

(APPROVED: 03/10/10)

**MOLOKAI PLANNING COMMISSION
REGULAR MEETING
JANUARY 13, 2010**

*** All documents, including written testimony, that was submitted for or at this meeting are filed in the minutes file and are available for public viewing at the Maui County Department of Planning, 250 S. High St., Wailuku, Maui, and at the Planning Commission Office at the Mitchell Pauole Center, Kaunakakai, Molokai. ***

The regular meeting of the Molokai Planning Commission was called to order by Chairperson Joseph Kalipi at 12:05 p.m., Wednesday, January 13, 2010, at the Mitchell Pauole Center Conference Room, Kaunakakai, Molokai.

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

A. CALL TO ORDER

Mr. Joseph Kalipi: Okay, we'd like to call this meeting to order. I wanna thank everybody for coming, and welcome to the Molokai Planning Commission meeting, January 2010 meeting. Here with us from the Planning Department we have Joe Alueta and Danny Dias. We have Clayton Yoshida. We have the new Molokai Planner, Mikal Torgerson. To my right here is Suzie Esmeralda, Corp. Counsel Michael Hopper. Your Commissioners are Mrs. Buchanan from my far left, Mr. Williams, Mr. Bacon, Mr. Sprinzel, Vice-Chair Mr. Chaikin, and myself Chairing the meeting today is Joseph Kalipi. Thank you. Okay? And so as we call this to order we would like to go down on our agenda today.

B. PUBLIC TESTIMONY ON ANY PLANNING OR LAND USE ISSUE, except Contested Cases as defined in Hawaii Revised Statutes Section 91

Mr. Kalipi: Item B, at this time, we'd like to open the floor for any public testimony on any planning or land use issue, if you need to go back to work or if you just wanna share. You also can wait until the subject or the topic comes up on the agenda and testify at that time, but we wanted to open this time for those who may need to be going shortly before the agenda item. Also, I would like to say that in that public testimony on any planning or land use issue, except the contested cases as defined in Hawaii Revised Statutes Section 91. Okay? So that's for a contested case that is ongoing at this time. So with that said, if anyone wish to testify, this would be your opportunity. Okay, seeing none, we're gonna --

Unidentified Speaker: ...(inaudible)...

Mr. Kalipi: Sure. Fine. Thank you, sir. Okay, so seeing none at this time, we're gonna close this time of the open public testimony and we're gonna move right along to Agenda Item C, which is the approval of minutes of the August 26, 2009, September 9, 2009. So with that said, I turn to the Commissioners. If there's any corrections or if they believe that it's written comfortably, then I would entertain a motion from the floor. Okay, Commissioner Chaikin? Excuse me, Commissioner Sprinzel?

**C. APPROVAL OF MINUTES OF THE AUGUST 26, 2009, SEPTEMBER 9, 2009
(previously distributed with the December 9, 2009 agenda. Commissioners:
Please bring your copies), and OCTOBER 14, 2009 MEETINGS**

Mr. John Sprinzel: I make a motion to approve the minutes of the 26th of August and 9th of September.

Mr. Kalipi: Okay, any second?

Mr. Nathaniel Bacon: Second.

Mr. Kalipi: Second by Commissioner --

Unidentified Speaker: ...(inaudible)...

Mr. Kalipi: Excuse me, Corporate Counsel also mentioned to me that -- oh, okay, he just asked me for clarification. I'm sorry. I did mention August 26, September 9th, and also the copy that you have before you which is the October 14th. So there are three minutes to be approved.

Mr. Sprinzel: Yes, add that to the motion - the 14th.

Mr. Kalipi: Commissioner Bacon, do you --

Mr. Bacon: Does that mean I third it now? Okay, second.

Mr. Kalipi: Okay, thank you. So we have a motion on the floor. Any discussion?

Ms. Lori Buchanan: It would be difficult for those that were not present during the inclusion of the three minutes to -- for either a second or to vote in favor because we weren't there. If you wanna do them separately, that would be okay with me, but I cannot -- I don't know what transpired to say that this is correct on your October 14 meeting because I was not present.

Mr. Kalipi: Okay, Commissioner Buchanan, so the other two that you were present, so you feel comfortable in voting in that matter, but October 14 is the one that is in question. Corp. Counsel, can you comment on that -- her voting on October 14, or what she had commented on?

Mr. Michael Hopper: I'm not familiar with any legal restriction of voting on the minutes. I mean, you could get into a situation where it would be impossible to approve minutes. Minutes -- there's no really formal way of doing them. The Chair could approve the minutes

by unanimous consent and say if there's no objection, the minutes are approved, and everyone could say no objections, and then the minutes are approved. So there's no law on that issue, but of course, if a Commissioner doesn't feel comfortable voting for something, then the Commissioner does not have to vote for that issue. The Commissioner could vote against the approval of the minutes. I wouldn't see that as a right to abstain from voting, though, necessarily. So, I mean, there's no legal restriction. You can vote for the approval of minutes even if you weren't at the meeting. I mean, for example, you could have a situation where there's an entirely new Commission and you still have to go back and approve the old minutes. It doesn't mean you can never approve those minutes through that process. So those would be the only comments that I would have.

Mr. Kalipi: Thank you, Corp. Counsel. Okay, any more discussion?

There being no further discussion, the motion was put to a vote.

It has been moved by Mr. Sprinzel, seconded by Mr. Bacon, then

VOTED: To approve the minutes of the August 26, 2009, September 9, 2009 and October 14, 2009 meetings.

*(Assenting: J. Sprinzel, N. Bacon, D. Williams, S. Chaikin,
J. Kalipi)*

(Dissenting: L. Buchanan)

(Excused: M. Pescaia, N. Leong, T. Waros)

Mr. Kalipi: Okay, so we have five. Motion carried. Thank you, Commissioners.

D. ANNOUNCEMENTS

1. Formation of Subcommittee to Review the Rules of the Molokai Planning Commission

Mr. Kalipi: Okay, Item D under Announcements, we have had this placed on our agenda item to let the public know that there is a subcommittee that the Commissioners have put together to review the rules of the Molokai Planning Commission, and some of the languages, and the process. And so the committee has been formed, and this committee will also look at probably the public to give input on certain rules that may not seem up to date, or need amending, or so forth. And from that, when they do that type of work, then they will bring back their request to the full Board of what they discovered or what the committee has come up with. So we wanted to let the public know that there is a subcommittee formed that are redoing some of the rules. And if you're interested in

participating, then you can see the subcommittee members. Commissioners, can you refresh me, whom -- which one of you are on that committee? Commissioner Chaikin?

Mr. Steve Chaikin: Yeah, thank you, Chair. I was appointed the chair of that subcommittee. And I believe Napua was on there. I think we also offered up Commissioner Sprinzel's name. Is that something that you're comfortable with being on that subcommittee? And I think that was it. It was three. Is that your -- the rest of everyone?

Mr. Kalipi: Commissioner Buchanan?

Ms. Buchanan: No, did Nat offer up his name as well to sit on the committee?

Unidentified Speaker: ...(inaudible)...

Ms. Buchanan: Okay. Yeah, was Don. Don also offered to sit on that committee. That's correct.

Mr. Chaikin: That's correct. Okay, so there's four of us on this subcommittee. And let me just ask you, Chair. We also have this item on no. 8 under Unfinished Business. Did you wanna wait until we get there to discuss this further? Or did you want me to make a few comments at this time?

Mr. Kalipi: If we could wait until we get there.

Mr. Chaikin: Okay. That's fine.

Mr. Kalipi: I just wanted to make that announcement, and then we can have more dialogue as we go through the agenda.

Mr. Chaikin: Okay, thank you, Chair.

Mr. Kalipi: Okay, thank you. Okay, so it's gonna reoccur again, but if you feel that there's a pressing need that you wanna testify on it, about that announcement, you're welcome to testify at this time about the announcement. Okay, seeing none, we're gonna close that time of public testimony under the Announcements. Again, it's gonna come up again later on another section. At this time we're gonna move on to Agenda Item E under Communications, and we're gonna call up Staff Planner Dias to present what's before us.

E. COMMUNICATIONS

1. **MS. JEAN TESSMER of SPACE OPTIONS requesting a Special Management Area Minor Permit in order to construct a concrete Americans with Disabilities Act (ADA) access route to an existing condo unit with side railing located at Unit #134, Ke Nani Kai, 50 Kepuhi Place, TMK: 5-1-003: 013-0059, Kaluakoi, Island of Molokai. (SMX 2009/0431) (Valuation: \$20,000) (C. Thackerson)**

The Commission may take action on this request.

Mr. Danny Dias: Good afternoon, Members of the Molokai Planning Commission. The first project before you is the Communications' item. The applicant is Jean Tessmer. The project involves a special management area minor permit for the construction of a concrete ADA access path at the Ke Nani Kai Apartment Complex. Basically, this project, if you look at Exhibits – approximately, 6 and 7, one of the residents there is I believe in a wheelchair. She has a difficult time walking. And so if you look at the bottom picture on Exhibit 7, she has to somehow get down those stairs and she can't do it. So from what I understand for at least the last month, probably longer, either she has to wait for somebody to actually physically carry her up there. So she needs an ADA accessible path, which there's sort of a rendering of it on Exhibit 7. That's the top picture. And basically, it's just a concrete path just so she can access her unit, and that's basically it. I think it's sort of an emergency type situation because she is having a lot of trouble getting to her unit right now.

Mr. Kalipi: Thank you. Commissioners, questions for Staff Planner Dias?

Ms. Buchanan: Yeah, I do. I needed clarification. On the agenda under Item E, no. 1, the Communications' state SMA permit. And then on -- I thought I read that it was an exemption. It says that the project was not a development. I'm sorry. I need clarification.

Mr. Dias: Okay, what I have in front of me on the agenda, it says, you know, a minor permit, Ms. Jean Tessmer of Space Options requesting a special management area minor permit and so forth. And the draft letter that should be in your packet reflects a minor permit versus an exemption.

Ms. Buchanan: So the letter dated December 31, 2009 from the Department of Planning, subject: assessment for a proposed construction of concrete ADA route says a determination has been made relative to the above-referenced project that no. 1, the project -- oh, is a development.

Mr. Dias: Is a development. Yeah.

Ms. Buchanan: Okay. I have a question. When I automatically saw that, I said, oh sure, of course they need access, but on the exhibits, there's an Exhibit no. 3.

Mr. Dias: Okay.

Ms. Buchana: And then an Exhibit no. 4, and Exhibit no. 5. And then on Exhibit no. 6, that is the actual rendering. I was confused as to how this -- I thought of an ADA wheelchair access as the typical type you see made out of wood that goes up to the person's door, and then they're able to access it with a wheelchair. However, this is a total installation of a concrete sidewalk up to the point of the level of the person's home. I read the correspondence from Ke Nani Kai that they cannot, because of the Disabilities Act, not agree with that -- this option. My question would be then about ground-altering or disturbance in excess of two to three feet deep because it said that very minor disturbance was gonna take place, but they didn't state in the application exactly how this ADA sidewalk was to be incorporated into the landscape. It's not clear. There's no schematics as to level, the degree of slope. There's no engineering stats by the contractor. It's a little bit more than your typical wooden sidewalk - I mean wooden access to a door. It's an entire new sidewalk area. And it does -- I don't even know how long it is. I don't know how it's gonna look. You mentioned on Exhibit 7, that top picture that says "Front #134," I don't know what that is.

Mr. Dias: Okay.

Ms. Buchanan: And so I just wanted to be sure because it would seem to me that what I'm guessing is it would be way more than \$20,000 of work to put an entire sidewalk in that seems to encompass a large area.

Mr. Dias: Okay. Those are actually questions I asked myself. I think part of the problem is -- maybe I can just hand you what I have cause, you know, with black and white pictures they're pretty hard to see.

Ms. Buchanan: And I guess that's my issue, too. And we just met a new Planner today. If you're gonna be doing things in black and white for this Commission, you have nine Commissioners, please take a highlight pen, and draw things out for us. Also, to scale, if it's really small and I can't read it, then I'm not gonna like it. And so you need to blow and enlarge pictures up especially of the target area in question. So, Planner, what am I looking at then on this colored picture? Is this a computer-generated rendering of what the final project would look like on Exhibit 7, the top picture?

Mr. Dias: Okay, on Exhibit 7, the top picture, basically, this -- well, I apologize for it not being in color, but basically, you know, this thing that goes across the yard, that's, you know, their version of a rendering of the sidewalk. Of course, there's no railing on it, but

what they're actually gonna build is gonna have a railing. And I know what you're saying about, you know, it's kinda like portable classrooms where you have like the wooden ramp thing. It may be because it has to go down versus up that -- I don't know if there's an architect here that actually worked on this, but I don't know specifically why they went with a concrete, you know, route versus like say a wooden, you know, a little path thing, but it's 43 feet long. I think the measurement is here. It's 43 feet long, about three and a half feet wide, approximately. But if I could just ask if anybody's representing -- okay, if you can perhaps come up here and answer any questions?

Mr. Kalipi: You can go ahead and state your name in the mike. And maybe you can help us with the questions.

Ms. Jean Tessmer: Yeah, I can. I'm Jean Tessmer. I'm with Space Options. We drew the drawings.

Ms. Buchanan: Okay.

Ms. Tessmer: Jean Tessmer with Space Options. We generated the drawings.

Mr. Kalipi: Okay so, Ms. Tessmer, you kind of understand the question that Commissioner Buchanan is asking? The slope, what it would actually look like? I guess we have an idea that's gonna be 43 feet long and three and a half feet wide, but where is it in the picture maybe? You can kind of explain. Is it gonna run from one way to another? And how is it gonna climb that high? Are you gonna contact all that with cement to a certain height to get to the second floor?

Ms. Tessmer: Okay, if you look at the Front 134 picture, the one on the top, you'll see a light line. You see this? And you see this higher mound over here? This is where the stairs are. So what we did was we found an area that was lower or wouldn't have to do hardly any excavation like 14 inches or something like that just to move some rocks. And the problem is we had to make it kinda long so you notice it kinda curves?

Ms. Buchanan: Yes.

Ms. Tessmer: It curves because we're coming at a juncture here in the walkway. If you look at the previous drawing, this one, so it starts here. So from the photograph, you're looking at it this way. And you kind of see it going here. And this hump is where the stairs are. So it's a real big hump that way. So we didn't want it go that way cause it requires a lot of excavation, you know, from way back here all the way to here. And we had to do this because in order for someone in a wheelchair to access this route on a level plane, it's a change in direction, and ADA requires it to be pretty much level to change. So we had to push uphill a little bit from the sloped one already so that we can continue more or less

level, and keep it flat, and come around this way, and just gently, gently go down to the existing pads that's here at the base of stairs. So it's very little excavation through here cause as you can see it's like there's a major hump here, and it dips way down over here. So what we did was we tried to find the lowest place that would cause the least amount of alteration work. And concrete is very durable whereas if we put wood down on the dirt, we would lose it pretty fast so -- and we'd want it to also blend in with the existing, you know, concrete, because they have really nice pathways there that are -- kinda meander throughout the site. So did I help you?

Ms. Buchanan: Yeah, Jean, so hang on. The total width from the entry point from the sidewalk to the doorstep is approximately, 43 feet?

Ms. Tessmer: It is 43 feet from this juncture to this juncture. This exists and this exists already to the door.

Ms. Buchanan: Okay. So I happen to know that the back wall -- this back wall is about 40 feet. So it would be larger, longer than the back wall. And then you'd have three feet wide. I was just -- the slope -- the slope seems to be -- the incline or decline or whatever, I would just think it would be problematic for an unattended person to make that incline on a wheelchair depending on their health and physical capability. I'm assuming -- I'm sure it's compliant or the schematics would be compliant. And I would think that Ke Nani Kai, at the get-go, would've been kind of probably not wanting to have that type of construction made because I was wondering what happens when somebody else needs an access? And are they now gonna start building different concrete areas to the -- I know it's not -- it just seems like it was a larger project than what would be deemed necessary. Can you tell me the total depth of excavation at any given point?

Ms. Tessmer: I think the maximum is gonna be somewhere around 20 inches. And it's a very short area. As you can see it's relatively -- it's almost flat. And when we took the elevation difference -- because the stairs are real high, and it goes down, down, down, down. And this part here, there's already a swale right across there at the base of this building. So it's kind of meandering to go that way. Now, it's a little longer because we had to do that curve in order to get it so it was more like ADA compliant. In other words, she's pushing more or less level. Then we have a level landing here, and then she's traveling down at 7%, which was less slope than what ADA allowed. In other words, we were trying to make it even flatter so it was even easier. Plus, we had to make it a little wider for her so she could turn easily on this area. Now, we are gonna redo this bottom part, but the ramp itself is only from here to here because here, it's all riprap. It's too rough for the wheelchair so we gotta make it a little smoother.

Ms. Buchanan: Okay, now I see that you have a landing --

Ms. Tessmer: Yeah.

Ms. Buchanan: Between Point A and Point B. Okay.

Mr. Kalipi: Okay, any more questions while we have the Ms. Tessmer up here? Okay, any more questions for Planner Dias?

Ms. Buchanan: Just to make sure that our exhibits are done in a manner that is legible, and then maybe for the next Planner, an introduction. And I know we cannot print in color, but then you need to get a highlight pen out, and you need to enlarge smaller scales because the next two projects have the same issues.

Mr. Kalipi: Okay, thank you, Commissioner Buchanan. Okay, at this time we're gonna take public testimony. And then we're gonna come back to hear the Planning Department's position. So if you wanna go ahead, step up to the mike. Please state your name for the record.

Mr. Joseph Pentak: My name is Joseph Pentak and I live at 135 Ke Nani Kai, which is next door to the unit that has requested this modification. Before I read my statement, I would like to say I would not consider this a minor modification. I would consider it a major construction project. I've lived in this unit 12 years now. I had no disability when we bought the unit. I certainly could use help and I appreciate the work that ADA does, but let me read out of my statement because I don't think you have the full story of the impact of this ramp. And I am not privy to the photographs. And maybe if I can look at them, I can explain things a little bit more precisely.

As I stated, my name is Joseph Pentak, full-time resident of Unit 135 at Ke Nani Kai. Also, I am aware of the letter sent to the Commission by our board of directors. I was not able to attend this meeting having been on the Mainland. I have medical problems qualifying me for handicap privileges, so I appreciate much of the work ADA does. We purchased the property 12 years before any ADA study was done at Ke Nani Kai and I was healthy. A comprehensive study was done approximately three years ago which indicates the area around 134 through 136 is the least suitable for handicapped people. The rampway as proposed for Unit 134 would run in front of our unit cutting into a 45-degree -- approximately 45-degree angled slope, which has in the past been one source of constant erosion. Over the years, with the approval of past KNK boards, I personally have stabilized this area by building rock walls and adding plantings and groundcover. In addition, the association has done a lot of drainage and remediation work in this area to prevent flooding that occurred. Many visitors also currently take pictures of this garden setting area now.

My question to this Commission is -- my questions are twofold. First, is why the owner, Mr. McNally of Space Options, chose to buy this Unit no. 134 for his 90-someodd-year-old mother knowing that it was not ADA accessible and when other more accessible units were up for sale at the same time. Secondly, it is my understanding that the plans that were drawn up by his ADA expert and presented to KNK were incomplete and inaccurate. Let me state clearly that I am not a civil engineer, nor an ADA expert, but I can read a set of plans.

The plan as submitted shows a 36-inch wide path, as required, but fails to show another eight inches width that will be needed for curbs and railings. So rather than 36 inches, you've now extended this cut into the slope, this 45-degree angled slope, to 44 inches. This is why I say the plans are not complete. With this wide a cut into the slope, the angle of the slope will dramatically change to approximately, 90 degrees, and no retaining wall was indicated from the plans I saw. And from what I saw, I believe the building code is anything over three feet needs a building permit or something like that. And cutting in at a 44-degree angle -- I'm deferring from my comments here -- for a path 44 inches wide into a slope that's 45 inches or angle, 45 inches, you're gonna cut deeper into it. Furthermore, this cut-through will probably damage and possibly kill a Plumeria tree above it. If the Plumeria tree survives, this presents another problem, and that is falling leaves as these trees drops leaves and flowers daily. The pathway is to build on common area of land. So I ask the Commission whose liability will it be should one slip and injure themselves on wet leaves or flowers? Who will be sued? The homeowner, the KNK association, or this Commission, others, and others that grant approval? I suspect everyone would be. And who pays for the maintenance of this pathway and keeping it clear of nature's debris?

Furthermore, there's a question of privacy. By placing this ramp as suggested, the unit directly above, that's 234, is exposed to almost eye level viewing. And if their blinds are constantly drawn, it denies them of light and the tradewinds, which are much needed in the second story units.

My question of approving the ADA-approved ramp is far more complicated than indicated. Currently, there is no ADA-approved access to the parking lot to or from 134. To my knowledge, Mr. McNally does not show this in his request to access 134. How can you have compliance in one area and not comply into another because there is no way you can ADA access the parking lot to the unit? That's one of the reasons why I'm sure it was designated one of the worst areas. And with additional ramps -- I had difficulty walking up the shorter way to the parking lot and I'm not in a wheelchair. There's a longer way to the parking lot and that, too, is not ADA compliant. So I don't think you're seeing the whole picture of the entire project.

I can accept the fact of poor judgement by the buyer. His mother is currently -- is not confined to a wheelchair as witnessed personally and by others. She has walked upstairs

and used the steepest incline to the parking lot with the aid of a walker. I personally have difficulty doing the same as I said. I also realize due to health, I may have to move and find a place which is on much more leveled land. This is my problem and should not be the burden to others, excuse me, in my waning years. Excuse me. I strongly urge this Commission not to act upon Mr. McNally's request for a ramp without further study and an absolute need as this is not public property. Respectfully submitted. Do you have any questions?

Mr. Kalipi: Commissioners, do you have any questions for Mr. Pentak? Commissioner Buchanan?

Ms. Buchanan: Where is your garden?

Mr. Pentak: Pardon?

Ms. Buchanan: Where is your garden?

Mr. Pentak: May I see the exhibits?

Ms. Buchanan: Would it be part of that slope?

Mr. Pentak: My garden's at Ke Nani Kai.

Ms. Buchanan: Yeah. Will any of that action be dipping into that refurbishment of the slope that you've been doing over the years?

Mr. Pentak: Yes, and also the association I believe has spent something like \$150,000 or more on drainage. We always had a flooding problem in that area. And as I heard this afternoon, they're gonna have to do something. I heard the word "riprap." And it's riprap, which is part of the drainage system, is gonna have to be paved over smooth. So will this affect the drainage system? Currently, it's working beautifully in the few good storms we've had. And so as say I don't know where that's indicated on there or not. This is one of the reasons I asked for further study that be made, architectural drawings, site elevations, depth of the cut. The height of the retaining wall I think is gonna be more than 26 inches would be required. So I think the plans are completely erroneous as presented to the Commission.

Ms. Buchanan: Yeah, I agree that I would have wanted better site plans. The site plans that we do have does not indicate the extra concrete work to support the railing. It does state that it's 36, so that I didn't know and I didn't think about. So thank you for that testimony. I'm sure Jean can respond to that, but thank you very much.

Mr. Pentak: Alright. As I say, if you'd like me to review the photographs, I'd be happy to do so.

Mr. Kalipi: Okay, any more questions, Commissioners? Okay, seeing none, thank you, Mr. Pentak. The floor is still open for testimony. If you wish to testify, please again, step up to the mike and state your name for the record.

Mr. Darryl Canady: Good morning, Chair and Commissioners. My name is Darryl Canady, a resident and owner at Ke Nani Kai since 1982 when we bought our first unit there. I -- or a little bit of history, I am speaking on behalf of myself today and myself only -- well, and my wife also, with her permission. History. I am currently, just to let most of you know, most of you know, I am currently the Molokai representative for the Urban Design and Review Board and have been for the last year and a half. I also, history-wise, am on the building committee of Ke Nani Kai, and this project was brought to us some six months ago. I am not gonna speak as those individuals. I'm speaking only on my behalf.

I'm standing here and I'm not sure whether -- I don't want to get into the ADA rights or wrongs because we have been told at Ke Nani Kai that you don't wanna mess with the ADA. If you do, you're gonna lose. You don't mess with the Federal government. Alright, I understand that. But we have a situation there where a unit was put up for sale. And the initial conversations on the ADA operation was done with the seller people. To my knowledge, the buyers didn't get involved in it until after they purchased the unit and were officially owners. It is a problem, the way it has been shown. It will cause, because of the massiveness of it, major things possibly that could go on in that area of our property. Joe mentioned flooding. Joe mentioned and as the Commissioner mentioned, the length of the ramp. It is obviously going to affect, as now planned, more than just Unit 134 and 135. As I understand it, the applicant will need to park their car at least 150 feet away from the unit, and then go by sidewalk from almost Unit 144 to their Unit 134 in that area.

All I would ask is if this Commission could give the parties some additional time because the association, even though the board did approve the project, has never been involved in any of the day-to-day plans or anything like that. This has not, at this point, been a mutually agreed upon situation. To my knowledge, there was no consideration given or no input provided by Ke Nani Kai, the board of directors, the building committee, or anyone else on this project. We would ask -- I would ask if this Commission could give the applicant and Ke Nani Kai a period where we could try to get together and see if there might be another ADA way of setting Unit 134 up without the interruption of all -- maybe a lot of other units.

I have looked myself and there is, I think, another access that would be far shorter and would accomplish the same thing, but it has never ever been able to be presented to the applicant and the company that the applicant is using to do the work. Just for your

information, the applicant is, to my knowledge, an owner and a director, either an officer or a sole proprietorship of the company that has drawn the plans and is doing the work. Any questions?

Mr. Kalipi: Commissioners? Okay, seeing none, Mr. Canady, thank you.

Mr. Canady: Thank you.

Mr. Kalipi: Okay, the floor is still open. Anymore from the public would like to testify on this matter?

Ms. Buchanan: I think Jean wants to respond, if the Chair is willing.

Mr. Kalipi: Sure, I believe she's the applicant, but before she comes up and responds, is there anymore -- we're gonna allow the public to testify, and then we're gonna close public testimony, and then we'll have Ms. Tessmer to respond. Anymore comments or someone would like to come and testify? Again, please state your name for the record.

Mr. Mikal Torgerson: Yes, hello. Mikal Torgerson. I'm also the new Molokai Planner. So it's a pleasure to work with you folks. I thought I'd -- I don't know. I'm a licensed architect in the State of Hawaii and so I thought I'd offer a little bit of clarity about the width of this ramp. The ADA allows for a minimum 36-inch wide ramp, and the handrails are allowed to project within that. And so it's not necessarily a given that it would have to be made wider than 36 inches. So I just thought I'd offer that clarity.

Mr. Kalipi: Thank you. Any questions for Mr. Torgerson? Mr. Torgerson, excuse me, one second. Commissioner Williams would like to ask you a question.

Mr. Williams: Since you're our new Planner, and this is directed at both of you, wouldn't it be common sense that drainage would be an issue? Wouldn't you normally require an elevation of some sort to show the drainage and the grading, because I noticed there's nothing in here to indicate it? There's no point shot or located. So naturally, I was -- my question would be what happened with the drainage? It would be kind of common, I thought, that you would -- before you would even recommend approval to us that you would kind of either visit the site, or make that comment, or make that requirement that we actually -- I think you do have to have some kind of elevation, if I'm not mistaken.

Mr. Torgerson: Since the question was directed to me, I'll answer first. I'm not familiar with this application at all. In fact, I haven't seen it. So I don't think that I could really answer correctly. In my architectural practice I would typically have a section and an elevation.

Mr. Kalipi: Okay, thank you. Okay, again, any more public testimony on this matter?

Ms. Buchanan: Chair, just as a -- for Commissioner, Item no. 3 of the December 31 correspondence does state that the project is not located in a flood hazard area zone per written confirmation by Department of Planning Zoning and Enforcement Division, and therefore, a flood development permit is not required.

Mr. Kalipi: Thank you, Commissioner Buchanan. She's following up on Commissioner Williams' question. Thank you. I did see a hand from the public to testify. So again, please come up and state your name for the record, if you wanna testify.

Ms. Ariko Takeuchi: Hi. My name is Ariko Takeuchi. I'm a full-time resident in Ke Nani Kai in Unit 234, which is above Unit 134. And I didn't plan to testify today but just bring -- I want to bring up one safety issue for that sideway like, you know, adding it to Joe's explanation. The sideway on the 45-degree hill, and if you look at the other side of the sideway gonna be like a ten feet drop to the drain hole and which is so steep. And my concern is the next -- the other side of the next unit is Unit 133, which is always has a guest because it's owned by timeshare people and a lot of guests brings a lot of kids with them. And I'm sure 133 guests gonna use this sideway because it's shortcut to the pool. And those kids -- I see many people either, you know, taking a drain path because it's shortcut to the pool. And I don't know how the rail, the handrail, gonna be, but smaller kids can drop from ten feet down, which is really, really dangerous. That's one thing I just wanna mention.

Mr. Kalipi: Thank you. Please hold on. Commissioner Buchanan?

Ms. Buchanan: I have a question for you. The previous testifier alluded to a privacy issue with Unit 234, which you're an owner of. Do you have issues with the alterations now gonna preclude you? There's some privacy issues that you're gonna have to -- that you're not gonna not want peoples passing in front -- your front? Is that correct?

Ms. Takeuchi: It is. I, too -- I live -- it's gonna be like if you stand on a hill, it's directly looking into my bedroom. And I cannot close the bedroom because I need the light and the tradewinds. And also, even like nighttime when you put the lights up, you can see everything in my bedroom. And I'm sure, you know, some people gonna planning to make like a flower arch or, you know, I have some ...(inaudible)... about it, but I don't think it's gonna help in the one day. It's -- it's -- yeah. But that's a lot, every day, 24 hours.

Ms. Buchanan: Okay, thank you.

Mr. Kalipi: Thank you. Any more questions, Commissioners? Thank you. Okay, for the public, any more testimony on this matter? Okay, seeing none, we're gonna close this time

of public testimony. And I'm gonna ask Planner Dias to share the Department's position at this time.

Mr. Dias: The Department's recommendation is to approve a minor permit for this project subject to five conditions, five standard conditions.

Mr. Kalipi: I'm sorry. Excuse me, Planner Dias, before you share that Department's position, I did say that we were gonna give Mrs. Tessmer an opportunity, being that she's the applicant, just to share a little more information before finalizing with Planner Dias.

Ms. Tessmer: I appreciate everybody's time. And basically as it was brought up, this has been a process for six months at least, or something like that, that we've been trying to get an accessible ramp. I did go through the other available units on this site to see if there was more -- some that were more accessible. There were like three other units that were available at the time that I did look at with the owners to see if his mom would be able to actually -- I'm actually an ADA consultant. I'm a Federal Barrier Free consultant to the U.S. Navy for the USS Arizona Memorial. I've been doing this for many, many years, and I'm actually more of an advocate for people with disabilities. I've worked on people's homes here who has diabetes, or, you know, cancer, and adapted their homes under HUD.

So anyway, this is kind of a pressing issue for us. We actually wanted it to be heard on December 9th because she is having a really hard time. She lives in a temporary location onsite. Living there for a while. And that was one we looked at. And that was gonna -- we had to put in a 100-foot wood ramp, and on top of that, take out two coconut trees. And so we thought, this is too much, and then we would be going in front of two other units. Now, what I wanna show -- I brought my plan because I did -- I did do this for ...(inaudible)...

Mr. Kalipi: Okay, Mrs. Tessmer, can you access the mike near you so we all can hear?

Ms. Tessmer: So I did send bigger plans. So as you can see, the walkway is actually three feet plus four inches. That's where the railing is going in that four inches. Yeah, it's really hard to see on the little -- and the other thing is if you look at the way it is being put here in the front -- so just so you know, we did look at several other units to see what would work. We looked at whether or not we could put a small elevator in at the front, and the association didn't like that because it looks so ugly. We looked at stair glides there, stair chair lifts, everything, and it would've been an impediment because of exiting. Egress for the Uniformed Building Code requires a certain width on the exit stairs and this stair thing would've folded up and only given us like less than 24 inches, which would've violated the code. So on top of that, the expense is like \$30,000 to \$40,000 for one of those things. So it just seemed too overkill.

So this seemed like a real low profile way to go and something that she could handle. It's pressing for us now because she is having more difficulty walking. She just went through another operation. So the son really wants to get this going for her. We did try to look at whether or not she could go in and out of the back sliding doors over the grass, but it was too uneven. She also has aides that work with her 24/7. So they're usually with her when she's walking. As far as I know, she never walks alone. And if she can't walk then -- or get up the stairs, then they carry her up and down the stairs. We realize that the entire site is not in ADA compliance, but under Fair Housing regulations, we're allowed to do as much as we can to make it workable. And with the assistance of the aides, it makes it real workable. And so she can get further away like if it's too far away and it's too exhausting, then they can push her in the chair, but then the aides can keep her steady like if it's not quite perfect. So we didn't wanna like over encumber the association with, hey, you know, you gotta change everything cause really, that would be too much to ask, but if we could just do this much so that we could get it going, that was very important right now.

So I was gonna address another issue. Mr. Canady, which unit are you in? I was just wondering what unit number you live in?

Mr. Kalipi: I think -- yeah. Come up, Mr. Canady. I don't know if that's relevant because -- we do wanna -- hang on, Mr. Canady. There are some questions I guess we want answered, so if you could be specific.

Ms. Tessmer: No, that's okay. I'll just skip that one.

Mr. Kalipi: Maybe I can help you if you can answer for us. You have heard the testimonies from individuals, their concerns. I think -- how would you respond, you know, to the Commissioners for their concerns? One of the concerns that I heard was there's a ten feet drop, and there's some children that would be probably wanting to access that route to the pool.

Ms. Tessmer: Okay.

Mr. Kalipi: The other concern that I heard was the privacy; the eye level of the bedroom.

Ms. Tessmer: Okay.

Mr. Kalipi: So maybe you could talk about --

Ms. Tessmer: Yeah, I think I can help with the -- I think the photograph will really help on this one. So as far as the ten-foot drop, what they're talking about is something that you can't see in here, but there's a dip down in here because there's stairs here to go down to

135. So the landscaping -- the route, there's this little area in here. As you can see, it's about six to seven feet away where it drops. It's actually gradual. Then it gets to a wall and that wall from the top to the bottom is about 30 inches. So it's not quite ten feet. So anyway, the other thing is these are the rock planters that Mr. Pentak did put in so one of the reasons we were meandering our route was so that we could preserve his work. So we didn't want to touch it. And we did talk to them that day when we were laying it out. We actually put flags to show them. And then they explained how they brought every rock in, you know, and it was a lot of hard work. So we thought, okay, well, we'll preserve that. And then if you look at the photographs for the privacy issue for 234 -- oh, I wanna point out one other thing. So this is 135. This line right here, this is 135. Okay? So this is the common space for 135. This is 134. So you can see we're primarily building this walkway only in front of Unit 134. This is the bedroom right here for 134. Okay so the Plumeria tree is here. So now I'm gonna show you the photograph. And by the way, we did do a lot of point elevations and submitted them to the association's architect, Art Parr, who looked at our elevations and how we were gonna retain that side wall, if it needed retaining. So anyway, if you look -- I'm gonna walk over there. You can see ...(inaudible)... Okay? So you can see that? Okay. Alright. So anyway, I showed her that. Okay, this is the walkway. This is the Plumeria tree. This is upstairs. You can see where we're walking.

Mr. Williams: ...(inaudible)...

Ms. Tessmer: Okay, it's way down in here.

Mr. Williams: It's not even on the ...(inaudible)...

Ms. Tessmer: No, no, it's -- the drain is running underground all the way through here.

Mr. Kalipi: Ms. Tessmer, can you speak in the mike and --

Ms. Tessmer: I'm sorry.

Mr. Kalipi: So everybody can hear and understand?

Ms. Tessmer: Yeah. The drain is -- the new drain improvements were put in the riprap area, where I told you was rough, and there are actually drain grates through here to contain the water, that was done several years ago, and those are like six-inch pipes that catch all the water and hopefully, that mitigates the problem with the drainage.

Ms. Buchanan: The yellow line is the drain?

Ms. Tessmer: Yeah, the yellow line here is where the new drain is put in with the drain grates. So we're -- we're not going to be affecting that with this work. And on top of that,

we are going to tie in, like we have a little slope from here going down, so we're gonna tie into the drain grates with another grate to this existing drain just in case there's any runoff. And then where railing is on the outboard side, it's a curb. It's stepped up so we'll catch the water and take it down right to this drain grate right here, and that is shown on the plan that the architect looked at. You have -- everybody got that?

Mr. Kalipi: Okay, Commissioners, you guys got any more questions?

Ms. Tessmer: Well, wait, wait. I was just gonna show the -- 245.

Mr. Kalipi: You can go ahead and --

Ms. Tessmer: Okay, so this is a ...(inaudible)... Can you see that light line in there? Okay, so this is the Plumeria tree, and this is where 234 is. So the stairs are here, and the stair walkway is here at 234.

Mr. Kalipi: So, Mrs. Tessmer, you're showing the Commissioners the pictures about the bedroom?

Ms. Tessmer: Yeah.

Mr. Kalipi: That's what you're showing the Commissioners? I'm just letting the public in on it because they're probably hearing mumbles --

Ms. Tessmer: Oh, sorry.

Mr. Kalipi: So I just wanted to let them know what -- what is she showing the Commissioners to answer that question that was made earlier about the -- I guess the view of the path towards 234. I'll give you a chance, Mr. Canady. One second.

Ms. Tessmer: Okay, so, you're okay? Alright. So, Joe, do you need to see? So basically, this is the new path coming in, 234 is up here. The ...(inaudible)... so this is the long concrete upper walkway where you can see directly to 234.

Unidentified Speaker: ...(inaudible)...

Ms. Tessmer: 234. Well, it's hard to see it. And I think it's more vivid to actually look at it. Okay. And then also the common line of the construction of the wall, you can see where it's fronting. It's actually her bedroom, 134, that this path is going. I tried to submit larger drawings because I knew this was going to be a little difficult to read. So this is 134. You can see we're right in front of that bedroom. This is 135. This is their landscaping that they

put in that they explained that we're trying to really preserve that so they can have their landscaping. So we did discuss it. Okay? Do you need this? Okay.

Mr. Kalipi: Okay, thank you. Ms. Tessmer, we have another question from Commissioner Sprinzel.

Mr. Sprinzel: We've heard from three people who have properties there who are against this project. Have you discussed this with these folks?

Ms. Tessmer: I have -- we did discuss it with Mr. Pentak and his wife. And I did talk to the gal who lives in 234 because I was working there, you know, to get all of the dimensions and all of the site elevations at the time.

Mr. Sprinzel: So knew they objected to this?

Ms. Tessmer: No, I had no idea until today.

Mr. Sprinzel: Because I think it might be a good idea to have a meeting with them and we could defer this till you do.

Ms. Tessmer: Well, okay.

Mr. Kalipi: Okay, Commissioners, I do have a couple people that do wanna answer or make some comments. And if it's alright with you, we'll bring them up. I know that we have a packed agenda, but if we can come to some kind of conclusion, I would love to move it forward. So, Mr. Canady, why don't you come up and can you please be brief? I already closed the public testimony, but again --

Mr. Canady: ...(inaudible)...

Mr. Kalipi: Okay, thank you.

Mr. Canady: Good afternoon, again. Darryl Canady. Owner -- Ke Nani Kai Unit 147. The applicant has indicated that they have chatted with some owners at Ke Nani Kai. I and/or my wife are not any one of those. And to my knowledge, there have been -- there has been no communication with any official committee or body at Ke Nani Kai to discuss the ramp whatsoever. In fact, most of the ramp goes on, and that's not what I should say, but most of the ramp design and work was done before the current -- before the applicant was even an owner at Ke Nani Kai.

Secondly, my last comment is I would ask, if I could, Mr. Chair, did the applicant discuss and look at other alternatives that would include a lift from the sidewalk down to the front

door of Unit 134. And if so, I would like to see some reports on that investigation. Thank you, Mr. Chair. Any other questions?

Mr. Kalipi: Yeah, I have a question, Mr. Canady.

Mr. Canady: Please.

Mr. Kalipi: You got me kinda confused now because I heard in your statement now you're saying that you are not party to the one that you discussed or talked to some of the owners at Ke Nani Kai during her process.

Mr. Canady: That is true.

Mr. Kalipi: My understanding was that she's already been involved or getting with the association for six months. Am I hearing it wrong?

Mr. Canady: What you are hearing, to my knowledge, is that, yes, they presented plans to someone in the association. The president of the association did hire an architect by the name of Mr. Art Parr. He, in fact, did look at the plans and said, yes, they do meet the ADA specifications. That was the only question was asked to my knowledge, and that was the only answer that he gave, and I was involved in that dialogue with Mr. Art Parr and the president. I have documentation, emails, and things that, if necessary, and I don't want to bring them up here, but they do show that there was a little skulduggery going on in some pressures being put on some of our officers and our board members to get this thing done and done now. Okay, any questions?

Mr. Kalipi: I guess, yeah, a followup question to that was were discussions to the association? Because I heard it and it says that she, through the discussion, they looked at different other options rather than just one option. I believe I heard that they looked at two or three different options from putting in the elevator and another option from being from the front of the house. Was that also a discussion or given to the association as Option A, B, and C?

Mr. Canady: To my knowledge, no. Now, as I said, I'm speaking here on my own. I have no authority to speak on behalf of the association. And I'm not speaking that way. I'm telling you what my personal knowledge is. Yes, I have other information and I have documentation on many of the things that we're talking about now, but I am not permitted to discuss those with you. All I ask for was some time by the Commission to see if the applicant and Ke Nani Kai can have some meaningful dialogue and come up an acceptable plan that meets ADA and is mutually acceptable. And I think one thing that you guys need to hear, we are -- we, Ke Nani Kai, are under the gun because the applicant has the right by the ADA rules to say, oh, they didn't meet what we wanted to do, and now you, the

association, will have to pay what we do. So there's some pressure on right now. This is a matter of \$20,000, \$30,000 whatever the costs are that we and the association, if we don't play our cards right, might have to pay. Thank you.

Mr. Kalipi: Thank you, Mr. Canady. We've got Mrs. Buchanan, Mr. Canady, that wants to ask a question.

Ms. Buchanan: I don't necessarily have to ask him a question, but I did wanna ask Suzie to supply a copy of the letter from the Ke Nani Kai board that was dated January 11, 2010 to this Planning Commission as Item 6 clearly states the discussion about a ramp, about a lift, and it goes on that the board -- it was considered not practical nor would it be aesthetically pleasing. It would be cumbersome, difficult to maintain in Hawaii's environment, and that the board did not see it practical to assume responsibility for maintaining the lift and paying for the upkeep of the maintenance. So he should -- someone should give him a copy of this correspondence to this Commission. It's a matter of public record showing clearly that they were showed alternatives, and ramp, and a lift.

Mr. Kalipi: Thank you, Commissioner Buchanan. We're gonna call Mr. Pentak up cause we gave -- again, we're gonna try to come to the conclusion to this matter. Go ahead, Mr. Pentak.

Mr. Pentak: Thank you so much for the additional time. My -- another question comes up from this meeting, thank you, is that we've just heard that Mrs. McNally's health is not as good. It's my understanding she's 95 years old. How long she's gonna live shouldn't really enter into the question because that's not the Commission's job. It's where the ramp is needed. Now, someone that is in ill health all of a sudden, what's gonna happen should she pass away tomorrow, two years from now, five years now, and certainly ten years from now? This ramp is still gonna be there. Are any provisions gonna be made that it be taken down and replaced? If it were a private home and you went to sell it, would you sell it with the ramp? Your buyers would be extremely limited. You would take it down. And I suggest that this Commission -- this is one of the reasons why I've asked further study be put on this is that what is the total impact of this ramp? Is it six months? A year? Five years? Certainly not 20 years. And this is why I ask the Board to reconsider in regards to this. And you also setting a precedent for lands that are within the flood zone. Does this apply that anyone buying a house on stilts can put up a ramp? The question is deeper than it first appears. And I'm totally not against the ramp. I would like to see the whole project, if done, if the ramp is approved, that the total area be made ADA accessible because what good is it if you can't reach it from the parking lot? And I would suggest that this be done at the request -- at the expense of the people that have made the request. Thank you.

Mr. Kalipi: Okay, thank you, Mr. Pentak. Questions for Mr. Pentak?

Mr. Chaikin: No, I was just wondering if Richard Novak is here. Would you be willing to answer a few questions?

Mr. Kalipi: Thank you. Again, please state your name for the record. And we're just trying to come to a conclusion to this.

Mr. Richard Novak: My name is Richard Novak. I'm one of -- I've owned a unit at Ke Nani Kai for 12 years. I was recently appointed to the board of directors. I'm one of seven directors. And as just as luck would have it, I'm the only director who's on-island at this time, so that's why I'm here. Knowing that this meeting was coming up, I contacted the board to publish a white letter, if you will, a white sheet, what our position is, and our position is outlined in this letter that you have. Basically, without summarizing this up, I just wanna say that our goal is very simple. We wanna make everybody happy. We wanna make all our owners happy. And we wanna make all other parties. And, you know, it's kinda difficult. So having said that, I'll plead a little bit of ignorance here because I was only appointed to this board last October, so I'm not really up on all the stuff that went on early last year and before that time, but having said that, I'd be happy to answer any questions you have.

Mr. Chaikin: Well, thank you for coming up here and testifying. This issue is something that, you know, is really within your guys' purview to take a look at it and see what is the best option. You've had an opportunity to get involved more than we have. Have you seen any other alternatives that are better than the alternatives that's presented here?

Mr. Novak: We -- no. Basically, the short answer is no. Having said that, though, we definitely do not want to get involved with any mechanical device such as an outside lift or anything like that, you know. We wanna have it a clean simple walk-in. Now, does the walkway have to be 40-some-plus feet long? I don't know. Is the pitch and grade satisfactory? I don't know. Does it infringe on Mr. Pentak? Probably more than anyone else because he's right next door to this thing. So I think what we're choosing here is the lessor of all the evils, quite frankly. We certainly want to make Mr. McNally, as an owner, and his mother, we wanna make them happy. We wanna make these gentlemen happy. And for God's sakes, we wanna make the ADA happy, the last thing we want.

Mr. Chaikin: Okay, well, thank you. You know, as a Commission, we're charged with the responsibility of coming up with some sort of a decision. Either we can agree with a special management area permit as presented. We can, you know, make some conditions on it, or we can defer this. See if he as an opportunity to work together to maybe come up with a better plan. Do you think there's any benefit in us deferring for you guys to come up with a better plan and work towards that?

Mr. Novak: Yeah, I would -- I would say yes in that there are some individuals here. There's three owners right here who are unhappy with the existing program, the existing plan. And maybe given a little extra time together with the architect or Mr. McNally, we could come up with something that would be more suitable and make everybody happy. So, yeah, I see a benefit in delaying this, but I sure don't wanna get on the wrong side of the ADA.

Mr. Chaikin: Alright, well, thank you for your testimony.

Mr. Novak: Any other questions? Thank you.

Mr. Kalipi: Thank you. Okay, we're gonna close that time of public testimony. I'm gonna go ahead and ask Planner Dias to state the Department's position.

Mr. Dias: Thank you, Chair. The Department's position is that we recommend approval of an SMA minor permit for this project subject to five conditions.

Mr. Kalipi: Danny, go ahead and read the conditions for the public, please, and for us also.

Mr. Dias: Okay, Condition no. 1 states that construction shall be in accordance with the description submitted on November 23, 2009. Condition 2, that best management practices be used in the implementation of the proposed work. Appropriate measures to minimize dirt and water runoff, noise and dust must be used. Condition no. 3, that all work shall immediately cease and the State Historic Preservation Division Office on Maui be contacted should any historical or archaeological artifacts be discovered during ground altering activities. Condition no. 4, that construction of the improvements shall be initiated by December 28, 2010 and shall be completed within one year of said initiation. And Condition no. 5, that full compliance with all other applicable governmental requirements shall be rendered.

Mr. Kalipi: Thank you, Planner Dias. Any more questions for Planner Dias at this time?

Ms. Buchanan: I have questions for staff. It doesn't matter if Planner of Corp. Counsel needs to answer this. I was -- I had thought already about conditions. And the SMA minor permit allows for conditions similar to a conditional use permit. Is that correct, Corporation Counsel?

Mr. Hopper: Well, it's not really -- it's not like a conditional use permit. If you put conditions on an SMA permit, it has to be because you see a potential adverse environmental or ecological effect on the project, and you need those conditions to mitigate the impact that the project will have. So that's the scope. I'm not saying it's not a pretty broad scope, but it would need to be focused on the impact the development was having. And we went over

sort of basic condition language when we had our orientation. You know, the condition needs to be -- have some sort of rational nexus of the project. So it has to mitigate an impact the project causes, not some other impact that has nothing to do with the project. And it also needs to be proportional to the impact that the project has on it. So if the impact is a moderate one, you would need a moderate condition. If the impact is minor, you couldn't have a very major condition that would be, you know, very detrimental to -- you know, very expensive and detrimental. So again, you would need to look at the specific condition in order to really determine if it fits that mold. And you do have broad authority, but it is not I would say the same as a conditional use permit. This is an SMA permit and so you've got 205-A, the State SMA law, that gives you the authority to put conditions on this project.

Ms. Buchanan: As an SMA minor permit, are the legal notification requirements to be met of the 500-foot notification of parties?

Mr. Hopper: I think the Planning Staff would be the best to ask on that, but my understanding is that a minor permit doesn't have the same notice provisions as a major permit, but maybe --

Ms. Buchanan: What is the notice provisions, staff?

Mr. Dias: Like Corp. Counsel said, that is correct. If it's a major permit, then you would have to notify neighbors within 500 feet, but minor permits, there is none. It's basically just putting it on the agenda.

Ms. Buchanan: The reason why I asked that because in a major permit, you legally have to notify all residences or anyone that would be impacted within 500 feet of the project. Seeing that those persons or anyone being impacted by the project would have a legal right to intervene in the project, or have a legal say taking into consideration the testimony that went on today. The other issue I see, and I had already thought about this before the testifier came up, was where the conditional use permit since there is opposition to this project notwithstanding the legal rights to the applicant under the Federal ADA compliance laws that if that project went up and the person or the applicant ceases to be in need of that construction or project, then the applicant would then be responsible to remove and restore the area back to its original state. Yes? You're looking at me? That means if they put this ramp in, and they don't need it in another two years, because the need for the ADA addition is not needed because there is not a person living in that unit that needs that ADA, then they should take it out and restore it right back, grading, everything put back. We've done it with conditional use permits in the past where people come in, and we give them a permit, and say if this doesn't work out, you need to restore things back the way it was. That's why I brought up the subject about the conditional use permit.

The other option is to defer this pending a site inspection by this Commission. I am very compassionate towards the needs of people who need assistance with ADA. I'm also compassionate. And as a person, I don't want anybody looking into my bedroom 24 hours a day. So it seems that the information we have, the exhibits and the schematics that was presented to me as a Commissioner, I'm not able to make an informed decision today based on what I have in front of me. That's why I stated in the beginning of this that my exhibits, I felt, was inadequate. And upon reading it, that's why it uncovered -- I can see why these people are upset, but I can also see that six months has passed and poor grandma, 94-year-old grandma, needs to get in and out of her apartment. This is not our issue, but there are legal issues, and that's the way I see it. So I'm inclined to defer pending a site inspection because we can conclude that there is safety issues. There may be flooding issues. And this Commission is charged with the responsibility in a special management area to make sure that there are no adverse impacts. That's why they have to get a minor permit. That's it.

Mr. Kalipi: Commissioner Buchanan, could we also in that idea, I'm just trying to add to the thoughts that you have shared with us is that we possibly could ask the applicant knowing that they're actually -- my understanding is they're actually gonna pay, the applicant -- not the applicant, but the owner of the unit is actually paying for the ramp, if they would consider putting in the request that they will remove the ramp if two years has passed and they no longer use it. We also could request that the applicant -- I mean, I'm just adding to that thought where if the applicant agrees that, you know, that could be something that maybe the applicant or the owner might wanna consider as our discussion.

Ms. Buchanan: And it would seem at some point in time the organization itself would have to look at these issues, you know, ADA compliant issues. I am not familiar with what needs to be required under condominiums in Hawaii because I haven't seen any, but I would think if I was charged with a conditional permit that stated I needed to remove cement, I might want to go with a lift because I can just dismantle that bugga when I needed to, and I didn't need to use it anymore and to be stuck with a permanent fixture.

Mr. Kalipi: Okay, thank you. Commissioner Sprinzel, you had a comment?

Mr. Sprinzel: Where the path ends, coming up to the apartment, are there steps there or does that go straight to the door?

Mr. Dias: That goes straight to the door.

Mr. Sprinzel: Thank you.

Mr. Kalipi: Okay, any more comments or questions for Commissioner Dias? Okay, seeing none, I'll go ahead and entertain a motion to accept, or defer, or deny from the floor.

Mr. Bacon: I move that we postpone making a decision until we've had a site visit and we can determine some of the issues that were brought up today, as well as any impacts that might have on drainage in that area since that was another subject that was brought up lightly, but I think is probably more of a major thing than people have touched on so far.

Mr. Sprinzel: I second that.

Mr. Kalipi: Okay, discussion? Okay, just for discussion, and I guess I'm using this is a comment period, not necessarily a discussion, but the applicant already hears what the Commissioners are looking for: basically, looking at the flood issue, basically looking at for safety issues. And so maybe you wanna shore up some of these presentations if it makes it more clear what the scope is. Again, a Commissioner made a comment that the information that we received was not adequate enough to really help us to make a solid decision, and therefore, the Commissioners are seeking more information and that's where I believe what I'm hearing where both Commissioners are saying that we defer it, have a site visit. We are gathering more information about it. So if that helps you to do some ground work if this motion pass, I just wanted to share that thought. Okay, with -- anymore discussions? Commissioner Buchanan?

Ms. Buchanan: I heard from the applicant that time is an issue. And so if this is deferred, then I would like this Commission to take that into consideration because it is a timely issue for the person that is in need. And so, you know, I would, at the same time, like the board of directors to take that seriously that it is a consideration. And during no. 6 item of their correspondence, it seemed like the lift was not aesthetically pleasing, but if it's a temporary thing, maybe they would wanna reconsider that. So I would hope that they could meet and that we could also meet on the site visit if that's the issue quickly.

Mr. Kalipi: Thank you, Commissioner Buchanan. Okay, any more discussions? Okay, seeing none. All in favor of the motion, signify by raising your right hand. Okay, all opposed of the motion, signify by raising your right hand. Okay, so motion dies.

Mr. Hopper: The Chairperson would need to vote in this situation. Did Commissioner Buchanan vote against the motion?

Mr. Kalipi: No, she didn't raise her hand.

Mr. Hopper: So that's four, correct? If you're silent, that counts as a yes vote at this point. So the Chairperson would need to vote in this case because if the Chairperson votes in favor the motion, then the motion is carried.

Mr. Kalipi: Okay so just for clarification again, we're gonna take the vote again.

Ms. Buchanan: If you're gonna redo the vote, I have a question. Is the time -- is there when we're gonna defer the site visit to? That, I didn't hear in the motion after conveying a time constraint. So I'm just wondering if there is a site visit when it's -- we can't -- I won't vote on a motion that puts it off into outer space forever.

Mr. Kalipi: Okay so, Corp. Counsel, we're gonna need your help. The motion is on the floor, but it's not passed, but she's saying that if this motion does pass, before the motion pass, she wants something concrete to know that it be scheduled, but it's kind of like putting a carriage before the horse.

Mr. Hopper: Well, I mean, you're having it on someone else's property, so you'd need to have their permission to come on. It also needs to be open to the public. So the public would have to be able to attend and go to that meeting for it to be scheduled. Now, I can't speak for the property owner as to whether or not when they could schedule or even they would allow the public to come to a meeting on their property. You could have at the earliest possible date, you could have at the next meeting. And if that's impossible, then you'd have to pick a different date. But there's some factors here that the Commission doesn't necessarily have direct control over. So that's the problem that I see, and I'm not sure if that can be resolved right at this moment. You know, you could ask staff to schedule at expeditiously as possible at the next meeting, if possible, but again, I'm not sure if the property owners will let you and the public onto the property for that site visit. I just can't speak for them.

Mr. Kalipi: Okay, thank you, Corp. Counsel. I think that made it clear. Okay so when I took the vote, it wasn't clear enough, so now it's clear.

There being no further discussion, the motion was put to a vote.

It has been moved by Mr. Bacon, seconded by Mr. Sprinzel, then

VOTED: To postpone making a decision until the Commission has a site visit and can determine some of the issues that were brought up today, as well as any impacts that might have on drainage in that area.

(Assenting: N. Bacon, J. Sprinzel, D. Williams, L. Buchanan)

(Dissenting: S. Chaikin)

(Excused: M. Pescaia, N. Leong, T. Waros)

Mr. Kalipi: Okay, so we've got five. Motion carried. So this is gonna be deferred at this time and we're hoping that we expedite it knowing the situation, what's going on. And again, if we could -- I guess all of you have heard it.

Ms. Buchanan: That's why I said, the owner is right there. He right there. We ask him right now.

Mr. Kalipi: Yeah. So, please, we wanna make sure that you get with our Planning Department to set up a meeting, or see what the timeframe and stuff like that would be.

Unidentified Speaker: ...(inaudible)...

Mr. Kalipi: Can you -- our agenda is --

Mr. Novak: ...(inaudible)...

Mr. Kalipi: Come to the mike. Come to the mike. And as you're walking, we're deferring it. We're hoping that we do a -- we're gonna make an appointment for a site visit. And so what that means is that we're hoping to meet with you, with Mrs. Tessmer. It's gonna be open to the public. We're gonna do a walkthrough. And we're gonna try to see if we can come to a conclusion, and then make a motion in our meeting that we can actually pass or come to a decision what would be the best case in there for all parties.

Mr. Novak: Good idea. Good idea. I'm just -- I wanted to be clear. I heard batted back and forth the fact that you would like us, Ke Nani Kai, to perhaps reconsider some other means of ingress and egress, like the elevator, if it's removable. Now, there's two issues here. Did we agree that at the end of the need for this special handicapped entranceway that the party will be required to remove it?

Mr. Kalipi: We didn't agree on that.

Mr. Novak: We didn't agree on that.

Mr. Kalipi: That comments were to the applicant that she maybe wanna specify or shore up her application and her information the next time we meet. Then the comment was also to the board of directors that they would reconsider or look at different alternatives knowing that maybe if we can find some common ground where maybe something mechanical if the owner would pay the installation of it and the removal of it.

Mr. Novak: And the removal of it.

Mr. Kalipi: Yeah. That's just comments that were made for those parties to go, and go back, and look at different alternatives, and bring us more information so when we meet up again, maybe you guys would come to a conclusion prior to the meeting. If not, then we'll go ahead and do the site visit so forth.

Mr. Novak: My gut reaction on this thing is if it were in there that whatever is gonna be done was installed and removed at the expense of the owner once the need no longer exists, then I think we'd more able to consider an elevating device or something like that, but that's not official. That's just my opinion.

Mr. Hopper: Just a comment that the association is completely separate from this SMA process. The Planning Commission has no authority to tell the association, you know, what to do or have any purview over the association. It exists totally separate from the SMA. One could be approved and the other denied, and vice versa. So I just want to make that clear that the Commission doesn't have any authority with respect to the CC&Rs and how the association administers itself internally. So they're totally separate. And I didn't wanna have the impression being that the Commission could order or direct the association to take any action. It's just I was saying that the Commission would need approval as, you know, necessary by law to be able to come onto the property for a site visit, and I wasn't sure if that would even be possible.

Mr. Novak: I, again, speaking for myself, I see no problem in that at all. It's just a question of when you think you'd all like to get together and do this.

Mr. Kalipi: We'll have the Planning Department make some contact.

Mr. Novak: You'll contact me? Okay. I'll give you my name, address, and phone number, and stuff so you can contact me and let me know.

Mr. Kalipi: Thank you.

Mr. Novak: So what are you guessing? Maybe within 30 days?

Mr. Kalipi: They'll contact you and you guys can work it out.

Mr. Novak: Okay.

Mr. Kalipi: They'll look at also Mrs. Tessmer and the parties involved. Thank you.

Mr. Yoshida: I guess, Mr. Chairman, since we have the parties here now, and we have the Commission here now, and we need the Commission to be there, a quorum of the Commission to be there, in order to have a site inspection, and I guess how pressing is it for the Commission to hear this? I mean, our next meeting is January 27th. We come in at 8:30, roughly. You know, does the Commission wanna meet on the morning of January 27th to do the site inspection and have the matter on your regular agenda at 12 o'clock?

Mr. Kalipi: Yes. Commissioners, are we getting the consensus? The Commissioners says yes, if that can be -- I guess you can hear us out there, Mrs. Tessmer, and so we're looking at January 27th, the morning of January 27th.

Mr. Yoshida: What time does the Commission -- we could be out there as soon as 9:15, I think.

Mr. Kalipi: 9:30.

Mr. Yoshida: 9:30 at? Where we gonna meet? In the parking lot?

Mr. Kalipi: Parking lot -- Ke Nani Kai, yeah.

Mr. Yoshida: Ke Nani Kai?

Mr. Kalipi: Yes.

Mr. Yoshida: Okay, so 9:30 on the 27th. And the SMA assessment would be on the regular meeting agenda that starts at 12 o'clock.

Mr. Kalipi: Yes. Thank you, Clayton, for the followup.

Mr. Torgerson: Mr. Chairman, if I could offer one more observation. Once again, Mikal Torgerson. I think you would run into legal issues, and Corp. Counsel might wanna chime in on this, but at a minimum, code violations, to require the removal of an ADA device. It wouldn't affect the permit to make a building less accessible. Once it's made accessible, you can't just come in, and remodel a building, and make it less accessible. That would be in violation of the Fair Housing Act, I think, and multiple codes, and perhaps the ADA. So I think that line of thinking should be carefully thought through.

Mr. Kalipi: Thank you for that information. Please, the applicant, please give us as much as information and as soon as you can about the ADA requirements that would affect the decision-making process for the Commissioners such as that we've heard today. Commissioner Buchanan?

Ms. Buchanan: And I think that's why it puts the onus back on the applicant because it's simple. It's just what is reasonable to make everybody happy. The board said they wanna make everybody happy. And so people gotta bend. And in life, that's just the way it goes. And so I'm hoping the applicant take things -- the testimony into effect, will find a happy medium. And maybe could work things out even before the 27th. That's my wish in a perfect world. Just work it out.

Mr. Kalipi: Thank you, Commissioner Buchanan. Okay, so we all know what's gonna go on on this matter or Communication 1. And we're gonna move on to Communication no. 2. Okay. And so we have our Planner Dias. Can you share with us what we're looking at as we look at Communication no. 2?

2. **MR. JEFFREY S. HUNT, AICP, Planning Director, requesting concurrence from the Molokai Planning Commission pursuant to their Special Management Area Rules, as amended, that Special Management Area (SMA) exemptions can be issued for the following:**
 - a. **MS. SARAH HYSMITH requesting a Special Management Area Assessment determination for the proposed renovation of the interior space of an existing condominium unit encompassing new and more efficient lighting, power, and plumbing equipment throughout the unit located at Unit Q4 Paniolo Hale, 100 Lio Place, TMK: 5-1-003:011-0062, Kaluakoi, Island of Molokai. (SMX 2009/0354) (Valuation: \$80,000) (C. Thackerson)**

The Commission may take action on this request.

Mr. Dias: Thank you, Chair. The second item today is a request for a special management area exemption, and this is for a condo unit in the Paniolo Hale Condominium Complex. Basically, it's all interior renovations. Looking at the plans, basically what they're going to do is sort of rearrange the unit, and in addition to that, install, you know, different plumbing, and make the -- add like efficient lighting, and efficient power and plumbing equipment throughout the entire unit. Like I said, entirely interior. No ground work involved.

Mr. Kalipi: Question, Commissioner Buchanan?

Ms. Buchanan: Clarification on Item 2.a.: Requesting an SMA assessment determination. Should that be reading, "concurrent with exemption?"

Mr. Dias: Correct.

Ms. Buchanan: Okay, so that's not written correctly because otherwise I would be asking why are we asking to make an assessment, which usually the Planning Director does. Okay.

Mr. Kalipi: Thank you, Commissioner Buchanan. Any more questions for Planner Dias?

Ms. Buchanan: Yes, I do have. Again, to the exhibits, Exhibit 4, 5, and 6, I cannot see these exhibits, but I tried my best. And according to the application, what it stated in the application and what I see in the schematics are two different things. I see that this application is an exemption because of interior stuff. And it's all interior except I would ask next time to be clearly transparent in what is submitted because there are proposed changes to the upper and lower level floor plan, not only with lighting and plumbing, but also to the two rooms on the upper level. But being that it's still considered interior renovation, I believe it would still qualify as not a development although those should be represented well and not only as lighting and plumbing, but also internal renovations.

Mr. Kalipi: Any comment, Planner Dias?

Mr. Dias: That's actually a good comment, and I will inform whatever Planners are working on these projects to be more descriptive and provide larger plans.

Ms. Buchanan: Yeah, the larger part is really important because you can see there's so much going on in this plan, especially because it's a wiring type of plan and a plumbing type of plan. And I think what I wanna get away from is that decisions being made and we're missing stuff if somebody's not really looking at it with a fine-toothed comb like I am. I would not look and see that, oh, so the attic is now an office. There are more things going on here. I'd like to throw caution to the applicant, yeah? Okay.

Mr. Kalipi: Okay, thank you. Any more comments, Commissioners, or questions for Planner Dias? Okay, seeing none, we're going to open this time for public testimony on this matter. If any of the public wanna testify, we'll give you this opportunity. Okay, seeing none, we're gonna close this time of public testimony, and we're gonna ask Planner Dias if you could present the Department's position.

Mr. Dias: Thank you, Chair. The Planning Department recommends that this project be issued an exemption from the special management area rules.

Mr. Kalipi: Okay, Commissioners, any comments or questions? If not, I'll go ahead and entertain a motion from the floor to concur with the Planning Department's position or any other motion.

Mr. Chaikin: Yeah, I'll go ahead and make a motion that we concur with the Planning Director's assessment of this application.

Mr. Sprinzel: I second that.

Mr. Kalipi: Okay. Okay, we have a motion with a second. Any discussion?

Ms. Buchanan: Discussion would be that it was noted that Item 2.a. is probably not worded properly, that it should be concurrent with an exemption, and that's it. And that the next time, please be transparent in all interior alterations.

Mr. Kalipi: Okay. Any more discussion?

There being no further discussion, the motion was put to a vote.

It has been moved by Mr. Chaikin, seconded by Mr. Sprinzel, then unanimously

VOTED: To concur with the Planning Director's assessment of this application.

Mr. Kalipi: Okay, unanimous. Motion carried. Thank you, Commissioners.

- b. Mr. GARY GUARDINO requesting a Special Management Area Assessment for the aboveground work only involving reinforcement of existing foundation to an existing single family residence located at 8900 Kamehameha V Highway, TMK: 5-7-006: 002, Kupeke, Island of Molokai. (SMX 2009/0397) (Valuation: \$55,000) (C. Thackerson)**

The Commission may take action on this request.

Mr. Kalipi: Okay, still in Communications E.2.b. Planner Dias, can you share on what we're looking at?

Mr. Dias: Thank you, Chair. Very briefly, this project involves foundation repairs to an existing single family residence located along Kamehameha Highway. If you look at the exhibits, and I hope that the pictures aren't too dark given the previous project, sorry about that, but basically, there's an aboveground foundation for this house, and the applicant wants to repair it. It's basically in bad shape right now. There's a lot of cracking, a lot of chipping, and so forth. So this project involves them repairing and maintaining their foundation. And according to the applicant, there is no ground work being done here. The foundation rests on top, on the ground.

Mr. Kalipi: Okay, any questions for Planner Dias? Commissioner Bacon?

Mr. Bacon: While there's no work being done to disturb the soil and that sort of thing, this foundation is often under water. Is there any sort of mitigating proposals that he has for

making sure that none of this construction is influencing the saltwater pond right next to his house?

Mr. Dias: Let me -- I'll ask Luigi. He's representing the applicant to respond to that.

Mr. Kalipi: Again, please state your name for the record.

Mr. Luigi Manera: Mr. Chairman, Commissioners, yes, in fact they will got the -- the wall down. If you take a look at the joint even to you, it's two feet above the ground.

Mr. Bacon: ...(inaudible)...

Mr. Manera: Yeah, six-inch, six-inch. I build the home. I see the home every single day. That's a fact. It's six-inch. That's it. There's no two feet below, above water, or whatever. The water, it is go under the house maybe two, three-inch at the most on the high tide. All this work is done above ground, two feet above sea level.

Mr. Kalipi: Any more questions, Commissioners?

Mr. Bacon: Yeah, can you prove that?

Mr. Manera: Yeah. Well, first of all, I don't know if you have the topo. This, you have color? It's probably a little bit more --

Mr. Kalipi: What page are you on, Luigi? Because I think we --

Ms. Buchanan: ...(inaudible)...

Mr. Kalipi: Okay, aren't we on the same --

Mr. Luigi: Because it's on the black and white. Oh, Exhibit 5, 6, and 7, I guess.

Mr. Kalipi: Thank you. Commissioner Sprinzel?

Mr. Sprinzel: I do not like to always complain, but when we get these things, could we have them printed on a modern printer so we can actually see them? I mean, there's no detail in this at all. I mean, this could be whatever. Is it so very hard to have a modern printer? It's ninety bucks.

Mr. Kalipi: I guess the comment -- the comment goes to the Planning Department again, and I think it was made earlier. I guess it's just a little bit too challenging to kinda figure out

what is what on the copy and the black and white issue. Anymore questions for Mr. Manera as he's here with us?

Mr. Bacon: What sort of repairs are being entailed? Are we encasing this?

Mr. Manera: No, this is just a cross brace, beam cross brace. There's nothing to do with concrete or anything like that.

Mr. Bacon: So these cross bracings are not coming down to the --

Mr. Manera: No, you have -- they never give you the drawing?

Mr. Bacon: They're not real clear. Take a look at the ones we have.

Mr. Manera: Oh.

Mr. Kalipi: Okay, anymore questions for Mr. Manera? Commissioner Buchanan?

Ms. Buchanan: Mr. Manera, this is not a fault of your own that we sit here today and wonder. The first thing I wrote on my sheet was: "What is this?" I had no inkling of where this property was in reference to where it is. I'm assuming at this point, and can you correct me, is this the house that is situated, as we would call it, in the water pond past Manae Goods & Grindz with the blue tile roof?

Mr. Manera: Yeah, correct.

Ms. Buchanan: Was this house -- did the applicant put in a prior permit for emergency renovation with Maui County?

Mr. Manera: They say it was no emergency.

Ms. Buchanan: Okay.

Mr. Manera: That's why we have to do the SMA process.

Ms. Buchanan: Okay. And you originally built this house yourself?

Mr. Manera: Yes.

Ms. Buchanan: I just curious. How you get one permit to do that? It stands as an example of --

Mr. Manera: That was 1989.

Ms. Buchanan: 1999.

Mr. Manera: 1989.

Ms. Buchanan: Oh, 1989. No wonder it's falling -- we need foundation restoration.

Mr. Manera: No, actually -- you know, actually it's just a -- I don't know why he -- it's just an owner option. And the house is perfectly level. Never shift. He just wanna do something else.

Ms. Buchanan: But there's no intention at sometime to build under this? It would always be a waterway because it does flood regularly according to the tide. Is that correct?

Mr. Manera: Yeah, there's a -- I think on the high tide, there's one colored picture you can actually see the high water because he stained the concrete beam to green. That's about six-inch above the existing ground. That's the most I saw it anyhow.

Ms. Buchanan: You had no feedback from Planning Staff that the work would maybe have some impact with the Clean Water Act?

Mr. Manera: No. This is not concrete work, you know. This is just 4x8 brace.

Ms. Buchanan: So there's no concrete work?

Mr. Manera: No.

Ms. Buchanan: You're just reinforcing with wood?

Mr. Manera: That's right. Yes.

Mr. Kalipi: Commissioner Bacon?

Mr. Bacon: So I wasn't quite understanding exactly what was going on. I anticipated that you were looking at doing some encasement work. Now, these braces that we have are coming down into brackets which are on Exhibit -- whatever this one is -- okay, Exhibit 4. Basically, you have the floor diagram plan or the framing. I guess, that's the floor framing plan. And over to the right you have some braces coming down.

Mr. Manera: Correct.

Mr. Bacon: Those brackets that at the base of those, those are all above the ground?

Mr. Manera: Above two feet. Two feet.

Mr. Bacon: Okay.

Mr. Kalipi: Commissioner Buchanan?

Ms. Buchanan: Luigi, on Item 6, the middle picture, so what is cracking? Because I don't have the color, is that cement?

Mr. Manera: Yeah, it's the existing cement.

Ms. Buchanan: So that's gonna be okay? You're putting wood on top of that?

Mr. Manera: Well, the wood is not on top the cracking cement. The wood exposed on the actual corner of the footing.

Mr. Kalipi: Okay, any more questions for Mr. Manera? Okay, thank you. We might call you back again, but the Commissioners seems content at this time. Okay, anymore questions for Commissioner Dias? And if not, we're gonna open the floor for public testimony about this matter, and then we'll come back to the motion. Okay, seeing none, we're going to open the floor for public testimony on this matter. If you wanna testify, we wanna welcome you up to the podium here. Okay, seeing none, we're going to close this time of public testimony. Planner Dias, you help us state the position of the Planning Department.

Mr. Dias: Thank you, Chair. The Maui Planning Commission -- I'm sorry, the Maui Planning Department recommends that the project be exempt from the SMA rules.

Mr. Kalipi: Okay, thank you. Again, anymore questions for Commissioner -- excuse me, Planner Dias? Commissioner Bacon?

Mr. Bacon: Yeah, in Item no. 2 here: The project is not subject to the Molokai Shoreline Rules. We've run into this problem before when we have ponds outboard of properties. And yet, in this particular instance, for instance, the tides even come underneath the house. So it seems like the rules that would pertain to shore front properties should also apply to this because, you know, any sort of contamination is going to go right into the pond, which is going to affect somebody else's property, which is the neighbor's property. And, you know, we talked about this once, I think when I first got on the Commission sometime ago, we talked about a situation like this. Is there any way to make sure that we work in a situation like this that it conforms to those rules?

Mr. Dias: There are other rules that the applicant has to adhere to, you know, that's just part of the building permit process, you know, just getting a building permit and being able to build. There's best management practices that they have to do. Regardless of what SMA condition we put on, they still have to do it. So in a situation like this, just with this particular situation, you know, we -- through the building permit process, that's where we expect that to happen.

Mr. Kalipi: Thank you. Any more questions for Planner Dias? Okay, seeing none, I'll entertain a motion from the Commissioners to concur with the Planning Director's assessment to exempt the project or otherwise.

Mr. Williams: I'll make the motion that we accept the recommendations of the Planning Department. I think it looks like it's not gonna be any problem.

Mr. Chaikin: I'll second that.

Mr. Kalipi: Okay, any discussion?

Ms. Buchanan: Only that the same provisions for correcting Item 2.b. as a concurrence with an exemption as opposed to asking for an assessment.

Mr. Kalipi: Okay, you got that, Planner Dias?

Mr. Dias: Yes.

Mr. Kalipi: It can be a verbiage correction.

Mr. Dias: Okay, we will correct that in the future.

Mr. Kalipi: Okay, thank you. Okay, any more discussions? Okay, seeing none.

There being no further discussion, the motion was put to a vote.

It has been moved by Mr. Williams, seconded by Mr. Chaikin, then unanimously

VOTED: To accept the recommendation from the Planning Department.

Mr. Kalipi: Okay, motion carried. Unanimous. Thank you, Commissioners.

Ms. Buchanan: Chair, can we take a five-minute recess?

Mr. Kalipi: Yes. We're gonna take a five-minute recess and we'll be right back. Thank you.

(A recess was called at 2:08 p.m., and the meeting reconvened at 2:15 p.m.)

Mr. Kalipi: Okay, we're gonna call the meeting back to order. Commissioners, if we can settle down, settle in.

F. UNFINISHED BUSINESS (PART I)

1. MR. STEPHEN MORGAN appealing the Director's decision to exempt the "Zappacosta Farm Dwelling" from the Special Management Area (SMA) permit requirements on property located at 4300 Papohaku Road, TMK: 5-1-008: 049, Papohaku Ranchlands Subdivision, Kaluakoi, Island of Molokai. (APPL 2009/0002) (T. Kapuaala) *(The Commission concurred with the SMA exemption at its April 22, 2009 meeting.)*

a. BRIAN T. MOTO and JANE E. LOVELL from the DEPARTMENT OF THE CORPORATION COUNSEL, attorneys on behalf of THE DIRECTOR OF THE DEPARTMENT OF PLANNING submitting a Motion to Dismiss Appeal; Memorandum in Support of Motion; Certificate of Service dated August 25, 2009.

b. MR. STEPHEN MORGAN submitting his proposed revised Written Decision and Order denying the request of BRIAN T. MOTO and JANE E. LOVELL from the DEPARTMENT OF THE CORPORATION COUNSEL, attorneys on behalf of THE DIRECTOR OF THE DEPARTMENT OF PLANNING on a Motion to Dismiss Appeal; Memorandum in Support of Motion; Certificate of Service dated August 25, 2009 for adoption by the Molokai Planning Commission as its written Findings of Fact, Conclusion of Law, and Decision and Order in accordance with the action taken at the September 28, 2009 meeting.

The Commission may consider whether to amend Mr. Morgan's Proposed Findings of Fact, Conclusions of Law, and Decision and Order, or to develop their own, or to rescind or amend its decision to deny the Department's Motion to Dismiss.

Mr. Kalipi: Okay, so we're moving on to Agenda Item F, under Unfinished Business, Part 1. For the public, if you can recall from our last meeting, the Commissioners did not

wanna -- did not accept the report from Mr. Morgan, finding of facts, conclusion of law. We deferred it to this meeting here. The discussions was that he would redo the finding of facts, conclusion of law report to resubmit to the Commissioners. There were three things that we were gonna look at today. Those three things was the resubmitted report from Mr. Morgan. Also, we were looking at probably amending the report and also dismissing the right to appeal the process. So that other three items or the three items that we were looking at today: accepting the report that was submitted -- resubmitted to us, amending that report, or dismissing the case appeal.

So at this time, I'm gonna ask Mr. Morgan if he wanna just give a summary, and this is how we're gonna proceed with this. Mr. Morgan, come, and you can share a summary of thoughts about his report. The Commissioners then get a chance to ask him questions or comment. I'll give Mr. Morgan three to five minutes. And again, you don't have to really read the report. If you just wanna get that opportunity to summarize it, that's what I'm kinda looking for. Also, then after Mr. Morgan gives his summary and the Commissioners has a chance to ask him questions or comment, we'll ask Ms. Lovell to then come up and give a summary of her report, and then the Commissioners would then ask her questions or comments at that time. And we'll start with that, and then comment from our Corp. Counsel.

Mr. Hopper: Just to clarify, this is on Mr. Morgan's resubmitted findings of fact, conclusions of law, and decision and order. The last meeting, the Commission requested that he submit a new findings, conclusions, and decision and order. And that's what he would be speaking on today, as I understand the Chair's direction.

Mr. Kalipi: Thank you, Corporation Counsel. So, Mr. Morgan, you may come forward, please.

Mr. Stephen Morgan: You know, right off the top, Commissioners, this has been a really unusual process for me. And the reason I say that is because, obviously, on September 28th, the Commission voted in favor of my right to appeal. But then of course as part of that was the fact that I had to give my facts and findings not on a decision that I made, but on a decision that the Commission made. Now, I know this is what the rules read, but for me, it's kind of an abstract thought concept, but that's what my job is to -- was to do.

But in today, in truth, the only question at this time that's relevant is: Did my recent draft adequately reflect the reasoning of the Commission in making its decision to support my right to appeal? What I give, though, is a draft. It's called a draft. I've done my best, but the Commission has the opportunity to adapt, change, or remove content as they see best fits the decision that they made. Despite this, for the sake of clarity, I will acknowledge some of the issues that have been recently addressed.

Within the content of the May 8th letter, there were two decisions that were acknowledged. One decision is that in which the Director determined that after assessment, the Zappacosta project was eligible for exemption from the SMA process. The second decision contained within the May 8th letter was that of concurrence by the Commission.

The legal definition of concurrence is agreement. The concurrence in itself had no substance in regard to the assessment of the project. The assessment was solely in the hands of the Director. On April 22nd, the Commission agreed with the Director's decision. And because the SMA rules require concurrence by our Commission, thus concurrence is required in order to engage or validate the Director's decision. The final determination of the Commission allows them the right to either validate or refute the Director's decision. The previous April 16th letter used the word "recommend," but what the Director was recommending was that the Commission agree with his decision and validate his decision. This is why the rules offer the option to appeal either the Director's decision or the Commission's decision. I have never been confused as to who I was appealing to. The amended version of 12-302-26(A) is consistent with the previous version in the fact that an appeal of the Director's decision is heard by the Commission, not by the Circuit Court.

Furthermore, in regard to the final determination, the May 8th letter clearly demonstrated authorship by the Director in which the letter was signed by the Director's representative in which it states that an exemption from SMA rules for the Molokai Planning Commission is hereby granted. Now, ironically, if we follow the argument presented by the counsel, which basically states that although the Director signed the May 8th letter, that the Director cannot make a decision on behalf of the Commission, then in light of the fact that the May 8th letter was not signed by the Commission and then no letter authorized by the Commission was sent out thus disregarding SMA rules in Section 12-302-13-1. If I followed the counsel's logic, then I would have to conclude that the Commission's decision was incomplete and not valid. In regard to this point raised by the counsel, the question would not be whether or not there was a Director's decision involved. That remains a constant. Rather the question would be whether or not a Commission's decision was ever officially validated.

Regardless, my appeal was not in regard to the Commission's decision. My appeal was in regard to the Director's decision. On September 28th, the Commission voted in favor of my right to appeal, and in their testimony, the Commission clearly acknowledged the fact that two decisions were made in the process: one by the Director and one by the Commission.

The counsel also goes on to challenge the timeline in which my appeal was filed. It is interesting that this challenge has been modified and changed at each junction of this hearing. At this point, the counsel argues that despite the fact that it was the Planning Department's representative that acknowledged that the May 8th letter was not actually

deposited in the mail until May 11th, in representing the Director, the counsel insists that such language is hearsay stating that this evidence is outside of the record, that this is incorrect as this was admitted within my testimony on September 9th in Section C of my memorandum in response to the County's motion to dismiss my appeal. But even if we ignore the delay of the mailing of the letter, the timelines were still met. Rule 12-3-1-14 of the Planning Commission's rules state that computing of the time period begins one day after the act. In this case the act would be the date of receipt. The earliest date of receipt would've been on Monday the 11th thus starting the clock one day afterwards on the 12th and then eliminating weekends and one intermittent holiday at the end of the ten-day deadline would've been on May 26th, the day that I filed my appeal. But regardless of this, the Commission took this one step forward by correctly acknowledging the Department's failure to provide adequate notice of the project which interfered with myself, the applicant's ability to file on a timely manner, and also interfered in regards to the applicant's standing by contributing to the lack of participation at the April 22nd meeting. The counsel goes on to challenge this position by the Commission by stating that I had not previously raised this issue of inadequate notice. My acknowledgment of this issue can be found in my previous memorandum in Section F. Regardless, this particular case, as I've been reminded on numerous occasions, is not about the appeal itself. This case has been strictly regarding the issue of whether or not I had the right to appeal. And in fact, the inadequacy of notice did interfere with my right to appeal. The Planning Department failed to do what they normally and customarily do in giving notice to the public.

The negligence to give adequate notice was directly related to the haste in which the Planning Director proceeded. In fact, the Planning Director had not received the dimensions of the house, the pool size, or the new plot plan until April 16th, just four working days prior to the April 22nd hearing. With this haste, the Director should've insisted that notice of the project be expedited. Instead as the April 22nd hearing approached, the notice that was given reflects the application information as it existed prior to the inclusion of size and location of the project. And of course this is not part of this hearing, but this haste also led to the indiscrepancies within the application including the excessive building height.

But despite what I just explained, and as I mentioned before, the only relevant issue at this time is did my recent draft adequately reflect the reasoning of the Commission in making its decision to support my right to appeal? And again, what I submit to you is only a draft. I've done my best, but the Commission has the opportunity to change or remove content as they see best fits the decision that they have made. Mahalo.

Mr. Kalipi: Thank you. Questions, Commissioners? Commissioner Buchanan?

Ms. Buchanan: Hi, Steve. Since this is a rendering of findings of fact, I just wanted to -- because when I read it, I wasn't sure, and to be honest, I was kinda lazy to go back and read everything again having read it twice.

Mr. Morgan: Excuse me. Can I grab a copy myself?

Ms. Buchanan: Sure.

Mr. Morgan: I didn't bring up one here.

Ms. Buchanan: This is what you submitted, yeah, your findings of fact? In Item 2, you listed: To support the sewage disposal needs of these buildings, the Zappacosta development includes four individual wastewater treatment systems. Can you direct me where I can find a description or the listing of four individual wastewater treatment systems in the applicant's application to the Planning Department?

Mr. Morgan: I don't have that with me, but I have -- it is there. It's both on the application and in the announcement that went to the community.

Ms. Buchanan: And then on that same track, I would be asking on Item no. 4: The property would be excavated to a depth of 10 feet, with 1,500 cubic yards of cut and 500 yards of fill.

Mr. Morgan: Okay, and that was also on their application, and it's also -- I believe that's in also the public announcement -- that item.

Ms. Buchanan: Okay, thank you.

Mr. Morgan: Are there any other questions?

Mr. Kalipi: No more questions, Commissioners? Thank you, Mr. Morgan.

Mr. Morgan: Mahalo.

Mr. Kalipi: Okay, at this time, I'll call Ms. Lovell up.

Ms. Jane Lovell: Thank you. Aloha and good afternoon, Chair and Members of the Commission. I'm tempted to say we really should stop meeting like this. I'm hopeful that, one way or the other, we can get this resolved.

I urge you not to accept the proposed decision as written. Of course you already know the view that the Planning Director has submitted previously, and that view is that the appeal should be dismissed because the decision -- the Commission does not have jurisdiction to hear it. Nonetheless, if you are considering adopting the decision, then there are a number of things, you know, wrong with it that really would need changing. I'm not going to go

through my entire submission because I hope that you have received it in writing and that you've had an opportunity to look at it.

But just briefly there are number of findings, Findings 1 through 6, that go through the merits or the -- or the really the nuts and bolts of the project itself that really has nothing to do with the appeal. The appeal was based on a very narrow jurisdictional ground and that is does this Commission have the authority, the legal ability to hear the appeal in the first place? So therefore, I don't -- not only do you not need those findings, but I think they would be inappropriate to make.

I still have problems with the conclusions of law and the proposed decision. I think perhaps the most egregious issue is that the appellant continues to quote selectively from the record. This has been challenged many times. And I've pointed out that the Commission's attorney advised the Commission when the vote was originally taken that the Commission Members have three choices: to accept the recommendation, to not accept the recommendation and to turn down the exemption, or to defer. Now in this latest draft, we have two of those choices are now quoted, but not the third. And that is, I think, really an incorrect reading of the entire record, and it would be inappropriate for you to make that finding because it so misleading.

Finally, there were a couple of things in this latest draft that were not in the earlier draft. One was an attempt to incorporate some of the comments both of your Vice-Chair and of Commissioner Leong that were made a couple of hearings ago. Let me address Commissioner Leong's points first. I'm sorry she's not able to be here today. But it was my understanding that Commissioner Leong felt that the rules, as written, were kind of confusing as to where, and when, and how someone should appeal. And on that basis, she was inclined to allow the appeal to go forward. However, if I understood him correctly, Mr. Morgan just told you that he was not confused and was never confused about how the rules went and how they read. So therefore, you have the appellant saying there was no confusion. So I don't think that can be a basis for the appeal.

As for the -- supposed inadequate notice, I realize that Mr. Morgan did raise that issue in some of his pleadings, but my point is that when you go back to his letter, which is his notice of appeal, the issue he raised at that time was he didn't think that adequate -- he didn't think that notice had been published in the newspaper. He didn't say anything about the contents of the notice, or the lack of square footage of the notice, or so forth. So I think that's not a good basis either.

So in summary, I would strongly suggest that you dismiss the appeal. However, if that is not your inclination, then I would ask at the very least that the findings that we have objected to be stricken, and that there be substantial modifications to the decision and order.

Mr. Kalipi: Thank you. Commissioners, any questions for Ms. Lovell? Commissioner Bacon?

Mr. Bacon: Just one question. What you were just saying about the fact that Ms. Leong was -- you sort of just indicated that her only reason for accepting the appeal was because of the ambiguity as she saw it with the existing rules. And I'm sorry she's not here either because I don't think that was the only reason.

Ms. Lovell: Oh, I didn't mean to suggest it was the only reason, but I understood -- at least I understood that that was a major reason for her. She looked at the rules. She thought they were not a model of clarity. I actually agreed with her on that and was my understanding at least that that was a major point for her. But my point today is that Mr. Morgan is saying that, no, he was not confused, he is not confused, and was not confused so --

Mr. Kalipi: Any more questions, Commissioners? Okay, thanks, Ms. Lovell.

Ms. Lovell: Thank you.

Mr. Kalipi: Thank you. Okay so, Commissioners, we can do a couple of things. One, we could adopt the language or the report from Mr. Morgan, his draft, as stated. We can amend that draft, or we can also dismiss the appeal. And finally, if you need more direction or legal counsel, we can also go to an executive session to talk to our Corporation Counsel. So this is where we are right now. So I'll entertain a motion. Which one of the four from the floor would you like to proceed in this matter?

Mr. Chaikin: Well, I guess I'll share my manao; where I am on this whole thing. I have the findings of fact, conclusions of law, decision and order in front of me. I've reviewed it. And all in all, I think Steve Morgan did a pretty good job, considering he's not a lawyer, in laying out his arguments although as I go through there, I think there are some fundamental flaws in this document. And those flaws raise it to the point where I don't feel comfortable adopting this document the way that it is.

One of those it says, "The Planning Commission was never asked to decide whether an SMA permit exemption should be granted because the Planning Director had already decided the project was exempt." I think we did have an opportunity to make that decision. And it was very clear, at least to me, that we had that decision.

There's other things in here that, you know, are problematic for me that I don't feel comfortable with. Another thing is in the order, it says, "The Molokai Planning Commission will convene a hearing on Morgan's appeal of the Planning Director's decision to exempt the Zappacosta project from obtaining an SMA permit." And it kinda implies that the

Planning Director made that decision to exempt the project. And it's at least clear to me, in my mind, that this Planning Commission is the one that made the decision to exempt the project. So I would have a hard time moving forward with this language. And quite frankly, at this point, I'm not inclined to offer up language that would correct this because I think that this process, as far as I'm concerned, has gone as far as it should.

But that's not to say that the issues that you raised are without merit. I think that you do raise some valuable points here, but I make that decision because, well, besides the fact that this document, I don't feel comfortable with, is one. That's the primary reason. But also, I think that if you back off and look at this thing from a cost benefit perspective, this is a very costly process. I mean, it's already cost a whole lot of money to get to this point. It's taken nine months. And I think when you -- you know, the County doesn't have a lot of money. And they don't have a lot of time. And this is not a good use of it.

And on the benefit side that even if this thing was gonna go through the process, and Mr. Morgan prevailed, and made it through all of the challenges, we would end up not that far from where we are today. We have already heard the application. The applicant has already made -- agreed to mitigate some of the impacts. So I don't think we'd gain a lot there. I think that some of the issues that you bring up in your appeal can be dealt with outside of the purview of this process. And I think we can get something out of this from that.

I also think that it's unfair to the applicant that went through the process and did everything that they were supposed to do, got the thing accepted by the Planning Department to bring it to this Commission, got exempted, and now it's been nine months later, and they still have a cloud hovering over their project. So I don't think that that's fair to them to take this on further and further and further.

But again, I can certainly understand your frustration with this process, with the Director coming forward and noticing the thing in a way that you couldn't really understand the magnitude of the project, and then following that up with a recommendation to exempt the project when I know you have been professing all along that this project wasn't even eligible for an exemption. And I can tell you that at the Statewide Planning Conference that I went to, I raised that question to Planners at -- from the County of Kauai and from Planners from the Big Island. And they told me that this application wouldn't even be considered for an exemption on Kauai or on the Big Island because of the statute that says that a single family residence can only be exempted if it's not part of a larger development. And their policy is that if there is ever more than one dwelling unit on a TMK, that you cannot get an exemption. So, you know, I suppose that the Director of the Planning Department of Kauai and the Director of the Planning on the Big Island have the same understanding of the English language that Steve Morgan does. But I guess there's some latitude that's given to Planning Directors to interpret the ordinance as they feel is

appropriate because I did call Planners from the City and County of Honolulu, and they, in fact, do allow multiple residences on the same TMK to be exempt.

So I think that, you know, at this point, as I said, I'm not real supportive of the thing, but I can understand, you know, some of your frustration. I mean, to me, equally or even more concerning is the inconsistent manner in which these exemption standards are being applied. If you just look at some of the applications that have come to this Commission right around the time that we heard the Zappacosta one, we had the Gillian application come through, that was just for a two-car garage put in their backyard on ground that was already graded, and the Director made the decision that he thought the impacts were going to be so great or the potential of impacts were gonna be so great that they needed to get an SMA permit. And then the meeting after the Zappacostas, we had the Kaneshiros come before us, and all they wanted to do was build a thousand-dollar project to put a -- do a little bit of grading so they could do their ag work which is also eligible to be exempt, and the Planning Director made the decision that the impacts were gonna be so great or the potential of impacts would be so great that he was requiring them to get an SMA permit. And then this project comes along, shoreline property, fairly extensive grading, cutting, filling, and massive structure, three or four structures on the property. They have a large water use with I think a dozen bathrooms, pool, jacuzzi, irrigation for the plants, orchard in an area that's been hit with drought in recent years. They did say that they were gonna put in a desalinization plant, which requires drilling at least one well. It was unclear what they were gonna do with the salt waste, which is actually a hazardous material if you just left it out on the property. Considering all those things -- and also there's close proximity to archaeological sites. There is sensitive environmental areas close by that was subject to an inch and a half or a quarter of how to mitigate the impact of development. Considering all of that, the Planning Director came to the conclusion that he didn't feel that this project was going to have impacts, any significant impacts, or even the potential for significant impacts and he recommended that this should be exempt and he asked us to concur with his determination. So there is a, you know, very inconsistent way in which these applications have been looked at. And, you know, as I said before, I think we're still struggling to find a fair and equitable way that we can service our applicants.

But as I said, you know, I'm not real supportive of moving this further along in the process, but I think that the point that you did put this appeal in and do that, I think it did -- it is valuable because it's given us an opportunity here to shed light on some of these issues and bring them up, and take a look at them, and hopefully, get some changes as a result of that. I think it's also given us the opportunity to take a look at the bigger issue, which you present, and has been echoed I think many times in this community, and that's really the development of these mega structures on our island. And I think that's maybe a discussion for another day, but I think it's at least interesting to note that the house they're proposing to build is a lot smaller than a house that they could have built on that land. And when you look at some of these other ag properties, they can build farm dwellings the size

of a Wal-Mart, which would be totally within the guidelines of the County Code. But, you know, when we take a look at, you know, some of the constraints that we live -- you know, deal with living on an island in the middle of the Pacific Ocean, I think when we take a look at some of the impacts, you know, that man has made with development on this island, when you take a look at some of the real challenges that we're facing with sustainability issues in the years to come, I think that there should be some sort of a reasonable restriction on the size of these mega structures, but I don't -- I haven't heard of any kind of a limiting factor coming out of the Planning Department. I don't know if they're working on it. When you look at the speed at which they shuffled this project through the process, I don't think -- I couldn't imagine that they're working on any limiting language at this time. I think that also the Planning Department has their dual roles that they play, which is sort of this inherent conflict of interest in that they're charged with the responsibility for long term sound stewardship of our land, while at the same time, they're charged with the responsibility of securing funds for the operation of County government. And they do that by approving projects. And the bigger the project, the more funds can be secured. So given the state of the financial situation in our County right now, I don't anticipate that they would coming forward with any limiting language anytime soon. So if that is something that you're concerned about or you think is important, I think that's gonna have to happen from the community level. And the community plan process is coming up. And if you think there should be some sort of a reasonable limit on these mega structures, or if you think that they should be required to at least get a permit, I think that the community plan process would be a good time to initiate that.

So, I mean, that's my manao. I'm just one Commissioner. And so I'm gonna defer to the rest of the Commissioners what they think and how they wanna move forward with this.

Mr. Kalipi: Thank you, Commissioner Chaikin, for sharing your heart and your thoughts. Again, Commissioners, the four things that we're looking at in moving forward with this matter: one is to accept the new draft proposal from Mr. Morgan; the second one would be to amend the draft proposal that was given to us by Mr. Morgan; the third position or the third thing we could do is to reject both drafts from Mr. Morgan and come to an end for the process of appeal to dismiss it; and finally, the fourth thing that we could move forward to is to talk to our Corporation Counsel in going forward. So basically, that four decisions or that four options is what we face here today. So then, Commissioners, I'm entertaining the motion on how you would like to see us move forward at this time. Commissioner Sprinzel?

Mr. Sprinzel: My feeling is this: Was there a bit of haste in deciding that this was exempt and recommending to us that it should be an exempt SMA? Probably. Was this a development? Well, as Steve discussed, it could be or it couldn't be. Certainly the idea of four buildings or three buildings on a lot does sound like a development. Is Mr. Morgan affected by this? I don't think so. Not one tiny bit. He's not convinced me ever that he's affected by this. We had a meeting where we discussed this. We passed it. We agreed

with the Director's recommendation. All the people pretty well who were at that meeting, who spoke from the public, were in favor of it. A lot of local people spoke in favor of it. Hardly anybody objected to it. We discussed it very, very fully, and we decided it was, by a majority, that was in agreement with the Director. For us to now deny our original decision is a terrible precedent. If anybody from now on doesn't like what we decided, they can appeal. It makes no sense to me. I think this is a very, very bad thing. And as for the legal arguments, I must agree with Steve. There's an awful lot of holes in however well it was decided and well it was written, there a lot of things which were just not factual and just not legal. And after all, this is a legal discussion. When we passed the motion in the first place for the Planning Commission exemption, we all had reservations. We don't like 20,000 square foot houses either any more than you do. But he could build a bigger one if he wanted to. He wasn't doing anything illegal. Everything there was -- even if it's appealed again, and he puts it forward, we'll probably come to the same agreement. It's not something we had the capacity to change. We could delay it, sure, but it would probably still go through. With Steve, I agree, it shouldn't be possible to build buildings like that on Molokai. I said so at that time and so did other Members of the Commission, but we couldn't stop it because it was legal. So I'm afraid I vote against accepting your arguments. Thank you.

Mr. Kalipi: Thank you, Commissioner Sprinzel. Commissioner Bacon, we're kinda going in a row. Do you wanna comment or put up a motion while I'm going down the row?

Mr. Bacon: You put me on the spot here. No, I mean, I think Steve had some really good points there. I fall much further on Steve Morgan's side than you do probably and that I wasn't here when the decision was made. I wasn't a part of this Commission at that time. I think that, you know, I look back on the record and I can't believe that this whole thing was passed in the 20-minute period when we spent four or five hours sitting here debating whether somebody's three-stall garage is a two-car garage and an extra stall for a tractor or whatever it was, and actually turned them down in the end. I just -- you know, I personally think a terrible decision was made. I think a wrong decision was made, but again, I wasn't there to be able to participate in that. And I don't know that you can undo something like that.

I would only wish that in the long run if indeed we had some sort of an SMA whether it was a minor one, which would I think probably solve some problems, or a major one, which would solve more problems is that at least we would know that the desalination plant, you know, the effluents from that were being taken care of. We have no assurance that they will be. They could just be scattered out and we have no say in that sort of thing as well as any of the effluents from the swimming pool and this sort of thing goes. And I think that's one of the concerns that the community has.

I agree that the size of the house is something that none of us can do anything about because that's in the rules, in the laws. But I think that some of the other things that the community is very concerned about, which is the environment, which is what we're responsible for taking care of, should've been addressed, and I don't think they were. And that's just my feeling on the whole thing. I wish we could go back and, you know, look at it again, but I don't see how we can actually do that. Anyway, that's just my ideas.

Mr. Kalipi: Thank you, Commissioner Bacon. Okay so, Commissioner Williams, you see where I'm headed?

Mr. Williams: Gosh, I'm kinda sitting on the fence on this one. I kinda agree with some of the issues Mr. Morgan brought out, and I also kinda disagree with some of them. I don't think grounds to deny a project due to view plains and increased traffic I think is a little bit out there. Taking water from the aquifer at this point, we all have that right. Though I think there were some errors made in the process. I'm a contractor, as you all know, so I'm kind of -- I know that this island needs all the support and contracting that we can get. I know it's gonna provide a lot of jobs. So on that hand, I'm very much for that. I also wasn't a part of the original meeting. Maybe I could've interjected some issues that I had with the process at the beginning. I apologize for not being here, but we had some personal matters to take care of. I believe it would be a hard thing to change a decision of the Commission, to be honest with you. I think that's inappropriate at this point. And I do agree we've drugged this out way too long although I don't feel that we've -- this Commission has kept them from going forward. We didn't rescind any permits or anything like that. So I don't feel at all guilty about anything like that. I do feel a little bit ashamed that we can't make a decision, come to a point a lot faster than what we've managed to do. So I guess that's all I have to say about it. But I do appreciate Mr. Morgan bringing out a very valuable thing to us to light and that is the fact that our process has got some quirks in it, and we need to work on that. We need to get better. We need to take a closer look at projects of this nature that are apparently gonna impact us in a broader way.

Mr. Kalipi: Thank you, Commissioner Williams. Commissioner Buchanan?

Ms. Buchanan: Okay. My voting on this matter has been consistent and unwavering and it remains so today. And I would just in case state that if you don't like the rules, change it. And I think we have made that move as a Commission by forming a subcommittee to look at our rules and see where the holes are, and how we would, as a community, like to move, and that's all I have to say.

Mr. Kalipi: Thank you, Commissioner Buchanan. I guess I would like to comment, I guess. You know, putting all of you on the spot, I guess I would -- I was torn in a roller coaster ride with all of -- for some of you. I think lines have been drawn from the beginning. You either were or were not for the project. But if you went through the process, you could hear the

good points or arguments from both parties. And I agree with all of the Commissioners that we struggled through it knowing that it probably -- it doesn't look like it fits here; however, you know, in some sense, it's legal. There's certain legal standards that you follow the process, then it should be -- you should be able to build or to proceed with your project. I really think Mr. Morgan points out a lot of good things, as was said from the Commissioners. And, you know, it just challenges my mind to hear as he challenges the -- or his appeal to challenge the Director's decision made me think what would've had happened if the Director, you know, recommended something else, then it would've dominated -- or domino effect to the Commissioners. And I think that's kinda what's his argument and that's why he appealed to the Commissioners rather than to Second Circuit Court is that the domino really started with the Director's decision, and then the dominos fell in place.

And so there are several things we are not -- I truly believe pleased with the process or even with the language that has taken place. And we always look for a win-win situation in any matter knowing that the reality of it is that you probably will not always reach that win-win situation. There will be someone that would not be pleased with the decision that was made. And part of our job is not to stop development but to lessen the impacts, the environmental impacts that occur, or to slow it down as much as we can. And so I just wanted to share some of the thoughts as we struggle through the decision how to move forward.

I'm heavy-hearted to say even if we move toward dismissal of this case, my heart is heavy to say, okay, well, we know language needs to be changed. We know that there's an inconsistency and somewhat some confusion with some of the language. And the average Joe cannot find his way through the process. You literally gotta hire one attorney through the process to help you, and it shouldn't be that way. So I'm heavy-hearted to say, okay, well, if we move towards a dismissal, that that's not gonna hold up the gun to the Planning Department or make -- or charge them to help with the process, strengthening the process. And so, again, it's not the ideal situation and we're heavy-hearted -- well, I'm heavy-hearted about it, but I just can't see continuing in the process in the appeal process. I would hope -- have hoped in the early on that it went to court. I had hoped that a judge -- that you would appeal to a judge that if anything, to reverse the decision of this Commission that only the Judge would have the power to reverse it. So even though we say -- even though we agreed with you that the Planning Director didn't assess the situation appropriately, we ourselves cannot reverse our own decision. So judgement is awarded or by law to rescind our decision. And so our decision make it binding. And so through the process, we're gonna continue to bring people over, or if we go through the hearing, we couldn't reverse it even if we wanted to. Only a judge would be able to do that. And so, to me, I cannot go through this process to look at allowing the County to spend more money, and that's our money, taxpayers' money to continue to do this. And that's my manao. But again, heavy-hearted because again, some of the language is kinda messed up. And I hope through the

subcommittee and things being known, that we would make things stronger and better for Molokai in the whole. Okay, thank you.

Okay, now that you guys heard us rambling on, again, Commissioners, we are tasked to come up with a decision. Now, there's actually five now. There was four, but now there's five. Here's the five: one is to accept Mr. Morgan's draft as submitted, his newly submitted draft; second, to amend that draft as was submitted; third would be to reject that draft altogether and dismiss the appeal process today; fourth would be to go to executive session to get more legal advice from our Corporation Counsel; or five, if, you know, there's something in your mind that you're not comfortable, and we're not gonna come to agreement, then the matter is gonna be deferred to the next Commission meeting. So there's five things that may happen as we move forward. So I'm gonna take a motion from the floor, or if you wanna continue to throw out some things, these are the five things that we are tasked to move forward with. Commissioners?

Mr. Sprinzel: I'll stick my neck out. I propose we turn down Mr. Morgan's argument, proposal, appeal, whatever it's called with the proviso that perhaps he could put his energy into making sure that there are some changes on these property sizes allowed on Molokai.

Mr. Hopper: Just to be clear because you have already voted to -- not to dismiss the appeal, the motion you need to make, and it's on the agenda, would be to amend the previous decision to not -- to deny the motion to dismiss; your motion would be to grant the motion to dismiss. So you would amend your previous decision. If you had not made a decision, you could just make a decision now to dismiss, but the proper, in *Robert's Rules of Order*, the proper thing to do would be to make a motion to amend the previous decision to deny the motion to appeal in order to state that your motion would now be to grant the motion to dismiss the appeal.

Mr. Sprinzel: I so propose.

Mr. Kalipi: Okay, so if you're following and understanding it, it's the mannerism of language. And so, Corporation Counsel, the motion is that he, Commissioner Sprinzel, proposed amending the original decision to allow the -- Mr. Morgan to continue the appeal process. So his motion is to amend and dismiss and rule in behalf of the County's position to dismiss Mr. Morgan's right to appeal. And with that said, is there a second?

Mr. Chaikin: I'll second it.

Mr. Kalipi: We have a second on the floor. Any discussions? Commissioner Chaikin?

Mr. Chaikin: Yeah, I think whenever you spend a lot of time and money on something, you hope to get something constructive out of it. So I was just wondering. There's a couple of

issues that Steve Morgan brought up. One was the State statute that says that a single family resident can only be exempt if it's not part of a larger development. And I was wondering that not part of this hearing or not having anything to do with proceeding, but would you be able to get in writing from the legal department an assessment of what that means and how that should be applied?

Mr. Hopper: Yes, I suppose. I mean, that's -- I would need to confer with the Department to see what their reading of that language is, and if you wanted something in writing, I believe we could do that.

Mr. Chaikin: I would want that from the legal department as opposed from the Department of Planning what the legal department's interpretation of that statute is. Is that something you could provide?

Mr. Hopper: I believe we could provide that. I need to check with Brian Moto, who's, you know, my boss, to see if we've written opinions like that in the past. We may have already opined on that and get something in writing for you. I don't see that as being a problem.

Mr. Chaikin: Alright, well, thank you. That's one issue. Another thing is, Clayton -- is it okay if I bring up Clayton and ask him something?

Mr. Kalipi: We're in discussion. Sure. If he's gonna help us to make this decision, then by all means, Clayton.

Mr. Chaikin: Yeah, Clayton, you know, as you know during all these proceedings, we've been talking a lot about the Director, but the Director's not here. And he doesn't know what goes on. And I suppose that he may or may not read the minutes. And the reason I have you up here is you don't usually offer information unless you're specifically asked. So I'm just asking you if you would relay to the Director some of the concerns that were brought up here, especially the inconsistent nature in which the exemption standards are being applied and other things. Is that something that you could relay to the Director for us?

Mr. Yoshida: Yes, I can do that.

Mr. Chaikin: Alright, thank you, Clayton. Is it okay if I bring up Jane Lovell?

Mr. Kalipi: Sure.

Mr. Chaikin: Jane, can I -- as you're aware, one of the things that has been brought to light during all of this is that our rules are kind of convoluted and they really could use some rewording to make things seem a little bit more whatever.

Ms. Lovell: Clear.

Mr. Chaikin: Clear. Thank you. Is that something that you could work with maybe our Corp. Counsel on? Maybe give him some bullet points in some areas that you think need to be cleaned up because that is something that we're working on that has come out of this whole thing is to clean up our rules a little bit? Would you be able to do that?

Ms. Lovell: Sure, I would be happy to do that. And I also have been listening carefully to, you know, your remarks today, and I am totally prepared to discuss those with both the Director and whoever else needs to hear them.

Mr. Chaikin: Alright, thank you, Jane. That's all I've got.

Mr. Kalipi: Any more discussions? Commissioner Buchanan?

Ms. Buchanan: Discussion, I will not be voting in favor of the motion. Reason being if we're asking to amend the previous decision, I had voted at that time also against that motion. And, personally, it would be for me I found that arguments made at that time to accept the appeal by other Commissioners did have merits. And I did find that the concerns by the Commissioners were warranted. And to say now that that previous decision for them to allow him to appeal would be amended would go against. So I would -- I just stating that I am not gonna vote in there. Anything less than rejection and -- would be something that I would not concur with.

Mr. Kalipi: I'm sorry. We're still in discussion. Commissioner Buchanan, I'm unclear.

Ms. Buchanan: Okay, I just stating that I not going be in favor of that motion because it's a motion to amend the previous decision. It's not a motion to reject or to dismiss.

Mr. Sprinzel: I was told I couldn't make a motion to reject.

Mr. Hopper: In substance, it's a motion to dismiss. The issue was you've already made a decision as a Commission to not dismiss the appeal. Okay? That decision was made. That decision stands. If you just simply made another motion to dismiss right now, then that would be improper because there was already a motion and that was already decided on. What you need to do is amend that previous decision. If you prefer, I suppose you can move to rescind that previous decision and then do a motion to dismiss, but I believe the proper way under *Robert's Rules of Order*, and that's what I'm advising, if your desire is to dismiss this case is to amend your previous decision, which was to not grant the motion to dismiss, to deny the motion to dismiss, and grant the motion to dismiss. In substance, it does the exact same thing as dismissing the appeal. So that's -- just as a parliamentary way of, you know, following the *Robert's Rules of Order*, that's how I see - and I was asked

at the last meeting about this - and that's how I see the proper way of going about dismissing this appeal, if that's your desire. In my view, under the rules, it has this exact same effect as if you had voted to dismiss the appeal in the first place. And that's my understanding and that's what I was asked to look into by the Commission at the last meeting. So that's why I concluded that. That's why that was on your agenda the way it is. And that's why that was sent in the letter to both parties advising them that they may amend and dismiss the appeal. That was in the letter that was sent out to both parties. So everyone should have notice of that. And I do believe that's the proper way of doing that as far as the parliamentary rules are concerned.

Ms. Buchanan: Okay, then I stand corrected because I -- the Chair had said that we had five options. And the third option was to reject and dismiss. So I stand corrected.

Mr. Kalipi: Yeah, and that's my correction also because the third one is actually just to make it clear, amending had two forms of amending. Amending would be to change the draft that was submitted to us, and amending is also meaning that amend our regular decision then to dismiss it. So just for clarity, I kinda put it in its own category. So now I think we're on the same page. Okay, we're still in discussion. Any more discussion? Commissioner Chaikin?

Mr. Chaikin: Yeah, I just need, I guess, clarification because with all this talking, it could potentially get confusing. Corp. Counsel, is the motion that's on the floor right now to amend our previous decision and to dismiss the appeal?

Mr. Hopper: It's a good idea to clarify that because I think Commissioner Sprinzel took what I said and said, "so moved," essentially, and I believe that's what I had said, but I would like now, I think, because this is an issue, I'd advise you to clarify what that motion is. Normally, the Chairperson would clarify that understanding with Mr. Sprinzel's input.

Mr. Sprinzel: Yes, I got a little bit mixed up, to amend Mr. Morgan's proposed finding -- no, to amend the --

Mr. Kalipi: I'm sorry. Mr. Sprinzel, let me take a stab at it. And if you said, yes, then that would be your -- my understanding is you're gonna amend the Planning Commission's original decision to allow Mr. Morgan to appeal to the Planning Commission, the Director's decision. We're amending it to dismiss it. Is that correct, Mr. Sprinzel? Please to the mike.

Mr. Sprinzel: Yes, Mr. Chairman. That is correct.

Mr. Kalipi: Corporation Counsel, is that clear?

Mr. Hopper: Could you restate one more time, just for the record, please?

Mr. Kalipi: Okay, for the record, Mr. Sprinzel made a motion -- is making a motion to amend the Planning Commission's decision to allow Mr. Morgan to appeal the Planning Director's decision to the Planning Commission. He's amending it to state that we're dismissing the appeal to the Planning Director from Mr. Morgan.

Mr. Hopper: Yes, that's essentially it. You are not denying the motion to dismiss. You are now granting the motion to dismiss.

Mr. Kalipi: You are now --

Mr. Sprinzel: I'd like to kill all the lawyers.

Mr. Kalipi: Thank you, Commissioner Sprinzel. So we clear on the motion? I believe we did it many more times. Okay, any more discussion?

There being no further discussion, the motion was put to a vote.

It has been moved by Mr. Sprinzel, seconded by Mr. Chaikin, then

VOTED: To amend the Planning Commission's decision to allow Mr. Morgan to appeal the Planning Director's decision to the Planning Commission - amending it to state that the Commission is dismissing the appeal to the Planning Director from Mr. Morgan.

(Assenting: J. Sprinzel, S. Chaikin, D. Williams, L. Buchanan, J. Kalipi)

(Dissenting: N. Bacon)

(Excused: M. Pescaia, N. Leong, T. Waros)

Mr. Kalipi: Okay, so I'm gonna vote for the motion, and so the motion will carry. So it's going to be five-one. Okay, so motion carried. The appeal is amended to be dismissed. Thank you, Commissioners.

Mr. Hopper: Just as with your original decision to not grant the motion to dismiss, you will need to have findings of fact, conclusions of law, and a decision and order dismissing this case. That would normally be drafted by Ms. Lovell, who is the prevailing party, with notice to Mr. Morgan so that he will have a chance to have them, you know, it's the exact same process that you have so that Mr. Morgan will have ample time to object to any of the proposed findings, conclusions, and a decision and order. So Ms. Lovell will have to get -- you know, you will need to coordinate with Ms. Lovell and Mr. Morgan on timing for the

draft of the findings, conclusions, and decision and order to get to the -- to be filed and served on Mr. Morgan and Mr. Morgan's objections to be submitted and filed to everyone.

Also, as just another note, this was provided notice in your agenda. The agenda did state that the Commission may consider whether to amend Mr. Morgan's proposed findings of fact, conclusions of law, and decision and order, or to develop their own, or to rescind or amend its decision to deny the Department's Motion to Dismiss. In addition, in a letter to both parties regarding the resubmittal of the motion to -- or of the findings and conclusions, per your instructions, the letter stated to both parties that the Commission may also amend or rescind its September 28, 2009 decision to deny the motion to dismiss and decide to dismiss the appeal. The parties should be prepared to address the merits of the motion to dismiss not only on the proposed findings, conclusions, and decision and order. Just to let you know that all parties, based on your last meeting and your discussion of the issue, did have adequate notice that this was a possibility to happen at this meeting, but still to be done, you need to have the findings, conclusions, and decision and order filed, and then make a decision whether to adopt that, and also with time for Mr. Morgan to review those documents and have any objections that he would have just like Ms. Lovell had today.

Mr. Kalipi: Thank you, Corp. Counsel. So the roles are kinda reversed for laymen's term. Ms. Lovell will then submit now -- well, in the upcoming, will submit a findings of fact, conclusion of law. And also, Mr. Morgan will be notified if he would like to also argue her position of the findings of fact, conclusion of law, decision and order. And then the Commission will look at her draft to look at if they would adopt it, amend it, or so forth. So the roles have just kinda flip-flopped to proceed.

Mr. Hopper: And with that, the decision's not final, and the case is not dismissed until you adopt those findings and conclusions.

Mr. Kalipi: Thank you, Corporation Counsel, for that clarity. so thank you for your patience, all of you, for this matter. Okay, so we're gonna move on because we got quite a few stuff, and we didn't fly Mr. Joe Alueta all the way over here not to do nothing, but to come and have us to do some work. So at this time we're gonna move on to Item no. G, Public Hearing. And I'm gonna call up Mr. Alueta to give us what we are looking at to continue where we left off.

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

- 1. MR. JEFFREY HUNT, AICP, PLANNING DIRECTOR transmitting proposed amendments to Chapter 19.32 Planned Developments, Chapter 19.36A Off-Street Parking, Chapter 19.40 Conditional Permits,**

and Chapter 19.45 Project Districts of the Maui County Code that would delegate approval and/or renewal of permits to the Planning Director and other miscellaneous revisions.

The proposed bills can be found on the County Website at:
<http://www.mauicounty.gov/index.aspx?nid=1127>

Mr. Joseph Alueta: Okay, good afternoon, Commissioners. You got that, Suzie? Okay. When last we left our caped crusaders on the bat channel, we were working on five different bills or on the business districts. Is that the item? Or is the next item -- is it the streamlining bill, Commissioner Kalipi? Chair Kalipi? So since that time, we've been -- our Department has been busy. We drafted another set of bills as part of our streamlining bills and that's why you have a public hearing. So this is the first time you're seeing it. And those were e-mailed to you, as well as mailed to you. And they deal with part of a stream -- what we're calling the streamlining bills. They were initially drafted by not only our Director, but as well as a task force that was made up of private citizens that the Mayor had put together. And there was a book of recommendations for a variety of Departments and Divisions throughout the County of Maui in which to help to streamlining the process to make it a little more user-friendly for the general public. And these were the top five, I guess, these bills that you have before you.

One of them deals with cleaning up some language in the project district processing. Another one is a conditional permit, 19.40. There's a small change in 19.36 that we didn't catch with regards to pavement. And then dealing with planned developments or what we call planned unit development when we process them. So that's dealing with 19.32.

I'm sorry. I don't have an agenda in front of me. I'm not sure which bill you have first.

Mr. Kalipi: Yeah, I think -- you continue. I think the last time, Joe, I think the last time we requested when it comes up the next meeting, if we could have one hard copy of it, the new ones. Okay.

Ms. Buchanan: Yeah, Suzie supplied ...(inaudible)...

Mr. Kalipi: Okay. That was the one she handed out today?

Ms. Buchanan: Yes.

Mr. Kalipi: Okay, thank you. Go ahead, Joe.

Mr. Alueta: Okay. I'll start with 19.32. Let's stay in numerical order. So we'll start with -- these deal with planned developments.

Ms. Buchanan: Joe, I have a question before you start. Since the task force or a committee or something was formed to review this, did they take minutes of those meetings?

Mr. Alueta: I'm not aware of --

Ms. Buchanan: You have a summary of what discussions came out from those meetings in order to formulate this?

Mr. Alueta: These were the bills that were presented. Each -- from my understanding and seeing the recommendation, Planning's one was like three pages or three -- it was a small section of that overall report. The Department only got their report for their Department. And these are the bills that were -- that the Director had worked with the team that was doing it, and this was they came up with as far as being their support. But, no, as far as I do not know how the board meetings were organized at all.

Ms. Buchanan: So is there any way of getting a copy of the Department's summary?

Mr. Alueta: These are it. I mean, the Department's summary is --

Ms. Buchanan: This would be a draft, right, right now?

Mr. Alueta: Yeah, this is what we recommended. This is what that committee supported.

Ms. Buchanan: Okay, because in the past, on difficult stuff like this, it always helps, and you've done it in the past, cause I've seen it, and it helped me immensely is to follow the discussion of concerns by participants when you changing code. So that's why I was just wondering if had a summary because sometimes things get missed or left out that may not be important maybe to Maui but might be important to smaller districts like Molokai and Hana. So I was just wondering if there was summary.

Mr. Alueta: Okay. No, I don't think there was any -- it was kind of a free -- my understanding is that it was a group that was put together. I don't know how many people were on it. I do not know who was on it. All I know is these are what we recommended. I got a letter from them that they transmitted out to me that this is what they -- the recommendations they had as far as the bills.

As far as the substantive changes to the bills, they're not -- there's not really anything significant in them especially when you deal with planned developments. As you see, the two main is one that -- it labels basically the Step 1 and Step 2 process. It clarifies it. And I'm working from Exhibit 1 on -- if you have the staff report in front of you. And then you have --

Ms. Buchanan: What is Exhibit 1?

Mr. Alueta: Exhibit 1 of 19.32 is the draft bill that was established. So you have a staff report, dated January 7th, and there's an Exhibit 1 which is actually the ordinance itself. Yeah, the third paper in, if you're looking -- from a double-sided copy.

So it -- and the next amendment basically provides for a Director's approval for the Step 3 process. This is similar to what happens in project districts. And the funny part of this amendment is that, up until about five years ago, we used to do -- the Department did the Step 3 approval for planned development -- I mean, for planned developments thinking, in the way we read the ordinance, that it was -- that we did have the authority. And it wasn't until later that someone pointed out, no, I think that you gotta go to the Commission. And so we started doing that even though -- because in project districts, that's how it is. In project districts, Phase 3 is done by the Department itself. So we started going there, and then obviously, you're taking building plans. Step 3 for both planned developments and project districts is the building permit level meaning you've already gone through the Council entitlement phase as to what you're gonna do. In Step 2, you kinda have design guidelines already adopted for the district. You have a -- even color schemes. You've gone through Urban Design Review Board. You've gone through the Planning Commission. And you've kind of said this is where we going to build. And then Step 3 is here's the actual building permit. Here's the actual construction plans. And we just review does it meet the design guidelines that they had approved? Is it the same color scheme? Is it the same -- is it in the same location they said they were gonna put it in Step 2? Is it the density that they got approval for? And that's -- it was very administrative. And so that's how it is for project districts. So the amendments we have for 19.32, the planned developments, it's just that simple. It's just that we would be going to do the building permits.

Another amendment is to do non-substantial changes, revisions prior to -- of Step 2 approval. During the Step 2 approval, you often have -- you'll have like a -- you can have a subdivision or a street layout. Okay? Or you will. You'll have a preliminary subdivision or a street layout of it. You'll have utility -- I mean, showing where your utility easements are. Well, during -- as you refine that process, you may discover okay, you know what? We need to relocate this street because of a burial, or we need a utility easement through here for some other reason. And those are the kinda changes that the Director could be able to make, but it was approved during Step 2. And so the developers have come and said, look, I need to redesign this subdivision. I got approved for a hundred lots. I'm doing a hundred lots. I'm doing all single family. I'm not changing anything. The only thing I'm changing is how I've configured the streets or how the lots are configured. I'm not -- and it's very non-substantial changes. But however, because it was -- that's done during the step -- Phase 2 approval, it would have to go back to the Planning Commission, and that

can be a very time-consuming process. And so that's why it's pretty much for non-substantial changes only. And that's pretty much it for 19.32.

Ms. Buchanan: Chair, I have question for Staff. So in Step 1 for a planned development, can you quickly define planned development, Joe?

Mr. Alueta: A planned development in 19.32 allows for any -- you basically have the same zoning. Mr. Yoshida can correct me if I'm wrong, but you have the same zoning that you have now. So you have A-1, A-2, apartment, or -- I mean, or R-1, R-2, R-3. What you're doing is either you're -- say you have two zoning categories, okay, of A-1 and A-2, okay, right next to each other, but you wanna do a condominium project. Okay? There's different standards or densities allowed for either one of those. What you're saying is I'm going to combine the two, right, and do one project, and it's gonna be a planned development, but I am not going to -- I'm not gonna exceed the density, or I'm gonna be able to cross the density or lot, but at the same time I'm gonna have an open space area of -- you have to have a 20 -- dedicated extra open space in the project as a result of that. So you may have like say in A-1, you may be able to go two stories, and then A-2 -- four -- you may be able to go -- I mean, A-1 or whatever, you go different heights. You may be able to do those on the underlining under the different zoning categories. You're not restricted to that. So your overall densities, heights is still the same, but you're just allowed to treat the two parcels as one and the project as one. Okay? We had -- I recently worked on a project in Kihei in which they had eight acres of apartment and about three acres of residential. Okay? They wanted to do apartment buildings. So as long as the density on the residential portion of the zoning, right, was the same density as it was allowed in the residential, they're allowed to do eight lots or eight units per acre. As long as the buildings, the apartment buildings, located on that residential district did not exceed the density, they were allowed to do it. So basically, they allowed you to do apartment buildings in the residential district, but that was because they were able to combine the apartment zoning as well as the residential zoning and do a planned development.

And so the benefits of doing it is, one, like I say, when you have split zoning on a parcel. Two, the community gets more open space because there's a 20% open space requirement in addition to the -- for the approval. And the project is reviewed. Not only is it reviewed extensively by the Planning Commission as well as the Urban Design Review Board, so normally you get an -- overall, you get a better project. It's not used very often. Wailea is your largest. It's a planned unit development. So Wailea is. And what it does is it just allows you to shift your zoning uses around, to a certain extent.

Ms. Buchanan: Okay, I have another question. If in Step A and B, and I'm assuming that the referring to the Commission is the Planning Commission in this? Okay. So in Step A you have the Commission involved. In B you have the Commission involved. When you get to Step 3, you omit the Commission, and you insert the Planning Director. And then

you add an Item D stating that the Planning Director may approve amendments as long as they're not substantial. And I don't know what the Department's definition is of substantial and not significant impacts having just finished going through what we just did. So you know me, Joe, I going bang the same door every time you going take me out of any planning decision on Molokai. I'm not gonna like the idea. And so we get to Step C, and you take me out of the picture, and you put the Planning Director in, I don't like it. And then you give the Planning Director even more authority in adding another section, Item D, which basically says he can approve any amendments to the plan if not substantial and no result in significant impacts. Now, again, that's his own purview. What he might think substantial might not be what I think is substantial. So again -- and this would be comprehensive for all the bills. That's going be my position. Every time you going take out the Commission and put in the Planning Director to make that type of call, I'm not gonna be in favor of that.

Mr. Alueta: Okay, so then you won't be in favor of any of the bills because they're all streamlining bills.

Ms. Buchanan: Yeah. And then my -- that is correct. That is correct. And my recourse to that is that comprehensively -- my position would be to comprehensively, wherever that is mentioned you word it, if you wanna word it, where "except on Molokai," where the Commission will retain its power, that'll be fine for me. That's gonna be my recommendation.

Mr. Kalipi: Okay, some good discussion. However, since this is a public hearing, I would wanna officially open the floor for public testimony. Maybe take one bill at a time.

Ms. Buchanan: But he not done explaining to the Commissioners about the changes.

Mr. Kalipi: 19.32 and then we'll close it, and then we'll go - okay?

Mr. Alueta: Okay.

a. Public Hearing

Mr. Kalipi: So before us today right now is a bill, amendment, or proposed bill for an ordinance, amendment Title 19.32, Maui County Code, pertaining to planned development. And so I'm just gonna open the floor for public testimony. If anyone wanted to testify or comment on this proposed bill ordinance amending Title 19.32, you are welcome to do so now. Okay, seeing none, we're gonna close this time of public testimony. Excuse me, public hearing. I'm gonna close this part of the public hearing for proposed bill ordinance amending Title 19.32. Okay? And so back to our discussion. Joe, commenting?

b. Action

Mr. Alueta: Do you want me to -- are you planning on taking a motion for each bill or do you wanna -- because I'm done with my presentation for 19.32? Is there any other comments or questions on 19.32 specifically?

Mr. Kalipi: Commissioner Chaikin?

Mr. Chaikin: Yeah, Joe, I know that you usually like to limit our comments to the changes that you are proposing, but there's something in here that I think -- there's some wording in here that I don't agree with, and that's in the very beginning of the bill on Phase 1. Phase 1 is I guess where they come to the Commission and they gotta get their approval from the Commission for their Step 1 process. To me, the way you have it worded, that's really the approval, that Step 1, because as long as they adhere to the standards, and do everything according to what the County requires, the thing's gonna be approved. So really, you know, Step 1 is a very important process. And what do they have to do in Step 1? All they have to do is provide a brief description. And that's pretty weak for the Commission to be able to approve or not approve one of these projects. So I would change that "brief" and make some other wording like "adequate description" or -- because I don't think "brief" is gonna be enough for the Commission to be able to adequately assess the project. You follow where I am, the "brief," where I have that?

Mr. Alueta: Correct. And I can't think of any recent ones that I mentioned, but I -- in the most that I've done, they combine Step 1 and Step 2 together because most developments have a pretty good idea of what they're going to do early on if they're that small. Like I said like the one in Kihei, it was relatively small. So they did Step 1 and Step 2 together. However, when you're dealing with a Wailea type, 1,200 acres, you're not gonna have your color schemes and your design plan or all your -- maybe not all of your street layouts nailed down yet because you're dealing with such a massive acreage. And so that's the reason that's preliminary. So -- but when you're dealing with like say a Puamana in Lahaina or a Kai Makani, which is like the one I did in Kihei, you're dealing with 12 acres. You're not dealing with a hundred, 1,200, or 2,000 acres with some people do.

Mr. Chaikin: Well, anyway, that's my manao. I don't think "brief description" is adequate. So I would put something in there saying like they have to come forward with an "adequate description" or something along those lines other than "brief."

Mr. Alueta: And that would be completely up to you guys too. If you feel there's not enough information at the time they bring your Step 1, you can make that call to say, well, I like the concept, but I'm not willing to approve it until I get additional information so --

Mr. Kalipi: Okay, the other thing to add during this process, okay, so Joe presented the proposed amended bill to us right now. And so, you know, again, we're faced with we can accept the bill, or we can amend, take out the things we don't like, add in the things we do

like; however, we gotta have to come to a consensus what we like and what we don't like. Commissioner Buchanan mentioned she don't want C and D. She wants the power to be retained by this Board. And so -- and again, we can amend that, if we're in agreement, and look at what we do like, and then have Joe relay that as our decision from this Commission. So we're at 19.32. And we need the consensus of the Commission to alter or amend that proposed from the Planning Department.

Mr. Alueta: And if it's the consensus -- I mean, again, it's only one Commission that has the concern at this point, but if you were to go on that line, then all you would do is for Item D, you would just put in "Except on Molokai, the Planning Director" at the beginning of D. And then for C, you would put at the very end, you know, you could put on "except on Molokai, the Commission shall approve any changes." And that's all you would do.

Mr. Kalipi: Okay so, Commissioners, you see where I'm kinda going. We wanna move past 19.32 in order to get to the next proposed bills also. So if there's something that is outstanding like how Commissioner Chaikin said he didn't like it, I'm hoping that Joe's definition about brief was sufficient to say if you don't like that brief, you have that authority to say, no, you gotta give us more information in that first step, or we would like to come to a conclusion that we would like stronger language.

Mr. Alueta: We can just scratch "brief," if you want to recommend that "brief" is scratched so that it just says "description of the planned development."

Mr. Chaikin: That's fine.

Mr. Alueta: And then you would just determine what -- if the description is adequate when it comes before you, if and when anything ever comes before you.

Mr. Kalipi: Okay, so are we getting the consensus of Commissioners? We got "brief," to scratch "brief," and then we got also to C and D to put "except for Molokai," and so the revision, as Joe said, would come back to the Commissioners. Corp. Counsel, do we need an agreement, or just the nodding of heads of Commissioners is sufficient? Or if you don't agree with that, then maybe you should speak now, or you could render another opinion, but, Corp. Counsel?

Mr. Hopper: I suppose you could comments on the bill by unanimous consent and say, okay, after Joe gets all of your comments, he could either read them back to you and say we have these comments, and then you could say, as Chair, if there's no objections, those will be forwarded as our comments. And then people could have no objections. Or you could just do by motion. I think either way is acceptable. By unanimous consent, no one has to object. If anyone objects, if one person objects, then you need to take a motion and a vote, so that's how that works.

Mr. Kalipi: Okay, so I'm getting the consensus. Does somebody objects? Seeing none. Joe, that's gonna be what we wanna move on, our comments for 19.32, those three comments. Okay?

Mr. Alueta: Okay, moving on to 19.36. Again, it's a Planning Commission to the Director with regards to parking, to off-site parking approval. We've had several incidences -- well, it happens more on Maui. And the Commission really don't really -- it happens very quickly. They say, yeah, the guy's gonna do -- provide parking off-site. It's within -- it's basically, he shows that the property is less than 400 feet away or whatever the distance is. I think it's 500 feet, then it's done. There is not really much that the Commission -- I cannot think, in 18 years that I've been with the Department, that they've ever denied an off-site parking approval. I think they -- we pretty much just require that there be a lease, you know, a long term lease to show the thing. And if they ever lose that parking, then, you know, they have to provide for it otherwise.

It also allows for single family homes to maneuver onto a local street. This is kind of like an unsaid rule or unenforced provision. If you read the code, technically, if you have -- when you're on your -- pulling out of your garage, you cannot just reverse onto a public street and then drive off. You have to reverse onto -- on your own property and go head out, or do any type of maneuvering. And we've been allowing for it; however, the code does not, when you read the code very specifically, it does not allow for that.

It changes the requirement for striped parking. This would be from three stalls to five stalls. So you could have up to five stalls that are not striped. This is in response -- I think mostly for small businesses that have, you know, have only like -- have only a small requirement of less than five stalls as well as you have some bed and breakfast permits, you know, where you end up with striped parking and it looks kinda odd in a residential neighborhood.

So that's pretty much the changes for -- oh, prohibits loading into walkways. So walkways should be free of vehicles. So just providing some clarity to the existing code.

- a. **Public Hearing**
- b. **Action**

Mr. Kalipi: Okay, so we'll pause for a moment. We'll take public testimony and then, Commissioners, we can ask questions. We gotta go on record to do it. So at this time, we're gonna take public testimony for proposed bill ordinance amendment Title 19.36. Any of the public would like to testify? Seeing none, we're gonna close this time of public hearing. Okay. So --

Ms. Buchanan: I have a question on the parking.

Mr. Kalipi: Commissioner Buchanan?

Ms. Buchanan: Okay, I misunderstood this writing. So the 400 feet, the distance of 400 feet from the nearest point of the lot, because I've been to Maui where parking is an issue because of McMansions, so what is the law about parking? If you have a single family residence, you don't have any -- they could park wherever they want outside on the street if you have more than one or two cars?

Mr. Alueta: You park -- and they're called Manilla Mansions. Sorry. No, just --

Ms. Buchanan: That was my -- as I said, McMansions.

Mr. Alueta: Okay. They are two parking stalls for the main house, and one stall for accessory dwellings. So most homes require three parking stalls on the site.

Ms. Buchanan: Okay. And then other than that, it spills off to the road which becomes problematic?

Mr. Alueta: Only -- well, it's up to the -- each road will have its own standards as to whether or not you can do on-street parking. Most streets allow for on-street parking unless it is specifically prohibited by a sign.

Ms. Buchanan: So I no understand why we -- for residential, because this is combining residential as well as business, off-street parking, yeah? It's like one standard for residential and business.

Mr. Alueta: No. This has to do with -- you're talking about the first amendment with regards to 19.36.030, location? This has to do with -- well, yeah, it deals with all parking, but if someone has a business, such as Midnight Inn and they want to redevelop Midnight Inn, right, and they wanna fully redevelop the whole lot, and they can only -- but their new parking requirements is such that they couldn't -- they're required 15 stalls, but they only have space for ten, that means they gotta have five spaces somewhere else. Okay? Our code allows for them -- they could lease a property within a 500-foot radius and put five stalls there, and mark them as Midnight Inn stalls or say these are my stalls for Midnight Inn. Our code also allows for joint ventures. So if Midnight Inn only required their parking during the evening hours and Friendly Market was closed during those same times, they could work a joint parking agreement between the two and we would accept that also. But it's basically for people who have -- need the excess stalls.

The last one that I did many, many moons ago was for Miyaki Concrete in Kihei where they had a two-story building, and although they had warehouses and stuff, because they had a warehouse storage area, it required them to have more parking stalls than they had. And

so they leased the lot next door that was empty, and was never gonna be developed for a long time, and they had their off-site parking there.

Ms. Buchanan: Okay, so that type of -- needs a permit from you folks?

Mr. Alueta: Correct.

Ms. Buchanan: So you would require -- say somebody put in a request for service because there is parking in an area they feel is -- they don't like it, that request for service would go to the person who is parking multiple vehicles there, and ask for the lease of that property if they are not the owner?

Mr. Alueta: No. We would only react to a request for service, right, if the person did not have parking and did not have an off-site parking. If somebody wanted to have more stalls than they -- if they wanted to put in more stalls, and they know that they're busy, the County Code only requires them to have ten, but they know that they're heavy traffic, and they need 20 stalls, and they go out on their own and lease another ten stalls from some place else, that's not against the law. They can do that. In a commercial district, you can rent -- have a ten-stall parking lot. And again, it's not illegal, you know. It may not be what some people may desire, but it's not illegal. And this code is -- this section deals with I have a business. I've intensified the use, such as the old non-existent brewery that was supposed to go across that Subway is in, right? Well, they intensified their use with the restaurant downstairs. So they have only enough stalls for Subway. Well, they have empty space upstairs. Now, some people want to use the upstairs space. Well, they don't have enough parking. So they can't get a C.O. for upstairs, right? We all know that story. So they're using it for storage, okay, or some other illegal activity that none of the Commissioners want to admit to, but they know about. And so therefore -- therefore, if they wanted to get a legal C.O. to operate that, they have to provide parking. And one of the requirements -- one way they can provide the parking is by going to another property that's within 500 feet or 400 feet and say can I lease five stalls from you? Can I put a five-stall parking lot here? Okay? And if the Director or the previous years' Commission says okay, they can then say that's their stalls. And all this does is say it's no longer the Commission, it's now the Director just to make it -- I mean, it seems simplistic. Like I say, I've never seen one denied. I've never -- and half the time the Commission are like, okay, let's get -- let's move on. They've never had any questions on it except when it's a Korean Bar, but that's the only time.

Mr. Kalipi: Okay, thanks, Joe, for the explanation. Any more questions or clarification for Joe on the proposed bill 19.36? Okay, if not, you guys wanna amend it? You like it as is? We've already given Joe, I guess from the first -- are we still -- you know, for clarification, are we still staying consistent through all the bills to say that the Commission would be the deciding party rather than the Planning Director?

Ms. Buchanan: I'd like to say for 19.36, having Joe explain that, I would not offer that up to this -- for this. It would be okay for the Planning Director because it seems like this would be permits and asking for additional parking stalls. And that was clarified to me. So that is not an issue as opposed to what I was thinking about people parking illegally and taking up more space than they were offered on their lot. So it's okay with me if the Planning Director is inserted and the Commission is taken out.

Mr. Kalipi: Okay, but notice that there are more than that issue on the proposed bill for 19.36. We've got the reverse on your own property one and we've got the walkway. So if we're satisfied with the whole bill, and if that's the consensus of 19.36, just for discussion, yeah?

Mr. Alueta: The two other amendments again are allowing for single family dwellings to egress -- ingress and egress on a local street. Okay? And local streets are defined. And then also reducing the pavement requirement that only requiring paved stalls for -- if you have five, from three to five so that way small businesses don't have to have -- pave everything. I mean, sorry, not paved, but striped. So you could have five stalls, but you don't have to necessarily have to stripe them.

Ms. Buchanan: Chair, I don't know how to -- if any results that was made with parking issues in Ranch Camp, and that's how come I was trying to relate that to this and seeing if any changes in this was gonna reflect several requests for service to Maui Planning, and the problem was never resolved. And it's been ten years or more. That kinda stuff. We all know that you go to Napas, and there's no parking, and everybody's parking at the Dairy Queen, but I'm assuming they had leased that portion from whatever landowner. I'm just assuming so now people are parking there. It's just that Kaunakakai is an old town and so I didn't want any of this to add to the problem that I see on Maui to where I'm visiting an aunt and I have to park four blocks away because of multiple cars that should be on lot and they're in the street.

Mr. Alueta: Why can't you park on your aunt's lot?

Mr. Kalipi: Multiple cars.

Mr. Alueta: Why can't you park in your aunt's lot? Huh?

Ms. Buchanan: For the same reason everybody else ...(inaudible)..

Mr. Alueta: Huh? How come you cannot park on the -- no, just kidding.

Mr. Kalipi: Okay, so again the question would be do we wanna accept it as it is proposed by the Planning Department? Do we wanna amend anything that we see that we wanna --

Commissioner Buchanan stated that this one, she feels comfortable that she can -- we can give to the Planning Director and we don't have to put the, you know, the Commission. Commissioner Chaikin?

Mr. Chaikin: Yeah, Chair, I don't have any problem with this bill for an ordinance as it's presented to us.

Mr. Kalipi: Okay, so if any objections, state now. If not, we're gonna accept it. Okay, so that's -- we're accepting. Nobody said reject. So moving on, 19.40. Thank you, Commissioners.

Mr. Alueta: Thank you. 19.40 again is -- this deals with conditional permits. Again, it deals with -- again, you have the non-substantial changes to conditional permits. Provides for time extension criteria to be approved by the Director if there's no changes to the permit at all. Currently, this would -- this doesn't take away any power from the Commissions, just to let you know, because you don't have any power over the conditional permits. You only recommend to Council. It also requires -- but it does require that Council approval of time extensions is the appropriate Body if it doesn't meet for the administrative review. So we're not taking all -- everything away from the Council. If we feel that Council should review it, we'll send it up there. And then provides for unforeseen circumstances when an extension is not filed for timeliness. So right now, there's -- pretty much it's like there's a 90-day requirement, 90 days prior to the expiration, but sometimes people think that that's the minimum window. The soonest I can apply is 90 days, and they wait till the actual 90 days, or less than 90 days to file. And sometimes some people are, you know, sick or they miss for some reason. So that was -- those are the minor changes to the bill.

Mr. Kalipi: Okay, that's it, Joe, for 19.40?

Mr. Alueta: 19.40, correct.

- a. **Public Hearing**
- b. **Action**

Mr. Kalipi: Okay. Open the floor for public testimony. If anyone wants to testify about the proposed bill ordinance amendment 19.40, you may do so at this time. Seeing none, we're going to close this time of public hearing and call Joe back up. And Commissioner Chaikin has a comment or question.

Mr. Chaikin: Yeah, I've got a little problem with this proposed bill because the way I look at it a conditional permit is given to somebody or some entity to utilize the land or something that's not normally and ordinarily used for. And you give them that conditional permit with kind of like, oh, I hope everything goes all well. Let's see how it goes. And then

the thing expires and they come up for renewal. That's the time where you're gonna have the public come in and share their mana`o if there's problems with that particular use that's not normally allowed. And if we move that over to the Director's Office, he's gonna have some clerk in Wailuku trying to figure out if there's some impacts over here in Molokai. I think the appropriate body to approve an extension would be the Molokai Planning Commission because we're more intimate with what's happening in the particular location, and it also provides the opportunity for the public to show up and share whatever problems they have. However, I don't think that this Commission should have the authority to deny the extension, only approve it, because the authority allows with the Council. So if the conditional extension is gonna be denied, then we should have to refer it back up to the Council because they're the ones that have -- currently have the authority to either grant or not grant conditional permits.

Mr. Alueta: Point well taken, Commissioner Chaikin. I'll wait for the rest of the Commissioners and I can easily make amendments to the bill.

Mr. Kalipi: Okay, I kinda hear what Commissioner Chaikin is saying. For example, in my mind, you take Island Kine Rentals. I gotta believe that they have a conditional permit. And then their rent-a-car is --

Ms. Buchanan: ... (inaudible)...

Mr. Kalipi: Okay, oh, sorry, some kind of example like that. But anyway, for someone like that, we want the public to get an opportunity to probably rebut or, you know, share in what they feel about the conditional permit. So I don't know what that would look like, though, but I just wanted -- I thought it would be what Commissioner Chaikin said. It kinda threw me off guard. Okay, other Commissioners' input? Commissioner Bacon?

Mr. Bacon: Okay, in A, the Planning Director may approve changes to the conditional permit if the changes are not substantial and do not result in a significant impact. You know, usually these conditional permits come, and there's a lot of discussion, and they say you can go this far but no further. Well, that little further may be just insignificant to the Planning Director, but it was the last straw for the Commission as far as, you know, this is as far as you can go. So that -- it doesn't really make sense to me to say something that's insignificant to him was the last straw for us.

Mr. Alueta: Right.

Mr. Bacon: You know, and I think that should just remain with us if there's gonna be any changes.

Mr. Alueta: With the Commission or you wanted to strike it altogether? Because if you're going to require amendments or anything like that, you could, or you could put in -- you can put in the Commission if you want, just stick your name in there instead of the Planning Director.

Mr. Bacon: Yeah, I think that would be good because --

Mr. Alueta: If you wanna approve minor --

Mr. Bacon: Yeah.

Mr. Alueta: Okay.

Mr. Bacon: Because it would be a change, and we've already been through the normal process, and now they want a little bit more so --

Mr. Kalipi: Commissioner Williams, you had a comment?

Mr. Williams: ...(inaudible)...

Mr. Kalipi: Oh, okay, you agree. You just changed -- okay, so we're actually saying that we're back to we want the Commission to be the one instead of the Director, yeah? That's going back to --

Mr. Alueta: Right. That's on page 1, line 20. I would just change out Planning Director and say, "The Commission may approve changes to the conditional permit." And then on the extension's part, if you want the extension, you can just put in, you know, the Commission again. And again, that's provided that, you know --

Mr. Kalipi: Okay. Is that -- we agree with that?

Mr. Alueta: Again, the Commission would have authority only to do a time extension if there is no changes. And the Commission would have the ability to do non-substantial changes. Okay? And if there was any substantial changes, then it would still have to go back to the Council. And then let's see. And this would -- only talks about extensions. Okay? So, you know, in the way it's worded, I'll let Mike chime in to get what Commissioner Chaikin was saying was that he doesn't want the Commission to deny it at this level. He just wants them to be able to grant extensions, if warranted. And if they wanted to deny it, they would just recommend denial to the Commission.

Mr. Kalipi: To the Council.

Mr. Alueta: I mean to the Council. Excuse me.

Mr. Kalipi: Yes, that's what we're saying, Joe.

Mr. Alueta: Okay. I got the meaning.

Mr. Kalipi: Okay, so nobody opposed it? That's our language for 19.40. Thank you, Joe. 19.45.

Ms. Buchanan: Would that also go for line 48 where it takes out administration and puts our Planning Director? That's okay, yeah?

Mr. Alueta: On page 2, line 5, it talks about the Director considering unusual -- for time extensions. So if he feels that, you know, if they don't file for a time extension in a timely manner. This just gives the applicant more leeway. It makes it clear that he can file like if it's gonna expire in 45 days, he can still file it.

Mr. Kalipi: So is there a problem?

Mr. Chaikin: I mean, why do you even need to put that in there?

Mr. Alueta: I think because the way the conditions are worded, it says that the applicant shall file within 90 days prior to the expiration. And if the person fails to file 91 or 95 days prior to the expiration, then they technically -- there'd be a violation there. And then how do you resolve a violation of not meeting a time extension? I mean, do you still have a valid permit? You're asking for a time extension. It's just that you didn't meet this arbitrary deadline of 90 days. And we're saying is that, yeah, we understand that and so if somebody miss it, we can -- we're not going to go and bash you over the head for it. We're just gonna say, yeah, we got it. It's not timely, but we're still gonna process it.

Mr. Kalipi: But what if it's about 300 days later?

Mr. Alueta: Oh, if it's after-the-fact, the permit basically -- I would read it as being expired, but I'll let Mike chime in if --

Mr. Kalipi: You know what I mean? You're just saying that if he doesn't make 90 days, it can go a hundred days --

Mr. Alueta: After the day.

Mr. Kalipi: After the thing. I'm saying what if he goes 300 days? What's the difference with 10 days or 300 days?

Mr. Alueta: Right. Okay.

Mr. Kalipi: I mean --

Mr Alueta: I'm just trying to find out -- because it is -- most conditional permits are an ordinance issued by -- I'm not sure. Do ordinances expire like that? I mean, in SMAs, right, if you have an SMA permit, and the way the condition is worded, if you do not initiate within the two years that you're granted and if you miss that date, it's over. There is no permit. Your permit is gone. That's the way it's worded. So you need to get an extension in prior to that two years ending. And there's no -- the way this is worded, there's no ands, ifs, or buts. And we've had people lose their major SMA because they failed to file for -- initiate construction. So if Mike can help me out there.

Mr. Hopper: I haven't reviewed or approved these bills yet. If you wanted to have a maximum time after which they could file for an extension, you could revise that. You could also say something - may allow a late filing if the result is for excusable neglect. That's a term you use in your Planning Commission rules. It does give pretty broad discretion to the Planning Director. So the Planning Director will have a lot of discretionary. The other issue is also if you're talking about non-substantive changes, that's a term that right now I'm not very clear on what exactly that would be, so some clarification perhaps in the law as we draft it might be forthcoming there, but as far as the time extension, A, the Council should be specific. If they say it's a two-year permit and that you must -- and then this extension language comes in, and I'd say, yeah, it would probably be pretty strictly construed if you don't apply for it 90 days prior, then your permit's expired. That's why the permit has a time limit on it. But at this point, if you give the Director this authority, it's pretty broad right now, and I suppose you could do that, you could also specify under which circumstances the Director would be allowed to grant the extension. You could use wording like "excusable neglect." Again, you don't have to agree on the specific wording right now because what I do is work with Joe to compile the comments and to draft the ordinance before it goes up to Council to make sure it's in the proper format. And in doing that, we may address things such as ambiguity in language and things like that. But if you feel like you wanted to say the Director could grant an extension up to an extra ten days, or with an excusable neglect may allow the filing, then you could do that. The problem with these is that normally Council has unlimited discretion in how it does its conditional use permits. And we've kind of advised them, try not to be inconsistent with your own ordinance. So this does sort of limit them a bit. So changing this may allow that flexibility to Council, in this case, the Director. So it's up to you how you want that to be read.

Mr. Sprinzel: It does say may consider unusual circumstances that prevented an applicant from filing. So I mean, it's not that you can automatically go 300 days. It says if there are circumstances that prevented you from filing. I don't see anything wrong with that.

Mr. Kalipi: Okay. Commissioner Chaikin?

Mr. Chaikin: Yeah, basically when the guy is late, his thing is already over with. He's coming to you for a renewal. So, I mean --

Mr. Alueta: You can put that language in saying the Director may consider unusual -- when preventing the applicant from filing a timely extension, and you waived your requirement that the extension had been filed no later than 90 days prior to its expiration. And then put it in, "However, provided that the permit has not gone past the expiration date," or something. We can draft language that basically says as long as he files it before it's expired.

Mr. Chaikin: I mean, I like the -- just completely leaving it out, and leaving it up to the discretion of whoever, you know, whatever body is looking at that thing to renew it. That's just what -- another factor in their decision whether or not to grant renewal.

Mr. Kalipi: Oh, and the other thing is, didn't we just agree that it's going to be the Planning Commission instead of the Planning Director, I mean, just to -- I keep on hearing Planning Director? Commissioner Buchanan?

Ms. Buchanan: That doesn't bother me as much as right above that, that we kinda skimmed over that, and that was discussed. That was -- starts from item 48 under Extensions. Because this is how we've been handling conditional permits, and I will cite several conditional permits on Molokai. I will cite East End, Manae Goods & Grindz. That was one conditional use permit. And we gave them quite a length of time. And the reason why I like conditional permits is because at the end of that time, they have to come back to this Commission, and it's a time to review whether there was an issue, whether there was a problem, something's wrong with it, and then they're asking you to extend their conditional permit. And at that time point in time, they should be really moving to a more permanent type of permit, or rezoning, or boundary amendment, or some type instead of just getting conditional extensions. So that's why I like it the way it is because it gives us that review period. If we go along with the additions made in item 48 to -- they've taken out that whole section, and it reads, "If the Planning Director determines that," then they strike the rest, and it goes on to say that, "the use does not qualify for an administrative review and approval, the extension shall be processed in the same manner as the original application." So what is that?

Mr. Alueta: That means that if you go back up to page 1, line 40, for you to be considered for a time extension, right, and we were gonna -- and you wanted to change that from that the Commission, okay, provided that it meets the following criteria meaning you have to be a permit holder and in compliance with all the conditions, the use approved by the County Council has not been substantially changed, or new uses added that would result in

significant impact above that would result in the approval of the conditional permit. Agencies do not identify new concerns that need to be mitigated. If you -- if that is determined, and this is gonna be determined by the Commission, find that it's okay, right, you then get to do the time extension. Okay? However, if it does not qualify, or you, in this case, you determine that it does not qualify, then you are just gonna be the recommending body, and the whole approval process is it actually goes through the Council. Okay? So all it does is say you can do it if it meets this. If it doesn't meet this, then you can't do it, and it has to be done by the Council. You've amended it to be instead of being the Director, it's going to be the Commission. So I think it meets with what -- it meets what you wanna do - I mean, the changes that you proposed by just adding Commission instead of Director addresses all of your concerns.

Mr. Kalipi: Yeah, I would agree with that. I like that, Joe. On a different subject, we did not come to a conclusion of the 90 days, though. So I mean I don't wanna jump back and forth to da kine, so if Commissioner Buchanan is alright with that, that it would be us instead of the Planning Director that we're gonna put our name in there, so that's gonna take care of that situation. But are we comfortable with the 90 days? You know, the intent was to give them a cushion if you say it's 91 days they lose their permit. But we're saying that we don't wanna give them an open-ended 90 days that we -- you know, in some sense, and then Corp. Counsel said maybe something about neglect or even giving a maximum time or a maximum day. So 90 days would be like from a minimum, I don't know, 120 days would be maximum, just to file the proper paperwork. And, you know, if you have a conditional permit, you know it's gonna come up. So something like that. Commissioner Chaikin?

Mr. Chaikin: Yeah, well, I'm not sure if, you know, if you have a conditional permit that you're actually gonna know it expires. I mean, you might forget. I mean I don't think there's any bells or whistles that go off when the conditional permit is about to expire. And I can see, you know, especially in some entities changing staff over or something, and they just don't even realize it that their conditional permit has expired, and then they run past. And so if we have a certain period of time that we don't have that flexibility to let them slide or not let them slide, I don't know. I mean, my whole thing is just to leave it out and not even -- just let it up to the discretion of the renewing body whether they wanna accept their lateness or not.

Mr. Kalipi: Okay, Commissioners, any more input? We're gonna just leave it as is, move on, or put in something different? Okay, we get the consensus that we're just gonna leave it as is.

Mr. Alueta: Okay.

Ms. Buchanan: We're changing the Planning Director to the Commission?

Mr. Kalipi: Yes.

Ms. Buchanan: Okay.

Mr. Kalipi: Yeah, we'll --

Mr. Alueta: Okay, that's not what you said. So you're gonna change the -- okay, Commission.

Mr. Kalipi: So we're leaving the 90 days or whatever you got there, but maybe for your information we wanna tag something on. If it's not, it's gonna be open-ended.

Mr. Alueta: Well, that's what I asked you. Did you -- is there a consensus amongst the Commissioners, you want me to tag on provided that it has not expired so that they don't file afterwards?

Mr. Kalipi: No, they're saying no. Okay.

Mr. Alueta: Okay. So just add you, the Commission? Okay.

Ms. Buchanan: I think allowing for unforeseen circumstances like illness or death and stuff like that is reasonable.

Mr. Kalipi: And I think Commissioner Sprinzel said -- read something like that, yeah? Okay. So we're good, Joe.

Mr. Alueta: Okay. So there was a motion to approve it all?

Mr. Kalipi: We're on 19.45, yeah?

Mr. Alueta: Okay. We're going to do them all first. Okay.

Mr. Kalipi: Yeah, yeah. And then I'll take public testimony after we approve 19.45.

Mr. Alueta: Okay. Sounds good. Okay, so this is dealing with project districts. So as the requirement for special uses and other development standards, what this -- project districts are their whole separate animal from Title 19 in the Zoning. As you know that in the regular Maui County zoning, you have R-1, R-2, R-3. Okay? In project districts, you create your own zoning development. So you have -- so that's why in Maui Lani, the project districts such as Maui Lani, you have lots that are 3,000, 4,000. Okay? In some areas, there may be project districts where all the lots are five acres or whatever. It all depends on how the project district is set up. All of their zoning standards, development standards, are

completely different for the most part from the County. They do not follow the residential, apartment, or commercial development standards. They create their own. Okay? And it's extensively reviewed and -- when it goes to the Planning Commissions and the Council. One of the things they don't have or -- is that when you do that, you kind of have to decide what standards do they follow. And for a long period of time, if you didn't have -- there was -- if you didn't have your own parking standards, you had to -- you know, you followed the County Code parking standards. One of the things the Director is adding is on -- one, we're allowing for concurrent processing. And then it allows for special uses in the development. So just like we have in residential districts, or we have special uses and accessory uses that we're going through Title 19, in the project districts, in the Phase 1 approval, if you look at it, they allow for permitted uses, accessory uses, and we're adding special uses. That was never in there. So project districts didn't have that ability, or didn't add special uses, or have listed special uses for each of their categories.

Ms. Buchanan: So the project districts have their own ...(inaudible)... or their own standards and whatever?

Mr. Alueta: Yeah, they have their own setbacks. They come up with what they wanna have their setbacks. They come up with what their minimum lot sizes to be. They come up -- they even -- sometimes they come up with their roadway width.

Ms. Buchanan: And their own definitions?

Mr. Alueta: If they choose to do so, they will come up with their own definitions, but they will be specific like for this Title. For the most part, they will still use Title 19.04 which is the definitions section. These are again, this is for massive projects, you know, Kapalua, Maui Lani. Talking thousands of acres. You have -- so those are -- on Maui we have Project District 1, which is Maui Lani. Project District 2 and 3 I think is Kehalani, you know, right outside of Wailuku, those new homes. Those homes are on like 5,000 square foot lots, you know, some of them. And they go up to 8,000, but they don't have an R-1, R-2 zoning. They have -- they come up with their own SF for whatever numbers they want. It's basically a code within a code.

So this just allows for special uses. Again, it also makes the -- unless a concurrent application has been filed. So what it does is it allows for someone to come in for Phase 1 and Phase 2 at the same time. Some people have further along. Normally in Phase 1, like I say, you come in and you just say, this is where it's gonna be. I want "X" amount of acreage of residential uses, "X" amount of acreage of apartment uses, and this is the bounds. Okay? You don't say anything else. That's all you're doing. And if you read the community plan, that's how it's pretty much described as in the different project districts.

And then Phase 2, you kind of come up with your more specific -- this is where I want my residential. This is how many lots I'm gonna have. This is -- this is where these lots are gonna be located. Most developers nowadays come in and do Phase 1 and Phase 2 altogether. So they consolidate because they already have a good idea of what they wanna do. In the old days, it was pretty much A&B. They said here's 500 acres. I wanna do this with it. This is the density I want. And then they get the approval for Phase 1 and then they sell it off to somebody else who comes up with the more -- spends more money on the plans. And so this just allows for people to come at one time. It saves time and money for everyone.

And again, in accordance with representations made, on page 1, line 37, you know, that's kind of a catch -- a good catchall line because sometimes when you're at Council, you may make representations of what you're gonna do, and we wanna be able to hold the people's feet to the fire.

Ms. Buchanan: Joe, the development standards, so you inserting that they can now submit other development standards? And you just said they not subject. It's a code within a code. And I'll just take a stab at this. So if they wanted to do a home that was in excess of --

Mr. Alueta: What page and line?

Ms. Buchanan: Page -- line -- page 1. What is that -- line 26? They wouldn't need -- if their plan was approved and their house height was 40 feet from finished grade where the standard for Maui County is 30, that would be allowed? They wouldn't need to come to the County for a variance because their plan was approved?

Mr. Alueta: Correct, but, I mean, that's -- how would they get that approved? I mean, Council -- the Commission and the County Council would approve it. What the other development standards refer to is, as you know, people are moving towards this design -- more specific design standards. And so as part of their code, right, form-based code, people are coming up with this is not only the height, dimensions, but this is the materials you need to do. This is what your windows need to look like. You need to have an alleyway on the back side. You need to -- you know, we're gonna come up with this is where your trash receptacle is going to be located. I mean, they're gonna get specific. This is what our walls are going to look like, and they come up with all of that. In our County Code, we don't have -- we have wall heights and fence height, but we don't say it has to be a stucco wall. We don't say it has to be a wood fence. We just say here it is. In these project districts, they can get very specific on those, and that's what that other development standards are referring to.

Mr. Kalipi: Commissioner Sprinzel?

Mr. Sprinzel: I seem to remember from the Urban Design Review Board that almost all these larger projects went to them. And they said what color you could have, and whether it could be narrow, or wider, or taller, or whatever. I mean, the town center of --

Mr. Alueta: Maui Lani.

Mr. Sprinzel: That one there, the Wailuku extension, south of Wailuku, that huge project, they all came to the Urban Board first.

Mr. Alueta: Correct, and then that went -- they, with the input of the Urban Design Review Board, would come up with that other development standards, but the ultimate approval or authority will normally be -- will get adopted. And this is just a list, a laundry list, of what they need to have. And so that color scheme and material samples of Urban Design Review Board is all part of that other development standards because that gets incorporated into their project.

Mr. Sprinzel: What I was saying is it doesn't just go through without anybody looking at it.

Mr. Alueta: Oh, yeah, yeah.

a. Public Hearing

Mr. Kalipi: Okay, any more? Joe, you're still explaining the bill, yeah, because we're gonna do public testimony and we're gonna come back so -- okay, so anyone from the public would like to testify at this time for proposed bill ordinance amendment Title 19.45, you can do so at this time. Seeing none, we're gonna close this time of public hearing. Thank you. Joe?

Mr. Alueta: Okay, again, moving on to - let's see - substantive revisions shall subject to Phase 2 Planning Commission approval. The Planning Director may approve the revisions if they're not substantial. So it's just clarifying who's the authority. And then again, this is the substantial section. So it's up to you guys how you want to --

Ms. Buchanan: But why they add the Planning Commission, and then right after that put the Planning Director may approve revisions if not substantial again?

Mr. Alueta: Right, right, right.

Ms. Buchanan: Why?

Mr. Alueta: We wanted to clarify each phase and who has the authority so that it doesn't automatically -- there's no ambiguity as to who's supposed to approve it. And we have

been -- Phase 2, the final preliminary, and the preliminary site plan is approved by the Planning Commission.

Ms. Buchanan: I don't know. I -- I -- like Commission Chaikin said, that -- why is it even there -- the Planning Director? This is line -- starting on line 5 and going to line 9. You looking to streamline and make things easy, but by writing it that way, you just confusing again, because you say the Planning Director may approve revisions to Phase 2 if the revisions are not substantial. And we no trust him to make that call. And do not result in significant impact, blah, blah, blah, from Phase 2 approval. And then proposed revisions to the Phase 3 approval shall be subject to Phase 3 approval procedure.

Mr. Sprinzel: So I would take that whole paragraph out.

Mr. Alueta: Yeah, and that would be -- if the line is going on that way, then I would take out from the last part of line 5. You know, just take out the thing about having the Director do -- and then -- but I would do -- at this point in time, because I don't understand the -- I would say do it all the way up to the point where "proposed revisions to Phase 3" and just leave that part in.

Mr. Kalipi: Okay, so you guys understand? We are in agreement with that? No? We need more clarification?

Mr. Alueta: Again, currently --

Ms. Buchanan: I reading Phase 3 approval process. Hang on.

Mr. Alueta: Phase 3 is the Planning Department. Has always been. So we're just saying is that if you're gonna amend Phase 3 approval, you go back to Planning Department.

Ms. Buchanan: I trying to figure out why you went insert "Planning Commission" then when you trying to take the Planning Commission out of the rest of the process to streamline thing.

Mr. Alueta: Well, I think because it says -- I think we're trying to make sure that it says "Phase 2," right? And we wanna make it clear that the Phase 2 preliminary is the Planning Commission, not the County Council or someone else. We just wanna make sure that it's clear whose role is doing what.

Ms. Buchanan: So when it gets to Phase 3, only the Planning Director approves it at Phase 3?

Mr. Alueta: That's the building permit, so we see the big plans.

Ms. Buchanan: That's receiving already.

Mr. Alueta: So I'm gonna strike -- I'll read what I'm striking. How's that sound? That I hear what you want me to strike? Line 5, "The Planning Director may approve revisions to Phase 2 preliminary plan if the revisions are not substantial and do not result in a significant impact above what would result from the Phase 2 approvals." Okay?

Mr. Kalipi: Yeah. Got it. Okay. We're in agreement, Commissioners? Any objection? Seeing none, that's it. That's the one, Joe.

Mr. Alueta: Okay. You wanna get a motion?

b. Action

Mr. Kalipi: Okay, so now, I'll entertain a motion from the floor of what we just covered which is before you.

Mr. Alueta: Dealing with amendments to Title 19.32, 19.36, 19.40, and 19.45.

Mr. Kalipi: So motion from the floor?

Mr. Bacon: I make a motion that we accept those amendments as we've described them.

Mr. Kalipi: Do we have a second? Okay. Any discussion?

There being no further discussion, the motion was put to a vote.

It was moved by Mr. Bacon, seconded by Mr. Sprinzel, then

VOTED: To accept those amendments as described.

Mr. Kalipi: Okay, unanimous. Motion carried. Thank you, Commissioners.

Mr. Alueta: Mike, do they need a motion to approve the whole thing now or was that good enough?

Mr. Hopper: You're clear on their comments?

Mr. Alueta: Yeah, I'm clear on their comments. Are they approving the Director's recommendations with the Commission's amendments?

Mr. Hopper: I thought at some point they did a unanimous consent approval for a lot of those comments.

Mr. Alueta: Okay. Yeah.

Mr. Hopper: You're clear on the comments, and that they've either moved or gave unanimous consent for each set of comments they had.

Mr. Alueta: Yeah.

Mr. Hopper: Right? Correct? Okay. Then I think you're okay. And then that's it. And then you generate to Council these minutes and a description of what the comments were from the Commission, and send them to the Council.

Mr. Alueta: Okay, thank you.

Ms. Buchanan: I guess Corp. Counsel is worried that we would need to see a draft before it went to Council because otherwise that's gonna be our comments, yeah? I'm understanding it is our comments because I trust Joe and he has the minutes of the meeting.

Mr. Hopper: Yeah, Joe will have that letter. The Council will also get the minutes. So if they want to, they can actually read what you say on the issue.

Mr. Kalipi: And, Joe, more than likely, we gotta defer the next part of Unfinished Business on H because it's almost a quarter to, and I was -- maybe Clayton can kind of come up and let us know of the time constraints.

Mr. Yoshida: Thank you, Mr. Chairman, Members of the Commission. We have a 6:10 flight, Mokulele. I think we can go to about 5:00, and then we need time to kind of put away the equipment, and about 20 minutes to get to the airport.

Mr. Kalipi: Okay, it'll be kind of challenging if you want to take on the next item because we need refreshing or whatnot, or we could defer that part, and move right into the Director's Report, but I don't know. Commissioners, you guys wanna tackle one more? Okay. So I'm getting the consensus -- we're gonna -- okay, we're gonna defer Unfinished Business, H, and we're gonna --

Mr. Alueta: Okay, can I at least, Mr. Chair -- sorry.

Mr. Kalipi: Go ahead, Joe.

H. UNFINISHED BUSINESS (PART II)

For Item Nos. 1-5, the proposed bills provide for the Planning Department's update and simplification of the County's business district. The updates provide for improved useability, adding mixed uses to commercial districts, and including transient vacation rental, small scale energy facilities, and residential uses. (*Public hearing conducted on December 9, 2009. Commissioners: Please bring your documents.*)

The proposed bills can be found on the County Website at:
<http://www.mauicounty.gov/index.aspx?nid=1127>

1. **MR. JEFFREY S. HUNT, AICP, Planning Director transmitting A Bill for an Ordinance Amending Title 19.15, Maui County Code, relating to Country Town Business Districts and Amending Title 19.510, Maui County Code, relating to Application and Procedures. (J. Alueta)**

The Commission may take action on this item.

2. **MR. JEFFREY S. HUNT, AICP, Planning Director transmitting A Bill for an Ordinance Amending Title 19.16, Maui County Code relating to B-1 Neighborhood District. (J. Alueta)**

The Commission may take action on this item.

3. **MR. JEFFREY S. HUNT, AICP, Planning Director transmitting A Bill for an Ordinance Amending Title 19.18, Maui County Code relating to B-2 Community Business District. (J. Alueta)**

The Commission may take action on this item.

4. **MR. JEFFREY S. HUNT, AICP, Planning Director transmitting A Bill for an Ordinance Amending Title 19.20, Maui County Code, relating to B-3 Central Business District. (J. Alueta)**

The Commission may take action on this item.

5. **MR. JEFFREY S. HUNT, AICP, Planning Director transmitting A Bill for an Ordinance Amending Title 19.22, Maui County Code, relating to B-R Commercial District. (J. Alueta)**

The Commission may take action on this item.

Mr. Alueta: I worked so hard to get the -- I brought you a map. I brought you a map.

Mr. Kalipi: Oh, okay, okay.

Mr. Alueta: Let me just present the map so you guys can see it, and you guys can mull over it. One of the issues was always the mapping so we've been finally working on Molokai on our Dead Sea Scroll, and we have some pretty good idea of where the zoning is. So this is the map that shows you all the areas that are B-CT, B-1, B-2, B-3, M-1, and M-2 because, remember, any use in the -- allowed in the business district is automatically allowed in the M-1, M-2 districts. So I wanted to make sure -- so we catch it all. So I'm not trying to pull a fast one on you.

Ms. Buchanan: One copy of this map is gonna -- that staying on Molokai? We have one here in our office?

Mr. Alueta: No.

Ms. Buchanan: Okay, you need to leave that.

Mr. Kalipi: Okay, so we're gonna just gather around and take a look at the map.

Mr. Alueta: Okay, just to do a quick overview of this map that we provided is that it shows the Island of Molokai, and again, it shows what I talked about: the B-CT, B-1, B-2, B-3, B-R, and M-1, and M-2. It doesn't look like you have any B-3 zoning which is -- I'm pretty sure. And then we have six blow out maps that zoom into the areas, and you can see the parcel layer as best we can. Not everything jives, but this is the best map we have that we've produced for you primarily just to show you the general locations of all the different parcels and existing businesses that would be impacted by the five bills that we have before you. And I included M-1, M-2, industrial because although you're not dealing with any amendments until the next meeting about M-1 and M-2, because any use in the B-1 and B-2 or B-3 is allowed in M-1 and M-2, I wanted to make sure you knew where those uses were. Okay? And then you guys can --

Ms. Buchanan: ...(inaudible)...

Mr. Alueta: Yes, it is, right here.

Mr. Kalipi: Okay, thank you, Joe. Appreciate it.

6. **Status Report on the June 2009 request by MS. MALIA AKUTAGAWA to coordinate a Molokai Planning Commission Workshop on the historical, archaeological, and cultural laws and regulations.**

7. **Discussion that the Molokai Planning Commission be a consulted party on permits issued by various State and County agencies such as water use permits.**

The Commission may take action on this item.

8. **Discussion on appointing a committee to review the rules of the Molokai Planning Commission.**

The Commission may take further action on this item.

I. CHAIRPERSON'S REPORT

1. **Improvements to the Planning Commission's and Planning Department's service to the community.**

Mr. Kalipi: So we are deferring Agenda Item H of Unfinished Business, and then we're gonna jump right to the Planning Director's -- excuse me, Director's Report, Item J.

J. DIRECTOR'S REPORT

1. **Pending Molokai Applications**
2. **Closed Molokai Applications**

Mr. Yoshida: Thank you, Mr. Chairman, Members of the Commission. We have circulated copies of our open projects' report and completed projects' report.

Mr. Kalipi: Any comments or questions for Clayton, Commissioners? Commissioner Buchanan?

Ms. Buchanan: What was FRMP again? What was the acronym for FRMP? What does that stand for?

Mr. Yoshida: Oh, that's the farm plan.

Ms. Buchanan: Oh, the farm plan. Okay.

Mr. Yoshida: In the ag district, they have to do a -- if they wanna build a dwelling, they have to do a farm plan.

Ms. Buchanan: So Malama Cultural Park Halau Wa`a has submitted something, and they opened one project for you folks that going require one SMA permit, yeah?

Mr. Yoshida: Yes, it's an SMA major permit application submitted by Adolph Helm.

Ms. Buchanan: You know all the antenna arrays, did that come to this already? It says it's still open, the Mobi PC, Luci Wilhelm and one, two, three.

Mr. Yoshida: I believe those are still open: the Mobi and the Sprint.

Ms. Buchanan: That means they not existing now? The antennas are not there right now? They wanna be installed?

Mr. Yoshida: I think they have one antenna that's existing now, but I believe that Mobi also wants to put in an antenna on the building.

Ms. Buchanan: Because this is a submission for four antennas on one building in Kaunakakai. And I was -- I can see by driving by that there's an existing something. I don't know who it belongs to.

Mr. Yoshida: Yes, I believe that -- well, there is a -- well, it's zoned B-CT, and the antennas would be a County special -- it would require a County special use permit. So there are two entities that wanna have antennas there. One is Mobi PCS and the other is Sprint PCS. So each of them needs a County special use permit and an SMA minor permit.

Ms. Buchanan: Okay.

Mr. Yoshida: And all of those will come before the Planning Commission.

Ms. Buchanan: Okay. And then the Damien Church.

Mr. Yoshida: Yes?

Ms. Buchanan: They have a request for comment right now, yeah?

Mr. Yoshida: Well, they have a request for an SMA major permit that was submitted in September of last year. There was a request for comments from Chris Hart and Partners that was submitted in February of last year.

Ms. Buchanan: Okay, on page 2 of 3, that Fred Parker, is that the same Fred Parker that we denied the building permit for? It's still open?

Mr. Yoshida: That's correct, Fred Parker, where they denied the exemption.

Ms. Buchanan: Okay. And I was just wondering because on the same page, the Molokai concrete box culvert installation, was that the one at East Molokai? You know, because sometimes we see projects that fall off the face of the earth, and I just wondering what happened to them.

Mr. Yoshida: Yeah, I think actually those should be taken out because I believe the Commission required an SMA major permit.

Ms. Buchanan: Okay.

Mr. Yoshida: That's the one upstream of that --

Ms. Buchanan: Okay.

Mr. Yoshida: Manaba --

Ms. Buchanan: Yeah, the one that was -- had a lot of issues with.

Mr. Yoshida: D&J Operations.

Ms. Buchanan: Yeah, that one had plenty issues. Right under that, the Dunbar wetland habitat, is that coming in as an SMA major?

Mr. Yoshida: That's an SMA assessment.

Ms. Buchanan: Assessment. Okay.

Mr. Yoshida: That will come before the Commission.

Ms. Buchanan: Alrighty. I think that's it. Thank you.

Mr. Kalipi: Okay, any more comments or questions, Commissioners? Okay, seeing none --

3. Agenda Items for the January 27, 2010 meeting.

Mr. Yoshida: Which brings us to our agenda items for the next meeting on January 27th. We know we're gonna have a site inspection at 9:30 at Ke Nani Kai to look at the proposed ADA compliant walkway. And then we're also gonna consider that at the meeting. We

have about three or four SMXs to bring forth to you. And we have Item H which was deferred. So I guess my question is in terms of the order, what is the preferred order?

Mr. Chaikin: Is the Morgan appeal in there?

Mr. Kalipi: Wait a minute.

Mr. Yoshida: I think we're waiting for the -- well, then it will fall on the County to produce the proposed findings of fact based on the action which the Commission took at today's meeting, and the Commission would have to adopt that. And I guess Steve would have the opportunity to file any exceptions to the County's proposed findings of fact based on the Commission's decision today. So I don't know if necessarily, that will be ready, but for sure, I think we have the Tessmer item, maybe three SMXes, and all of Item H.

Mr. Kalipi: Commissioners, I would like the Tessmer to be there since it's gonna be our second meeting of it. And we should come to some kind of consensus as to the site visit, hopefully. So if the Tessmer could be close to the beginning there. And then I don't know if you guys wanna do Joe next or the exemptions following.

Ms. Buchanan: I think Joe because they have time constraints, yeah?

Mr. Kalipi: Okay. And then the exemptions, we're saying, because there's three or four exemptions to look at after that?

Ms. Buchanan: Maybe we gotta make the call, then. What, Steve?

Mr. Chaikin: I was gonna say that when you have exemptions, a lot of times you have the people come here and they're sitting here. And if they have to sit for a really extensive period of time when we hash this stuff out with Joe, they might get a little restless. So I was just thinking maybe we get them out of the way first. I don't know.

Mr. Kalipi: Okay, so we'll tackle the exemption and then Joe, and then we'll try to keep that in mind. I know we had a challenging time with the first exemption today, so I'll keep that in mind to say if we're not able to come up with a resolution to cut it off after a certain period of time.

Mr. Yoshida: Okay. Thank you, Mr. Chair.

Mr. Kalipi: Okay, anything else, Clayton?

Mr. Yoshida: That's all we have to report, Mr. Chair.

Mr. Kalipi: Okay, thank you. Okay, so --

Ms. Buchanan: Chair, better exhibits would help to expedite the review process for the SMA permits.

Mr. Kalipi: Yes, absolutely. So that's for actually the Planner that's presenting the exemptions coming up, and that's gonna help us expedite the process if we can clearly understand or see the pictures in the packet. Okay?

Mr. Chaikin: And I just wanted to thank Clayton for finding us a new Planner in an expeditious manner.

Mr. Kalipi: Yeah, thank you. Okay, so we're gonna call this meeting adjourned. Thank you, everybody. Aloha.

K. NEXT REGULAR MEETING DATE: January 27, 2010

L. ADJOURNMENT

There being no further business brought before the Commission, the meeting was adjourned at 4:55 p.m.

Submitted by,

SUZETTE L. ESMERALDA
Secretary to Boards and Commissions

RECORD OF ATTENDANCE

Present

Joseph Kalipi, Chairperson
Steve Chaikin, Vice-Chairperson
Don Williams
Lori Buchanan
John Sprinzel
Nathaniel Bacon

Excused

Teri Waros
Napua Leong
Mikiala Pescaia

Others

Clayton Yoshida, Planning Program Administrator
Danny Dias, Staff Planner
Mikal Torgerson, Staff Planner
Joseph Alueta, Administrative Planning Officer
Michael Hopper, Deputy Corporation Counsel
Jane Lovell, Deputy Corporation Counsel