're impacting your direct neighbors that are touching your property. Across the street, next door, up the street, whatever. I can understand that. But what's happening on Lana'i it isn't only the guys that have vacation rentals, but the luxury homeowners in, in Manele, the luxury homeowners in Koele, are all doing this. They're renting their properties out and it's a fact. I mean, it's pulling to the whole island. And houses on this island are so scarce that everybody has kicked families out of homes so they can rent their homes for \$4,000 a month, and this is happening all over Lana'i. So this is not – I think the Lana'i Planning Commission ought to take this up as a separate issue and debate this, and come up with specific rules for Lana'i. The same thing they should do on Molokai. We're not afraid to give our names. We don't have advertise. If we don't advertise we're – I guess we're home free. And most of us don't have to advertise because everybody knows who's doing it. It's like truck rentals and car rentals. This is amazing. The coconut wireless on Lana'i is alive. And everybody knows who has houses and when they have them open and when they're not. But I think that Maui County if they want to do that on Maui, it's fine. But I think Molokai and Lana'i, and Lana'i specific, we need to have our own rules. I really do because we see this all the time. It's constant. We don't have enough housing on Lana'i. And what Pat said – I'm going to correct what Pat said – his housing project had nothing to do with the hotels. It was Lalakoa III that had to do with the hotels, they had to open the two hotels. So I know Pat took credit for that, but it's not. Yeah you did.

Mr. Ornellas: Okay, okay, okay.

Mr. McOmbler: Anyway.

Mr. Ornellas: Alright. Alright. Ron, if you could put this on your iPad, one of the agenda items for July 16<sup>th</sup> meeting is review and transmittal to the Council relating to Chapter 19.65 relating to short-term rentals.

Mr. McOmbler: Right.

Mr. Ornellas: So we can add those rules then.

Mr. McOmbler: Well, we gotta establish the rules first. We gotta find out –

Mr. Ornellas: We – in fact your 500 – I thought we, we approved that a few years ago that that the 500 feet was not for Lana'i. It was basically –

Mr. McOmbler: Well, we didn't approve it. It was a discussion. We had still had never brought it to a forum yet.

Mr. Ornellas: Okay. Well, we'll make it happen on the, on the July 16<sup>th</sup>.

Mr. McOmber: Because what we have – what we have to do is show where's the impact. The impact is the immediate homes in that area. If my house on, on Ilima is 500 feet, it goes all they from Fraser to Lana'i Avenue which makes no sense whatsoever. And one person in there said they don't want it, or don't want you to have that, you're dead.

Mr. Ornellas: Okay.

Mr. McOmber: It should be the people impacted. Thank you.

Mr. Ornellas: And I just confirmed it with Clayton is we can recommend on that and then the Council has to approve it. Alright? Thank you Ron. Alright, anybody else have comments. Hi, Winnie, come up front, please.

Ms. Winifred Basques: Good evening. My name is Winifred Basques. Sorry to be in this kind clothes because I have to go to work but I made an issue to come here this evening. First of all, when I pass that house, it's ridiculous. Who gave them the permit to build the house in the first place? Who was the one who when sign the paper? They don't know what the issue goes on here on the island of Lana'i. The thing is that when you look – I thought the County Code – I not too sure about this regulation. Are they suppose to be two-story building? Not a three story building? Can anybody define that? Because when I look at it's so ridiculous, it's so humongous on this small little road. And that house use to belong to Joe . . . (inaudible) . . . He use to work for Dole Company. And another thing, did you know how much the price he paid for the permit? \$6,000 for the permit. I seen the paper. So the mean is that the guy get money. He can do whatever he wants. It's on fee simple land. So the thing is that how can Lana'i Planning Commission stop it? Because why it going create problems with their other neighbors. They've been looking at all these issues. We can build a house two, three story building. But see the thing is that on a small little lot, I don't think so, can be. But other than that, that's all I get to say.

Mr. Ornellas: Thank you Winnie.

Ms. Basques: You're welcome.

Mr. Ornellas: You know on the 16<sup>th</sup>, we can – I don't know if that will fit in for short-term rentals, but Joe – Joe has heard this and Clayton has heard this, so if they can provide us with something in writing maybe for the next meeting give you some time.

Mr. Alueta: I'm sure Clayton and I will be able to talk with Erin Wade who's the small planner for Maui County, and we can look at the Lana'i City Design Guidelines whether it has been expanded to some of the residential areas. I will tell you the Council will be taking up the residential bill which does come to – two things that the residential bill will do if it's to adopt it, and you guys did recommend approval for is one of it was getting rid of the definition of stories so you would just have a maximum height. So there won't be any of this argument of is it a two or three story or four story. If they can set it, a legal floor within 30 feet that would be it.

Another thing that that does is it also requires a lot coverage because even though – I know you guys have some postage, postage sized stamped lot here. We also have them, but we also have 10,000 square foot lots in Kahului, and we get people building from setback to setback. And this would require a lot coverage foot print basically. For residential districts it should be 40% so that would allow – in some of the smaller lots it would reduce some of the foot print of some of the – from people building a large home that may or may not match some of the plantation character within Lana'i and would also help alleviate some of our issues on Maui as well as other areas. It's a common problem from here to Manhattan Beach in California, people buying multiple lots, consolidating and building monster homes, so it's not – it's not something unique to Lana'i.

Mr. Ornellas: Okay, great. Anymore questions from – anymore testimony from the audience, residents, on this issue? Okay, if you want Joe, maybe I can, after we're done with this meeting, we can drive, take a drive and I'll show you the places where these people are talking about. I don't know if that will help you or we can do it tomorrow morning.

Mr. Alueta: Sounds like a plan.

Mr. Ornellas: Clayton – Clayton can go along for the ride.

Mr. Alueta: I have an early flight.

Mr. Ornellas: Alright. You have an early flight. That's the seven – okay, sounds like Clayton's going to go.

Mr. Alueta: So again Mr. Chair and the Planning Commission we are recommending – recommending no. 2 on – on your options for this bill and that is recommending with amendments, and the amendments I read into the record to you earlier.

Mr. Ornellas: Okay. Anymore – members, anymore questions for the – for the County? You heard the recommendations? Can I get a motion to approve?

Mr. Marlowe: So move.

Mr. Ornellas: Do I have a second?

Mr. Oshiro: I second.

Mr. Ornellas: Okay. You got that Leilani? Okay, so anymore discussion on this item? Kelli, you look a little –

Ms. Kelli Gima: . . . (Inaudible) . . .

Mr. Ornellas: Okay. Alright, so hearing none, then all in favor of approving item no. – this was no. 2. All those in favor say aye? All those against? Passes.

Mr. Alueta: Thank you very much.

**It was moved by Commissioner Stuart Marlowe, seconded by Commissioner Bradford Oshiro, then unanimously**

**VOTED: To recommend approval of the proposed bill with the amendments to the Maui County Council.**  
**Assenting: S. Barfield, K. Gima, S. Koanui Nefalar, S. Marlowe, B. Oshiro, B. Zigmond**  
**Excused: J. Aoki**

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

- 1. MR. WILLIAM SPENCE, Planning Director, transmitting Council Resolution No. 14-15 Referring to the Lana'i, Maui, and Molokai Planning Commissions a proposed bill to amend Sections 19.12.020 and 19.37.010, Maui County Code, pertaining to Transient Vacation Rentals in the Apartment District. (J. Alueta)**
  - a. Public Hearing**
  - b. Action**

Mr. Ornellas: Alright Joe. You want to go on to the next one?

Mr. Alueta: Sure.

Mr. Ornellas: The transient, transient vacation rentals?

Mr. Alueta: Yes. This is dealing with Resolution 14-15. So again as I explained earlier two methodologies to amend Title 19. The first method was coming from our department to try to clarify some language from 19.65. This one is coming from as a Reso from the County Council down to the three planning commissions. So basically again it's more of an administrative amendment to clarify 19.12 which is the apartment district. And it is basically just to put in the condition that was established back in 1989 when the County of Maui defined – when they first defined the difference between short-term and long-term rental. When we established that we had – we established the definition that anything less than 180-days is going to be vacation rental, and you had to rent – long-term had to be more than 180-days. At that time many of the codes were amended and it – and it changed the definition, and in 1989 they made it specific that buildings or dwellings within the apartment district had to be used for long-term rental. But they made a specific exclusion to structures that were built prior to a date which I think is April something 1989, or April 20<sup>th</sup>, 1989. So – but their language basically said it excluded, (1), any building or structure built before that date, or had a legal building permit, a structure that had an SMA Permit, or a Planned Unit Development site plan that showed structures on their property.

So those were the three exemptions. The department currently administers that – that the way it's exempted. And the way we administer it is that any building or structure, habitable structure, that's in the apartment district and built prior to that date, in the apartment district, can be used for either short-term or long-term rental. And the way we look at is that – and the way we also handle it is if that structure burns down they would lose their non-conforming. If they had to get a new building permit, they would have to re-build it.

We also interpret that, the way the code is written, to mean that you cannot convert a non-habitable structure within the apartment district that was built prior to that date into a habitable structure for short-term rental. So if you had a laundry room facility or a tennis court facility you cannot convert that to all of sudden have short-term rentals. We also interpret that to mean that if you got a building permit, you had a 12-story – 12-unit apartment building, and you got a building permit to put another five-units on, those specific five-units under the new building permit would be restricted to long-term. The same thing under the SMA. If you had an SMA Permit and the structure burned down, and you were completely burned down and you had to get a new SMA for the construction of the building, you would lose your, your provision to do short-term rental. It does not – we do not apply that if someone wants to renovate a unit. So if you came in and you wanted to renovate one unit within that building, you would still be able to do short-term in that building.

Planned Unit Developments are a little different because they have a site plan. If the building burns down and they reconstruct to that site plan, they would still be able to continue to do the short-term rental, okay, on it. And again this is only dealing with the apartment district, so it has to be a zoned apartment. The reason – so that's why 19.12 is being amended.

19.37 is being amended because 19.37 is the language or the section that restricts timeshares and short-term rentals in the County of Maui, and that's being added and amended as you saw by the County Council. The department, again, we've been administering this provision for many, many years. We feel this is basically just clarifies it. The main reason that the real estate agents wanted in 19.12 specifically is that a lot of times when they're trying to sell a unit to someone they say you can do short-term rental in this building, and they go, oh really? And – but I checked with the Maui County Code and Title 19.12 doesn't say anything about doing short-term rentals. So they wanted specifically in the code both to say, yeah, this building was built prior to this date, which would be legal. And so that's what the main reason the real estate agents want it in there.

The department does requests – again, we support all the thing. We feel that 19.32 also which is the Planned Development section of the Code also needs to be amended. Recently the County Code did amend it. You saw about a year ago, I guess, I came before you. We called it the Puamana Development based on the criteria that was – a narrow criteria for that bill. We wanna – we feel that you should add that language in it, and the language that the department's proposing that be added into the 19.32 is on page 2 of my memo report. And you see it underlined where provided that it's either one, a Planned Development, that receives a planned development site plan approval on or before April 20<sup>th</sup>, 1989, and the land is zoned apartment. Or, and then we go into the rest of the provisions that are in existing within the County Code. So that's pretty much it again. Again, this is a bill that's being proposed by a resolution by the

Maui County Council. The department does support it. We feel it would be better if you add that provision that we talked about 19.32 to clarify that section. And so again, we are recommending approval subject to – and that's option 2 on your – on our recommendations. Do you have any questions, I'm happy to take them.

Mr. Ornellas: Members, any questions for Joe? Hang – hang one. Hang on. Members, any questions for Joe? Alright, I'll open it up for public testimony. Please come forward. Come please use the mic and tell us who you are.

Ms. Susan Osako: I'm Susan Osako and I just wanted to know how do we know what the apartment district is on Lana'i. Is, is there – I haven't seen a map. Is there a map that specifies that? Yes, there is. Okay, I'll look at it later.

Mr. Ornellas: Joe?

Mr. Alueta: Yeah. No, there is and it's zoned –

Mr. Ornellas: Lana'i City Apartments.

Mr. Alueta: Right. It would be zoned A1 or A2. Off the top of my head I can't think of any other. You might have some other zoned lands that are apartment, but again, it would have to have been built prior to 1989 to qualify.

Mr. Ornellas: Susan, we'll – we'll – we'll check the maps and see – see if there's anymore on this island. Joe, can we –? Can you check and e-mail me back so I can tell Susan? Alright. Thank you. Anybody else want to weigh in? Alright, so members, can I hear a motion to approve item F1?

Mr. Marlowe: So move.

Mr. Alueta: As amended?

Mr. Ornellas: As amended. Yes, as amended. I'm sorry.

Mr. Marlowe: So move.

Mr. Ornellas: Alright. And second by –

Mr. Oshiro: (Hand raised).

Mr. Ornellas: Second by Brad, you got that? Okay. Anymore discussion? Hearing none, all in favor say aye? All against? Passes.

Mr. Alueta: Thank you very much.

**It was moved by Commissioner Stuart Marlowe, seconded by Commissioner**

**Bradford Oshiro, then unanimously**

**VOTED:** To recommend approval of the proposed bill with the amendments to the Maui County Council.  
**Assenting:** S. Barfield, K. Gima, S. Koanui Nefalar, S. Marlowe, B. Oshiro, B. Zigmund  
**Excused:** J. Aoki

Mr. Ornellas: Alright we're gonna take a five minute break till quarter till.

*(The Lana'i Planning Commission recessed at 6:40 p.m. and reconvened at 6:46 p.m.)*

- E. 1. **PULAMA Lana'i requesting a State Land Use Commission Special Use Permit and a Phase II Project District Approval for the Reverse Osmosis Desalination Facility and Distribution System including the development of reverse osmosis desalination plant facility, administration building, water generation facility, and related improvements within the Manele Project District at TMK: 4-9-002: 001 (por.), 4-9-017: 009 (por.) and 010 (por.), Manele, Island of Lana'i. (SUP2 2013/0028) (PH2 2013/0001) (B. Sticka)**

**The public hearing was conducted on April 16, 2014 and the Commission deferred the matter. (Commissioners, please bring your copies to the meeting.)**

**Site inspection conducted on May 21, 2014.**

**The Commission may take action on these requests.**

Mr. Ornellas: Alright we're back in – back in order and in session. Alright so then we'll go to E, Unfinished Business, and that is the Pulama Lana'i Reverse Osmosis Desal plus the Special Use Permit as well as the – and Phase Two Project District. Alright, Mr. Ben Sticka from the County of Maui please proceed.

Mr. Ben Sticka: Good evening Chair, members of the Commission, my name is Ben Sticka with the Planning Department. Just to give you a little bit of background, get everybody up to speed, and also to take a little bit of time on the addendum that was included in your packet this evening. This matter was deferred from the April 16<sup>th</sup> meeting. Again, on May 20<sup>th</sup>, the Commission did conduct a site inspection on May 21<sup>st</sup>, but was unable to conduct their regularly scheduled meeting due to lack of quorum. The applicant, Pulama Lana'i, has requested that the department concur with the amendments to four conditions listed in the State Special Use Permit. The amended conditions are based on comments that were received during the April 16<sup>th</sup> Lana'i Planning Commission meeting and subsequent comments within the community.



This recommendation report has been updated from that meeting. Items updated include the added conditions nos. 10, 11 and 12, and amending condition no. 16 which was previously listed as condition no. 13, all reflecting how the conditions were proposed to be changed. Again, as a result of the Commission's discussion and motions at the April 16<sup>th</sup>, 2014 meeting.

Some background on the addendum includes the following. The proposed reverse osmosis desal facility contains several components. The desal facility project site is located within the agricultural state land use district which is why the Special Use Permit is being required. The associated components of the facility such as the disposal wells, source wells, utility lines and roadways are all permitted uses. The two disposal wells are both existing now and were approved by the Commission of Water Resource Management. Source wells 1 and 2 are also existing and approved by the Department of Health. Source well 3 is proposed and is located in the Project District which requires the Project District Phase Two approval.

The subject project was first submitted to the State Land Use Commission on November 5, 2013. A reminder memo was also sent to them for their comment on December 31<sup>st</sup> of 2013, and no comments were received from the State Land Use Commission. This project was also transmitted to the Office of Planning and the Department of Agriculture with favorable responses from both agencies. At this time I can read the recommendation or I can hand it back to –.

Okay, the – as far as the recommendation goes, the application does comply with the applicable standards for a Phase Two approval and Land Use Commission Special Use Permit as found in Title 19 Zoning; Chapter 19.45 and Hawaii Administrative Rules; Title 15 Department of Business Economic Development & Tourism; Subtitle 3 State Land Use Commission Chapter 15, Land Use Commission Rules Subchapter 12, Special Use Permits 15-15-95 respectively as listed in the Department's addendum report dated June 18, 2014. The Maui Planning Department recommends that the Lana'i Planning Commission grant the State Land Use Commission Special Use Permit and Project District Two approval subject to the 22 conditions listed in the addendum report you have before you this evening. To date, no letters of opposition or support have been received, although there have been letters requesting information or clarification on the project. Thank you.

Mr. Ornellas: Thank you Ben. Members, any questions for Ben on the –

Ms. Zigmond: Mr. Chair?

Mr. Ornellas: Go ahead.

Ms. Zigmond: Mr. Sticka, thank you for all of those conditions and including some new ones. There were several things and I'm sure we're going to get to them here in a bit that were asked for at the April meeting which sort of didn't get in here, so I'm hoping we can get them in here. When you say the Land Use Commission did not have any – did not have any comments what I remember from the April meeting is that the Office of Planning which is not actually – I mean, I think somebody said it was an advisory group to the Land Use Commission, they just said it's a great project. And while I'm not disputing that I had asked the Planning Department to request

a formal opinion from the Land Use Commission on this very project, and I'm still hoping to get that. Because that's different than the Office of Planning saying it's a great project. So, I'm – I'm still not real comfortable with 14.95 acres and I'd really like to hear from the Land Use Commission as is something that Mr. Reilly had requested also.

Mr. Ornellas: Thank you. Anymore – any questions? Anymore questions from the Commission? Hearing none. Stay close. Pulama Lana'i, do you want to do your presentation? You guys okay? Alright. Then I'll open it up for public testimony. Anybody want to come and testify on this particular item? Yes sir – Ron – go ahead, come up. Ron, you're next. And there's a mic right here Ron. In fact, I think Dave Green can probably hand it to you. Go ahead.

Mr. Kaleo Manuel: Aloha Chair and Commission. Kaleo Manuel, acting planning program manager with the Department of Hawaiian Homelands. I'm here just to ensure that you guys did get a copy of our letter submitted to you Chair on June 10<sup>th</sup>, 2014 with our comments related to this application, and the department's comments, and there are – seven of them total. We just wanted to go on the record and be here present if there are any questions for the department at this time I can try and address those.

Mr. Ornellas: Members, any questions for the Department of Hawaiian Homelands? You know, we just got it, so my question – one of the first questions that came out – how are you relating the – this 50 acres or the 35 acres to the desal plant? How are you guys relating – making those a condition?

Mr. Manuel: Chair, the 35 acres remaining . . . (inaudible) . . . current inventory do not have current water allocated to it, so for us to continue to build future homesteads for our beneficiaries working with Lana'i Water Company and so forth, we would need that type of allocation. We've been told that there is no allocation at this point, so one of the recommendations, for us, what we're recommending is that as new desal or new water's produced or potable water is made available that it would free up water from this upper level aquifer for us to access and continue to build those lots. That's, that's the connection.

Mr. Ornellas: Okay. I appreciate your comments. But – Department – Hawaiian Homelands has water, and it has been allocated already, so you're not looking for anymore water and you're planning on building more houses some place?

Mr. Manuel: We have existing 50 acres parcel as the letter states.

Mr. Ornellas: Which is being – which is being supplied with water as we speak.

Mr. Manuel: The 15 acres that currently have 45 lots have allocation of water. The remaining 35 that are vacant do not have allocation and – we do?

Mr. Ornellas: Okay, you know what, thank you, thank you for your, your testimony, but you have a date with us on the 28<sup>th</sup> because we're gonna start talking about how this land all of a sudden showed up and that was part of CPAC – if everybody remembers – that was part of the CPAC community plan update, so we will see you on the 28<sup>th</sup>.

Mr. Manuel: Staff from the department will be attending.

Mr. Ornellas: Great. Would love to see you. Thank you.

Mr. Manuel: No problem. Thanks.

Mr. Ornellas: Go ahead Bev.

Ms. Zigmond: So you're saying you don't, and they're saying you do, so who do we believe?

Mr. Ornellas: Can – okay, so let's not do this here today. Can we do it on the 28<sup>th</sup> when they come back?

Ms. Zigmond: But this is relevant to, to tonight. I mean we just got this and we need ingest this and, and consider this.

Mr. Ornellas: Well, they should have brought –. Okay. We'll talk about this on the 28<sup>th</sup>. We're not talking about 10 million gallons here. They're just talking maybe a few 100's, maybe 1,000's, that's about it. So we can talk about it on the 28<sup>th</sup>, alright? Thank you. Go ahead Clayton. Ron? You've got the mic, alright.

Mr. McOmber: I got one of those things. This is an example – this is why the desal is important. It let's –

Mr. Ornellas: Who are you?

Mr. McOmber: I don't know. My name is Ron McOmber. I'm a resident of 45 years on Lana'i, and I've been to the wars on this water issue on Lana'i from the beginning when Castle & Cooke started to develop this island. We have fought for water for the whole time. When we started the CPAC if you remember correctly we asked Pulama to show us what they were gonna to do. Surprising to us the ones that – LWAC and Lana'ians for Sensible Growth (LSG), we did not have to go looking for water because they knew prior to coming on this island that they needed extra water to do their projects. It was a pleasant surprise to us and LSG because we thought we'd have another fight. We had a fight with Land Use Commission. We had a fight with everybody about water. The desal, however it comes out, is something that has to go through. They're gonna have to work out boogie boos in it. They're got problems. They've got problems with the type of water they found. We hear all these rumors on Lana'i. It's a too small island not to know what's going on. I urge this Council, this Planning Commission, to approve this, but approve it with some restraints that we can watch the project grow. Not a 30 year carte blanche thing. I hear five-years. I think five-years is too long in between an update. It should be no more than two-years. And in the first six months to a year and half we should see every six months we should see updates, not what – not later on down the road. This way it gives you reassurance to you folks and the new people coming on the planning commission, LWAC and everybody else that's associated with water on this island, and it's really important. So my recommendation is that you have a two-year show me with the first year and half, every six months we should have that show me and see how the progress is going. Thank you.

Mr. Ornellas: Thank you Ron. Please come forward Robin.

Mr. Robin Kaye: Hi. Robin Kaye. This is a question of process. May I ask the applicant a question?

Mr. Ornellas: You state – state the question and then we'll – we'll do that.

Mr. Kaye: My question was something that was raised before and I was curious about why a test, a dye test, could or could not be done prior to the actual operation of the, of the desal project. Is there – is there a reason why it couldn't be done, and if so, why not?

Mr. Ornellas: Okay. Thank you. Thank you Robin. Anybody else in the community want to speak up? Go ahead Warren. Please come forward. State your name.

Mr. Warren Osako: Warren Osako. In light of the recent problem with the injection wells near Kaanapali, I'm sure the County didn't do those with the plan that it was going to affect the ocean there, and my concern is, you know, what are we gonna do if it affects the ocean here, even though with planning and all the people involved say nothing's gonna happen. What are we gonna do if something does happen?

Mr. Ornellas: Thank you Warren. Anyone else? Seeing none – members?

Ms. Zigmond: Mr. Chair?

Mr. Ornellas: Go ahead Bev.

Ms. Zigmond: I had that same question, what is the mitigation plan in the event that, heaven forbids something does go wrong. Is there – this was brought up before also and it was another question of mine – is there a more recent test on the waters than the August 13<sup>th</sup>, which is a year old and it's inaccurately referenced in the project specific condition no. 10 as March 2014 because the, the copy that we got says August 2013. So I'm wondering if there's something new there. And I have questions and comments on just about every standard and project specific condition as well as additions, so when we're ready for those, I'm ready.

Mr. Ornellas: Alright. Other comments members? What would you think if we went through basically what the County has presented to us and accept that and then we add our conditions on top of that?

Ms. Zigmond: No, because – because we have changes in the conditions.

Mr. Ornellas: Understood.

Ms. Zigmond: Or I cannot approve something that I don't agree with. . . (inaudible) . . . standard condition no. 1.

Mr. Ornellas: Okay. During the discussions, during the discussion then we – if you want to

make a change to that, then we can. But I want to get the County out of the way first, and then we come back to Lana'i specific conditions.

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

Mr. Ornellas: Okay, then – then let 'er rip. Give us what you – what you have. What, what do you want?

Ms. Zigmond: Okay, the State Land Use Commission Special Use Permit shall be valid until April 16<sup>th</sup>, five years from now which will be 2019, and that subject to further extensions by the Lana'i Planning Commission.

Mr. Ornellas: Which – what are you looking at?

Ms. Zigmond: Standard condition no. 1 on the County's – on the County's recommendations.

Mr. Ornellas: And what do you want changed?

Ms. Zigmond: Okay, actually June 18<sup>th</sup> because April's gone already. So that the permit is valid till June 18<sup>th</sup>, 2019, subject to further extensions by the Lana'i Planning Commission, upon a timely request for extension filed at least 90-days prior to its expiration. So I'm just taking out the date and replacing that with June 18<sup>th</sup>, 2019 and subject to further extension by the Lana'i Planning Commission.

Mr. Ornellas: Bev, can you just go through it one more time for me? I'm a little bit slow today.

Ms. Zigmond: Okay, standard condition no. 1 which is, in this report, the addendum report that we have with our packet today – no. 1, that the State Land Use Commission Special Use Permit shall be valid until June 18<sup>th</sup>, 2019 for the expiration date of the project – No. Okay. Just right there. June 18<sup>th</sup>, 2019. Subject to further extension by the Lana'i Planning Commission – upon a timely request for extension filed at least 90-days prior to its expiration. The Commission may require a public hearing on the time extension.

Mr. Ornellas: Okay, so basically you're asking for a five-year permit versus a 30-year permit.

Ms. Zigmond: And extending any extensions by us – approved by us.

Mr. Ornellas: Understood. Thank you. Members, any comments?

Ms. Stacie Koanui Nefalar: Chair, I, I agree with Mr. McOmbler. I rather it be shorter than five-years.

Mr. Ornellas: Thank you. Anybody else? Pulama, would you like to weigh in on the short? Go ahead.

Mr. Yoshida: Okay, from the department's perspective, I think, the reason for the 30-years that

would be the useful life of the plant. I would note that there has been occasion where the Lana'i Planning Commission had given more than five-years for a State Special Use Permit and that was for the photo voltaic solar array where they gave them seven years. Because it takes a certain amount of time to construct and then to operate. But in 2008, the Lana'i Planning Commission gave Lana'i Sustainability Research LLC seven years on the State Special Use Permit.

Ms. Zigmond: But Clayton that's not our water. A solar farm is a whole lot different than our water. And with the, with the, the lawsuit right now against the County on those injection wells I don't have a warm fuzzy. I'd be more inclined to go with Stacie, although I'd be willing to stretch it to five years. But there's no way, no way.

Mr. Ornellas: Pulama?

Mr. Kurt Matsumoto: Kurt Matsumoto, Pulama Lana'i. Our position on the term, with all due respect, we – we would not be able proceed with anything less than the 30-years. If there are specific concerns that you have about the performance of the plant, then, you know, tonight, we have people here that could answer some of those concerns. Because I think, like, specifically to the injection wells, there are other things that control that besides just this body so if you have some reasons why you want to have a short time frame for this project, you could raise those specific issues and we could address them tonight.

Mr. Ornellas: Bev?

Ms. Zigmond: Mr. Chair? Kurt, why do you need 30-years?

Mr. Matsumoto: Because of the significant investment. We wouldn't move forward with something that we would only get two years permission to use.

Mr. Ornellas: Go ahead Kelli.

Ms. Kelli Gima: Has there ever been 30-year permits, like this, in the State of Hawaii? And if so, what we the de – like, what kind of projects were those that needed 30-year permits.

Mr. Yoshida: I don't know necessarily if there's been 30-year permits. I brought examples of 20-year permits. For the Molokai Planning Commission granted a 20-year permit for a hot mix asphalt plant facility for Grace Pacific Quarry at . . . (inaudible) . . . Molokai. This was last year. The Maui Planning Commission granted a 20-year permit to Hawaiian Cement for their Honokowai concrete batching plant, and that was a Special Use Permit and a, and a Conditional Permit.

Ms. Zigmond: And it's not water.

Mr. Ornellas: Go ahead Stacie.

Ms. Koanui Nefalar: The reason I don't agree with the 30-year is I consider the ocean my

refrigerator, and it's like you're tampering with my food source. So by tampering with my food source and not giving me the confidence or, I guess – there's really no confidence. I – there's really no promise that nothing will happen to the ocean, and nothing will hurt the ocean. You already see what they said the injection wells are doing on Maui, so without any concrete evidence for me I wouldn't be able to agree.

Ms. Richelle Thomson: So a couple of comments. One, on the water quality monitoring and assessment, that, that is a condition along with reporting, so you do have oversight by way of that condition on what goes on in the off shore environment. The Clean Water Act is – covers pollution in the off shore environment. And the Maui injection wells, just to clarify, the judge did not rule on harm. The judge ruled that the Clean Water Act applies to the injection of waste water in the two of the four wells. So it's a – it's really specific ruling that she made, and it's not the ruling that's been portrayed in press and commentary. So that's been pretty greatly misunderstood in the press and in the commentary. So it's – it's not – the Clean Water Act applies there. So it's not the jurisdiction of this body as far as the Clean Water Act. That would be the Department of Health and the EPA.

Ms. Koanui Nefalar: That still doesn't give me the confidence.

Ms. Zigmond: I have to agree with Stacie. Yes, we're, we're asking for various reportings and, and monitorings, but that doesn't undo if something happens. We get a report that something happened, we're not seeing any mitigation plans. I mean, you can't undo if the water gets polluted. It really takes a long time to un-pollute it. It doesn't give me a warm fuzzy.

Mr. Ornellas: Sally, you want to – since you had – you have conditions in, in this too?

Ms. Kaye: Yeah, I just want to point out that there's actually two time limits in the, in the rules. The first one, shall establish, among other conditions, a reasonable time limit suited to establish the particular use proposed. Five years is well beyond when they will have the proposed use. It doesn't say that it's going to be revoked in five years. If it's working after five years then it's a different situation. But that's the first requirement is that there's a reasonable time, and they've already said that's going to be possible. So I'm not understanding really what the hold up is.

Mr. Ornellas: Thank you.

Ms. Kaye: And I actually thought of another condition that I've seen almost in every application that we used to review in the Planning Commission and that's to restore to prior use if the project ever doesn't go forward. And that doesn't appear to be in the County's conditions and it use to be in almost every application we saw.

Mr. Ornellas: Good point. Thank you. Go ahead Stacie.

Ms. Koanui Nefalar: Kurt, I just wanted to clarify. So you're saying you need the 30-years because of investment, because of money.

Mr. Ornellas: Pulama, you wanna respond please?

Mr. Matsumoto: I'm sorry, that was rude. Yes, it's because of the significant investment and the knowledge that there's only two-years on that permit would make us have to pause and reconsider whether it's feasible for us to make that kind of an investment. I think the Commission should also investigate about in granting the Special Use Permit what are the conditions about revoking the permit.

Mr. Ornellas: Kurt, you're asking, you're asking us that maybe we should consider what happens if we don't approve this?

Mr. Matsumoto: No, I think what the Commission should ask the question about is if you granted the Special Use Permit tonight, what is in the purview of the Planning Department or the Planning Commission to revoke the permit if the applicant fails to perform properly. So, in other words, you're not issuing a blanket 30-year permission like it's being implied.

Ms. Koanui Nefalar: So Kurt you did say that, so 30-year would be the minimum. So if we issued you a five year that would not do.

Mr. Matsumoto: That's correct.

Ms. Zigmond: But if it's working in five-years, there is nothing, no reason why it would not be extended. As we learned with – what was it? Yeah, yeah, that – I mean, we were scolded for considering the fact that it was just a few years. I don't remember the details. I just remember the scolding, but –. It was the extension. That's what it was. Yeah, yeah. But, I can't do 30.

Mr. Ornellas: Alright. Anymore questions? Go ahead.

Mr. Marlowe: I think that the entire Commission has lost sight of the fact that they're here for what's ultimately best for the community, no. 1. No. 2, I think that not granting the permit under the conditions that Kurt has asked for is another insult to the company's integrity and to their style of business, and I think that it's a failure on the part of this Commission to simply not grant it subject to further debate and discussion with Pulama Lana'i about some of the conditions and concerns. And I assure you that the company will sit with this plan – Planning Commission or anyone else to discuss those issues going forward. But because of the investment and because what the desalination will do for the good of the community, I cannot understand why we wouldn't grant it as is.

Ms. Gima: And in response to that Stu, I think it is absolutely insulting for you to say that we've lost sight of the community when we are just asking questions and trying to get more information, and throwing thoughts out there. I don't it's ever been discussed that nobody is onboard with this and nobody wants this. We're asking questions. We're getting the information. And that's what we should be doing. Not just reading something and taking the word for what the applicant is saying. So I think it's very insulting to say that all of us here are losing – are losing sight of the community.



Mr. Ornellas: Okay. Thank you. Members – I tell you what, Pulama, do you have any more, anything else to say before we – I move this to a vote? This, this standard condition.

Mr. Matsumoto: No, I understand it's a difficult choice that you have to make and I, I – I can feel the, you know, the weight of the decision that's on your shoulders. It is a big decision, but you've gone through a lot of testimony on our part. We've had a lot of experts here testifying. You had the opportunity to do a site inspection so you can understand the scope of the project. I think a lot of you have lived here long enough to understand what the significance of the desalination would be for Lana'i. So, I think a lot of things have already been asked and answered. You have a lot of information, and you're going to make best decision you can tonight.

Mr. Ornellas: Thank you.

Ms. Zigmond: I, I think one of those questions though, or, I don't know if it ever got to be a question, but I have it, is, so the water is mostly for Manele, but also for ag. And so – and I think that's a good idea, and I think we're being good stewards in asking these questions and, and pondering them. Stacie's refrigerator, for instance, I, I don't know how much of this water is going to be available for ag. I mean, is it ever? When is that going to happen? We have concerns about the renewables. We – yeah, we're gonna get reports, and reports, and reports, and reports, but, again, there's no – no warm fuzzy that it's –. When we're gonna get off the fossil fuels, for instance. There's – there's a lot of questions.

Mr. Ornellas: Alright. Thank you. Members, can I get a motion on amending the standard conditions if so be – if someone makes a motion to that effect.

Ms. Zigmond: Okay, I make a motion that we amend standard condition 1 as I previously said. That we amend condition no. 6.

Mr. Ornellas: Wait a min, wait a minute let's stick to 1.

Ms. Zigmond: Okay. Alright, that's my motion then.

Mr. Ornellas: You amend – you're amending standard condition no. 1.

Ms. Zigmond: For five years.

Mr. Ornellas: For five years versus 20 – 30.

Ms. Zigmond: And extension by – approved by us.

Ms. Gima: I second that motion.

Mr. Ornellas: Alright. First and second. Anymore discussion members? Hearing none, all in favor – all in favor of the motion raise your hand. Is your hand up? So, three. And – and against the amendment, raise your hand. Shelly, did you raise your hand? Are you abstaining?

Ms. Thomson: An abstention is a vote for the motion.

Mr. Ornellas: So you're, you're voting for the change, to five years. Just want to make sure you understand by abstaining you're voting for the motion. Okay, so it's basically three. Yeah, Stacie voted no, you and – and there's three. And so I guess it's me. Motion failed? That's right, I need five, so motion – motion fails.

**It was moved by Commissioner Beverly Zigmond, seconded by Commissioner Kelli Gima, then**

**VOTED: To amend condition no. 1, that the permit be valid for five years, and extensions be approved by the Lana'i Planning Commission. – MOTION FAILED**

**Assenting: K. Gima, B. Oshiro, B. Zigmond**

**Dissenting: S. Barfield, S. Marlowe, S. Koanui Nefalar**

Mr. Ornellas: So the standard condition no. 1 stands as written. You want to do another motion? Go do another motion then. Somebody.

Ms. Zigmond: Can we have some discussion? I'd like to know why – Shelly, what is your concern. And Stacie, you're still at the two year? You're less than five. Okay. Shelly, what are you?

Ms. Barfield: . . . (Inaudible) . . .

Mr. Ornellas: Okay, make a motion and then we can have that discussion.

Ms. Zigmond: Perhaps we need a motion to defer.

Ms. Thomson: I would recommend that if you're going to defer it would be based on specific information that you do not have right now that's going to enable you to make a decision. So you need to identify exactly what the information is that you are missing.

Ms. Zigmond: Okay, I, personally am missing that formally opinion from the Land Use Commission.

Ms. Thomson: I want to back track a little bit. And so the process for analyzing a Special Use Permit, one of the first steps is the Planning Department, in conjunction with the applicant makes a determination on the project area. If it's under 15 acres, the Lana'i Planning Commission, in this case, is the final authority. If it's over 15 acres, it still comes to the Lana'i Planning Commission first, and the Lana'i Planning Commission still makes a recommendation – analyzes it completely, makes a recommendation, approves if, if the project is approved, then it goes to the State Land Use Commission for their hearing and analysis. If it's denied by this body – if denied, the applicant is free to appeal that decision to the Circuit Court. So regardless of whether this is under or over 15 acres, the first stop is here. And the first analysis is here. As far as requesting a formal opinion from the Land Use Commission, what I'd recommend is

that you go ahead and take action on this permit. And if it is approved, you can also request that the Planning Department send a request, along with their analysis of the project area and the reasons they came to the conclusion that it was, you know, 14.95, to the Land Use Commission, and request a formal opinion.

Ms. Zigmond: So that has to be done after the fact is what you're saying?

Ms. Thomson: It doesn't have to be done after the fact. But what I'm saying is that I don't – it does not have to slow your process up – because the process is still the same. You still have to analyze the application and either approve or deny it.

Ms. Zigmond: So let's say we moved forward with it and it goes to the Land Use Commission then, right, they see it.

Ms. Thomson: Because – because it's under 15 acres, and the determination has been made that it is under 15 acres, you're the final decision authority on it.

Ms. Zigmond: They don't see it at all.

Ms. Thomson: No. And Clayton may have something to add to this too, but my understanding is that the – the application as it stands, if approved, then that's it. If it's over 15 acres, then this body's decision and order, and the materials are forwarded to the Land Use Commission within a certain time period, and then the Land Use Commission takes action on it subsequently.

Mr. Yoshida: If it's over – well, the project area is over 15 acres, then if the Commission denies – or Planning Commission denies the request, then they – a decision and order is created, and the applicant can appeal that to the Second Circuit Court. If the Commission recommends approval – if it's more than 15 acres for the project area – and the Commission recommends approval, then the record of the Planning Commission's deliberations is sent to the Land Use Commission. And they can approve, modify or deny the request. I mean, that's – that's the process for your landfill which is more than 15 acres here on Lana'i. It goes to the Planning Commission first and then – but that's because the project area is more than 15 acres. In this case, it's less than 15 acres, so the Planning Commission is the final authority.

Mr. Ornellas: Okay. Ron? Then after that we're gonna – because I got a feeling this thing is gonna run all night, so we're gonna halt the public testimony.

Mr. McOmber: You folks are making a grave mistake. We went to the Land Use Commission the first time we had water issues on Lana'i, and the Water Comm – and the Land Use Commission shafted us because they looked at it different than the way we look at it. You guys are letting something go that you have control over. Give 'em some data that they can work with and let's move forward. But let's make it a Lana'i decision. Don't let the State make this decision. I mean there's all kinds of conditions you can put on it and make it work for them and us. But we took – we took a hell of a beating with the Land Use Commission the first time around. It took it right out of our hands. You guys cannot allow that to happen. You've got it in front of you. Give 'em some conditions that they can work with, and let's move forward.

Don't do this again. We went through 30 years of that crap with the Land Use Commission. Do not do this. I beg of you. Work with Pulama. Get some conditions, but don't let this go back to the Land Use Commission. Because I guarantee you, you're not gonna like what you see.

Mr. Ornellas: Thank you Ron. And public testimony is now closed. Go ahead Shelly.

Ms. Shelly Barfield: I mean, so – what if we approve the 30 but then they come back to us every year, you know, come back before us and, you know, with some reports.

Mr. Ornellas: It's already – it's already a condition for LWAC. Every – every month, every quarter, semi-annual too, I take it, John. I think it is semi? Annual. Yeah, it's one of our conditions. It's also in the conditions also, so as far as the monitoring and keeping track of it, it, it's in, it's in – it's in this plan. So, does that make you feel any better? Okay. So, is somebody gonna make a –? Go ahead.

Mr. Marlowe: I simply like to make a motion that we grant the permit as, as written this evening. And again, just subject to further dialogue with Pulama Lana'i and talk about other conditions after the fact. But I motion for permit granted is before the Commission.

Ms. Zigmond: You can't add conditions after its been approved.

Mr. Ornellas: Well, I think what he's – what he's saying is this is this the County's conditions. We approve this and then we go into our, the Lana'i specific. Can – hang on Pat.

Mr. Yoshida: I think that, that can be the main motion. But amendments can occur to the main motion including addition of additional conditions. I mean, the motion is to approve. Right now, Stu's motion is to approve subject to the conditions as proposed by the Department. But conditions can be amended, conditions can be added.

Ms. Zigmond: But we can't get past the first standard condition.

Mr. Ornellas: Well that's, that's – it failed. It failed. Your motion to turn it into a five year failed. Okay, so what, what he's doing is now making the motion to approve it. And then once that motion is met then we can add conditions then according to Clayton. So –

Ms. Thomson: So there's – there's been a motion made to approve this, this Special Use Permit and Project District Two Approval subject to the conditions laid out by the Planning Department in this amended report. If it's seconded, it goes to the body for discussion. At that time, other amendments can be made by way of motion, so then you can get into some of the specifics if you want to, you know, further tweak the conditions and you can do it at that time. Those amendments either pass or fail, and then you go back and you'll vote on the main motion, either as amended or not. So right now you have a motion before you and you don't have a second.

Mr. Ornellas: Do I have second on Stu's motion? Hearing none, alright, so – I'll make, I'll make the second. Alright so let's have discussion, and now let's add – let's add on our conditions.

Ms. Zigmond: Mr. Chair? I say that we amend standard condition no. 1, we amend standard condition 6, 9, and we add a whole bunch of project specific conditions.

Mr. Ornellas: And this is based on – conditions submitted by Sally?

Ms. Zigmond: No, my conditions. Some of which are similar to hers, but I have additional ones.

Mr. Ornellas: Did you pass out those conditions? Your, your conditions that you're talking about? Okay, so let's start with 1 again. You want to change it to a five year?

Ms. Zigmond: I want to change it to five year, and absolutely, positively that –

Mr. Ornellas: Okay.

Ms. Zigmond: – extension is Lana'i Planning Commission.

Mr. Ornellas: Okay. Then I guess we're gonna vote on that again then. All in favor of –. Can, can we go back? It's a new motion, right?

Ms. Thomson: Right. The motion made – the motion made previously did fail. There's a main motion now that you approve the entire, the entire recommendation by the Planning Commission. Now she's making an amend – she's offering an amendment to your motion. It needs a second. However, this is the very same subject material that was already voted upon before. It's not technically a reconsideration of that identical motion, although the subject material is identical.

Ms. Zigmond: And Commissioners, I have to say, are you really ready to give this extension process over to the Planning Department and not our successors?

Mr. Ornellas: Alright, so we're gonna go through it again. Alright, so she wants to change it to a five year. Any – do I have a second for it?

Ms. Gima: . . . (Inaudible) . . .

Mr. Ornellas: Okay, we have any discussions? Okay, then hearing none, then all in favor? Okay, one at a time. So all in favor of the motion raise your hand. That's four. It doesn't pass. We need five. Okay, so it stays the same. Okay what's your next one? No. 6?

**It was moved by Commissioner Beverly Zigmond, seconded by Commissioner Kelli Gima, then**

**VOTED: To amend the main motion and amend condition no. 1, that the permit be valid for five years. – MOTION FAILED**

**Assenting: K. Gima, S. Koanui Nefalar, B. Oshiro, B. Zigmond**

**Dissenting: S. Barfield, S. Marlowe**

**Excused: J. Aoki**

Ms. Zigmond: So I have ask, when you, when you read the amendment, you didn't include the part about the Planning Commission, so are you all saying you're okay with giving this to the Planning Department? I don't think that was part of this amendment.

Mr. Ornellas: What is, what's no. 6?

Ms. Zigmond: Changing from the department in two places to Lana'i Planning Commission.

*(Commissioner Shelly Barfield leaves the meeting at approximately 7:40 p.m.)*

Mr. Ornellas: Do I hear a second?

Ms. Gima: . . . (Inaudible) . . .

Mr. Ornellas: Kelli. Any discussions? Hearing none, all in favor say aye. Okay. Let's – raise your hands, let's count five. Come on, higher. Where'd Shelly go? She left. I vote in favor of putting it, putting – changing 6 to the Lana'i Planning Commission on both.

**It was moved by Commissioner Beverly Zigmond, seconded by Commissioner Kelli Gima, then**

**VOTED: To amend the main motion and amend Condition no. 6 to change "department" to "Lana'i Planning Commission" in two places.**

**Assenting: K. Gima, S. Koanui Nefalar, J. Ornellas, B. Oshiro, B. Zigmond**

**Dissenting: S. Marlowe**

**Excused: J. Aoki, S. Barfield**

Mr. Ornellas: Okay, what's the other one? So that – that's been – your amendment has been approved for no. 6.

Ms. Zigmond: You know, I'm not sure of the rest of the matter if on no. 1 it's still the extensions are still going to the Planning Department.

Mr. Marlowe: . . . (Inaudible) . . .

Ms. Zigmond: No, I said the Planning Department versus Planning Commission.

Mr. Ornellas: Okay. I see what you're saying. You want, you want the Planning Director removed and the Lana'i Planning Commission added?

Ms. Zigmond: That's what I said in both of those motions.

Mr. Ornellas: Okay. Okay. Bev, can you make a new motion to add the Lana'i Planning Commission for no. 1 please?

Ms. Zigmond: Standard condition no. 1, amending it to say subject to further extension by the Lana'i Planning Commission.

Mr. Ornellas: Thank you. Second?

Ms. Koanui Nefalar: . . . (Inaudible) . . .

Mr. Ornellas: Any discussion? All in favor raise your hand. It passes. Okay, what's your next, what's your next one?

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

**VOTED: To amend the main motion and amend Condition no. 1, that further extensions be approved by the Lana'i Planning Commission.**

**Assenting: K. Gima, S. Koanui Nefalar, S. Marlowe, J. Ornellas, B. Oshiro, B. Zigmond**

**Excused: J. Aoki, S. Barfield**

Ms. Zigmond: No. 9, it should include the Lana'i Archaeological Committee.

Mr. Ornellas: Can I have a second?

Ms. Gima: . . .(Inaudible) . . .

Mr. Ornellas: Any discussion? All in favor say aye – raise your hand. Wait a minute. Hang on. Let me ask Corp Counsel a question. I am the chair of Lana'i Archaeological Committee. Okay, I'm free and clear, so it passes. And your next one Bev?

**It was moved by Commissioner Beverly Zigmond, seconded by Commissioner Kelli Gima, then unanimously**

**VOTED: To amend the main motion and amend condition no. 9 to include the Lana'i Archaeological Committee.**

**Assenting: K. Gima, S. Koanui Nefalar, S. Marlowe, J. Ornellas, B. Oshiro, B. Zigmond**

**Excused: J. Aoki, S. Barfield**

Ms. Zigmond: These become project specific then.

Mr. Ornellas: Go ahead.

Ms. Zigmond: The applicant shall provide an update on the various renewable energy related options. I don't think that's in there is it? Okay. Renewable energy? Okay, mines –

Mr. Ornellas: No. 11.

Ms. Zigmond: Mines a little bit different. I'm saying that we get an update on the various renewable energy options. Semi-annual reporting be sent to Lana'i Planning Commission and the Planning Department.

Mr. Ornellas: Okay, say it, say it and put it all together in one.

Ms. Zigmond: The applicant shall provide an – and this can go into any of the other reports – but an update on the various renewable energy options – energy related options for possible ongoing use. And breaking it down to various of phases of construction expansion of the desal facility. Semi-annual reporting shall be sent to us and the Planning Department.

Mr. Ornellas: And so instead of alternative just change it to renewable?

Ms. Zigmond: Okay, is that in there?

Mr. Ornellas: It's in no. 11, in the County's –

Ms. Zigmond: Okay, I'm asking for a little bit more though to segment it to, like, the different phases.

Mr. Ornellas: Let's stick with annual.

Ms. Zigmond: How about semi-annual?

Mr. Ornellas: I think it's – I think we have enough already being, being reported on concerning that issues, those issues, so.

Ms. Zigmond: Trying to get off renewable – off of fossil fuels.

Mr. Ornellas: So make your motion again – just – so we can decide.

Ms. Zigmond: Okay, I'm saying for that no. 11 make it renewable energy related options and breaking it down to various phases of construction on a semi-annual basis, reports coming to us.

Mr. Ornellas: That kind of didn't make any sense. I – it just – it got jumbled up between my ears. Yeah, Kelli just said maybe a stand alone condition just for that. Okay. Okay, let's go through these and then finish yours and then we – we can get –. Pulama, you have a better suggestion?

Ms. Zigmond: These are our conditions.



Mr. Ornellas: Yes, understood, but there's something that may, may have already. Go ahead.

Ms. Lynn McCrory: Lynn McCrory, Pulama Lana'i. My understanding from the one draft that we made of this annual report and sent in to the Planning Commission is that a number of the points of the renewable energy were removed by the Planning Department as being not something that they could require. And this condition was rewritten by Michele McLean, the Deputy, so that this is what the Planning Department said they could enforce.

Ms. Zigmond: Okay, how about this one then?

Mr. Yoshida: Yeah, I guess the Pulama's proposed conditions were reviewed by my bosses and they came up with alternate language which they felt the department could enforce.

Mr. Ornellas: So enforcement was the issue why it was changed, so, go ahead. You want to change it?

Ms. Zigmond: Okay, so how about this one then instead, the applicant shall provide a semi-annual update to Lana'i Planning Commission on progress made to replace diesel LNG with renewable energy to operate the desal facility?

Mr. Ornellas: Do I hear a second?

Ms. Koanui Nefalar: . . . (Inaudible) . . .

Mr. Ornellas: Any discussion? All in favor raise your hand? Wait a minute – did you – you didn't vote for it Bev? So it's four? Okay, so, no, it doesn't pass. No, it doesn't have five.

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

**VOTED: To amend the main motion and amend condition no. 11 to include the following language: "The applicant shall provide a semi-annual update to Lana'i Planning Commission on progress made to replace diesel LNG with renewable energy to operate the desal facility." -- MOTION FAILED**

**Assenting: K. Gima, S. Koanui Nefalar, B. Oshiro, B. Zigmond**

**Dissenting: S. Marlowe**

**Excused: J. Aoki, S. Barfield**

Ms. Zigmond: Nobody's worried about replacing fossil fuel, huh?

Mr. Ornellas: Okay, we don't, we don't need a commentary. Just, let's get through this. Thank you.

Ms. Zigmond: Alright. Once the desal plant is operational no high level aquifer water will be pumped to or used in the Manele Project District except in the event of an emergency as

determined by the Lana'i Water Company and the Lana'i Water Advisory Committee, and then only for human consumption.

Mr. Ornellas: And what, and what – what is that on the County's?

Ms. Zigmond: It's project specific.

Mr. Ornellas: It's project specific, okay. Okay, so – repeat it one more time so we can make a second on it.

Ms. Zigmond: Once the desal plant is operational no high level aquifer water will be pumped to or used in the Manele Project District except in the event of an emergency as determined by the Lana'i Water Company and the Lana'i Water Advisory Committee, and then only for human consumption.

Mr. Ornellas: Do I hear a second?

Ms. Gima: . . . (Inaudible) . . .

Mr. Ornellas: All in fav –

Ms. Thomson: I would caution you to take a look at the, the permit and the scope of this project, and find a place that brings your concern with the potable water and the use of the high level aquifer directly in line with this permit application. I'm not seeing enough of a connection at this point to have it be a defensible condition.

Ms. Zigmond: This is – this is all about – I mean, it's all about water. It's always been about water. That's why they're having the desal plant to give Manele water, and not use it from –

Mr. Ornellas: I see the connection so let's proceed. Who – we have a second on the floor. All those – all those in favor of the motion raise your hand? That's five. Okay Bev, what's next?

**It was moved by Commissioner Beverly Zigmond, seconded by Commissioner Kelli Gima, then**

**VOTED:** To amend the main motion and add a project specific condition no. 23 to include the following language: "Once the desal plant is operational no high level aquifer water will be pumped to or used in the Manele Project District except in the event of an emergency as determined by the Lana'i Water Company and the Lana'i Water Advisory Committee, and then only for human consumption."

**Assenting:** K. Gima, S. Koanui Nefalar, J. Ornellas, B. Oshiro, B. Zigmond

**Dissenting:** S. Marlowe

**Excused:** J. Aoki, S. Barfield

Ms. Zigmond: Hire, train local workers first. A training program shall be established to ensure residents are – are, are trained and hired.

Mr. Ornellas: Okay, do we have a second? Repeat it again, Bev.

Ms. Zigmond: We want to hire and train local workers first and, and there was talk a long time ago about a training program, and we would like to see that happen.

Mr. Ornellas: Okay, do I have a second?

Ms. Koanui Nefalar: Can you define “local workers?”

Ms. Zigmond: Residents.

Mr. Ornellas: Okay, so –

Ms. Thomson: Again, I want to – yeah – I really want to caution you that the conditions that you're coming up with need to be directly related to this project and to the effect of this project as it, as it is under the law that you're applying which is the Special Use Permit law. So look at your unusual and reasonable uses, look at the 205, the policies of 205 and 205A of HRS. And if you need to take a break I can show those to you so that you can refresh your memory on them. If you start to getting too far afield in your conditions, these are not going to be enforceable and they are subject to challenge.

Ms. Zigmond: Every project we have ever approved we have asked for Lana'i residents to get first priority. Every project.

Mr. Ornellas: I – I understand where the County's coming from as far as enforcement. But I do know that it has been discussed more than a few times, here, as well as in LWAC that, that Lana'i residents will become trained and work. In fact the guy from IDE said, yes, that's what he prefers so he doesn't have to send people from Israel to here to run the plant.

Ms. Thomson: If those were representations made by the applicant or the applicant's representatives, that's something that you can rely on. But I would caution making it a project condition.

Mr. Ornellas: Bev, were you here for, for those presentations that IDE made and the company did about –? So, it's on the record.

Ms. Zigmond: . . . (Inaudible) . . . failure's not in our vocabulary. That one, yeah, I was here.

Mr. Ornellas: Alright, you were listening. Anything else Bev?

Mr. Oshiro: I get one.

Mr. Ornellas: Go ahead.

Mr. Oshiro: This LNG gas that you going use, is any of it going be stored down at Miki?

Mr. Ornellas: That's a question for you guys, Pulama.

Ms. Kaiulani Sodaro: Good evening. Kaiulani Sodaro with Pulama Lana'i. Yes, Hawaii Gas is exploring with the logistic of delivery plan is. And given the zoning at Miki Basin, there is potential for iso containers on trailers so they won't be dismantled, they'll still be on their iso trailers to be queued to be brought down to the facility.

Mr. Oshiro: Okay, one condition I want, I'd like to see happen is that – I spent 20 years in the military working explosives ordinance disposal – bomb squad – and stuff happens no matter how much precaution you take. So I would want because Miki Basin has our only electrical plant, I would love Pulama to put a berm around the tanks and the entry to that berm would face towards the mountain or to Miki Basin, away from the electrical plant. Because if it goes off, it will disrupt our electricity.

Ms. McCrory: Lynn McCrory, Pulama Lana'i. They're looking at placing those iso containers at the shuttle station, not at Miki Basin, near the electrical facility.

Mr. Oshiro: Even then. Even if you put it at the shuttle station, the blast radius, it will affect the electrical plant, I will promise you this. I mean, the berm, all its got to be is dirt. You know, mound it beyond the height of the tank, facing away from the electrical plant.

Ms. McCrory: Okay.

Mr. Ornellas: Okay, so Brad –. Go ahead.

Ms. Sodaro: Chair, if I could just for record let you know that we are – we have met with the Maui County Fire Department. We've been –

Mr. Oshiro: I just telling you 20 years experience, it happened, you know –

Ms. Sodaro: No, no.

Mr. Oshiro: You know –

Ms. Sodaro: So we're taking a lot of precautions.

Mr. Oshiro: It will – I would rather see if it happens, the blast goes –

Ms. Sodaro: Contained.

Mr. Oshiro: – away from the entry. All you gotta do is put dirt berms around it and put the entry way facing the mountain, you know, mauka, and the blast will go the opposite direction of the

electrical plant. Because if it goes off whether you put at the shuttle station or you put it down at Miki, it will affect – it will affect the electricity here on the island.

Mr. Ornellas: Okay. So Brad, the motion is gonna read?

Mr. Oshiro: The motion is gonna read –

Mr. Ornellas: Wherever they store it –

Mr. Oshiro: Wherever you store it –

Mr. Ornellas: There gotta be a berm around it.

Mr. Oshiro: Yeah, especially if it's going be around Miki or the shuttle station. What you do down at Manele is up to the residents down there. Because if you put a berm there you going beyond your 14.95, okay. It's going beyond the 14.95 around that, that area.

Mr. Ornellas: Okay. So that – okay, that's his motion. Okay wait, I want to make sure that Leilani got it written down? Did you get all that? Okay, so you kind of understood what he was trying to say, a berm around, around the – wherever they store the LNG tanks and stuffs? Okay. So Kelli second. Anymore discussion? All in favor, raise your hand. Everybody. Alright good. We finally agreed on something. That passes. Anything else Bev?

**It was moved by Commissioner Bradford Oshiro, seconded by Commissioner Kelli Gima, then unanimously**

**VOTED: To amend the main motion and add a project specific condition to include the following language: "Pulama to put a berm around the stored LNG tanks, and the entry to that berm would face towards the mountain or to Miki Basin, away from the electrical plant."**

**Assenting: K. Gima, S. Koanui Nefalar, S. Marlowe, B. Oshiro, B. Zigmond**

**Excused: J. Aoki, S. Barfield**

Ms. Zigmond: I have five more. If higher concentration of salinity or other particulate or other adverse effects are observed either on land or in near shore ocean waters, Lana'i Planning Commission retains the right to require a mitigation plan or issue a cease and desist order.

Mr. Ornellas: That's no. 25 on Sally's?

Ms. Zigmond: Yes.

Ms. Thomson: Again, I wanted to caution that this type of water quality condition is the territory of the State Department of Health under the Clean Water Act, so this body does not have jurisdiction over the – over that kind of matter. I would leave that to the State Department

Health that permits those types of activity.

Ms. Zigmond: But is it not our right to ask for a mitigation plan?

Ms. Thomson: I think what you have right now already in the, in the permit conditions that has been discussed and put into the staff report is that you do have quite a bit of oversight as far as what the water quality monitoring and the reporting, and the reporting back to you folks. If there are adverse effects off shore I would assume that the Department of Health would be quite vigilant about that.

Ms. Zigmond: That assumption word again. It just doesn't give me a warm fuzzy.

Mr. Ornellas: But you know Bev if you look at – if you look at, if you look at this, these are all the points where, where they're going to be testing. So, anything, anything out of the ordinary or doesn't fit, doesn't fit on the bottom line, then we can go – we will see that within the first – within a month, yeah? We're doing a monthly check so we would see that. Quarterly, I'm sorry. And I was just told number – if you look at the County's no. 15 – it says "the applicant shall, shall contact the Department of Health, Clean Water Branch determine whether a National Pollution Discharge Elimination System permit is required prior to commencement, and to the satisfaction of the Department of Health." We should be copied on that. So can we add that to the condition that the Lana'i Planning Commission also receives that report? A copy of that report? Somebody want to make –. I can make a motion. We still have a motion.

Ms. Zigmond: Okay, I'll drop that one and go with yours.

Mr. Ornellas: Okay. Okay, so I make a motion that we change no. 15 – amend 15 to require a copy of the report to be sent to the Lana'i Planning Commission. Nobody's going to second my motion? How sad.

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

Mr. Ornellas: Bev second it. Any discussion? All in favor say aye – show of hands? That's almost everybody. It passes. Okay, so go ahead Bev, back to yours.

*(Commissioner Shelly Barfield returned to the meeting at approximately 8:00 p.m.)*

**It was moved by Commissioner John Ornellas, seconded by Commissioner Beverly Zigmond, then**

**VOTED: To amend the main motion and amend condition no. 15 to include copies of the report be sent to the Lana'i Planning Commission, as discussed.**

**Assenting: K. Gima, S. Koanui Nefalar, J. Ornellas, B. Oshiro, B. Zigmond**

**Dissenting: S. Marlowe**

**Excused: J. Aoki, S. Barfield**

Ms. Zigmond: I'd like to have a reporting and monitoring on birds strikes. This comes directly from Fish & Wildlife Services comments.

Mr. Ornellas: Bird strikes to what? What are they gonna hit?

Ms. Zigmond: Alright pause that. I'll look for it while we're talking about some other things.

Mr. Ornellas: Okay.

Ms. Zigmond: The applicant will provide a quarterly report to Lana'i Planning Commission on measures taken to protect and restore the watershed and critical recharge areas.

Mr. Ornellas: See no. 20. No. 20.

Ms. Zigmond: How about the Lana'i Planning Commission retains the right to require additional review at any time?

Mr. Ornellas: Which one is it? It's on – I know it's 20. This is off of Sally's that you're reading?

Ms. Zigmond: Yeah, I see the Fish & Wildlife one up there. Okay.

Mr. Ornellas: Okay. We have – we have a lot. I know, I know, but – we're just – okay. Yes. So no. 29, the LPC will retain the right, the right to require additional review at any time.

Ms. Thomson: I think that a – as, as written there's a lot of problems with that condition. It's deceptively short, but it's very problematic. So if you kind of hold that one and let me think about it a little bit and see if we can come up with something that might work a little bit better. If you could just maybe put that, put that on the back burner for a little bit.

Ms. Zigmond: Okay, then the only other one I have is, is to restore to prior use if the land, if the project doesn't move forward.

Mr. Ornellas: I have a second? Return the land – once the desal is pau, you know, it's going away, they have to return the land the way it was. Do we have a second?

Ms. Koanui Nefalar: . . . (Inaudible) . . .

Mr. Ornellas: Okay. Anymore discussion? Seeing none, all in favor, raise your hand. Bev, you raised your hand? I agree so it passes.

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

**VOTED: To amend the main motion and add a condition that land**

**must be restored to its original state if the project does not move forward.**

**Assenting: K. Gima, S. Koanui Nefalar, J. Ornellas, B. Oshiro, B. Zigmond**

**Dissenting: S. Barfield, S. Marlowe**

**Excused: J. Aoki**

Mr. Ornellas: Does somebody want to take a five minute break? Okay, let's come back at 10 after. Let's make it 15 after. Okay?

*(The Lana'i Planning Commission recessed at 8:05 p.m., and reconvened at 8:15 p.m.)*

Mr. Ornellas: Before we sit down, we're gonna – I'm going to make a motion that we go into executive session and so I need a second.

Ms. Gima: . . . (Inaudible) . . .

Mr. Ornellas: Alright. Any discussion? And this is –

Ms. Thomson: We need to state the purpose of the executive session and during the break I was recommending to the chair that we discuss the liabilities related to one of the conditions that was proposed and adopted. I think that there may be some things that we should discuss regarding the liability related to that condition in executive session.

Mr. Ornellas: Alright, so all in favor say aye. Alright, so we'll go over to this office right back here. The executive session will be held in there so you guys can hang out.

**It was moved by Commissioner John Ornellas, seconded by Commissioner Kelli Gima, then unanimously**

**VOTED: To enter into executive session.**

**Assenting: S. Barfield, K. Gima, S. Koanui Nefalar, S. Marlowe, B. Oshiro, B. Zigmond**

**Excused: J. Aoki**

*(The Lana'i Planning Commission entered into executive session at 8:20 p.m. and reconvened the regular meeting at 8:30 p.m.)*

Mr. Ornellas: Based on our conversations in executive session can I hear a motion to reconsider for item no. 23?

Mr. Marlowe: . . . (Inaudible) . . .

Mr. Ornellas: Do I hear a second? I second it. Okay, for discussion. Anymore discussion we want to bring forward on why? I tell you what, I'll let the lawyer talk.



Ms. Thomson: So condition no. 23 is – states once the desalination plant is operational no high level aquifer water will be pumped to or used in the Manele Project District except in an event of an emergency as determined by the Lana'i Water Company and the Lana'i Water Advisory Committee, and then only for human consumption. So what I can say in open session is that we discussed the application of such a condition to the specific project, and I feel that this condition is best dealt with in other avenues such as prior approvals and other actions related to use of high level aquifer water and that it does not belong in this permit as a condition. So, my recommendation would be to remove that condition.

Mr. Ornellas: Alright. Listening to Corp Counsel, anybody have – anybody else on the Commission have comments? Okay, so, we have a motion on the floor to reconsider no. 23, and we have a second. So all in favor of the motion raise your hand. That's two, so it doesn't pass.

**It was moved by Commissioner Stuart Marlowe, seconded by Commissioner John Ornellas, then**

**VOTED: To reconsider removing condition no. 23 as a project specific condition, as discussed. -- MOTION FAILED**  
**Assenting: S. Barfield, S. Marlowe**  
**Dissenting: K. Gima, S. Koanui Nefalar, S. Marlowe, B. Oshiro, B. Zigmund**  
**Excused: J. Aoki**

Mr. Ornellas: Okay, Bev, do you have anymore conditions? Alright members anymore conditions to this permit? Brad, you okay? Any, anymore conditions? You got your berm so you're happy. Alright. Nothing? Stu, you're okay? Shelly, you okay? Kelli? You're looking for something. Okay. Stacie? I do have – I do have a couple questions, and I'm gonna need Pulama's help. On no. 11 from the County it says applicant shall provide an annual report that includes desalination capacity, facility capacity water utilization, any emergencies or corrective actions that have taken place. I don't have to go any further than that. Any emergencies, I want the – I want LWAC and, and the Lana'i Planning Commission to be notified immediately.

Mr. John Stubbart: . . . (Inaudible) . . .

Mr. Ornellas: Yeah, but it says annual report. I don't want to wait a year to find out there was an emergency down there. Okay. Okay, so I make a motion that we add a condition to notify LWAC and the Lana'i Planning Commission. Yeah, if it pertains to water, sure, it should –. Emergencies is, is, it's a wide scope, right? It could be doing all kinds of stuff down there so I want us to be in the loop. And you guys have been very help with LWAC so far so I'm –. I mean, you can, you could bring it up in a report. I mean, you can – I mean, you have everybody's e-mail, right? So, just say hey pump no. 2 went out last night and that be it. Okay, you guys want to define an emergency? You want us to define an emergency? Okay, so –. And –. If you got to turn the plant off or there's a major leak of some sort – fuel, water, and you know – then we would like to be notified.

Mr. Stubbart: . . . (Inaudible) . . .

Mr. Ornellas: So, so, an emergency would fall under, under that? You see any blank spots that might slip through the cracks? Okay. Okay. And so, and so we don't have to wait a year so you'll let us know.

Mr. Stubbart: . . . (Inaudible) . . .

Mr. Ornellas: No, we don't want to run the plant. We just want to know if something happens.

Ms. Gima: . . . (Inaudible) . . .

Mr. Ornellas: Yeah, but that's just using a high level aquifer. I'm not talking about high level aquifer. I'm just – if there's an emergency down there that they have to turn off the plant or – that we be notified.

Ms. McCrory: . . . (Inaudible) . . .

Mr. Ornellas: I can live with the Department of Health. I can live with that. And which one – which one is it? Is it 16?

Ms. McCrory: . . . (Inaudible) . . .

Mr. Ornellas: Can we be – can we be copied on that as a condition? You guys know as just as well as I do. I mean, you know, the coconut wireless runs rampant in the city so we get to know – we get to know a lot of the stuffs before you guys tells us anything. So if you tell us, we'll be able to help you guys out by saying that's wrong. This is what happened, and we got this from Pulama themselves. I got this from Kurt. Please, yes.

Mr. Matsumoto: Kurt Matsumoto. So Chair, you know, we've already agreed to meet with the LWAC and, you know, this would be part of the information we agreed to talked about, so, you know, it just – I think that you're over reaching and trying to impose additional conditions that are more like oversight of operations than just dealing with the SUP itself. So I would decline that condition.

Mr. Ornellas: Okay. Okay, John, can I ask you a question? When you do public notification what is, what does that curtail? What does that pertain to?

Mr. Stubbart: It would be notification, depending on what level of the situation is, of notifying the public and we would use phone, we would use postings, we would use signage in the local area. So depending on the situation there's certain requirements for what you have to do for public notice. And the Department of Health has requirements for, for those different situations.

Mr. Ornellas: Okay, so you do have to send off reports to the Department of Health for the whole gamut of so-called your emergencies, right?

Mr. Stubbart: Right.

Mr. Ornellas: Or non conformance or –

Mr. Stubbart: Right. So, in the emergency plan for contamination or equipment failure we could look at how we report out emergencies to different groups, and that might be how we can do that.

Mr. Ornellas: So copying, copying LWAC or LPC is – I mean, we're not, we're not asking to create a new report, we just want a copy of the report that you're sending off. Does that – would that be considered notification?

Mr. Stubbart: No. It would be part of the notification potentially. It wouldn't be the notification. It would be part of perhaps the notification of what's going on.

Mr. Ornellas: Because I'm not – we're not gonna make a decision. We just want to be notified. That's all.

Mr. Stubbart: Yeah. For instance if we're in a particular area we would use our water list for notification, call people, you know, contact numbers, things like that. We have to put out a letter. We would mail out information to those people that need to be notified.

Mr. Ornellas: Like what you do with the water reports. You send to certain people. You don't send to everybody.

Mr. Stubbart: The water report doesn't go to everyone. No, the PWR.

Mr. Ornellas: Yeah, periodic water report.

Mr. Stubbart: The Consumer Confidence Report goes to every customer.

Mr. Ornellas: Yes, I understand that one. So, so –. Thank you. Okay. Members, you guys understanding where I was headed with that? I mean, do you guys want to pursue this or we just think we have enough on record now that they have – that we're notified? We're okay? Okay. I'll let it die on the side of the road – road kill. This – Pulama? This report here by assessment of ground water input near – you know I want these guys to do my taxes next year. These reports are totally incoherent. I think Brock did this. No. Yeah, no kidding. Yeah, yeah, high risk. And also – okay, and then also the back page where the references are cited, there's some reference there that's older than me. You gotta be kidding me, 1968? There's – there's nothing, nothing that says – anything older than 1995. There's 1992, 1983, 79, 93, 68. I mean, I mean technology has progressed a little bit.

Ms. McCrory: . . . (Inaudible) . . . .

Mr. Ornellas: Tell 'em, tell 'em to go find some newer references because this is just too old. And, and some of this is based on those references, and it could be out of whack. Alright, so

let's continue on with the conditions. Are we done with the conditions? Anymore from anybody? I think I already asked everybody, but go ahead, Kelli.

Ms. Gima: No after, I think, it was our April meeting and I had quite a few questions for you Lynn in regards to the social economic impacts, specifically in regards to – with the increased amount of workers coming in for this specific project, I had questions about social services. And I know that one of the conditions talked about, you know, requiring that all contractors and subcontractors receive an orientation on the social cultural of Lana'i. And I think, I would like to see something added in there where it's collaborating with the various social service agencies so that there is accurate, I guess, information being shared with these workers that are coming. They're understanding what the social economic break down is of the community. I think it – for me – that's just something that I would like to see added, just to see more of a collaboration and that everybody is on the same page. You know, that Pulama's –. Yes, no. 12. Thanks Bev.

Mr. Ornellas: So, Kelli, what would –

Ms. Gima: And I don't know specifically how to specifically word it, but the point I'm trying to make is that if there are any type of impacts, social economic impacts, on the community due to large amount of workers coming in which we have seen, I think it's just important to have a collaborative effort and working with the people in the field who know what's going on. And I don't know if that's appropriate. I just want to bring that up and put that on the record.

Mr. Ornellas: Can we add that to 12?

Ms. McCrory: Can I respond maybe? I'm going to suggest it's not a condition. I've already talked with Butch about attending the Keiki Network meetings. And what I would like to suggest is that we do that collaboration as to how we can put it into the orientation and how it should look, and that we do that and then move it into the orientation. Because that orientation is going to be for the other construction workers too. And that I think you mean overall. You don't just mean it for these workers.

Ms. Gima: Yeah. It would be overall, but I know that I can't put anything in here that would imply that it's overall.

Ms. McCrory: Yeah, there's really no nexus and that's why I'm saying not differently than we've said before, let us work together. Let us see how – because –. Butch was funny. He said I don't think you get it. And I said, I don't think I get either because I'm having a difficult time understanding. And he was suggesting coming to the Keiki Network and starting to talk with people so we have a better understanding of the pieces. And then maybe from that perspective we can say, what should it be? And then you and I can meet. I met with Joelle already on this issue, had some ideas from her. But let's see if we can do it collaboratively rather than conditionally.

Ms. Gima: Well definitely collaboratively with, I think, every key agency and entity. I think it would be to Pulama's benefit to have all the information, to know what the issues are, how

various things that maybe Pulama is doing is having impact. But, so, yeah, maybe it isn't a project specific condition, I – but I, I just felt the need to bring that up in terms of no. 12.

Ms. McCrory: We're working already at addressing it.

Ms. Gima: Okay.

Ms. Zigmond: Great, and I just might add that the Keiki Network meeting is a place to start, but it's not all encompassing.

Ms. McCrory: Okay. Yeah, and that's a – it's a start.

Mr. Ornellas: Okay, so it's not going to be added to the conditions. Anybody else have something? Go for it Kelli.

Ms. Gima: I have one more thing, and it's not a project specific condition, but going back to the standard condition no. 1. I mean, obviously there is a disagreement on the length of the permit. And what I don't want to see is this application be denied because there is no agreement on the term for, for the permit. So with that being said, five years, failed. I'm pretty sure what I'm understanding is there's a lot of disagreement with 30 years. So I would like to make a motion to change the –. Can I do that?

Mr. Ornellas: Go ahead.

Ms. Gima: So I would like to make the motion to change the permit of 30 years to 10 years. Leaving also the change that was already made earlier, that subject to further extension by the Planning Commission which we all voted on and approved. So leaving that in and changing the 30 year to a 10 year. It's better to try and meet in the middle.

Mr. Ornellas: Alright, do I hear a second?

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

Mr. Ornellas: Alright. Any discussion members? Hearing none, all in favor of amending no. 1 on Sally Kaye's list from 30 years to 10 years? All in favor, raise your hands. That's four, it doesn't approve. So no. 1 stands. Anybody got anything else?

**It was moved by Commissioner Kelli Gima, seconded by Commissioner Beverly Zigmond, then**

**VOTED: To amend the main motion and amend condition no. 1, that  
the permit to be valid for 10 years. -- MOTION FAILED**  
**Assenting: K. Gima, S. Koanui Nefalar, B. Oshiro, B. Zigmond**  
**Dissenting S. Barfield, S. Marlowe**  
**Excused: J. Aoki**

Mr. Ornellas: Okay, so let's get to the motion to approve this permit with – with the except – with the conditions. Can I hear a motion to approve? Stu made the motion. That was a long time ago. And who second it? Did somebody –? Did I second? I think I second it. Okay. Am I here? So let's – anymore discussion on the permit? So it stands at 30. Any more discussion? So all in favor of the motion with the conditions, as amended, please raise your hand. Two. Okay, so it doesn't pass. The permit is – done. The permit is dead. Well, it's just – it's been, it's been disapproved.

**It was moved by Commission Stuart Marlowe, seconded by Commissioner John Ornellas, then**

**VOTED: To approve the department's report and recommendations with the amendments and additional conditions as discussed by the Lana'i Planning Commission. -- MOTION FAILED**  
**Assenting: S. Barfield, S. Marlowe**  
**Dissenting: K. Gima, S. Koanui Nefalar, B. Oshiro, B. Zigmund**  
**Excused: J. Aoki**

Mr. Yoshida: Well, the motion to approve with the amended conditions did not pass. Yeah, which was to approve the permit with conditions did not pass. So the Commission has to vote by taking an affirmative vote with at least five members to act on the application. So there has been no action yet on the application. So we could defer, it could make another motion. I mean the motion is not denied at this point. It hasn't been acted upon yet.

Mr. Marlowe: Could there be a motion for reconsideration?

Ms. Zigmund: Clayton, let me ask you a question. Is that number five based on a full nine members, so the eight members?

Mr. Yoshida: By majority to which the board is entitled. You are entitled to nine members, where you currently have one vacancy, so you need to get five affirmative votes for the motion in order to take an action.

Mr. Ornellas: Okay, so, I mean, again – so didn't we just vote on this? With, with conditions, with amendments to the conditions.

Mr. Yoshida: That's correct, but that motion did not – was not passed.

Mr. Ornellas: . . . (Inaudible) . . .

Mr. Yoshida: It's a no action. You have to take an affirmative vote to approve or disapprove or – otherwise it's a no action.

Mr. Ornellas: So –. I don't know what the vote would be though.

Mr. Oshiro: John, can we –

Mr. Ornellas: Go ahead. Wait a minute, let him.

Mr. Oshiro: Can there be a motion to defer to the next?

Mr. Ornellas: I think, I think –

Mr. Oshiro: Because right now, right now, you got something that just – it won't, it won't happen.

Ms. Thomson: So, is the main hang up the time period? If the main hang up is the time period, then someone could propose a new motion with a different time period. So you've already tried five years and 10-years. If someone want to propose a motion with a different time period, you could see where that goes. The new motion could include all of the amendments that you already made, or it could exclude some of them. It could be completely different.

Mr. Ornellas: So is the, the length of the permit, is that the hang up for everybody? Shelly, you agree?

Ms. Barfield: . . . (Inaudible) . . .

Mr. Ornellas: You're okay at 30. Is that the same reason for you guys? Brad? Bev? So if we can settle that, then we can move forward? So let me hear a motion that everybody will agree to. Well, not everybody agrees to. Kurt, can you come back up and give us – what if we don't give you the 30, what will happen to the desal plant and what will happen to our future as far as water?

Mr. Matsumoto: So, if you don't approve the 30 years, then we have to go back and we have to make decisions. And, you know, I already told you that based on the amount that the project would cost, it would be hard for us to make the decision to move forward, you know, with whatever decision comes out of here tonight. So, you know, it's like I said, you have, you have a lot of things that was presented to you. We presented all kinds of solutions, answers, answers to all of the, the monitoring questions, and you do have an ability to act if we, if we don't live up to the requirements. So, the position for us still stays the same.

Mr. Marlowe: Would you consider at 25 and no less?

Mr. Matsumoto: So, no, you, you all need to vote based on what, you know, you, tonight, feel comfortable doing, and then we're gonna to take that information and make decisions after the fact. But we're not here to negotiate that tonight.

Mr. Oshiro: Okay, let me, let me suggest something. If we go 15 years okay, and the project – the project suppose to work like its suppose to work – all they gotta do is come back, present the information and it goes forward. What is the hang up? It's not like we going shot you down. That's not the hang up here. The hang up is a year. You know, you talking 30, 15 whatever. 30 years I going be dead by 30 years. I don't want to be responsible for something that, you know, neva happen. But if this thing works the way Pulama is talking about it, okay, how you saying it's gonna work, it's gonna work. So what is 15 years and coming back? And if it works

fine, nobody here is gonna say no we not going – they not gonna add anymore conditions, they not gonna – they just going pass it on. It doesn't make sense. We grumbling about 30, 15. I just cannot see 30 because I going be dead. I like to see something happen in the next 15 years. I might be in a wheel chair, but I like to see something happen. Okay this doesn't make sense, we arguing. What is it? If Pulama says it's gonna work, hey, 15 years, come back in front of us, these guys, whoever gonna be sitting up here, probably just going say, yeah, just pass it through, because everything that Pulama said, it happened, everything's working honky dory, economy going good. You know what, you guys do want you guys want to –

Mr. Ornellas: Alright, so Kurt made a statement, so are we gonna make a motion to change it, or we're gonna just keep it the same and just let it – just let it die? If we can't get through this, it's gonna die. Our amendments will die. Thank you Dave, I appreciate it. So I want us, I want us to get through this tonight. I mean, if we can get rid of maybe –. He's not going – he doesn't want to negotiate with us over the 30 years, period. Okay? So it's up to us, either we live by the 30 year or we go away. Go ahead Kurt.

Mr. Matsumoto: So – my – my comment about the 30 years is not a negotiation, it's not a threat. You asked a question and I, I just simply stated that this is what we would do. So we're not using that as a threat. We're not saying that telling you how to do your job tonight. So it's just – it's just an information piece for you, and, you know, I know it's a struggle, but that's, that's what you have to use as an information point.

Mr. Ornellas: Okay, so let's go back. So maybe – can I hear a motion to accept the permit based on staff's recommendations and that's it. Based on staff's recommendations. We eliminate all this other stuff.

Mr. Marlowe: . . . (Inaudible) . . .

Mr. Ornellas: Second by . . . (inaudible) . . . So, okay so let's have a discussion. I mean, we're not get any where with this 30 so let's give it one more chance, and then if we don't, don't pass it, then we'll just –. I don't know how we'd defer it because if we don't – if we defer we're gonna let somebody else make that decision for us.

Ms. Zigmond: It's 120 days, and we haven't gone through that many days. It's April, to May, to June, that's half the time. We could defer based – and for Corp Counsel sake, so you're happy, we could say we need more information and to digest DHHL's – what they're requesting also. We just got that information tonight. That's something that's relevant, and we haven't had a chance to think about it, to talk about it, and we could defer it on that.

Ms. Thomson: Regarding DHHL, because we have the representative here and you have Pulama Lana'i here, who can respond to any of the concerns that are raised in DHHL's letter, I would recommend to just going ahead and asking those questions because you have all the resources available to you.

Ms. Zigmond: We haven't had a chance to read the three or four pages.



Mr. Ornellas: Go ahead Kurt.

Mr. Matsumoto: So I would hate to see you guys defer, and I would also hate to see you guys just not take any action tonight. So, you know, I've shared with you what we can do, what we're thinking we would do. My suggestion to you, you know, not just – not as a – I know can never escape this, but my suggestion to you is not as the CEO of Pulama, just a resident, somebody who grew up here. You should take action tonight. Take action on whatever you feel. Then the ball's in our court.

Ms. Koanui Nefalar: Chair?

Mr. Ornellas: Go ahead.

Ms. Koanui Nefalar: Can we get more – how do we know if DHHL is telling the truth, how, you know, Pulama, how do we know, you know, about the – that they got the water. Because if DHHL doesn't know they got water, and Pulama is saying they didn't – I mean they do – how – there's a conflict.

Ms. Thomson: I think the first question that you need to ask is whether that information is relevant to your consideration of this particular project and this particular permit. So you'd go back to – we're talking about a desalination plant, and we're not talking about water allocation from the high level aquifer. That's a separate topic that's outside of the purview of this permit. So I would start with that. But if DHHL or Pulama has information relevant to anything that DHHL may have, you know, relevant to this permit, I would ask all of those questions that you might have and try to get the clarification. And then – and you would decide whether you have enough information and if you feel that it's relevant or not.

Ms. Zigmond: So, I, I don't understand because if the desal plant is going to give water to Manele, and they won't be using the water from the aquifer, then that frees it up for, let's say, DHHL, so how can that not be relevant?

Ms. Thomson: It's not relevant as permit condition related to this application. It may – it may be relevant to the topic of water availability on the island of Lana'i, in general, you know, as a very large topic, but it's not relevant to this permit itself, or a permit condition related to that. Water allocation from a high level aquifer is separate topic.

Mr. Ornellas: And I'd like – and like I said before earlier that I want DHHL to be before us on the 28<sup>th</sup> about the Community Plan, so this, this – that letter could be digested by then and we can ask a lot of questions about that at that time. But to do it tonight, I don't think so. We already have a motion on the floor, he second it, and that is just to go back to the permit and, and the County's conditions without any other additions to it. So let's get – clear that. So all in favor of that motion, raise your hand. Okay so it's just one – thanks Stu – so it fails.

**It was moved by Commissioner Stuart Marlowe, seconded by a Commissioner (unidentified), then**

**VOTED:** To approve the department's report and recommendations as presented. -- MOTION FAILED  
**(Assenting:** S. Marlowe  
**Dissenting:** S. Barfield, K. Gima, S. Koanui Nefalar, B. Oshiro, B. Zigmond  
**Excused:** J. Aoki)

Mr. Ornellas: Then I open up the floor to a motion to deny the permit, for the desal plant, Special Use Permit. Do I hear a motion to deny?

Ms. Koanui Nefalar: Is there a limit to the amount of motions you can do pertaining to –

Mr. Ornellas: No. I just don't want it to run all night. So – okay, let's – okay, and there's no motion to deny the permit, but yet, we can't get pass this. So, any recommendations on how we should – how we can move forward on this and make a decision on this? I mean, if we want – if we just want to let the Maui County Council to make that decision for us, you know, we short our duties.

Mr. Oshiro: I put that motion in front of you John, 15 years.

Mr. Ornellas: With, with the amendments. Conditions and amendments. Okay. Who's gonna second that?

Ms. Gima: . . . (Inaudible) . . .

Mr. Ornellas: Okay, so it's been – it's been seconded by Kelli.

Ms. Thomson: I just want to clarify, is the motion that you're moving to approve the permit with the conditions as related by staff, and with the amendments discussed previously. All of the amendments.

Mr. Oshiro: Yes.

Ms. Thomson: Okay. With standard condition no. 1 being a 15 year initial term.

Mr. Ornellas: Okay, so it's been – motioned by Brad. Who second? Kelli you second it? Alright, so any more discussion on this?

Ms. Thomson: I again wanted to raise my concern over a project condition, specific condition no. 23, that is listed on the sheet submitted by Sally Kaye. I again would like to recommend that that condition be modified or eliminated.

Mr. Ornellas: So does anyone want to make a motion to, to modify or delete item no. 23 on Sally's list? Make a motion to delete no. 23 on Sally's list.

Mr. Marlowe: . . . (Inaudible) . . .

Mr. Ornellas: Do I have a second? Hearing none, motion fails.

**It was moved by Commissioner Stuart Marlowe to delete proposed condition no. 23 as a project specific condition; and due to lack of a second, the MOTION DIED on the floor.**

Mr. Ornellas: So we go back to the main motion to accept – as was – so 23 is include – is included in this motion so we have a – and it's been seconded by Kelli so any more discussion on this? 15 years? If not, then all in favor of the 15 year with all our, with all our conditions and amendments, raise your hand. I'll go along with the 15 years. Alright, so –

**It was moved by Commissioner Bradford Oshiro, seconded by Commissioner Kelli Gima, then**

**VOTED: To approve the department's report and recommendations with the amendments and additional conditions as discussed by the Lana'i Planning Commission, and that the permit be valid for 15 years.**

**Assenting: K. Gima, S. Koanui Nefalar, J. Ornellas, B. Oshiro, B. Zigmond**

**Dissenting: S. Barfield, S. Marlowe**

**Excused: J. Aoki**

## **G. COMMUNICATIONS**

1. **February 6, 2014 Third Quarter Report (June to August 2013) submitted by LYNN MCCRORY, Senior Vice-President of Governmental Affairs, PULAMA LANA'I 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 Lana'i. (95/SM1-015) (95/PH2-001) (B. Sticka) (Previously circulated with the February 19, 2014 and April 16, 2014 agenda packets. *Commissioners, please bring your copies to the meeting.*)**

**The Commission may provide its comments on the report. Deferred at the April 16, 2014 meeting.**

2. **February 7, 2014 Fourth Quarter Report (August to December 2013) submitted by LYNN MCCRORY, Senior Vice-President of Governmental Affairs, PULAMA LANA'I 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 Lana'i. (95/SM1-015) (95/PH2-001) (B. Sticka) (Previously circulated with the February 19, 2014 and April 16, 2014 agenda packets. *Commissioners,***

*please bring your copies to the meeting.)*

**The Commission may provide its comments on the report. Deferred at the April 16, 2014 meeting.**

Mr. Ornellas: Okay, so Item G, Communications – this is a quick one – I recommend that someone makes a motion to file communications no. 1 and no. 2. – on Item G on our agenda. And this is just a report, third quarter, fourth quarter report of last year as far as project irrigation. And it's just a report, so this is something that comes out every quarter. To just file. Okay. Second, anybody? Okay, Brad seconds. Any – and discussion? Hearing none, all in favor say aye? All against? Passes. Alright, we got that off.

**It was moved by Commissioner Kelli Gima, seconded by Commissioner Bradford Oshiro, then**

**VOTED: To file the third and fourth quarter reports regarding project irrigation as submitted by Pulama Lanai.**

**3. Pulama Lana'i's Upcoming Projects Update - Lynn McCrory, Vice-President of Governmental Affairs, Pulama Lana'i.**

**This is for information purposes only.**

Mr. Ornellas: Lynn, no. 3, Communications. That is Pulama upcoming projects update. Okay, I do have some questions. First thing for the, for the County, why did we get two? Two different dates?

Mr. Yoshida: Since we didn't have a meeting technically on May 21<sup>st</sup> because we didn't have a quorum for May 21<sup>st</sup>. But we did prepare a report for May 21<sup>st</sup>. You got the one that was sent in the agenda packet for May 21<sup>st</sup> and the one that was sent in the agenda packet for today's meeting.

Mr. Ornellas: Okay. Lynn, do you have these, these reports? I'm looking at the 6-09 one. Okay, 5-13, that's fine. The second one is a gas storage tank fleet baseyard? Turn it on.

Ms. McCrory: Lynn McCrory, Pulama Lana'i. That was to put in an additional storage tank, above ground storage tank at the fleet yard. But in multiple discussions today, I believe we'll not be going forward with that.

Mr. Ornellas: Okay, so you're withdrawing that permit?

Ms. McCrory: We'll be more than likely will from the discussions we had today.

Mr. Ornellas: Okay. Okay, since you're gonna take it out. The second one is, I guess, Kurt's doing the work, but Canoe's restaurant? What's happening – what's doing – what's going on with all of that?

Ms. McCrory: It's some interior renovations, some kitchen renovations.

Mr. Ornellas: Okay. Lana'i Theater is going to be up and running this week? I mean the renovations.

Ms. McCrory: . . . (Inaudible) . . .

Mr. Ornellas: Yeah, but I mean, we're gonna start working on it again after –

Ms. McCrory: We hope to have the permit this week.

Mr. Ornellas: Okay.

Ms. McCrory: We hope.

Mr. Ornellas: Okay.

Mr. Stubbart: . . . (Inaudible) . . .

Mr. Ornellas: What was that?

Mr. Stubbart: . . . (Inaudible) . . .

Mr. Ornellas: We can go to your house John. Lana'i City Pharmacy renovations, has the permit come for that yet?

Ms. McCrory: Not yet.

Mr. Ornellas: Lana'i Central Storage. This, I haven't heard before.

Ms. McCrory: This was storage behind –

Mr. Yoshida: Landscape planting plan approval.

Mr. Ornellas: It's what?

Ms. McCrory: It's a landscape plan.

Mr. Yoshida: For the – the code requires that one large ground shade tree for five parking stalls, and hedging is required, so we require the applicant to submit a landscape planting plan and we need to approve that before they can be issued the building permit or whatever permits.

Mr. Ornellas: Okay. Alright, and then temporary tent that's the Four Seasons Manele Bay Resort – temporary tent – I mean that's the – is that the one that we had discussion?

Ms. McCrory: It's constructions workers. No.

Mr. Yoshida: I think they were asking for – they were asking for a time extension on the period because I think it was run until – it ran into –

Ms. McCrory: It's a six month time limit. Yeah.

Mr. Ornellas: . . . (Inaudible) . . .

Ms. McCrory: This is the construction worker's food tent.

Mr. Ornellas: Okay. So, this is their food tent? Okay, so this an extension of the six month? Okay. And this is the one we had the big –

Ms. McCrory: No.

Mr. Ornellas: That was the retail, yeah?

Ms. McCrory: That was retail.

Mr. Ornellas: Isn't – isn't that due to be – isn't that also six months?

Ms. McCrory: That was also was renewed already. At least to me it was renewed.

Mr. Ornellas: It was?

Ms. McCrory: Yes.

Mr. Ornellas: Okay. The Nobu trellis, is this an addition to the renovations down at Manele that we agreed upon?

Ms. McCrory: Yes, this is a change to the trellis over the front end. Can you describe it better than I can?

Mr. Ornellas: Hi Arlan. Welcome.

Mr. Arlan Chun: Hi, Arlan with Pulama Lana'i. This was the trellis that had the glass skylights that extended out and that's being demolished and replaced with a retractable awning type covering.

Mr. Ornellas: Okay. And that's being done by Lana'i Builders or is that being done by –

Mr. Chun: Sorry, that's being done by Viking Construction who's doing the Nobu renovations.

Mr. Ornellas: Okay. And then Hulopoe Beach, that just says –

Ms. McCrory: That continues on the next page. That is the access gate and that permit has come through.

Mr. Ornellas: Okay, and that's to the sandy area leading up to the –

Ms. McCrory: So the cars don't drive on the beach.

Mr. Ornellas: Understood. And then, installation of electrical services – service. Is that the same place?

Ms. McCrory: Yeah, that is at the ranger station.

Mr. Ornellas: Is that the ranger station? Okay. And so you have a bunch of – you have a bunch of – you also have some SMA permits for the park ranger station? Look on page 1 of 1 on your 5-13. There's like – there's like about five or –

Ms. McCrory: The short page? The second page?

Mr. Ornellas: Yes.

Ms. McCrory: Yes, there's a whole range of permits that went with that.

Mr. Ornellas: Including –

Ms. McCrory: From railing, to electrical, to digging trenches, to you name it.

Mr. Ornellas: And that's for the ranger station?

Ms. McCrory: Yeah, for the ranger station. All this was complicated. You think – you think running electricity to a building is easy, it's not.

Mr. Yoshida: These are permits that – I mean – request for permits have been issued. So that's why it's on the completed projects report versus the open project reports.

Mr. Ornellas: Is this something that was signed, was signed off? These are SMA permits. Was this signed off by the, the director?

Ms. McCrory: Yeah, they're minor.

Mr. Ornellas: They're minors, okay.

Ms. McCrory: Yeah, they aren't even close to – I mean, I don't know, maybe \$70,000, something like that.

**H. DIRECTOR'S REPORT**

- 1. Open Lana'i Applications Report as distributed by the Planning Department with the May 21, 2014 agenda packet.**
- 2. Open Lana'i Applications Report as distributed by the Planning Department with the June 18, 2014 agenda**

Mr. Ornellas: Okay, let's go to the Planning's open applications report.

Mr. Yoshida: . . . (Inaudible) . . .

- 3. Agenda Items for the July 16, 2014 Lana'i Planning Commission meeting.**

**Public hearings scheduled:**

- a. MR. WILLIAM SPENCE, Planning Director transmitting the Planning Department's Report with comments, recommendations, and proposed amendments to the planning commissions for review and transmittal to the Council relating to Chapter 19.65 of the Maui County Code relating to Short-Term Rental Homes. (G. Flammer)**

**The Report contains a Proposed Bill for an Ordinance containing the Planning Department's proposed amendments to the Short-Term Rental Home Ordinance No. 3941.**

- b. MR. WILLIAM SPENCE, Planning Director transmitting the Planning Department's Report with comments, recommendations, and proposed amendments to the planning commissions for review and transmittal to the Council relating to Chapter 19.64 of the Maui County Code relating to Bed and Breakfast Homes. (G. Flammer)**

**The Report contains a Proposed Bill for an Ordinance containing the Planning Department's proposed amendments to the Bed and Breakfast Home Ordinance No. 3611.**

**Both reports are available on the County website at:  
[www.mauicounty.gov](http://www.mauicounty.gov)  
( <http://www.mauicounty.gov/index.aspx?nid=121> )**



Mr. Ornellas: Okay, he's good with that. Okay, so the agenda for the next meeting on July 16<sup>th</sup>, we're gonna have public hearings on the short term rentals and bed and breakfasts on Lana'i so – so the – so if the housing, that housing issues if you have. I'll make sure Ron knows and so he'll be here. And of course Gail's still here trying to stay awake, so she'll be here. So, you know, tell the people that if you want to find out and want to put their, their thoughts to this because we can add to it on, on island specific.

Ms. McCrory: Yeah, Lynn McCrory, Pulama Lana'i. About a year ago I went back out to a number of rental people and said, do you want Lana'i specific vacation rental conditions or ordinances and didn't get a lot of input. I mean, everyone just kind of went, well, I don't want to be the first one in there, and I don't want to tell you, and I'm doing everything legal, but no one else is. And you know how that one goes. So we just stopped. So if you have people that, you know, you know in the community there, it would be great to have them to try to get together and put input into this bill. 'Cause, then it's all together – then it's all in one place.

Mr. Ornellas: Yes, we know. And I think we, we – and we definitely make sure it sticks this time. And then – but also these reports for both of these ordinances is at the bottom of the agenda, it's in blue, so if you want to go online and read these reports, be my guest.

**I. NEXT REGULAR MEETING DATE: JULY 16, 2014**

**J. ADJOURNMENT**

Mr. Ornellas: Alright our next meeting is July 16<sup>th</sup>. But we do have a CPAC review the 28<sup>th</sup>. Yeah, Saturday, June 28<sup>th</sup>, and it's gonna be over at the – the Old Bowling Alley. Nah, I think it's – it's the bowling alley. Yeah, make sure you bring your cushions. Alright so anybody else have something to say or are we ready to close up shop? Alright, well, thank you all for coming. This meeting is adjourned.

There being no further discussion brought forward to the Commission, the meeting was adjourned at approximately 9:30 p.m.

Respectively submitted by,

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

**RECORD OF ATTENDANCE**

**PRESENT:**

Shelly Barfield (from 5:30 p.m. to 7:40 p.m., and from 8:00 p.m. to 9:30 p.m.)  
Kelli Gima  
Stacie Koanui Nefalar, Vice-Chair  
Stuart Marlowe  
John Ornellas, Chair  
Bradford Oshiro  
Beverly Zigmond

**EXCUSED:**

Joelle Aoki

**OTHERS:**

Clayton Yoshida, Planning Program Administrator, Current Planning Division  
Joseph Alueta, Administrative Planning Officer  
Ben Sticka, Staff Planner  
Richelle Thomson, Deputy Corporation Counsel