

(APPROVED: 04/14/10)

**MOLOKAI PLANNING COMMISSION
REGULAR MEETING
FEBRUARY 10, 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. ***

A. CALL TO ORDER

The regular meeting of the Molokai Planning Commission was called to order by Chairperson Joseph Kalipi at 12:08 p.m., Wednesday, February 10, 2010, at the Mitchell Pauole Center Conference Room, Kaunakakai, Molokai.

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

Mr. Joseph Kalipi: If everybody would like to – welcome everybody to the Molokai Planning Commission. We'll call this meeting to order. Here with us from the Planning Department: our Program Administrator, Clayton Yoshida. We have Joe Alueta. Back there, Suzie Esmeralda, Clerk. Left of me here is Corporate Counsel, Michael Hopper. Representing the Planning Department, Jane Lovell. To my far right, Commissioner Williams, Commissioner Pescaia, Commissioner Sprinzel, Commissioner Bacon, and Commissioner Vice-Chair Steve Chaikin, and myself, I'll be Chairing the meeting today, Commissioner Kalipi.

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

Mr. Kalipi: So at this time looking at our agenda, we would like to open the floor for any public testimony on any planning or land use issue, except the contested cases as defined in Hawaii Revised Statutes Section 91. If you have anything to testify or would like to share with the Commission, Commissioners, this would be your opportunity. Or you could wait till it comes up on the agenda item today. I also do want to say if you could turn off -- put on vibrate your cell phones, or your beepers, your pagers, so it doesn't disrupt our meeting this afternoon. Thank you. So again, we want to open the floor for public testimony.

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

Mr. Kalipi: Yeah, you could -- it's open for public testimony. So it -- we don't --

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

Mr. Kalipi: Okay, alright. Thank you. Alrighty. Okay, seeing none, we're gonna close this time of public testimony.

C. ANNOUNCEMENTS

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

Mr. Kalipi: We're on Agenda Item C, if you have an agenda in front of you. If you don't, and you would like an agenda, you could see Suzie here. Agenda Item C under Announcements is that there is a -- we have formed a subcommittee to review the rules of the Molokai Planning Commission. Through the process, different meetings, there were some concerns about the language and the clarity of some of the rules, and how to channel or follow certain procedures and guidelines. And therefore, the Commissioners have created a subcommittee -- excuse me, a subcommittee, to review it, possibly, alter it a little bit, and then coming back to the full Commission to make a recommendation or some comments with it. So that's -- we wanna let the public know that this is occurring, and that there is -- the Commissioners are reviewing or in motion to review the rules and the procedures. Okay. And one comment.

Mr. Michael Hopper: Just to be clear, I think the Commission has appointed the Members of the -- who was going to serve on that rule group already. That's correct, right? So while this I think can stay up, and that's for the public to come in and testify on that issue, I just recommend you, Item D-6 be taken off future agendas. Instead of discussion on appointing the committee to review the rules of the Molokai Planning Commission, that's already been done, and no one -- I mean, no other Members are going to be added, I think you can still allow public testimony under Item C-1 without that D-6 there. Maybe more of a housekeeping item, but I just wanted to point that out because it's probably not a good idea to have repeated on the agenda that you're going to form a committee if it's already been formed and you're already working on those rules.

Mr. Kalipi: Commissioner Chaikin?

Mr. Steve Chaikin: I just wanted to state that the reason that we're putting this on the agenda specifically, to notice the public that if you have any ideas on how our rules can be approved, improved, to submit them to us so that we can take those under consideration. There's going to be a number of different opportunities for you to submit those comments or perspective rule changes, but that's why we have that in the agenda, that announcement, specifically to notify you guys that, hey, if you have any suggestions, bring them forward to us. Thank you.

Mr. Kalipi: Thank you, Commissioner Vice-Chair Chaikin and Corp. Counsel, for the clarification of housekeeping. And so for the public, the subcommittee has already been

selected from the Commissioners. And again, if -- as Commissioner Vice-Chair said, if you would like to submit certain information to the subcommittee, you are welcome to do it at any time. And so we constantly wanna engage the public to let them know that this is the process, and we are in process of looking at procedures and rules, and so forth. Okay. With that said, if you do wanna testify about the subcommittee or wanna comment, I would like to give you this opportunity to testify about it or comment on it. So the floor is open. Okay, seeing none, we're gonna close this time of public testimony on Item C.

D. UNFINISHED BUSINESS

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) (C. Cortez) (The Commission concurred with the SMA exemption at its April 22, 2009 meeting.)
 - a. **MR. BRIAN T. MOTO**, Corporation Counsel and **MS. JANE E. LOVELL**, Deputy Corporation Counsel, DEPARTMENT OF THE CORPORATION COUNSEL, attorneys for the Director of the DEPARTMENT OF PLANNING submitting the County's Proposed Findings of Fact, Conclusions of Law, and Decision and Order granting the Motion to Dismiss the Appeal dated January 21, 2010 per action taken by the Molokai Planning Commission on January 13, 2010.

The Commission may take action on this matter to approve the Decision and Order, approve with modifications, or take some other action.

Mr. Kalipi: Moving on to Unfinished Business D, Mr. Stephen Morgan appealing the Director's decision to exempt the Zappacosta farm dwelling from the special management area permit requirements on property located at Papohaku Road. How we're gonna proceed with this is I'm gonna have, at this time, Ms. Lovell, give three to five minutes. If she wanna comment on what was submitted to the Commissioners, I'll allow you that time. If there's any questioning, then we will question Ms. Lovell. And then following Ms. Lovell, I'll have Mr. Morgan have three to five minutes to comment on his submission to the Commission. Okay?

Ms. Jane Lovell: Thank you, Chair. Good afternoon, Chair and Members. Thank you for allowing me to be here today. I hope you all have the proposed findings of fact, conclusions of law, and decision and order that I submitted for your consideration in mid-January. I tried to keep it relatively short and focused, and tried to keep to the exact issues in the appeal itself as opposed to what I would call the merits or lack of the merits of the Zappacosta project itself. I think among the key findings or that the decision at issue was the decision of the Commission and not a decision of the Director because the Director does not have the power under your rules to make the final decision. So at this point, I would ask that you give your consideration to the findings of fact, and conclusions of law. And certainly, if you have any questions about them, I would be happy to try to answer them.

Mr. Kalipi: Commissioners, any questions for Ms. Lovell? Okay, seeing none, Ms. Lovell, thank you very much.

Ms. Lovell: Thank you.

Mr. Kalipi: Mr. Morgan?

Mr. Stephen Morgan: Aloha, Commissioners. Thank you for having me here today as well. I want to respond to a couple of issues on the Director's findings of fact and conclusions of law. My first comment is in regard to paragraph 7 under Findings of Fact.

The first point has to do with due process in regard to the voting process that took place on January 13th. While I was asked to prepare the findings of fact for the Commission's decision supporting my appeal, it seemed apparent that because it was a decision of the Commission and based on the reasons by the Commission itself that the final draft would be created or at least edited by the Commission especially, given the fact that you have a service of legal counsel available to you. You have to admit there's a certain logic and reasonableness to this.

As it was stated in the January 13th agenda, one of the options that you were supposed to have offered when voting was the option to develop your own conclusion, which could've been anything from a slight modification to an entirely new draft. Again, as I stated before, you have the luxury and privilege of legal counsel, which could've assisted you in this process. But this option, as it was clearly stated on the agenda, was not offered to the Commissioners. In light of this fact, I believe that the voting process was incomplete and that my due process was violated.

Going on looking at -- into the conclusions of law in regard to paragraph 2 -- I'm sorry. I haven't gone there yet. My second point in regards to paragraph 7 is that the Commission

also made it very clear that one of the reasons for ending this hearing was that it was costing too much money to keep these hearings going. In the beginning of this process, I was told by the Director's office that these were legal hearings and the Commission should be treated as a jury as of a regular courtroom. Now, I can't have possibly imagined a regular courtroom, or of that matter, any judge thing, a case dismissed because this hearing is costing too much money. I'm sympathetic to this. Obviously, I don't want to see more money spent than needs to be, but I was not the one that gave a 22,000 square foot house the green flag for SMA exemption within three hours of the time that a plot plan and dimensions of the project were received. And I wasn't the one that six days later gave the green flag for a final determination agreeing with the exemption without any further investigation. In light of the fact that expense of the hearing process was one of the reasons given by the Commission for ending this hearing, this Commission has proceeded using arbitrary and nonexistent rules. Nowhere is there any precedent or rule set forth to allow this Commission to cease these hearings because of cost or expense. In light of the cost, I'm not even sure what we're talking about exactly. Ms. Lovell and Mr. Yoshida are on Staff. Maybe we're talking about plane tickets. Regardless, it's an argument that has no merit in this hearing. And either way, this Commission has chosen to proceed according to arbitrary and nonexistent rules.

In regards to conclusions of law, paragraph 2, I'll go ahead and read the brief statement that I made which says:

Although the rules state that the Commission makes the final decision, this does not negate the fact that other decisions are made, or that other decisions can be appealed. In this case, there were two decisions made: one by the Director, and one by the Commission. This fact was clearly recognized by the Planning Commission when it voted on September 28, 2010 in support of my right to appeal.

I then go on to establish responses to paragraph 3 through 5. And basically, what I'm repeating here and stating about points that the Commission itself made in support of my right to appeal. And this is easily evident if you go back and review the September 28th minutes. If the Commission goes on to support the Director's decision which concludes that the only appealable decision was the Commission's decision and not a Director's decision, the Commission would not have to -- would have to not only deny my right to appeal, but also reverse its previous supportive reasons for allowing my appeal. To reverse these previously established conclusions again violates my right to due process and is capricious. To proceed, you must stay consistent with your previous argument. You cannot just arbitrarily change your argument to suit the Director's conclusion. A conclusion of law must be consistent with the conclusions that you have already established.

In conclusion, I wanna say all that I wanted was a fair chance for the community to review this project, and have a say in whether it might be – it might damage our coastal environment. The community never got this chance because the Planning Director decided to exempt this project from getting an SMA permit. And the Planning Commission just basically rubber-stamped the Director's decision. I ask the Commission to allow my appeal to the Director's decision so that the community could learn more about this project and have input in it. I did my best to comply with the Commission's rules and I was glad when the Commission decided to allow me to appeal. If the conclusion of today's hearing is that the Commission will continue with a reversal of its decision, I have no choice but to file a lawsuit against the Planning Department and the Molokai Planning Commission which is allowed under Hawaii Revised Statutes Section 205-A(6), and ask for an injunction against the Department, the Commission, and the Zappacosta project. If you had allowed my appeal, I've not been forced this position.

In conclusion I wanna say, I have no personal vendetta. I have no personal gain to be achieved by going -- coming against this project. My only concern all along has been that justice be served on behalf of our community.

Mr. Kalipi: Any questions, Commissioners? Commissioner Sprinzel?

Mr. John Sprinzel: First of all, Steve, we didn't rubber-stamp it. It was fully discussed. We listened to everybody in the audience and the decision was made to allow an exemption. So that part of your argument is wrong. Secondly, in my case, cost and time had nothing whatsoever to do with the vote. And the third thing is, the Commissioners' vote to accept your right to appeal was not based on law. And the people who voted to accept your appeal admitted it was emotional and it was their feelings about the Zappacosta thing. I agree. I sympathize. I had problems with it myself. But having duly voted, it should've been just -- your acceptance should not have been voted on emotion. It should've been voted on law, which it wasn't, and subsequently, we have corrected that. Thank you.

Mr. Morgan: You say it was not rubber-stamped. Can you tell me what assessment materials that you or other Commissioners reviewed in regards to the approval of this -- I'm sorry, in accepting SMA exemptions?

Mr. Sprinzel: Have a look at the minutes.

Mr. Morgan: I have thoroughly reviewed the minutes. I find no assessment materials available. I find no -- no maps were provided for anywhere here on the island. I find no assessment of the changing of the location of the project. I find no assessment of the impact of the dimensions of the project. I find no elevations. I find no answers to any of the basic questions regarding cultural, historical issues on the property. They're simple --

on the assessment, all there are, are yes, no, yes, no. There's no explanation as SMA law does require, explanations for all these answers. You have an incomplete assessment, which I personally don't believe you or the other Commissioners reviewed.

Mr. Sprinzel: We had all sorts of drawings in front of us, all the plans. We had virtually everything we have on every other -- every other proposition we in front of us. There was nothing different. I agree, originally, in the notice, no size was mentioned, and that upset me, too. But there was no objection from the floor or from the Commissioners at the time.

Mr. Morgan: Again, as your Commission noted, one of the reasons, and this is your own Commission deciding this is one of the reasons they supported my right to appeal was the fact that a lack of -- including those dimensions interfered with the process of people testifying. It interfered with Points A and B. A and B, I forget the letters, but basically, it interfered with the appeal process. I'll conclude it with that. That was a decision by your Commission. You were not here at the time, but that was a decision your Commission made in which you were a part of.

Mr. Kalipi: Commissioner Pescaia, you had a question for Mr. Morgan?

Ms. Mikiala Pescaia: So these issues that you have -- you're mentioning now, you've included that in your findings of fact, the reasons why we need to reconsider -- these exact points? In this --

Mr. Morgan: That's not findings of fact. That's response to the Director's findings of fact but, yes, those same issues on the findings of fact that I prepared for the Commission, they are included, yes. But what you have there is a response to the Director's findings of fact and, yes, they are included. I'm just basically summarizing them right now for your sake. That's all.

Mr. Kalipi: Any more questions for Mr. Morgan, Commissioners? Commissioner Chaikin would like to just comment.

Mr. Morgan: Sure.

Mr. Chaikin: Yeah, as you're aware, I've been somewhat supportive of your position through this process, but a couple meetings back, I really felt that the onus of moving this process from one point to the next point should really be on your shoulders. I mean, the Commission should not be working on your behalf to get this appeal moved through the process. So with that, we kind of left it up to you to come up with these findings of facts, conclusions of law, something that we could support, and you did. You did a pretty good job and you submitted those to us, but in reading through those, you know, I really felt that

there was some fundamental flaws in your argument specifically when you keep referring to the decision to exempt this as the Director's decision. Now, it's true that he does make some determinations. And you can even call that a decision, but the way that I understand the process working is that the Planning Department is like our Staff. Okay, they go out and they collect information. They collect facts. They come to some kind of a conclusion, or determination, or some kind of a preliminary decision, or if you even wanna call it a decision. And they present that to us for the final -- as the final decision-maker on the exemption process. So even though the Planning Director does all of these things, ultimately, it's our decision. And I don't think there's any ambiguity in that. It's very clear. I think all of the Commissioners understand that. The Planning Department understands that. And they might even send out letters to the Project Administrator or the owner saying what their -- what they've concluded. But they also say that it's, you know, ultimately our responsibility that we have to concur with them. So, you know, when you put in your documents all the way through there somehow this decision was made by the Director, that's where I gotta part from your argument because it's clearly we have the authority and only do we have the authority.

There's other arguments within your text that I think that are viable and good arguments, although, when you take the whole thing as a whole, you know, it's nothing that I can sit there and wholeheartedly support. And we've given you a couple of chances to come through with documents that I would feel comfortable with. And personally, there's a lot of different things that come into making the decision that I made for the last meeting, but ultimately, the primary thing is the fundamental flaws in some of your logic of your argument.

Mr. Morgan: Can I respond? Of course, one of the ambiguous territories that we still -- at the very beginning was the fact that it was the Planning Director that was the authoritative signature in the process. And that could be argued from both ways. He could say, well, he didn't have the right to. Well, if he didn't have the right to, then the process from which the Commission gives its final determination is invalid because they did not go through the steps necessary, which one of those steps requires notification to the parties involved. And so that step was never fulfilled, which in that case, you have no Commission's decision to begin with. On the other hand, if you say that it was obviously, the Director did have the authority to sign that, well, indeed you have a Director's decision to appeal to.

Either way, if you do say there's a Commission's decision, as was stated, there were two decisions in this case. That's your Director's decision. If the Commission's decision is considered appropriate, was validated in that and activated in the process of that -- I forget the dates now -- May 8th. Is that what we're talking about now -- letter? And his recommendation, his decision of exemption is validated at that point. So you have some, you know, I agree, you have some ambiguous territory when it comes to that Director's

authoritative decision being signed, but it had -- that position had to be -- had to be challenged.

Furthermore, you had the option to -- if you felt that that was a problem, you had the option to eliminate it. And maybe you wouldn't have exercised that option, but the fact is, at our last hearing, as you stated on that -- the agenda clearly was the -- the Commission, one of the voting points was to decide whether to create and develop their own draft. And that includes anything from very, very minor changes to big major changes. And the fact that you did not even provide that option violated my due process.

Mr. Chaikin: Alright. Thank you, Stephen. Yeah, as far as the process or the procedure goes, the way that usually is within the Commission is that any Commissioner can come up with any motion he or she feels is appropriate, and that's what happened. I mean, in every single case, we don't review the written documents that are part of the meeting to review what all the potential options may be because there's a lot of different options. We're just available to make a motion as it's presented, but if you want, Corp. Counsel can chime in on that. Was that -- do every single time that we make a motion, do we have to review prior to that, all the potential options available to the Commission?

Mr. Hopper: Would you like me to do this -- explain this now, or you want to go through the rest of the questions with Steve, or I can answer questions? There appears to be a couple of due process issues that Mr. Morgan raised. I could address those now or would you like me to do -- would the Commission like me to do that now or later?

Mr. Chaikin: I'd say go ahead.

Mr. Hopper: Okay. In my opinion, the due process issues was they were given notice that the findings could have been changed, and that they might not be acted on as written. Originally, you had a meeting. You said we want to have the ability to change the findings or to have -- you know, you asked for another draft, asked Steve to prepare that. You also said we want the freedom to be able to amend this or to change our decision. A letter was sent out explaining that that might happen at the next meeting, and in fact that the parties should be prepared for that. And so I think that did give adequate notice to the parties that that might happen at the next meeting. At the next meeting, I think it was clear that your options were to -- and the agenda is not much of an issue because this is not subject to the Sunshine Law. To me, the issues are -- was Mr. Morgan and Ms. Lovell, as the parties, given notice of what might happen. I think it was clear that the Commission could decide, if it wanted to, to amend the findings as they were; to produce their own, if it wanted to; or to decide not to go with those findings, to amend their previous decision, which it did, and ask for new adoption of Planning's -- from the Planning Department, which you have before you. Until the Commission makes its decision based on findings of fact and conclusions

of law, and votes to adopt those, its decision has not been made. Therefore, to say that, orally, reasons given for a vote at one point were -- or that the Commission's bound to that forever is incorrect, because until the written decision is actually adopted, there is no decision that's been made on the record. And that's required under your rules. That's required under HRS 91. And I believe that's the reason for the findings of fact and conclusions of law is because it sets forth in detail the reasons for making the decision.

So today is the day in which you really set forth your reasoning. And the Commission always has the power since these are your findings of fact. You might have a party to draft them for you, but these are your findings of fact. You always have the ability to amend them, to adopt different ones, or to reject them outright and ask for a new one.

So if you're talking about the issue of each time a motion has to be made, do all possible options of a motion have to be presented, I would not agree with that. I think that somebody can make a motion to basically, do anything legally permitted, and doesn't necessarily have to have all options set forth or give all options possible. Frankly, there's so many different possible options of actions to be taken. It doesn't have to be done before every single vote. I mean, apparently, there are due process objections. I would just say in response to that that I do believe that with respect to the process of adopting these findings, at this point, I do not see any due process problems with adopting findings and conclusions today, if you see fit.

So that's my opinion on the matter. I'm sorry to be perhaps more long-winded than you would like, but I wanted to address the concerns that were raised. And that's my advice that I give to the Commission at this point.

Mr. Kalipi: Okay, so anymore questions or -- for Mr. Morgan? Mr. Sprinzel?

Mr. Sprinzel: Steve, the one thing I said to you at your first address to us this last year was you kept saying the Director's decision, and you still do now. And I pointed out to you that it wasn't the Director's decision that we made. We made a decision. Alright? He gave us his recommendation, which he does on every single case probably, when you built your house, too. And so all the time, I've said you can't appeal this to us. You should appeal this to the Circuit Court. Thank you.

Mr. Morgan: I'm aware that you've said it all the time, but that is not the reason that your Commission gave to support my appeal. You were not here at the time. Maybe you've since then read the minutes. I don't know. But your Commission did decide and voted in support of my --

Mr. Sprinzel: I was in the hospital, actually.

Mr. Morgan: Okay, I'm sorry. I'm not assaulting you for not being here, but the fact is that you were not here. And the Commission here did come to a conclusion. In fact, if you read what I have here in my response, most of this is what your Commission did say at the time. They believed that there were two decisions made: one by the Commission and one by the decision that I did have the right to appeal the decision by the Director. That determination was made by your Commission as a vote in support of my appeal.

Mr. Kalipi: Thank you, Mr. Morgan. Commissioners, again, if you have a question for Mr. Morgan, this would be the time for questions. And I'm gonna withheld the comments for Mr. Morgan, but if you need a question for clarification, then I would ask you to ask your question. Okay, seeing none, thank you, Mr. Morgan.

Mr. Morgan: Thank you very much, Commissioners.

Mr. Kalipi: Okay, so hearing the position of the Planning Department, and hearing the position of Mr. Morgan, I turn to the Commissioners. We can do a couple of things at this time: one, you could accept, have a motion to accept the findings of fact, conclusions of law presented to you -- presented to us by Ms. Jane Lovell. You could also accept it or change the findings of fact, conclusions of law, decision and order that was presented to you; change to add or to take away some things that were presented to you; or you could deny the findings of fact, conclusions of law, decision and order that was presented to you, and accept a argumental fact of Mr. Morgan saying that we should not accept the findings of fact, conclusions of law, decision and order from the Planning Department representation, Jane Lovell. So in any case, you could -- we could do that. If you need more clarification of Counsel, you could motion that you have a executive session with Corporation Counsel to give you a more legal positioning of understanding of this matter. So those are what's in front of us at this time. However, you wanna proceed, I wanna open the floor for a motion to proceed at this time. Commissioner Bacon?

Mr. Nathaniel Bacon: Okay. I guess I have a question for the Counsel. When somebody concurs with something, that's just agreeing with something that has already been offered up as a decision? Or how do I -- I have a little conflict here with concurring with something that wasn't a decision, apparently, and just because we concur, that is a decision? I mean, what changes a recommendation into the decision?

Mr. Hopper: If you're talking about the findings and conclusions, what happened at the previous meeting was that there was -- I believe it was two meetings ago, there was a motion to amend the Commission's original decision on the motion to dismiss. And that was to change it from denying the motion to dismiss to granting the motion to dismiss. That was a decision the Commission made. This is the basis for that decision to deny the motion to dismiss. You're basically saying this accurately reflects the Commission's basis

for making this decision. You can agree with it, or you could say you don't believe this is an accurate decision. So, occasionally, it does happen where somebody within the minority in the vote, they end up saying, well, this does reflect the basis for -- the Commission had. So they would vote for it anyway. Oftentimes, people who vote against the original decision do not vote to adopt the findings of fact and conclusions of law. That's common as well.

So basically, this is setting forth the basis for the decision to grant a motion to dismiss which was done two meetings ago by the Commission. If you do not believe this reflects accurately a basis for that decision, or if you do not want to adopt these as your findings, you could decide not to adopt this. And again, you can decide to amend this. You could decide to draft your own. And you can decide to reject this and ask for new findings, or change your original decision as you did with -- at the last -- at two meetings ago. So you have a variety of options here. Like I said before, until this is adopted as your decision, because this is going to be your decision -- once you adopt this, this is the document that reflects your decision. If there are appeals allowed or appeals to be taken, it would be appeals from this decision as the basis for your decision as well as the rest of the record. But this is really your document. This would be as if a court made a decision orally, and then decided to make that into a written opinion. This would be basically, you know, what that would be. And this solidifies your decision. So that's basically what you're doing here.

Mr. Kalipi: Okay so, Mr. Bacon, that was the long-winded area definition, but I do wanna say when Ms. Lovell bring forth this recommendation, findings of facts, conclusions of law, it becomes our decision if we adopt it as our own. We can adopt her decision, her presentation, or her recommendations to us. When we adopt it and we vote on it, it becomes ours, then we take ownership of it. But Corp. Counsel is saying that we can adopt it, we can amend it, we can deny it. These are the options that we have. And again, if you want legal counsel help of some of the language in there, that's why I said you needed more -- a time for executive session, then that's, you know, that's an option also. Because I'm not sure where -- what the Commissioners are doing, but because everybody's silent, in my mind, they might need more questions that they would feel more comfortable in asking Corporate Counsel. So I don't know. Again, the floor is still open. Commissioner Sprinzel?

Mr. Sprinzel: Under the conclusions of law from the -- from our legal people, Item 3 clearly says the decision that Morgan appealed was a Commission decision which is appealable only to the Circuit Court. I've been absolutely steadfast from day one that you have every right to appeal, but it should've been to the Circuit Court and not to us because we can't really change or appeal or judge on what we decided. We can't be our own judges. And under that, I would suggest that we propose to accept the counsel's case.

Mr. Kalipi: So, Commissioner Sprinzel, are you making a motion on the floor?

Mr. Sprinzel: Yes, I am.

Mr. Kalipi: Okay, is there any second to that motion? Commissioner Sprinzel's motion is that we accept the proposal from the Department, representative Jane Lovell, as recommended to the Commission. Is there any second?

Mr. Chaikin: I'll second that.

Mr. Kalipi: Okay, discussion? Commissioner Bacon?

Mr. Bacon: Yeah, the same thing that we just -- what you just quoted as far as the decision that Morgan appealed was a Commission decision. That's not what he was actually appealing. He was appealing the Director's decision. That's what he stated. What we've turned around to now is that any decision that was made is the Commission's. And sort of what I was asking was earlier if the Director gave us a recommendation only, and all we did was concur, I grant that we decided to concur with something that he said, but that doesn't mean that we made the initial decision that the SMA should be exempted. I mean, that's just the way I look at it. And probably Counsel can tell me if I'm way off base or not, but that's just the way I see it.

Mr. Kalipi: You want Counsel to comment on that?

Mr. Hopper: Okay, this is a matter I think that would merit discussion in executive session. We've had discussions before in executive session. If you wanna go over this issue, I'd recommend we go to executive session.

Mr. Bacon: Can we go to executive session?

Mr. Kalipi: Okay, we're gonna keep the existing motion on the floor. However, I will entertain a motion to go to executive session if that's the wishes of this Commission. So, Mr. Bacon, are you making a motion to go to executive session?

Mr. Bacon: Yes.

Mr. Kalipi: Is there a second? Okay, Commissioner Pescaia signaled that she seconds it. Any discussion for executive session? Commissioner Vice-Chair?

Mr. Chaikin: Yeah, I think I need clarification on the purpose of the executive session. I didn't get that.

Mr. Hopper: It's to give legal advice to the Commission on the issues that Mr. Bacon has raised. In my opinion, I believe it's important to have the discussion in executive session.

Mr. Chaikin: I guess I missed the points that Bacon was making that led to the idea that we should consider an executive session. Maybe, Commissioner Bacon, can you reiterate that?

Mr. Bacon: Yes, I was just simply saying that what Morgan's initial appeal was for was he was appealing the Director's decision. And we have somehow determined that it was our decision. And in fact, all we did was concur with the recommendation. And I don't see how that defines a decision on our part of the stated exemption of the SMA.

Mr. Kalipi: And then Corporate Counsel said that he would like to share information. However, he believed that it fits in executive session and not at this part. Does that answer your question, Commissioner Vice-Chair?

Mr. Chaikin: Yeah, it's a little bit more clear.

Mr. Kalipi: Okay, any more discussion?

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

It has been moved by Mr. Bacon, seconded by Ms. Pescaia, then unanimously

VOTED: To go into an executive session.

Mr. Kalipi: Okay, unanimous, motion carried. We're gonna take a few minutes in executive session. We're just gonna move into executive session. Thank you for your patience.

(The Commission entered into executive session at 12:53 p.m., and the regular meeting was reconvened at 1:23 p.m.)

Mr. Kalipi: . . . from the time we went break or we went into executive session, we had had a motion on the floor, I believe it was from -- motion by Commissioner Sprinzel, second by Commissioner Chaikin. And to reiterate the motion, it was to accept the findings of fact, conclusions of law, decision and order presented to us by Planning Department Representative Jane Lovell. And so I just open the floor for -- we're in discussion. And so the floor is still open for discussion. And if not, we're gonna take the vote. Excuse me, Corp. Counsel do wanna make a comment before we go in discussion.

Mr. Hopper: I think I can say in open session the Commission wanted me to say that, that -- and I think I said this before on the record, so it should be nothing new that it is the Planning Commission who makes the decision on whether or not a project can be issued an SMA exemption or not. That's a Commission decision. Not a Director decision. It may be called a concurrence on the agenda, but until that concurrence is made, the project is only recommended to be exempted. And in addition, I do believe the sending of a letter that states that the project is exempt based on the Commission's decision, the mere fact that that will be signed by the Director would not make that a Director decision. That because the Commission had to take that vote to exempt the project, being informed of that vote via a letter from the Planning Department, which is authorized to act as staff for the Commission, would not make that a Director decision. I think it's important to know that the only decision that can exempt projects in Molokai under your rules is a decision of the Planning Commission. And that was a rule that was changed a while ago. And that should not be new. Every time an exemption's come up, the Commission's had those options, and has taken a vote on those issues. You do that frequently. And I believe I've advised that in open session frequently on those issues.

So as far as how exemptions are done on Maui County, they are voted on by the Commission. So -- and that's, I think, obvious under the rules, and should be clear from the past advice I've given on the cases of exemptions. And the Commission can decide to not issue exemptions if it believes the project does not qualify for exemptions. And again, I believe that is advice that I have given on the record before. And the Commission has voted in the past to not issue exemptions, to require SMA permits. So I wanted to get that on the record. I think that that's something that we discussed in executive session that can be stated on the record.

Mr. Kalipi: Okay, thank you, Corp. Counsel Hopper. Okay, Commissioners, so I turn back to you. Is there any more discussion for the motion on the floor? Commissioner Chaikin?

Mr. Chaikin: Yeah, personally, I'm leaning in the direction of affording the Planning Department Jane Lovell's findings of fact, conclusions of law, and decision and order. And basically, because as I said earlier, I think there's some fundamental flaws in Steve Morgan's argument. And I'll quote, it says -- he writes in his order that the Planning Commission was never asked to decide whether an SMA permit exemption should be granted because the Planning Director had already decided that the project was exempt. We are the final decision-maker in this, and so I think it's a little bit misleading that he states that it was really the Director's decision. Ultimately, it's our decision. On the order he writes, "The Molokai Planning Commission will convene a hearing on Morgan's appeal of the Director's decision to exempt." This is clearly another example of how he believes the Director has made that decision to exempt when it's clearly, I think, and also stated by Corp. Counsel, it's clearly the decision of this Planning Commission. That's all.

Mr. Kalipi: For discussion, I, too, would wanna say that I do agree with the comments that Commissioner Chaikin has just mentioned. However, I do applaud Mr. Morgan in his next step. And this is something that I guess what I was hoping him to do was to proceed to Second Circuit Court. However, it seems like he's gonna pursue in the legal ramification, and that, I'll be really watching that also. So if it goes that way, again, I applaud Mr. Morgan for continuing to follow the process. Commissioners, are there any more discussion or comments before we take the vote?

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 accept the findings of fact, conclusions of law, decision and order presented to the Commission by Planning Department representative Jane Lovell.

(Assenting: J. Sprinzel, S. Chaikin, M. Pescaia, D. Williams, J. Kalipi)

(Dissenting: N. Bacon)

(Excused: L. Buchanan, T. Waros, N. Leong)

Mr. Kalipi: Okay, so let the record reflect five to one. Motion carried. Thank you, Commissioners. Okay, so at this time, we're gonna take a short break, bathroom break, and then we'll take a short recess, and then we're gonna come back to reconvene our meeting. Thank you.

(A recess was called at 1:30 p.m., and the meeting was reconvened at 1:43 p.m.)

- 2. 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 public hearing was conducted on December 9, 2009. Commissioners: Please bring your document.)**

The Commission may take action on this request.

Mr. Kalipi: Okay, we'd like to call our meeting back into order. Okay, moving on our agenda under Unfinished Business D-2, we're going back to the Planning Director transmitting a bill for an ordinance amending Title 19.20, Maui County Code. And we're gonna ask Mr. Joe Alueta to come and help us process through this part of our meeting.

Mr. Joseph Alueta: Good afternoon, Commissioners. So we meet again. So we have two more bills to go through. Just to refresh your memory, we're gonna update all of the business districts going from B-CT, B-1, B-2, B-3, as well as business resort district. And you all have had a chance to look at the zoning map that had -- showed all of the different districts. That map also included the industrial M-1, M-2 identified, because again, in M-1, M-2, it identifies uses. Anything allowed in the B-1, B-2, B-3 districts is also allowed in the M-1, M-2 districts. So that was for your information as far as comments. You have already voted to approve and make comments on both B-CT, the B-1 neighborhood business, and the B-2 districts. And as indicated, the vast majority of Molokai has B-CT, business country town, so all of like most of Kaunakakai as well as Maunaloa and Kualpuu area.

So dealing with the B-3 districts, there's very limited B-3 districts, and that's on 19.20. B-3 is your high density commercial. One of the things that we're doing is -- as indicated in the staff report and also when you're looking at Exhibit 1, some of the things that we're -- key notes that we're adding in is we're adding residential-type uses. So you could do like -- have a mixed use building--apartments within these B-3 districts. We're also allowing for as an accessory use, small-scale energy systems, small scale. And we are -- there's also a provision to add transient vacation rentals as an allowed use up to 20 rooms as an allowed use. And then, anything greater than 20 rooms or 21 to 50 rooms would require a special use permit. Okay? The standard language so far in coming through the three prior bills with this Commission has been -- your standard comments have been to have "Energy systems, small scale provided that it does not have an adverse impact on surrounding properties." As well as you have pretty much consistently do not feel that transient vacation rentals should be allowed within the business district. And so you basically took them out of as an allowed use and moved them over to the -- under special uses where it falls into your domain.

Previous comments coming from Lanai and Maui which have already reviewed and approved all these bills, on Page 2 of Exhibit 1, Lanai comments were basically on Line 14, No. 8, catering establishments. They basically struck out "Employing not more than five persons." So they feel that it wasn't necessary to have that restriction. And we still don't know -- understand the reasoning behind it, but they felt let's take it out. Just make it -- you can have catering establishments. It doesn't matter how many in the B-3.

Pet shops, they took out "not involving treatments . . ." They took that part out, but they put in "Pet shops not involving the boarding of animals." So they feel that a pet shop can treat an animal, but they shouldn't be able to board it in the B-3 district. And that's coming from Lanai. They wanted to make sure veterinary services were allowed.

On Maui, the only changes they recommended was to have "Energy systems, renewable." So not just small scale. They wanted to be specific that renewable energies would be allowed.

Mr. Kalipi: What line are you at, Joe?

Mr. Alueta: I'm on Page 3, Line 41. And they just added that, and it's one of the letters. And then on Page 4 on that table, Line 13, because this is a high density commercial district, they felt that the floor area ratio should be increased from 300 to 400. And that was the comments from Maui and Lanai. So again, sticking with your standard comments, the only ones I have to be consistent is that again, small scale energy systems provided that it doesn't have, you know, adverse impact on surrounding properties, and then your removal of vacation rentals, but I don't have any other specific comments for this bill.

Mr. Kalipi: Okay so, Commissioners, understanding from the last time we went through this, again, Joe, you're just saying that it's our standard language that there's certain things that we're gonna add and that's attached to the energy uses. The other one thing specifically we're gonna add is that not to allow any transient vacation rental in any of the submitted proposals, but we're putting it under special use permits which then would come -- give final authority to the Planning Department. So that's gonna be injected in this proposal also.

And he's seeking out if there's any change. As you look through the recommendations from the Lanai and Maui, if we have any changes or other than the ones that I mentioned, that two that I mentioned, this would be the time to bring forth the change or the amendments. And how we do this, if there's an amendment, if you come up with a certain thing that you want, maybe a word added or deleted, you would state it. And if there -- you know, I'll look through the floor. If there's no objection from any other Commissioners or discussion, then that would then be adopted as our proposed language to that line or this bill. Okay? So I'm just sharing with you again, to concur with what Joe is saying from where we last left off. So is there any amending that any of you, Commissioners, see?

Ms. Pescaia: Where is B-3 on Molokai?

Mr. Kalipi: Commissioner Pescaia. Is there -- is the map here today?

Mr. Alueta: I left it in the office. Sorry.

Ms. Pescaia: Do you know where B-3 is on Molokai?

Mr. Alueta: There is none.

Ms. Pescaia: There is none.

Mr. Alueta: It's only in Wailuku.

Ms. Pescaia: What about B-R? Because if no more, then he no need go. B-R, get B-R on Molokai?

Mr. Alueta: B-R might -- there might be some down in Kaluakoi. I don't recall offhand. So we're gonna pull the map.

Mr. Kalipi: Commissioner Chaikin?

Mr. Chaikin: Yeah, Joe, just in the event that from the day we do get B-3 here on Molokai, I think we should go ahead and recommend our standard which is the TVR as Joe was saying, you know, special use. And also, the energy systems language that we proposed. I also liked Lanai getting rid of wording, the animals in the business district. I think that could potentially be annoying.

Mr. Kalipi: Okay. I see Commissioners nodding their heads, so agreement with the boarding of Lanai.

Mr. Chaikin: I would also get rid of the limitation of five employees on the catering.

Mr. Alueta: Lanai's comments again was the elimination of "five."

Mr. Chaikin: What?

Mr. Alueta: Lanai's comments were get rid of the -- catering establishments, the limitation on the employment; the pet shops that we talked about, the one that you just made the motion on; and then adding veterinary services as an allowed use.

Mr. Chaikin: Well, I don't think we need veterinary services. It's already allowed for the treatment of animals under that other one we just submitted.

Mr. Alueta: Okay.

Mr. Chaikin: And then what was the other one?

Mr. Alueta: The catering.

Mr. Chaikin: Oh, yeah, just put the catering. You don't need to put in the employee restriction. What's the 400% or 300%? What does that refer to?

Mr. Alueta: That's the FAR, floor area ratio. So if you had a 10,000 square foot lot, you could build -- currently, under 10,000 square foot lots, the 300% ratio, you could build a 30,000 square foot building on it. And if you are -- if you have a -- so they were saying you can build -- and remember, this is over a nine-story -- the building height, as indicated, is that your maximum building height can be 144 feet so --

Mr. Kalipi: Yeah, that's not gonna go with Molokai, Joe.

Mr. Alueta: Yeah, I don't think -- I don't think there's not a real need for that. Nine stories, that's what the County building is. The County building is nine stories.

Mr. Kalipi: Should we put "except for Molokai," then?

Mr. Alueta: No, because it's a zoning district. I wouldn't do that as far as standards. If you did it, if you had that concern, I would look -- first look at it in your community plan because Lanai and some of the other community plans when they come in, they put in a restriction on building heights regardless of what the zoning category is. They do have that. Again, I don't think anybody's going to come in and zone a B-3. And if they did, it would be a conditional zoning.

Mr. Kalipi: Because we currently have what? What is our current -- 30? Don? Commissioner Williams? Commissioner Williams, what is the current height restriction of a building? Thirty -- 30 feet, residential? About 35 for businesses on Molokai?

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

Mr. Kalipi: Okay, Joe, so help us through this.

Mr. Alueta: The maximum height for like Kaunakakai is like 35 feet.

Mr. Kalipi: We don't really care because it doesn't --

Mr. Alueta: There's no B-3 on Molokai.

Mr. Kalipi: Yeah, there's no B-3 on Molokai so --

Mr. Chaikin: So this 144 maximum height, is that something new, or was that in there before?

Mr. Alueta: It's new in the sense that we're moving the story limit. Before it used to be -- it would say nine stories and each story is 15 feet or whatever, if you look up the definition in the Building Code what the height is. And so, yeah, it's 15 feet. And so what we've done is we've eliminated the referencing to stories because what most people -- what the Department is concerned with and what everybody is concerned with is what the overall height of that building? It doesn't matter whether somebody puts in -- you know, makes a couple small stories in there because you have one, health requirements that have certain minimum height requirements like seven and a half feet, and then you also -- for non-habitable space, it's less. So someone may have a tall building, they may have a couple floors that are non-habitable spaces they're using for storage. So they may that floor be a little lower than would be normal. You also have that for parking garages. You don't have to have that full height so they have them a little smaller. It's all -- but what we're concerned is what is the overall height of that building when you build it, and what is the floor area ratio? And those are the main issues that are gonna regulate the size of that building.

Mr. Chaikin: Well, I'm just wondering if somebody wanted to -- well, I guess there's no B-3. Is there? You guys are looking at the map. Do you see any B-3? Okay. Alright. So but if there was B-3 on Molokai, Clayton, could somebody come and build a building 144 square foot -- I mean, 144 feet high on Molokai because that's what is being proposed in this language, 144 feet height limit? So let's just say during the community plan we put in B-3, is the community plan say something that you can't do that? Or could somebody, theoretically, come and build a 144 square -- height?

Mr. Alueta: They have to have the zoning. They have to have the zoning. If you don't have the zoning, you don't build that high.

Mr. Chaikin: Well, we have the zoning here. It's in the --

Mr. Alueta: You have the zoning development standards, but you do not have any land as actually zoned B-3. I don't even think you have lands zoned B-2 much less -- if you do, it's very --

Mr. Chaikin: But in the future, there may or may not be. So the question is, if there is in the future, could somebody just build that, or is there some restrictions in community plans, or how does that work?

Mr. Clayton Yoshida: Yes, I guess, Commissioner Chaikin, you know, I guess your major commercial center is Kaunakakai Town. And all of the urban area of Kaunakakai Town is in the special management area. So any development would require an SMA permit. An SMA permit requires consistency. One of the things it requires is consistency with the

community plan. There may be language in the community plan which says that buildings should be a maximum of 35 feet high. So we would have to go with the more restrictive between the zoning and the community plan as far as the building height is concerned. So they would have to be consistent with both, but we would go with the more restrictive.

Mr. Chaikin: Thank you.

Mr. Hopper: Thank you, Mr. Chair. Joe, the current height limit is 12 stories in B-3 subject to a lot of other maximum floor height issues? That's the language that's being struck: Page 4, Lines 8 through 11, "No building shall be more than 12 stories in height?"

Mr. Alueta: That is correct.

Mr. Hopper: Okay. So right now, if someone tried to get a change in zoning to B-3, they could build a 12-story building subject to these restrictions?

Mr. Alueta: That is correct. Right now, it says "12 stories," and we're removing the "12 stories," and putting "144 feet" instead.

Mr. Hopper: Right, so it's "12 stories," and "144," but as Clayton said, if someone did it in a community plan area that was in the SMA, they would have to comply with the community plan. But if they're building outside of the SMA, and they ended up getting a B-2 zoning, they could build a 12-story building, correct?

Mr. Alueta: That is correct by today's law.

Mr. Hopper: Right. They'd need to get a change in zoning, though, to that zoning district. And arguably, that change in zoning would be contrary to the community plan if it had a 12-story building height, right?

Mr. Alueta: That's why if somebody came in for a change in zoning, most likely they would be getting either a B-CT zoning or a B-1 zoning. Or if they got a B-3 zoning because there was a use in B-3 that they wanted that wasn't in any other districts, right, they would most likely be a conditional zoning -- condition placed on the zoning request or the approval so that it would be consistent with the community plan because they already -- you already have language in your community plan.

Mr. Chaikin: So just to better understand the process, I think what I've heard that if it's in the SMA, then there has to be some kind of concurrence with the community plan or consistency or something with the community plan. If it's outside of the SMA, I've just heard that somehow the community plan becomes irrelevant. Is that correct?

Mr. Alueta: No, that's not correct. It doesn't become irrelevant. It just doesn't have the -- certain legal interpretations have made it that it does not have the force of law. However, it's very difficult for someone to try to go to Council and propose something that would be obviously directly in conflict with the recommendations of the community plan. In the SMA, it can be mandated because you have to -- the way State law is currently written, you have to find consistency.

Mr. Hopper: The key being that there's these other districts out here that have design standards that are pretty clearly inconsistent with what's here on Molokai, but they don't -- like currently right now the B-3 allows the 12-story height. So regardless of the changes to these ordinances, you have a B-3 out there that exists and would allow a 12-story building to be built if you had a change in zoning to that, which would be contrary to the community plan, and would have to be approved by Council and the Commission, but that's what that zoning district says now.

Mr. Alueta: Right, but there's no B-3 here on Molokai.

Mr. Hopper: Right. Someone would have to go to the Commission and then the Council in order to have that happen.

Mr. Kalipi: Corp. Counsel is just making the point that B-3 exists already with a 12-story height. Whether we like it or not, it's already existing, already B-3. But the language or what the proposal is that they're getting rid of the 12-story language and just putting a 144 feet language in there besides the 12-story language. So for our information, it's already in existence. There's some alteration of it. So it's kinda minute because it doesn't really reflect in Molokai. Again, there is no B-3. So we could leave it, or if you wanna change it for whatever reason, it's not a big deal. But go ahead, if you --

Mr. Chaikin: Yeah, I don't have a problem with the way that it is. I'm just trying to understand. I'm just really not familiar with B-1, B-2, B-3. Is B-3 the innermost part of a city like your downtown? Is that what it is normally?

Mr. Alueta: It's your -- it's the central business district.

Mr. Chaikin: Okay, is that different than -- I mean, is there any -- is that usually the most intensive? Is there another business district that would have a higher height limit? So that's basically your downtown, your skyscrapers. Okay.

Mr. Kalipi: Okay, Commissioners, any more input, or recommendation, or amendment that you see? Okay, Joe, before we bring you back, let me go open the floor for public testimony if they wanna chime in. We'll bring you back for maybe wrapping it up on this

bill. Okay, does anyone wanna testify on this bill proposed ordinance amending Title 19.20? You're welcome to testify. Aunty, please state your name for the record also? Thank you.

Ms. Ruth Manu: Aloha. I'm Ruth Manu, kupuna. As a matter of fact, if I remember right, all the buildings on Molokai was two stories high. Even Kaluakoi was the same thing. I don't know why they want -- for me, when I look at it, I remember before they wanted to make it in town because they wanted to make the business on the ground, and on the top for you to live. And then we said when we came over here, and that's why we had a designated area in the industrial to build over there. That's where all the whatever was supposed to be. So I was talking about this 144 whatever crap. That's one new one now. That's with the zoning and everything. Everybody gotta go back and look at the Molokai Plan, what we really wanted. They coming in here and talking about their plan. I no think so because when we were here, it was said to be two stories high. And it was -- back up. Check up your records. Check up your notes, whatever, because it seems like it they want us to be higher now. They wanna go up. They wanna make it -- look Kaunakakai already. It's already -- I don't know what else they trying to do, but whatever, but you know what? It was two stories. Aloha.

Mr. Kalipi: Thank you, Aunty. Any questions for Aunty Ruthie? Okay. Thank you. Mahalo. Okay, next testifier, please.

Ms. Judy Caparida: Aloha. My name is Judy Caparida. I should remember my name. And aloha, everybody. This is really -- for me, when I look at things, it's like wow. You know, it's so manipulating. You know? From what? Twelve stories, now it's 144 feet. I mean, you know, you gotta be clear, clear, because I'm sitting over there, it's not clear to me. If you never say 12 stories, I wouldn't have known you're talking about 144 feet. You know, that's why I feel that we're being cheated. I tell you. We make so much mistakes. Our Board make so much mistakes. And you know, we forgive you folks for doing that. But you cannot keep making up mistakes when you did not clarify to what they're talking about, then better we get it clarified just like you folks did today. I mean, it's really unclear when somebody's trying to catch you in a corner and you can't get out. And you cannot even say I'm sorry. That's the worstest thing. You know, I screwed up. I'm sorry. What's so wrong about that? I don't know how you guys can sleep. That's why I need for -- I always tell the Lord, "Lord, help me." Help me to be honest. Help me to help our community live in a way that we can afford. Live in a way that we can do things that is upright and not go around and start cheating others to get where they have to go. For the law is so messed up they have to make it clear. Molokai is a separate island. Let's tell you guys again. Molokai is a separate island. What their plans are for Lanai and Maui, that's their problem. Hello. You guys are here for us. You not here to fit our self into something that we don't fit in. You know I wanna get on the Board, but you know what? I get on the

Board, my hands get tied. My mouth be tied because you only can say what they like you say. But I'm here to say you know what? My heart is because we're blessed. We're being robbed of our blessings because we gotta do something that pleases others. And I no think that's fair. I don't think that everything that we doing is good if it's not benefitting our people. All these plans they making is not for us. All these plans they making is for others to come that do not live here that do not care how we live and want to make changes. That's what you let inside of me to see all this happening. You have to fight for something that you know that you cannot even fight because man is looking for greed. Man is looking for money. Man don't give a heck if you die. And that's why our people suffer. Our people suffer. That's why they take drugs. They get stoned out. So what the heck? No matter how hard I try, it never come out good because it's against them again.

So I'm gonna tell you that this, I remember this is a two-story island. Okay? That is because you can make room for our island. We can do it because this is our island and this is our people -- reside. They ain't got no other place to go move because it's so expensive. I'm building a house that it gotta be \$130,000 or more and they call that low income. Do we have the kinda funds for ourselves here, our families here on the island to do that? No, we don't. They talking about houses and millions of dollars that one day they can make. So I letting you guys know because I'm here because I care. That's why I come here. I care for what they gonna do to us and for my children's children's children's children and yours, too, that you live here. This is where -- we cannot go nowhere. So all the plans I see on top here, it's a lot of B.S. I tell you folks clearly because we cannot live and make up for all what they are planning for our lives. I read this and say, wow, even if so much confusion over here, hello, but you know what? You folks are the makers of our island. I come here to see that you guys do something for our island.

And I wanna ask something, too. Here's another one. I not going wait over here until it comes up. It's for Akutagawa, for Malia. I think she's been on the list almost a year now. I think you folks should hear her out because there is all the things that she's going for is because of all the places you can build and you cannot build. There are wetlands. There are historical things that she has to share with you guys and with Maui so that they know that this island is not like Maui. A lot of stuff. There's a lot of iwi over here. All that has to be taken into consideration that you know what? You guys have to look into it and be pono. We having so much controversy, so much stuff, because you know why? Because we no understand. We say yes when we mean no. Because they know they supposed to be no, but they confuse us and say yes.

So I feel that you know what? Let's be pono, our Board on Molokai, because we really trust you guys to do what is sticking to us. It's not looking to way out there, but look to what is happening today, tomorrow, and the future. I love these guys, but you know what? I going have to tell them that we no can fit them. And so I've been on Maui and I saw all

what's happening. Slowly, this is what's gonna happen. They wanna build five, six houses inside one lot and all that. That's all not okay. By the time they get built, you look down, we going look like Honolulu. Mini Los Angeles, that's what we gonna look at. So I let you folks know. And it ain't gonna be our people. So I really love you guys and I need to tell you folks. This is the only reason why I come to the meetings to see how we're gonna fit in the future for our generations to come. I love you guys. Mahalo. Is there anything you guys wanna ask?

Mr. Kalipi: Any questions? None. Thank you. Okay, any -- anyone else would like to testify on this matter? Okay, seeing none, we're gonna close this time of public hearing. And I'm gonna ask Joe to just reiterate the amendments that we did or just give some understanding.

Mr. Alueta: So far the only comments I have from the Molokai Commission is that on Page 2, Line 14, you have just catering establishments. On Line 38, pet shops, you're gonna have pet shops not involving the boarding of animals. You're gonna strike out on Line 44, "transient vacation rentals." You're gonna strike it altogether. On Page 3, Line 41, a, energy systems, small scale, provided it doesn't have an adverse impact on adjacent properties -- the standard language that you've come up with. And under Page 4, Line 5, you're just gonna have transient vacation rentals, period. And that's pretty much what I have so far.

Mr. Kalipi: Okay. Commissioner Chaikin?

Mr. Chaikin: Yeah, I'll go ahead and make a motion that we accept the Planning Department's recommended changes to the B-3 central business district subject to the changes that the Molokai Planning Commission has stated and as been duly noted by Joe.

Mr. Kalipi: Any second? Commissioner Bacon seconds. Discussion? Okay, just for discussion, Commissioners, I just would like to say we understand that there is no B-3 on Molokai. This bill does not affect us in any how, any form or fashion. We will not have a ten-story, nine-story, 11-story, or 144 feet on Molokai. It's pretty much a Maui thing and not a Molokai thing. Are we in understanding? There's no zoning as B-3 at this time. And so that was just my discussion to our -- the Commissioners. 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. Bacon, then unanimously

VOTED: To accept the Planning Department's recommended changes to the B-3 central business district subject to the changes that the Molokai Planning Commission has stated and as been duly noted by Staff.

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

Mr. Alueta: Thank you.

- 3. 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 public hearing was conducted on December 9, 2009. Commissioners: Please bring your document.)**

The Commission may take action on this request.

Mr. Alueta: Moving on to the next item which is the 19.22, this is for B-R resort commercial. Its primary designation is for resort commercial activities. The only places that we have B-R that I can think of is adjacent to Kaanapali. I'm not sure if there's any on the map that -- Kaluakoi because that is a resort area, so you might have it in that areas.

And so the uses as listed there, they're meant to be primarily focused on serving the tourists. However, from a long term aspect or goal is that we're not sure exactly why you need a separate, pretty much a separate zoning category for tourist-related commercial activity. We feel it should be covered under a generic. So a long term goal would probably be to kinda fold B-R into one of the B-2 districts or something like that. But back in the day, you know, they felt they needed to have separate or specific zoning categories for these resort areas. We've been finding from a Department aspect that we had to process permits in the B-R in which they had to go back before the Commission and get approval for uses that would normally -- that would serve the general public. We had to deal with Gold's Gym in Lahaina. It was in the B-R district and it was like their rationale at the time was trying to be we're a nationwide company and that people can come if they have a nationwide membership, but it would be also open to the residents. So we had to get permission by the Commission to say it was okay to open up a gym in this zoning district. And that's pretty much it.

Again, so you do have, again, as pointed out on the zoning map that we've provided for you, one of the things that Maui did as far as their comments, they added in on Page 2, Line 27, they struck out "restaurants" and put in eating and drinking establishments, because that's the definition. They added Line 31, Page 2, they put in "taxi cabs, shuttles, buses, and new drive stations and offices." They added on Line 33 for theaters, they put "theaters, auditoriums, entertainment establishments," because they're also defined. And they also put in recycling collection centers. They just added it in as an allowed use because it falls more in kind of a B-2 than a B-3 district. They felt that it was appropriate to have a recycling center in a B-2 district.

Oh, and then Lanai, Lanai didn't make much changes except for on Page 3, Line 16 on the development standards. They made it, you know, on the notes and exceptions on the maximum building height, it says "35 feet." And then on the exceptions, they put -- they made it 45. And we agreed with those comments because in all of the categories, we've added -- allowed for a ten-foot bonus, and so 40 was only a five-foot bonus so they felt give them the full ten feet. So their recommendation was to go to 45 for Lanai. I mean, not for Lanai, but that was Lanai's comments. And that's pretty much it.

Again, for you, if you carry over your standard comments, one is gonna be transient vacation rentals, but you should think that over because remember, this is a B-R district in a resort area. So you may wanna keep that. And then small scale energy facilities, that's one of your standards. We can add that in. And the Department supports that. We've been making that change in our recommendations to Council also. And then we would concur for our Department, the 45 feet for that so -- with Lanai. So those are -- that's your standards. I'm not sure what your overall motion would wanna be at this time.

Mr. Kalipi: Okay, Commissioners, just for your information, looking at the map, and I'll go ahead and pass it down, the zone is -- it looks like Kawakiu Ike, not Kawakiu, but one more, one more bay look like. So it's -- no more any infrastructure. That's probably a road at this time. And it's -- yeah. So just to let you know where this actually fits for Molokai B-R, the resort area designated or zoned as. Okay, so with that -- and this is why I understand what Joe is saying about the transient vacation rental. This is the only place that it actually is designated in even now. That's where it's designated. If you wanted a transient vacation rental, you would have to do some work over there to get it up there. So you might wanna consider keeping that language or whatever we wanna do. It's a current language that's existing now, but I think the new language just changes the -- I think, the rooms, yeah, Joe?

Mr. Alueta: Well, the new language actually allows transient vacation rentals in the B-R. Currently, you can't do it. It would allow for it, and then up to a certain number, and then I believe only up to 20 rooms. And then anything more than 20 rooms up to 50 you would

have to get a special use permit from the Commission. So it would allow for like a small scale hotel or a mixed use in which you have again, commercial uses on the ground floor, or you have a small business-type hotel above it. So that's the intent at least.

Mr. Kalipi: Okay so, Commissioners, the floor is open for -- Commissioner Sprinzel?

Mr. Sprinzel: I think we should be consistent and have not the Director, but the Commission -- Line 37 and Line 40.

Mr. Kalipi: And, Joe, if we missed any of the past one, I think that's the consistency, part of the consistency of our language.

Mr. Alueta: Oh, the -- oh, yeah, Page 2 on other uses similar. So we can put in the Commission. Put the Commission back in there. Okay.

Mr. Kalipi: Thank you, Commissioner Sprinzel. Any more amendments or changes?

Mr. Chaikin: So, Joe, are condominiums allowed in this kind of a zoning district?

Mr. Alueta: No.

Mr. Bacon: On the transient vacation rentals up to and including 20 bedrooms, what's -- what exactly is the difference between a TVR and a hotel?

Mr. Alueta: Nothing.

Mr. Bacon: So basically, we're not talking about our typical situation that we have out here at the East End where people have their homes and they're renting them out as TVRs? This would be an established --

Mr. Alueta: Well, someone could. They could build what would be -- look like a residential home, or build a big residential home, and they would rent out their rooms, and they would run it, and it would be a TVR. Technically, a TVR is a hotel.

Mr. Bacon: Okay, thank you.

Mr. Chaikin: I like Lanai's idea, if that was Lanai's idea -- the recycling collection center. I think we need those all over the place. I don't think we should exclude any areas from having recycling collection centers.

Mr. Alueta: Okay. That was Maui's, Maui Planning Commission. They concurred with having --

Mr. Chaikin: I would concur with them on that.

Mr. Alueta: Okay. And then you do need to do a public hearing, Mr. Chair.

Mr. Kalipi: I'm just -- Commissioners, anymore amendments or anymore changes?

Mr. Chaikin: The only thing that I wasn't real clear on is if we've made a decision whether or not we wanna include TVRs as a permitted use or exclude them. Is there a consensus on this Commission about what we wanna do with that? My personal view is that we should include them because this is a resort area so if there's gonna be TVRs somewhere, they should be somewhere around the resort area. So, I mean --

Mr. Kalipi: I agree with Commissioner Chaikin. I like -- if any place is zoned such as, that would be the place, the appropriate place. It should be in some sense consistent with our Molokai Plan because development was designated to the West Side of the Island. And so I would have no problem leaving it as it is also. Okay, so we'll come back to the Commissioners. We're gonna open the floor for public testimony. If you wanna testify on this matter, Title 19.22, County Code, relating to the B-R resort commercial business district, you're welcome to testify at this time. Okay, seeing none, we'll close this time of the public hearing. And we're gonna ask Mr. Alueta to wrap up on some final comments and -- for the Commission.

Mr. Alueta: Thank you, Mr. Chair. So again, the comments that I hear from the Molokai Commission at this time is one is on Page 2, R, or Line 37, you would rather put that back to the Commission as being the determiner. You would concur with Maui's recommendation to add recycling collection centers. Let's see. You would -- on Page 3, Line 1, "Energy systems, small-scale, provided it does not have an adverse impact to adjacent properties." And I wasn't clear on Page 3, Line 4, subordinate uses and structures which are determined by the Director. Did the Commission want to take that authority also? And -- okay.

Mr. Kalipi: Was there comments, Commissioners?

Mr. Alueta: This is for accessory uses and structures that it would be determined by the Commission instead of the Director.

Mr. Sprinzel: I think we should be consistent.

Mr. Kalipi: Okay. Yes, Joe. Thank you.

Mr. Alueta: Okay. On Molokai?

Mr. Kalipi: Yes.

Mr. Alueta: And then I believe I saw concurrence with Lanai's recommendation to change Page 3, Line 16 with regards to giving them a bonus of ten feet to go to 45 feet if they're doing vents, pipes, fans, chimneys, and small scale energy systems that are located on the roof.

Mr. Kalipi: Yes.

Mr. Alueta: Okay. And those are the changes that I see.

Mr. Kalipi: Okay. Commissioners, we have a motion from the floor?

Mr. Chaikin: Yeah, I'll make a motion that we move to accept the Planning Department's recommended changes to the ordinance to the B-R resort commercial business district noting the changes that the Planning Commission has given to Joe.

Mr. Sprinzel: Second.

Mr. Kalipi: Second by Commissioner Sprinzel. Any discussion, Commissioners? Commissioner Pescaia?

Ms. Pescaia: So back to Page 2, Lines 27, 31, and 33, he mentioned some other changes. Are we gonna include those? Because Line 31, I think one other Commission recommended adding shuttles and buses, but in his review just now, he didn't list those. I don't think we discussed whether we agreed with that or not.

Mr. Alueta: Those are comments that came from the Maui Planning Commission, and I wasn't sure if you concurred with all of them.

Ms. Pescaia: Right, I was asking if we had feelings on any of those.

Mr. Kalipi: Nobody was really burning about it, and it was not that big of a deal, but if we are burning for something, then I don't have a problem with that.

Mr. Alueta: Did you want me to repeat them, or are you guys good? We're good? Okay.

Mr. Kalipi: 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 accept the Planning Department's recommended changes to the ordinance to the B-R resort commercial business district noting the changes that the Planning Commission has given to Staff.

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

Mr. Alueta: Thank you. Thank you very much, Commission.

Mr. Kalipi: Okay, back to our agenda, Chairperson's Report. We did have improvements to the Planning Commission's and Planning Department's service to the community.

Ms. Pescaia: Excuse me, Chair. I think you skipped a few agenda items.

Mr. Kalipi: Yes, thank you.

4. 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.

Mr. Kalipi: We're still on Unfinished Business, no. 4, status report on the June 2009 request by Ms. Malia Akutagawa to coordinate a Molokai Planning Commission workshop -- historical, archaeological, and cultural laws and regulations. Commissioner Pescaia, go ahead.

Ms. Pescaia: So I spoke with Ms. Malia, and she is -- apologizes for being quite busy at the moment, but we have decided on proposing April 14th, 28th, and May 12th meetings, if she can have one hour blocks in each of those meetings. She broke up her presentation and decided to allow for enough time for us to engage in a healthy conversation if we did it that way.

Mr. Kalipi: Clayton?

Mr. Yoshida: Well, Mr. Chair, typically April is our kinda annual orientation refresher timeframe and we've tried to break up the orientation session into different modules so that we're not sending like eight staff members here for one meeting and we don't get to certain subjects. Your agenda are fairly light from now until April because we've gotten through this stream of proposed legislation with amendments to the rural district, accessory dwellings, streamlining bills, business district bills, and we've kinda gotten through this Zappacosta Morgan Appeal, which as kind of consumed a lot of time for the Commission, and the we don't have any public hearings scheduled at least until April.

Mr. Kalipi: Commissioner Pescaia, any chance that --

Ms. Pescaia: Unfortunately. Mr. Akutagawa is unavailable this month and March, so if anything, it'll have to be in May and June then.

Mr. Kalipi: Okay, Clayton, if something happens in April, can we get Ms. Akutagawa there or incorporate her in the orientation maybe because I guess it's a good time if we're looking at policies and procedures that we can incorporate if that's any possibility in somewhere in April?

Mr. Yoshida: Yeah, I guess we're consulting with the Commission in terms of how they want us to formulate the agendas for future meetings. We could possibly, you know, block off an hour at each meeting for Malia. We try to have some time for SMA assessments if they're ready to go so that the community isn't kinda kept waiting if it's a simple type of application.

Mr. Kalipi: Commissioners, if the Commissioners don't mind to going a little late, the 4 or 5 o'clock meeting, then I think we could incorporate that in April but, again, it would be the Commissioners consensus to say that this is important enough that we can go to the length of the period of time. So it would be additional hour to have that in -- in the agenda. So I'm okay with that if -- I think it's a necessary and a very big help for the Commissioners to do it. Commissioner Sprinzel, you wanna comment?

Mr. Sprinzel: Are there going to be any new Commissioners in April?

Mr. Kalipi: Clayton, can you answer that?

Mr. Yoshida: Oh, as far as?

Mr. Kalipi: Term expiration - when the new Commissioners come in?

Mr. Yoshida: Oh, I think all that's on the table is the reappointment of Commissioner Bacon from the list that I saw, so it's pretty much the same -- it's the same Commission; it's just that Commissioner Bacon is being appointed to fill a full five-year term.

Mr. Sprinzel: So we haven't got to have the same orientation and stuff?

Mr. Yoshida: We would like to sort of, you know, give you an annual refresher as to the Sunshine Law and --

Mr. Sprinzel: A nice shortened version?

Mr. Yoshida: You know, your rules, contested cases, and the like, and maybe some new court cases that have come up but, you know, just to provide a framework or a baseline, and then probably our Long-Range Division can inform you as to where they're at with the community plan update.

Mr. Kalipi: Okay, Commissioner Sprinzel, this is why I said I would like to have it to see it incorporated during the orientation. It kinda made sense if we're going over policies and procedures, you know, to kinda blend that in.

Mr. Sprinzel: I think it's probably is important, if not more so for us to really know this particular --

Mr. Yoshida: We can block off an hour on those days for Malia to make her presentation.

Mr. Kalipi: Thank you, Clayton. And, you know, again, I just forewarning the Commissioners that we might run lengthy meetings. We've been running some meetings lengthy because of the different things we've been facing but -- so it might run 4:30-5:00 - just to give you guys a heads up, or until the Planning Department gotta catch their plane. Okay, so thank you, Commissioners. Anymore discussion about Ms. Akutagawa? Okay, if not, we're going to take public testimony. Anybody wanna testify or comment about this agenda item, they can do so at this time. Okay, seeing none. We're going to close this time of public testimony.

5. **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.

Mr. Kalipi: Now we're going to move on to Unfinished Business, No. 5, discussion that the Molokai Planning Commission be a consulted party on permits issued by various State and County agencies, such as water use permits. Didn't we wanted to draft a letter?

Mr. Yoshida: Yeah, I guess we haven't -- we haven't provided the draft letter, form letter, for which we would be requesting that the Commission be a consulted party for whichever State, County agencies it identifies it wants to be a consulted party on. But -- so you wanna do that first before you identify which agencies?

Mr. Kalipi: I think we did that, you know. We probably gotta go back on the minutes on that because we put together a list of agencies that we wanted to draft it, and then we wanted kind of like a universal letter that's just stating that we would like to be a commenting agency. But can you have the Planner maybe go back into the minutes cause I think, you know -- Commissioners, I turn you guys. I truly believe we actually went through this conversation and went through the agencies and have mentioned -- I don't know if you remember, Commissioner Chaikin.

Mr. Chaikin: Well, I initially had brought up the idea of us being a commenting agency on people apply for water permits on the island of Molokai, and it was -- that was a fairly simple thing. It doesn't have to be a long -- it could just be an email shot off from the Chair of the Commission asking to be a consulted party. Basically, when I talked to Charlie Ice, he just said he needed something in writing. So I thought that was a pretty simple request. And then it kind of like expanded out to be, oh, maybe we should be a consulted party on all of these agencies, and it got kinda complicated. But I don't know. Maybe we can just start by sending a letter out requesting to be a consulted party from the Water Commission, and then, you know, that we'll have something under our belt, and then we could leave it on our agenda if somebody wants to reiterate getting on something else, we could maybe send out another one to that agency just as a way to kinda get the ball rolling.

Mr. Kalipi: Yeah, I agree. I mean if we're going to move ahead and not look back, then just say that maybe the Planner can come up with some kind of language that we can adopt, and it doesn't have to be long, it could be some generic language that's saying that we request that we -- we would like to request that we wanna be a consulting party on this matter, you know, fill in the blanks. It could be water use permit, it could be whatever, but let's start by water use permit, keep that on record, and whoever wanna, for future references, if the Commission decides that they wanna be a consulting party on different agencies, then we can use that letter as a standard letter to send to other agencies. So can we leave this on the agenda and maybe request that the -- the Molokai Planner put some language together and then maybe at the next meeting we can adopt it as our language and, in this case, we're going to specifically direct it to, I guess, water works, as Commissioner Chaikin mentioned, for the water use permit. Okay. Thank you, Clayton.

Okay, Commissioners, anymore comments or discussion in this matter? Okay. At this time, I'm going to open the floor for public testimony on agenda item Unfinished Business No. 5. Anyone wanna testify at this time - it would be your opportunity? Okay, seeing none. We'll close this time of public testimony.

Moving down on the agenda, Chairperson's Report. It says improvement to the Planning Commission and -- excuse me, I'm sorry. We're still Unfinished Business, No. 6, discussion on appointing a committee to review the rules of the Molokai Planning Commission. Commissioner Chaikin.

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

The Commission may take further action on this item.

Mr. Chaikin: Yeah, this is -- we've already gone over the situation of actually appointing a committee, but there was -- this is the first time we've ever really gotten to the point of actually discussing, you know, the logistics of how we can actually accomplish this feat. And, you know, just in looking at this situation, let me just say that I think we have to try to make a complicated process as simple as possible, or at least attempt. I mean what we're trying to do is not a rewrite of the rules; just identifying a few problematic areas and seeing if we can come up with some language that seems to make better sense.

So with that said, in order to actually accomplish this, it's going take a concerted effort, which means that we're going to have to have everybody kind of come up with their suggested changes, and probably the person that knows this process the best, I would say, is Clayton Yoshida. He has a very good knowledge of, not only our rules, but some of the other rules of the other commissions and could be one of the -- the people involved in coming up with a list of areas that he thinks could be improved in our rules. So I would ask, Clayton, on behalf of the Planning Director, from your perspective, to maybe work on some kind of a list of things that we might consider changing to make the process a little bit better. Is that something you would be comfortable working on?

Mr. Yoshida: We could work on that but I think we'd also like some direction from the subcommittee as to -- you know, because you folks are the decision-makers --

Mr. Chaikin: Right.

Mr. Yoshida: And there's also some non-Commission Members on that subcommittee so, you know, we're wearing different hats in the process but, you know, as to how to make the process work better, but what areas to possibly address.

Mr. Chaikin: Well, yeah, there's going to be a lot of people involved. The Planning Director and the Planning Department should be one body that gets involved in this process. We also have to have Corporation Counsel, you know, take a look at our rules and see if there's problematic areas. And I think if you come up with suggestions, Corp. Counsel comes up with suggestions, the subcommittee comes up with suggestions, the public comes up with suggestions, we can get all those suggestions together, the subcommittee can go through 'em, and come up with a final draft maybe to present to the Commission as a whole. But you guys know this process much better than we do, so if you would be able to identify areas that seem like they're not, you know, as clear as they could be, so that's why I'm just asking if you're willing to take a look at our rules and just from the Planning Director's perspective, see if there's anything that he thinks in our rules that could be improved.

Mr. Yoshida: Well, yeah, we could identify some areas from the Planning Department's perspective where we feel there may be some inconsistencies.

Mr. Chaikin: Alright, well, thank you. And then we also have to have Corp. Counsel. I know Corp. Counsel already said he'd be willing to work on this and in conjunction with Jane, who has been reviewing the rules lately, and so can you reiterate, once again, your willingness to come up with some kind of bullet point list of areas that need to be improved?

Mr. Hopper: I absolute can. Again though, because this is a subcommittee issue and there's Sunshine Law rules on that stuff, you could have this as a regular item for the Commission to talk about yourself, but you've given this to an investigative group so I mean I think that group would be tasked with going and talking to either me or Clayton or anyone else. And I can certainly do it. I still recommend this particular item on No. 6 come off the agenda so that's why I'm nervous about -- especially saying that we could take further action on this item. But, obviously, part of my job is to -- to deal with your rules and to amend your rules. I actually have a packet on my desk that I have some working drafts based on things that Lanai Planning Commission had done in their latest rewrite, so I'm looking to trying to incorporate that into your rules, which are certainly unique among the different -- I mean all three commissions are unique at this point, so there's -- there's several things -- among them, increasing the maximum fine on a SMA violation from 10,000 to \$100,000, which is allowed by State law. That hasn't been updated in your rules yet. But that's one of the changes down the line. And a fine of a \$1000 a day to \$10,000 per day, which is allowed by State law. Lanai changed their rules to reflect that. And those are among the changes. So, absolutely, that's part of what we're doing. I would need to approve as to form and legality any rules anyway, and then the Mayor would have to sign the rules once they come out of the Commission - that's part of the process. But, yes, I'd absolutely would be willing to work on that.

Mr. Chaikin: Thank you for that. And then, we also have -- we have player, which is the Planning Department; we've got another one, which is Corp. Counsel; we have another one, which is the public. If we take this off of our agenda, how can we get information from the public as to how -- how they would like to see the rules change?

Mr. Hopper: Well, you see item C.1., Announcements? That can stay on. I mean so you can take testimony from the public. The potential problem, and I talked to OIP about this, and it's not that I have a problem with this, that -- is that your deliberation on this topic, if you've assigned an investigative group to it, are supposed to happen after that group reports back to you. That's the only issue. It's not having it on your agenda for the public. That's C.1. I think would allow anyone from the public to come here and submit testimony to you. Also keep in mind that you guys on the investigative group aren't subject to the Sunshine Law for the purpose of your investigation, so you can go and talk to members of the public, and members of the public can come to you and give you that information. You just have to present it to the Commission before the Commission votes to -- on specific rule changes. So that's all. I'm just saying if you have something on there saying you're going to take action on the item when you've already appointed the committee, was my only thing. Again, for maybe a housekeeping issue, but there is that Sunshine Law aspect to it so I thought I should mention that.

Mr. Chaikin: Okay. Well, that's fine. I just was thrown off by the word "Announcement" cause when it sounds like it's an announcement, it seems like you're not really trying to get testimony coming in or you know what I mean? Cause you're just making an announcement. So is that the proper way to agenda that as an announcement?

Mr. Hopper: I think if you want different wording, you could ask the Department to use different word, such as "Commission seeking comments on the proposed rule amendments" something like that.

Mr. Chaikin: I mean that seems like it would be more descriptive cause, basically, that's what we're -- we're trying to notice the public and we're trying to get the public engaged and involved in the process, so when the whole thing is said and done, if they don't like what we did, at least we can say that we gave you an opportunity to come here and say your piece. So that would be my recommendation that we change it from an announcement to that we're seeking comments on that.

Mr. Kalipi: Well, let me just share my thoughts of understanding it. The reason why we put as an announcement is that the public would know where to channel their information to the subcommittee. It's then through the subcommittee the investigation and the dialogue would -- would be shared. So my hope of the announcement was to engage in the public to let them know to engage in the subcommittee. I did not like wanna take

lengthy time of deliberation and dialogue for certain rule changes or possible rule changes or -- through our meeting. I would like to focus on the meeting where you look at the permits, the exemptions, the bills, and other stuff. The gathering of it was just to have the public to channel their concerns through a subcommittee then that could do the research and dialogue and come back with a final proposal to the board. And so that's why I thought the announcement would fit that descriptive cause we did -- we do not want really have the dialogue here. Then if we would have the dialogue here and come to a conclusion, then we wouldn't need a subcommittee, and then we'll spend most of our time trying to change our rules and stuff like that. But if that's the consensus of the Commission, then that's where it would lead.

Mr. Chaikin: Okay, yeah, I can understand how it could get out of hand if people came here and wanted to spend a whole bunch of time, you know, on rule changes. So if that's the case, we should provide instructions on specifically if they want to submit testimony, how to do that. So, you know, on the Announcement, we can announce, you know, if anybody has any suggestions, rule changes, please provide your changes in writing to the Molokai Planning Commission, Attention: Subcommittee on Rules Changes, or something to that effect.

Mr. Hopper: Yeah, I just -- I had wrote you could change "Announcements" to "Commission seeking comments on the review of the rules of the Molokai Planning Commission," and then after that, "An investigative group was formed to assess potential amendments to the Commission's rules to provide comments or testimony to this group," and, you know, you could have an address or, you know, or wherever -- I'm not sure exactly where you would go, Clayton would know, but you could have that. That was my suggestion as far as language, it's a little longer, but it might be a little clearer for you.

Mr. Kalipi: I think that kind of captures what we want to do so if Hopper can work and get the language to Clayton to put it on our next agenda so it would be clear on what we want to establish with the public and with the Commission going forward. I do have a suggestion also concerning the group, these are my thoughts, and the subcommittee can proceed as however they want to cause, at this time, it seems like they're collecting information or problematic things in the procedures or the rules, this is just my thought quickly is that my suggestion is if the subcommittee could take two topics to bring forth, do some research; one would be the definition of single-family dwelling. If they can come back to the Commission so we can tighten up the language of single-family dwelling hoping that that would eliminate some of the -- some stuff that we have been seeing in the past and not so far past in that matter. Connected to single-family dwelling would also be square footage of the single-family dwelling - possibly looking at square footage restriction of maximized square footage. That kinda two go together. And if they can look at that and start biting away on a small way because there's a lot of language, there's a lot of things

that we can improve, but if we attack certain things directly, especially the single-family dwelling, I think it would be pertinent to where we are and what's going on through our process right now. So I just suggesting this. I'm not part of the subcommittee so I guess easy for suggest when you're not part of it. So Commissioner Chaikin is the Chair of the subcommittee, and I'm just saying that -- what my thoughts were if we can take a bite, small bite out of this, and then learn through the process, then we can look at different languages on how we can really move through it, but I do wanna see the subcommittee to make some advancements with it. So that was just my suggestion.

Mr. Chaikin: Alright, thank you, Chair. And I think, you know, we do need clarification maybe from Corp. Counsel in terms of exactly what we have final authority on here at this Commission. I know there's our Molokai Planning Commission rules, but then there's the shoreline rules, and then there's SMA rules, and then there's the special use rules. Are we final authority on each of those documents, or can you let us know where we stand on that?

Mr. Hopper: Yeah, I don't wanna deliberate too much on the committee's topics, but, yes, you have the final authority on SMA rules, shoreline rules, and your practice and procedure rules, which go over things like contested cases, subject, I think, to HRS 205A and State law, and things like that, but, yeah, you would be the -- to change those rules, you would need to vote on a change.

Mr. Chaikin: Okay, we're also the final authority on the special uses within the rural and agricultural districts?

Mr. Hopper: On the permits, you have to follow HRS 205, and that tells you what you -- how you grant special use permits, and there's a set of rules that the Commission has, in fact, I think you're the only Commission that has special use permit rules on how you decide on a special use permit and whether or not they're allowed. So, yeah, you're the final authority but again, the State law makes you the final authority and places some requirements on your for how to go about making those decisions. But if you wanted to adopt -- or you have rules, so if you wanted to amend your rules on how you make those decisions, you would be the final authority over that too.

Mr. Chaikin: Alright, thank you. Also, we have gotten public testimony that are rules that are very difficult to deal with, unlike the Maui Planning Commission, I haven't tried myself, but what I've heard is that if you go online and try to cut and paste, you can't do that, whereas in the Maui Planning Commission you can, and that might be a little problematic for us trying to, you know, take some language and try to wordsmith it to make it better. If we can't cut and paste, it's going to be a lot more laborious. Is there a problem - I can understand why you might not wanna put that online cause you think somebody might alter

that and try to change it in some way and use that in a deceptive fashion, but for the purposes of this subcommittee, would it be possible to get those in an editable form that we could work with?

Mr. Yoshida: We can examine that and we can probably report at the next meeting if we can or we cannot.

Mr. Chaikin: Okay. Well, thank you for that. And then I think the only other clarification I needed - who's on the subcommittee? I know it was me, Williams -- Commissioner Williams is on it, we have Commissioner Sprinzel and Napua, I believe was on that. So it's us four. So the three of us might wanna get together after this meeting to just try to figure out some kind of dates or when we want to try to -- to try to at least move this forward a little bit and get the ball rolling on that. So that's all I have. Thank you.

Mr. Kalipi: Thank you, Commissioner Chaikin. Anymore discussion, Commissioners? Commissioner Sprinzel.

Mr. Sprinzel: Can we, under the rules, limit the size of buildings on Molokai?

Mr. Kalipi: That -- I believe the subcommittee can come up through the dialogue on whatever they wanna submit to the Molokai Planning Commission.

Mr. Sprinzel: Okay, good, as long as that's in the terms reference, that's fine.

Mr. Kalipi: He did ask are we the final authority of the rules and he did answer, "Yes, you are."

Mr. Hopper: For the SMA rules, okay, not for the County Code. You can't amend the County Code, so that is a distinction there. For SMA rules, we look into, you know, you couldn't -- I don't think you could necessarily say no single-family dwelling ever could -- you could I think say you're not exempt if you do this, but I don't know if you could say you could never permit a dwelling over this size without a change to the Maui County Code unless there was some sort of environmental impact you saw from the size of the building. We could certainly look at that, you know, as far as prohibiting. I mean so you can't amend the County Code, but you could amend your SMA rules as long as they deal with SMA issues, you know, SMA issues, special use permit issues, shoreline issues and -- I mean through that, you can't amend the Maui County Code. There's certain things Council has to amend so --

Mr. Kalipi: Okay, anymore comments or questions, Commissioners? Okay, seeing none. We're going to open the floor for public testimony on this matter.

Ms. Manu: Aloha. I'm Ruth Manu. You talking about the Molokai Planning Commission. The Molokai planning was the GPAC. I sit on it. And the person to see that you really want to know about it is Daniel Bennett. He used work at Molokai High School. He was the math teacher. He was the president for that time for us. We were sitting on the board. Then they went change 'em to CPAC now. But to get all your verification that's if you hunting down everything, you can come -- invite him to your meeting, he get all the notes and everything you need, and he can plug you guys in real fast so it won't take time, okay? Daniel Bennett. Aloha.

Mr. Kalipi: Thank you, Aunty Ruthy. Any questions? Thank you. Okay, anymore testimony, testifiers? Okay, seeing none. I will close this time of public testimony. Okay, and then we're going to move on. Well, it says that we should take action because we do have a subcommittee already formulated so if it's alright with Commissioner Chaikin and the rest of the Commissioners, we can remove this from the agenda, and we're going to shore up the language of the announcement so we can engage the public to actually comment or engage the subcommittee through the process, okay? And then Michael Hopper agreed that he's going to work on the language with you, Clayton, to leave it on the -- on the agenda so -- okay. Thank you.

E. CHAIRPERSON'S REPORT

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

Mr. Kalipi: Okay, under Chairperson's Report, it says improvement of the Planning Commission and Planning Department service to the community, I think by creating the subcommittee, this is one way that we are trying to improve our service to the community. Is there any additional points to make for both the Planning Department or the Planning Commission? And I basically turn to the Commissioners to say if there's anymore input on improving our service to the community? Commissioner Chaikin.

Mr. Chaikin: Thank you. You know, I remember ever since, you know, I was on this Commission that AKAKU was always filming us, and then, all of a sudden, they quit, and then we asked the Mayor for an explanation of why they quit, and she said that it was a contractual thing and it would be rectified in whatever it was, five or eight weeks down the line, or some period of time, that time has long since come and gone, and so I asked you at the last meeting to give us an update on what the status of that situation is?

Mr. Yoshida: Yes, Commissioner Chaikin, I did with the Mayor's office regarding your request to learn of the status of the AKAKU contract, but I haven't received a response yet

back from them but -- so I guess I'll contact -- followup and contact them again and see if they can provide us with an update.

Mr. Chaikin: Thank you, Clayton.

Mr. Yoshida: Also, I guess, Commissioner Chaikin did raise the issue about the tsunami area signs and I did check with the County Civil Defense but -- indicating your request, well, to know the status of the installation of the signs, but I haven't received a response from them. So I'll followup with them and try to report at the next meeting the status.

Mr. Chaikin: Alright, thank you.

Mr. Kalipi: Clayton, is there any possible way, for the next agenda, can we put it under a bullet point or something under improvement of the Planning Commission and Planning Department service to the community, bullet point - AKAKU; bullet point - Civil Defense sign? Something that we could remember that this discussion has taken place and we don't let it fall through the cracks cause I kinda let it slip my mind so I thank Commissioner Chaikin for bringing that up. Is there any additional discussion of improvement of the Planning Department or the Planning Commission? Okay, let's let the public chime in then on this matter if there's no more comments from the Commissioners. Okay, we're going to open the floor for Chairperson's Report, agenda item E, if there's any comments or testimony on improvement of the Planning Commission or Planning Department service to the community improvements. Okay, seeing none. We're going to close this time of public testimony. Okay, moving on, the Director's Report.

F. DIRECTOR'S REPORT

- 1. Pending Molokai Applications**
- 2. Closed Molokai Applications**
- 3. Agenda Items for the February 24, 2010 meeting.**

Mr. Yoshida: Yes, Mr. Chairman, we've circulated copies of the pending and closed Molokai applications. If the Commissioners have any questions, we would note that, at this time, we probably have four major applications that we're processing; one is the SMA major for the Blessed Damien Church at the St. Sophia's Church site, the second and third ones are for installation of antennas at the Lucy Wilhelm Building for MOBI PCS and for Sprint, and then the fourth application is for the canoe hale, proposed canoe hale at Malama Cultural Park, which is an SMA major permit application.

Mr. Kalipi: Clayton, where's the credit union in all the mix? There's still couple -- the credit union application?

Mr. Yoshida: Oh, the Commission passed that back in August, I believe, so that SMA major permit was approved by the Commission last August.

Mr. Kalipi: Okay, so it's in closed applications or closed.

Mr. Yoshida: So if there aren't any other questions from the Commission?

Mr. Kalipi: Commissioner Bacon.

Mr. Bacon: Couple questions. On these open ones, I know last week you guys worked on the Roland project and it says that it's open, what -- when do these things become closed? You know, you say they're open but if we've made a ruling on it, doesn't that close it or is it until the building is actually finished and occupancy issued? Or how does it open or close?

Mr. Yoshida: Yeah, I think on some of -- well, some of these, the Commission has dealt with but I guess the report probably was printed on -- well, it says it was printed on February 3, so the approval letter may not have been done, and we don't close it until we complete the approval letter.

Mr. Bacon: Okay, then down on Page 1 of 1 on the completed projects, we've got the -- there's the -- I guess it's, what, the third -- third item from the bottom there, Yuknis vacation rental is closed or done, it's something that started in 2002, and was apparently done on the 20th of January this year. What was done? I mean this is the first time that showed up in any of these reports that I've seen, and it says that it's done, but it doesn't say what?

Mr. Kalipi: Commissioner Bacon, where are you looking at? I'm sorry.

Mr. Bacon: This is on the completed projects, there's only page of those, and it's about the third item up from the bottom - Yuknis vacation rental or beachfront cottage in Molokai. And actually the one right below it --

Mr. Yoshida: Oh, I believe that, in that case, I guess Mikal has been contacting these applications for TVRs, which have been pending, you know, we had that County policy before, which we came across in the Feeter application where there was like held -- the application is held in abeyance until the County develops a policy, which changed with this administration, basically, he's been contacting these applicants to see if they're still wishing to pursue their application and in some cases, they've said no, they don't wanna pursue

because it's been, you know, a number of years. I mean they may have submitted the application back in 2002 and, you know, currently they're not interested in pursuing so, basically we said, well, you know, they've kind of withdrawn their application so we'll file it.

Mr. Bacon: Okay, so that would apply to the next one too, Peters Paradise. I guess the other question I have then is -- is so once we've acted on any of these SMA -- either the SMA permit or minor or exemption, is that when it should go from the -- from the open file to the completed project? Or does that wait until the physical project is actually completed?

Mr. Yoshida: When the disposition letter is sent out to the applicant or whatever, then the project is closed - you know, whether it was denied or it was approved or approved with conditions, or the applicant withdrew.

Mr. Bacon: Okay, thank you.

Mr. Kalipi: So, Clayton, just to piggyback on Commissioner Bacon's questioning. So when we look at the word "done," that doesn't mean that they received the permit or anything like that? The "done" just refers to that it's completed? For example, "done" could be that the applicant withdrew their application. Was that correct?

Mr. Yoshida: Well, I guess that the application has been dealt with and, you know, completed, so it's not a pending application anymore, but it's -- some decision has been made, you know, it's approved, it's denied, it's withdrawn.

Mr. Kalipi: So "done" could basically mean approved --

Mr. Yoshida: Yeah, "done" could be --

Mr. Kalipi: Denied, withdrawn?

Mr. Yoshida: Yeah, it's not -- yeah.

Mr. Kalipi: Okay, just for clarification. Okay, Commissioner Pescaia.

Ms. Pescaia: Mikal was just commenting that what he was doing was going through the files in kinda this housekeeping kinda things, any loose ends, cause you'll see some entry day and completion date same day. It's because he had a piece of paper that needed to be put into -- inputted, it wasn't inputted into the computer but it could have been something really simple. So he's cleaning up and following up with some of these things that were open that -- or weren't processed properly, and he's just following up and making

sure that people -- and if they come and say, oh yeah, we withdrew that, he's just closing files as much as he can to get rid of some of that backlog. That's why there's so many completion all in a row, you know, just in January, there's all these completions but you look at the entry dates and they're staggered. He's going through files and he said he was just trying to clean it up.

Mr. Kalipi: So he's doing housekeeping according to what he told you? Okay, thank you. Commissioner Chaikin.

Mr. Chaikin: Yeah, on the last agenda we had an exemption request from -- for the Dunbar wetland, and I think we were told that he was out of town so it wasn't taken off the agenda or something, was there any update on that?

Mr. Yoshida: I'm sorry. What was the applicant's name?

Mr. Chaikin: That's the Dunbard wetland.

Mr. Yoshida: Oh, that one. That was the one that you dealt with at the last meeting.

Mr. Chaikin: Yeah.

Mr. Kalipi: No, no. He wasn't here. It was deferred.

Mr. Yoshida: Oh --

Mr. Kalipi: And I think it's rescheduled in March but you probably would know better. I seen Kip on the street one day and he said that he recommended it to be on the agenda March something.

Mr. Yoshida: Yeah, I think --

Mr. Kalipi: March 10.

Mr. Yoshida: Mikal had said that Kip was going to be gone for about a month so it was moved to the March 9 meeting.

Mr. Chaikin: Alright, well, thank you. Just one more item. Quite some time ago we had an exemption request here, I don't know who put that in, I think it was the Department of Transportation, for the culvert underneath the road around Mile No. 11, somewhere out there, and this Commission denied the exemption, and we're requiring them to get an

SMA, I guess it would be an SMA major permit. It's been quite a while. Is that thing still proceeding or do we have any information on that?

Mr. Yoshida: Well, the SMA -- well, the assessment for an exemption was denied so they have to come in for an SMA permit and we haven't received an SMA permit application from the State Department of Transportation.

Mr. Chaikin: So we don't have any additional -- are you saying they haven't applied or they just haven't -- how does that work? They have to physically come in with an application, a new application or something?

Mr. Yoshida: Yeah, they would -- I believe that the cost of the project was more than \$125,000 so it would be a SMA major permit.

Mr. Chaikin: So does that mean we denied it and then they never applied? Do we have any information as to whether they still are moving forward with that project, or they didn't like our answer and have abandoned the project, or do we have any information?

Mr. Yoshida: Well, I think that, in that case, the Commission disagreed or, well, did not concur with the exemption so, you know, the Commission is requiring an SMA permit. That has to be, I guess, conveyed to -- well, in written form, that has to be conveyed to the applicant and that has to be done because, again, they can appeal, like any decision which the Commission makes as a final decision can be appealed, so the written decision has to be transmitted to the applicant.

Mr. Chaikin: So I guess my question was more that do we have any information as to whether that project is moving forward in the direction of actually doing the project cause they were ready to do the project, and this was quite some time ago. They came to this Commission, this Commission didn't concur, said you go back, do your homework, do your SMA permit, and we'll take a look at it. And then I'm wondering what happened cause we haven't seen -- that was whatever, a million dollar project or something, and it has --

Mr. Yoshida: We haven't received any recent communication from State Department of Transportation regarding this project.

Mr. Chaikin: Alright. Well, thank you.

Mr. Kalipi: Commissioner Williams.

Mr. Williams: Clayton, I just have a question about the farm plan for Charles Nacos. Is that in the SMA? Cause I own the lot right next to him and I was under assumption it wasn't in the SMA.

Mr. Yoshida: Which --

Mr. Williams: It's on Page 1 of 1 on the completed projects - Charles John Nacos. My question I guess is are we looking at when people wanna build multi-dwellings that we're charged with the responsibility of approving farm plans, section dwellings, and stuff like that if they're not in the SMA?

Mr. Yoshida: Is that in --

Mr. Williams: It's the third one from the top.

Mr. Yoshida: Third one from the top.

Mr. Williams: Charles Nacos. He's in the middle of Papohaku Subdivision, Ranch Land Subdivision. Isn't that a farm plan he's asking for?

Mr. Yoshida: Yeah.

Mr. Williams: It says "done."

Mr. Yoshida: Yeah.

Mr. Williams: Why would that be a Commission issue if it's not in the SMA?

Mr. Yoshida: Oh, I see. Okay, I think the Commission wanted to know, back when we first started producing this list of all application, all Molokai applications so, you know, we include things like farm plans and other types of permits, flood development permit, which are processed administratively by staff but the Commission still wanted to know about it. So when we do the -- generate the report, it's for all applications that were issued or completed during that timeframe, so it encompasses matters that may come before the Commission for open applications, or matters that the Department is processing.

Mr. Kalipi: Okay, Commissioners, anymore questions on the pending Molokai applications?

Mr. Yoshida: Our next meeting date is February 24. So far we have that Arturo Oamil SMA assessment for an addition and covered deck, and I would have to check with Mikal

if we have any other SMA assessments. But that's what it's going to be like at least for the next couple of meetings.

Mr. Chaikin: So what is the status of Mikal?

Mr. Yoshida: Mikal is here on island. He's doing some site inspections.

Mr. Chaikin: So why wouldn't he have showed up at today's meeting?

Mr. Yoshida: Again, I guess he was kinda doing some site inspections of pending SMA assessments because we don't wanna -- because people live here and they see what's on the ground, and right now he's commuting from Maui, we don't wanna report that, oh, well, the house is to be built when it's already built. You know, cause we get questions from the public or we get questions from the Commission like, oh, isn't this house already built? And since he hasn't done the site inspection, he doesn't know for sure. So he's just checking things out for -- cause we have a lot of pending SMA assessments kind of spread all over the southern coast of the island and just, you know, looking at the conditions and kinda, you know, making his observations.

Mr. Chaikin: Alright, well, thank you. I was just going to suggest that since he doesn't have a, you know, he's an architect, I just thought it would be good for him to sit in on these meetings so he can get more familiar with the process and the way it all works even though he's not necessarily presenting, it might be --

Mr. Yoshida: Yeah, we're kinda transitioning from Danny to Mikal in terms of Mikal doing more of the presentations on the assessments whereas Danny used to do them before. So Danny is kinda working with Mikal in the transition.

Mr. Chaikin: Thank you.

Mr. Kalipi: Okay, thank you, Clayton. Anymore questions for Clayton or the next agenda. Okay, seeing none, I going give the public one last time to chime in on any of the discussion the Commissioners have talked about Molokai applications, the closed and the pending ones, to testify. Seeing none. We wanted to open the floor for the pending and the closed applications. Okay.

Ms. Caparida: Okay, my name is Judy Caparida, and I feel that we should have notice that when anything passes or it's been pending, or whatever it is, if you pass something, we want an answer cause it takes long time before you find out what's happening and I don't think that's right. I think that everything that you folks pass, you should have an answer to that problem, or not you'll get a bigger problem, right? Because it's going to be a bigger

problem cause everybody wants to know what's the answer. It was there. They heard it. But then it was never completed. So that's what I had to say. Thank you.

Mr. Kalipi: Thank you, Aunty. I just wanted to comment. I agree with you, and it might have to -- we might have to look at the word "done."

Ms. Caparida: Yeah.

Mr. Kalipi: Maybe put "done - withdrawal" --

Ms. Caparida: Yeah.

Mr. Kalipi: "Done - pass" --

Ms. Caparida: Yeah. At least you know what's going on.

Mr. Kalipi: "Done" --

Ms. Caparida: You know, cause every time I look at that, it only say "done." What is "done?"

Mr. Kalipi: Yeah.

Ms. Caparida: How far did the "done" go? You know? By the time you find out, the building is up. Okay, thank you.

Mr. Kalipi: Thank you. Thank you, Aunty. Very well noted. Very well noted. Commissioner Chaikin.

Mr. Chaikin: Yeah, I would just suggest that the Chair specifically ask Clayton that if he can make that clarification on the report.

Mr. Kalipi: Clayton, any chance -- who makes -- who spits out the report for us - is that you guys? If we could -- if we could simplify some of the done because then it kind of -- many of us our hair went stand up when we get the done, done, done. You know, it was like -- you know, made us very questionable. I guess is there any language that can kind of specifically help us when we look at "done," "done-withdrawal," or "done-approved," "done-denied?"

Mr. Yoshida: I guess we can confer with the staff and with MIS and see if we possibly can come up with some more detailed information as to how it was dealt with whether it was withdrawn or it was approved or it was denied or whatever versus done.

Mr. Kalipi: Okay, thank you, Clayton. Okay, Commissioners, seeing that that conclude our meeting, we call this meeting adjourned. Mahalo.

G. NEXT REGULAR MEETING DATE: February 24, 2010

H. ADJOURNMENT

There being no further business brought before the Commission, the meeting was adjourned at 3:28 p.m.

Submitted by,

SUZETTE L. ESMERALDA
Secretary to Boards and Commissions

RECORD OF ATTENDANCE

Present

Joseph Kalipi, Chairperson
Steve Chaikin, Vice-Chairperson
Nat Bacon
Mikiala Pescaia
John Sprinzel
Don Williams

Excused

Buchanan
Napua Leong
Teri Waros

Others

Clayton Yoshida, Planning Program Administrator
Joseph Alueta, Administrative Planning Officer
Michael Hopper, Deputy Corporation Counsel
Jane Lovell, Deputy Corporation Counsel