

(APPROVED: 11/04/10)

**CULTURAL RESOURCES COMMISSION
REGULAR MEETING
JULY 1, 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, Hawai'i. ***

A. CALL TO ORDER

The regular meeting of the Cultural Resources Commission (Commission) was called to order by Chairperson, Erik Fredericksen, at approximately 10:15 a.m., Thursday, July 1, 2010, in the Planning Department Conference Room, first floor, Kalana Pakui Building, 250 South High Street, Wailuku, Island of Maui.

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

Mr. Erik Fredericksen: Happy July everybody. Good morning and, once again, Happy July 1st to all. I call the July 1, 2010 meeting for the Maui County Cultural Resources Commission to order. First item is under -- Item B, under Unfinished Business, and, Stanley, if you'd like to take it away.

Mr. Stanley Solamillo read the following item description into the record.

B. UNFINISHED BUSINESS

- 1. MR. XORIN BALBES, on behalf of SOULSPACE RANCH, LLC, requesting reconsideration of conditions for interior courtyard pool and landscaping, located at 1813 Baldwin Avenue, TMK (2) 2-5-004:007, Makawao, Maui. The CRC may comment and provide recommendations. Public testimony will be accepted (B T 2010/0434). (S. Solamillo)**

Mr. Stanley Solamillo: Okay, there were two permits that were addressed by this project when we first brought it to the Commission and the first one for after-the-fact permits for work that had already been started, and this second one dealt with landscaping and pool design. The primary items that the Commission is being asked to reconsider today are those that were made with respect to water and that is that since standing has often been used as an indicator of personal wealth, there's a misuse of the same associated with it, that the pool design be reconfigured to better represent traditional kanaka maoli values, and that the traditional kanaka maoli place names, based upon the oral traditions associated with this site, shall be used, there's no question about that, but that native plants shall be incorporated into the pool and landscape design.

When the applicant began to ask questions about that latter point about incorporating native plants into a pool design, it became kind of clear that a number of Commissioners thought that that was the formal entry to this site, so we're going to go back over briefly where the formal entry is for the building and where the pool actually is located.

As you remember, this was a building built in 1910 to 1911 as a retirement facility for, as they said it in period records, for white men. It is a variation of a U-plan and it was designed by Honolulu architect, Henry Livingston Kerr. It uses Beaux Arts Forced Perspective so that the buildings, if you were looking from the open end of the U, the buildings, which are farther away, are actually physically smaller so that they can be read from a distance as being separate buildings. This was an aerial view taken by helicopter or from a helicopter in 1950 and it shows that a formal garden was planted instead of a pool, which was originally planned by Kerr for the interior courtyard. There was also an identified building on the makai end of the site, which actually acted as closure for the entire complex. Here's another view that shows the formal gardens probably taken in 1958 with elderly residents sitting there, and then you can see this cobbled pathway, which was part of the formal landscaping scheme. This is another view showing the formal plantings. Today, those plantings are gone. There are eight buildings associated with the formal complex, plus an ancillary building, which is the ninth building, and this is the view today.

Historically, this was -- there was an interior road that came in and provided access to this site. So, historically, this was an entry place or an entry point for the complex. This is not the case today and not the case for the proposed project.

This is a site plan showing the complex, enlargement showing the rehabilitated buildings after the proposed project has been completed, and this shows the pool design as it stands today and as it was originally presented to the Commission. Just running through these buildings, Fred Baldwin Memorial Home 001, 2, 3, 4, and 5. This now will become the formal entry. So you'll enter from this side. The sheds that are closest to you, there are two of them, will be removed and the building behind that will be rehabilitated as the new entry. FBMH 6, 7, and 8, are the closest buildings to the road, and the frontage between them and the road will actually include a parking lot. So what you will see as you come down Baldwin Avenue will be the edges of the building plus the parking lot, if you can see it, and then there's a planted area in front of the parking lot, which screens it from the road. This is the view that everyone is familiar with. That was the landscape design, which was prepared. This is actually a swimming pool for the people who come to use this facility. It's not an entry landscape feature.

So I'm repeating, this is not Versailles, as everybody kinda thought it might be. This is what you'll see as you come down Baldwin Avenue. You'll see an entry drive, which leads either to the parking lot on the left or to the right, which will be the formal entry. There's a circular drive, which is a drop-off point, for the formal entry to the Baldwin Memorial Home, and

that's at Building FBMH 005, so those sheds, which would be occurring where the palms are shown, had been removed. And this is pedestrian level view of that formal entry. So you will only see the pool when you go through the formal entry into Building No. 5, and then you look out onto the pool. This is looking at the parking lot, which front Building 7 and 8, between the building facades and Baldwin Avenue.

So the question, I guess, today is, based upon the fact that this is a swimming pool, is there any way to reconsider the condition that was given to the applicant? We will keep references for Hawaiian place names, but the question is: Can it remain as a pool currently designed or do you want to -- and can you instruct the applicant on how to incorporate native trees or native plantings into that design?

Mr. Fredericksen: Thank you, Stanley. I know for, you know, for myself, I was under the impression, when this was presented, that the pool was a landscape feature and it was also going to be the entrance to the -- to the facility. That's the understanding I had. Rhiannon?

Ms. Rhiannon Chandler: Chair? Thank you. Stanley, I have a question. Are we talking specifically about the pool or are we talking about the pool and the native landscaping around it that was suggested?

Mr. Solamillo: That's going to be everything.

Ms. Chandler: Okay. Is there a hesitancy to incorporate native landscaping at all? Okay. No, I was just wondering.

Mr. Solamillo: No. In fact, if you would Xorin to come up and address the Commission, that probably would be good before --

Ms. Chandler: Thank you.

Mr. Solamillo: You ask anymore questions.

Mr. Fredericksen: Yeah. Thank you.

Mr. Solamillo: Xorin? Please.

Mr. Xorin Balbes: Thank you for your time again today. Nice to see you all.

Mr. Fredericksen: Good morning.

Mr. Balbes: You know, we haven't done anymore work on the landscape plan but I definitely am going to incorporate the native trees and landscape up there.

Ms. Chandler: Oh great. Thank you.

Mr. Balbes: Yeah. So we're totally readdressing the landscape for the whole property.

Ms. Chandler: Okay. Thanks.

Mr. Fredericksen: Yeah, the plantings would be -- native plantings would be -- as much as can be utilized would be very appropriate. We always try to encourage landowners to, if they are redoing a place, to try to incorporate native landscaping. That's a really good way to help ensure that native plants actually have a chance to continue instead of just being overwhelmed by exotic landscaping stuff.

Mr. Balbes: I totally get that stuff.

Mr. Fredericksen: Any questions for the landowner?

Ms. Chandler: No, I would also say that I also did think that was the entrance so it does actually change --

Ms. Makalapua Kanuha: Change the whole dynamics.

Ms. Chandler: Yeah, because --

Ms. Kanuha: Yeah.

Ms. Chandler: If you think that's the entrance, then it's a different story, like it really is, but if it's not the entrance, you know, it's all about impression and, you know, the character of the community and stuff and what's appropriate. I completely agree with the decision in the beginning but I can see how it is worth reevaluating today under different circumstances. I appreciate your time coming down here.

Mr. Balbes: Absolutely.

Ms. Chandler: Yeah.

Mr. Balbes: And I actually realize for a couple of days that -- that there was a misunderstanding.

Ms. Kanuha: Yeah, and I just wanted to say I too thought it was just going to be standing water but after learning and gathering more information, it's like, yes, how would he have people swim in the lo'i kalo, which was our recommendation. However, I'd like to still recommend that you would have maybe one patch of lo'i kalo on the property. You know,

for us it's the beginning of our older sibling, yeah, who would be Haloa, you have Wakea, the sky was Papahanaumoku, earth mother, their first unification that was the child Haloa, and, of course, he was stillborn so when they buried him, out of Haloa came kalo. So for what you're doing up there, it would be great to have at least one section that would be dedicated for, you know, going over native but have Haloa there as well.

Mr. Balbes: Great. Okay.

Ms. Kanuha: And --

Mr. Balbes: We'll work that into the design.

Ms. Kanuha: Yeah, and it might be great because of the healing of what you're doing up there, maybe you might wanna think about having a cultural person, maybe like on a retainer or employee cause that way it'll kinda keep you culturally correct. At least you would have someone to confide in.

Mr. Balbes: Stanley actually gave me the name and number of somebody that I'm going to consult with cause I'm still going to be here next week.

Ms. Kanuha: Okay, great. It's the name that I --

Mr. Balbes: Yes.

Ms. Kanuha: Okay.

Mr. Balbes: Thank you.

Ms. Kanuha: Okay, great. Thank you. Mahalo.

Mr. Fredericksen: Ray?

Mr. Ray Hutaff: It does offer a change not being at the forefront, but at the same time, what exactly is your intension for the pool? What's its purpose?

Mr. Balbes: What's its purpose? Well, I think that it's got a couple of purposes.

Mr. Hutaff: Good.

Mr. Balbes: One is just a regular pool where people can actually swim, and the other is that we'll also use it for Watsu sessions later, which is a healing therapy that's in the water with

a Watsu master, which is sort of like -- almost like an underwater massage technique and releasing of energies in the body.

Mr. Hutaff: Culturally, that fits very well. Healing water is healing, which is why we don't abuse it. Your landscaping that I see in the picture there, what does that bring to the healing in the pool? What's the visual inner aspect of that?

Mr. Balbes: Well, you know, the landscape that's there is still the original landscape plan. We haven't readdressed that yet.

Mr. Hutaff: Okay.

Mr. Balbes: So certainly that's something to consider as we are redesigning and make sure that it is somehow incorporating in to the healing mordality.

Mr. Fredericksen: And that, having the cultural advisor that you could speak with about how to make a -- you know, how to have an appropriate landscape plan is an excellent idea.

Mr. Balbes: Right.

Mr. Fredericksen: And an appropriate --

Mr. Balbes: Yeah, totally.

Mr. Hutaff: The other water feature below the pool itself and the flames - purpose?

Mr. Balbes: The other water feature is actually probably -- it's not going to be there. That was something that the renderer that took it upon himself to expand that out, but I definitely would like to have fire on the property because we like to balance all the energies of earth, air, fire, and water as another healing element.

Mr. Hutaff: And you're going to have a cultural advisor lead you in the correct direction on that?

Mr. Balbes: Yes.

Mr. Hutaff: Okay. Her idea about the lo'i kalo, a piece of information about that. She gave you some good information, but do you know that it's one of the few plants, if not the only plant, that literally gives birth to itself?

Mr. Balbes: Really?

Mr. Hutaff: The leaves don't come out of another shoot -- I mean out of another branch. They come out of the plant itself, literally, to be hapai, to be -- to carry or to be present, comes out wrinkly, reaches for the sky, and then becomes a leaf to produce another sibling. So a lot of energy.

Mr. Balbes: A lot of energy and actually very appropriate for the rebirthing of people on the property.

Mr. Hutaff: Yes. So that would be, in my opinion, I don't think we're going to make a requirement but, you know, to be connected to everything and to be pono, right?

Mr. Balbes: So that it has a purpose.

Mr. Hutaff: When you think pono, you know, to be pono is you're taking the past and the present and the future and make it all good. This has some unkind things associated with the property and the building, but the rebirth can change its attitude and latitude and everything else about it, so I think that a cultural advisor will give you some advice. The fire is a good idea if it's done appropriate, culturally. Is that your intent? I mean we obviously can't judge you on those things but, personally, I have a great curiosity. You seem like a wonderful man, you have a lot of energy. I'm glad that's not the forefront, okay. I'm glad it's going to be used for healing that that's going to be it's intent. But I kinda wanna know really along the lines of where you're coming from, obviously, this is a business, but sometimes businesses can have proper things. You have to survive.

Mr. Balbes: Yes.

Mr. Hutaff: And, unfortunately, it's all been, you know, other stuff that we have ...(inaudible)... fish don't work together, too well together in today's environment. You can't put fish in gas or in your vehicle. So your original intent is to bring what to this particular part of the island? What is it that -- what's the energy that you wanna bring to it?

Mr. Balbes: Well, I think it really is an expanded version of what I already do in Los Angeles, and that is, you know, the name of our company for design and architecture is called "Temple Home," and we're all about bringing the sacred into space and assisting people and really discovering who are they on a soul level and then bring that level of design to the space so that when they forget at times, the space reminds them of who they are. In fact, I'm writing a book, it's called *Soul Spaces - Eight Steps to Personal Transformation from the Interior Design of You to the Interior Design of your Space*. So I really see this as an extension of a philosophy and a process that we've been engaged in for a long time so that we actually can then bring people in to assist them in really getting to that next space, getting to that next level of peace and satisfaction within themselves and the only way we get there is by connecting to a deeper part of ourselves. And so I really see this as a -- the

opportunity in which to assist others in getting there. So it is a business, but it's, at this point in my life, it's not -- it's less about making money. It's about making a difference. So that's what this is about.

Mr. Hutaff: Cool. When you said you're bringing stuff from LA to here, you know, that kinda makes the back of my hair stand up.

Mr. Balbes: My personal philosophy.

Mr. Hutaff: Yes, I understand exactly what you're saying. Again, just kinda like little bit of, you know, guidance is every place has it's own sense of spirituality. You have to find that place in order to bring it out. And if you take somebody from another place, and you bring them into a place that has a different kind of energy, if you don't relate to it, my personal experience is it doesn't work. You don't have that fullness of it. You know, you have pieces of it and definitely have some guidance. Getting the information about Hawaii and it's own spiritualness and the `aina and the lanii and all those things, I think, personally, right, would make you have a better outcome because of where you're at. Are you on those lines?

Mr. Balbes: I'm completely in agreement with you. Can I share a short little story? Is that okay? So when we came to start doing the inspections on this property, you know, we did them for several days and then we had like ten minutes to like stop there before having to go to the airport to go back to Los Angeles, and in those ten minutes, this - I think Stan knows this story - but this woman walked on the property and she said, "I'm looking for this other lady, you know, who bought this property." I said, "Well, she was in escrow but she fell out and I'm now the, you know, new, you know, potential owner." And she took me, and she hugged me, she says, "I'm your Aunty Fran." And she started crying. She says, "You know, this property is very sacred." And then she took me and Norm and she started doing all these prayers on us and we started doing prayers on the land, and she says, "I want you to come out and I want you to meet your Aunty Emma." And so we went out and we met Aunty Emma, and then we all went to lunch and - I've got goose bumps - because I felt like it was -- it felt like Hawaii was welcoming us in a deep, very deep, deep sense, and we've stayed close to both of them and we keep bringing other people in to do ceremony on the land even before we start our renovation to just really, you know, bring the life back. So I totally understand what you're saying and I'm totally open that if anybody here knows other people that, you know, can bring anything to it, I'm totally open.

Mr. Hutaff: Good beginning.

Mr. Fredericksen: Any other comments or questions?

Ms. Kanuha: Well, just one more thing. If it gets to the point of having the lo`i kalo there, it's not just there, but everything has a purpose, so if we work the lo`i kalo, we eat the lo`i kalo, yeah, so it doesn't sit there and then we kiloi or we just get rid of it - we eat it as well. So I just wanted to put that in too.

Mr. Balbes: And just so you know that we plan on doing all gardening to be able to eat off the land.

Ms. Kanuha: Good.

Mr. Balbes: Yeah.

Ms. Kanuha: Good. Thank you.

Mr. Fredericksen: Good.

Mr. Balbes: Thank you.

Mr. Fredericksen: Good use.

Mr. Balbes: Thank you for your time.

Mr. Fredericksen: I've got just one comment. It doesn't have anything to do with the swimming pool issue itself, but I would encourage the design of the parking lot, and this has -- this is just a comment, not a condition or anything, try to make it so - I can't remember what they're called, but you can have a self-draining parking lot that has -- so it's just not all asphalt or concrete where you have -- I don't know. There's grass space in there.

Mr. Balbes: Grasscrete.

Mr. Fredericksen: Grasscrete, yeah. If that's --

Mr. Balbes: That's what we're doing.

Mr. Fredericksen: Okay, great, because it just -- it's just one small way to prevent or help minimize runoff and everything, and it's such a nicer look.

Mr. Balbes: Yeah. And you won't be seeing the parking lot at all from the street and/or the buildings cause it's all going to be landscaped in.

Mr. Fredericksen: And that's great too.

Mr. Balbes: Yeah.

Mr. Fredericksen: Lots of trees and as much native plantings as can be utilized.

Mr. Balbes: For sure.

Mr. Fredericksen: Any other comments?

Mr. Hutaff: Yeah, the native plantings and doing what you're doing, it'll bring healing to that area because it was used in the form of souls. You have the responsibility.

Mr. Balbes: I felt like I took that responsibility on the last time I was here, and it felt good to be taking on that mantle. So thank you.

Mr. Fredericksen: Okay, and thank you for being open and for being, you know, displaying concern and everything. That's not always the case with the landowners. Thanks.

Mr. Balbes: You're welcome.

Mr. Fredericksen: Stanley?

Mr. Solamillo: Okay, the devil is in the details. I'm going to reiterate the recommendations that I heard. What I think the initial thing, and I'm going to ask for concurrence from the Commission, is the size of the pool and the current configuration alright if we make these other changes? Are we okay with that?

Mr. Fredericksen: Stanley, when you say "configuration," are you referring to landscaping that was depicted, the landscaping that's depicted there --

Mr. Solamillo: No, I'm not --

Mr. Fredericksen: Or the actual shape of the pool?

Mr. Solamillo: I mean just the size -- just given the square footage of water that we got there as a -- as a swimming pool.

Mr. Fredericksen: Could you give us a qualitative -- like what is it? Is it 40 by --

Mr. Solamillo: I don't know.

Mr. Fredericksen: 80 feet? 35/60? Qualitatively?

Mr. Balbes: I think it's like 38 to 40 by like 65.

Mr. Fredericksen: Okay.

Mr. Solamillo: Okay, 38 to 40 by 65. Instead of palms, they'll be incorporating native plantings, correct? Okay. So those will be upcountry trees.

Mr. Fredericksen: And there are native palms as well too.

Mr. Solamillo: Okay. That there will be a lo'i kalo that will be utilized, not just for decorative purposes, but also utilized in food preparation at the facility. That there will be a cultural person who is on retainer or an employee of the institution to make sure that everything is pono and culturally correct. And then do you want the grasscrete added in?

Mr. Fredericksen: That's -- they're already using that.

Mr. Solamillo: Okay.

Mr. Fredericksen: And that's not part of the --

Mr. Solamillo: Okay.

Mr. Fredericksen: What we're addressing. It was just a general comment.

Mr. Solamillo: Do you wanna deal with the fire issue or no deal with the fire issue? This is a question for Ray. You want it specifically called out or not?

Mr. Hutaff: No.

Mr. Solamillo: Okay.

Mr. Hutaff: I think -- I think if he has a cultural advisor, he's going to have to listen to it. The only thing I would like to add to this is that it be stated that it be a covenant of the property so if it's sold or a new owner comes in or whatever, that it's perpetuated, this permit's perpetuated forever, so it would be part of the covenant.

Mr. Solamillo: A covenant, that means a deed restriction attached to the property?

Mr. Hutaff: Forever.

Mr. Balbes: ...(inaudible)...

Mr. Solamillo: The use of the water and how all these --

Mr. Hutaff: As a pool.

Mr. Solamillo: As a pool and what's its purpose. Yeah, it would not change in perpetuity. Alright.

Mr. Fredericksen: Yeah, let's -- I'm going to ask James to come in on this one.

Mr. Solamillo: Yeah, that's fine.

Mr. Fredericksen: I don't -- I don't think that that's our purview.

Mr. Solamillo: Okay.

Mr. Fredericksen: I mean what I would see is if -- if this -- we do approve this one instance, if this property is sold, if there's something else that's going to happen, then it would, at that point, come back to the Commission --

Mr. Solamillo: Come back.

Mr. Fredericksen: And the Commission would revisit whatever -- I mean, Ray, are you --

Mr. Hutaff: Yeah, fine. That's fine. Yeah.

Mr. Solamillo: Okay.

Mr. Fredericksen: Okay.

Mr. Solamillo: Alright, so the recommendations today are for the incorporation of native plantings, okay, into a pool, roughly 38-by-60; that there be a section where lo'i kalo is grown --

Mr. Fredericksen: On the property.

Mr. Solamillo: On the property for use as food, a food source for the institution, and that there be a cultural person on retainer or an employee.

Mr. Fredericksen: Any other comments or request for addition?

Ms. Kanuha: What is the name going to be on this facility?

Mr. Solamillo: I don't think we have one yet because that's something they'd have to work out.

Ms. Kanuha: Oh, okay. Maybe at the time, you know, with the cultural resource person, you can kinda bring the inoa, the wahi pana, the stories of the place --

Mr. Solamillo: Yeah.

Ms. Kanuha: And the people so --

Mr. Hutaff: I have a question for Maka. Lo`i - always wet or can be dry?

Ms. Kanuha: I know that they have two different types: wet land, dryland.

Mr. Hutaff: But lo`i is still --

Mr. Fredericksen: But lo`i is wet.

Mr. Solamillo: Lo`i is wet.

Ms. Kanuha: Wet.

Mr. Fredericksen: Yeah, that's what --

Mr. Hutaff: Won't that be a little bit of a problem up there? Not many types of taro can stand standing water. There's no stream.

Ms. Kanuha: I wouldn't know. I would maybe recommend that we get --

Mr. Solamillo: It can be a dryland --

Ms. Kanuha: Advice from a mahi `ai.

Mr. Fredericksen: And probably -- I mean given the location of this -- given the area, there wouldn't have been in that spot lo`i because there was no running water, there certainly could have been dryland taro, and certainly we'd encourage the landowner to do appropriate dryland taro, Hawaiian dryland taro varieties and other Hawaiian plantings, food. There's sugar, different types of sugarcane and different sweet potatoes, that really would have been sweet potato country, and other food --

Mr. Solamillo: How about instead of lo`i kalo that we just say kalo.

Mr. Hutaff: Yes.

Ms. Kanuha: Kalo.

Mr. Fredericksen: Kalo. And if they wanted to have lo`i there as an educational thing, that could certainly be -- be the case.

Mr. Solamillo: Okay.

Mr. Fredericksen: Did you wanna come up and say something? Just come on back up. We'll keep it --

Mr. Balbes: Currently there is taro, dry taro on the property but, you know, I'm also -- we're also thinking of doing like a little pond for fish and I don't know if that can go into the water with the fishes also.

Mr. Fredericksen: Sure.

Mr. Balbes: So I mean I'd like to incorporate it because I also -- not only is it to eat, but it's also a beautiful plant. So I think we can figure out how to incorporate both.

Ms. Kanuha: Great. Thanks.

Mr. Fredericksen: Yeah, that's neat. Stanley?

Mr. Solamillo: Alright, that's it then.

Mr. Fredericksen: Okay. Any other comments, Commission Members? Bruce?

Mr. Bruce U`u: I'd just like to thank all the Commissioners and see if we can do a yoga class.

Ms. Kanuha: I second that.

Mr. Fredericksen: I wanted to make one other comment, this isn't, you know, directly to the application, this, what we're looking at right now, but I just wanted to point out to the Commissioners that this property's going to be considered by the Hawaii Historic Places Review Board for Nomination to the Hawaii and National Registers of Historic Places, and that's -- I'd like to see buildings that have some historic significance being preserved, if possible, rather than torn down, and I think what's being proposed for this group of buildings I think is a positive and that's -- that's really neat to see that adaptive reuse into a -- kind of a, I don't know if "higher purpose" is quite the right term, but just into a positive purpose is

good. Okay, so does anybody wanna make a motion or anymore discussion on this? At this point, we're --

Mr. Hutaff: I'd like to move, since I was the one that pretty much --

Mr. Fredericksen: Okay, Ray.

Mr. Hutaff: Did the difference so that we can show that we're -- we're open. Okay, I'd like to move that this be approved with the recommendations that Stan has read into the record.

Ms. Kanuha: And I second.

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

It has been moved by Mr. Hutaff, seconded by Ms. Kanuha, then unanimously

VOTED: to approve with the recommendations that Stanley Solamillo has read into the record.

Mr. Fredericksen: Okay, motion carries. I wanted to, on behalf of the Commission, just thank the landowner for being open, also for showing sensitivity and being willing to follow through on -- on matters that have been discussed because that's real important and I appreciate the use of the native plantings and the -- and also a commitment to use portion of the property to grow food because that's -- that, I believe, is really really important. Anyway, thanks again and best of luck, and use the cultural advisor, and, you know, best of luck on it, okay?

Mr. Balbes: Thank you very much.

Mr. Fredericksen: Alright. Okay, let's see, next item, Item C, Workshop.

Mr. Solamillo: Ah, the one that we've all been waiting for.

Mr. Solamillo read the following item description into the record:

C. WORKSHOP

- 1. Continuing Workshop for Cultural Resource Commission on Chapter 6E, Hawaii Revised Statutes, and "Regulations on Buildings and Uses" as outlined in Chapter 19.52 of the Maui County Code as well as applicable State and Federal laws. Public**

testimony will be accepted. (Hinano Rodrigues, SHPD, and S. Solamillo)

Mr. Solamillo: Your guest speaker is Hinano Rodrigues from SHPD.

Mr. Fredericksen: Okay, Hinano, keep us engaged. No -- I'm sorry. I couldn't resist.

Mr. Hinano Rodrigues: You know when three people say they going get coffee already, I'm not off to a good start.

Mr. Fredericksen: No, good morning, Hinano, and thank you for participating in this.

Mr. Rodrigues: Aloha mai kakou. 6E is the driving force behind our preservation laws in this State. 6E is a statute. Accompanying 6E are Hawaii Administrative Rules that permit or that put us in the direction to accomplish that of which is evidence in 6E. 6E is very boring so we're going to go through this real fast, and then we'll open this up to a question and answering period. For the most part, what affects you guys and my office is 6E-8 and 6E-42 and 6E-43. 6E-8 are government projects that has its rules. 6E-42 are, for the most part, any other kind of projects, and 43 are the burial laws. Those are the stuff that come in front of you, okay?

So anyway, we don't even need to read this. 6E-1 is just the declaration of intent. Those things always sound nice but they have no teeth until you actually apply that intent. And then, of course, definitions. As a good lawyer, as James would say, lawyers always stick with their definitions for their statutes. We'll just skip through the definitions.

Okay, so the historic preservation program. For the most part, historic preservation, in terms of how it's actually applied in real time, historic preservation is really a matter of us doing one of two things. The most important is for us to review permits that give us -- by reviewing permits, it gives us the opportunity to comment on that permit, and that is the first step towards preserving historic sites. The second part is to -- is to create and develop a historic data -- a database. And if any of you had read the National Park Service ENPS Critique of Historic Preservation, you'll notice that those are the two items that they were mostly concerned with, and we'll get to that when we talk about 6E-8 and 6E-42.

The reason why I'm going through this is it's a little bit too boring but a little bit too concise, and then if we start to go through each one one-by-one, we're not going to get past 6E-2, right, and we gotta go to 6E-43. Nah, we really don't ...(inaudible)... skip in-between. Okay, State historic preservation officer. This is a very interesting one because the law says that we have to have what is known as a historic preservation officer. If you look at the bottom, the last sentence, it says, "The State historic preservation officer shall be appointed on the basis of professional competence and experience in the field of historic preservation." I

know that -- I think Nancy McMahon, who is the Branch Chief for Archaeology, might be the Assistant State Historic Preservation Officer. The way Hawaii statutes are written, the historic preservation officer is the chair of the DLNR, and it creates a problem because our chairs in the past don't have that kind of expertise, and I don't know how to reconcile that difference.

Mr. Fredericksen: Hinano, I have a question. On - let's see - the -- so the historic preservation officer, who is the defacto, you know, is the chair of DLNR, what were the National Park comments, Park Service comments on that? Or did they have any comments on that, that hat, if you will, being worn by the chair of DLNR?

Mr. Rodrigues: Yeah, you know what? I don't remember, even if they addressed that issue.

Mr. Fredericksen: Is this a common practice in other states or is it just -- is Hawaii kinda unique or -- in that?

Mr. Rodrigues: I don't think it's a common practice in the other states. The point is is that we might have a conflict with the law. This says one this and another thing says another thing.

Mr. Fredericksen: And a conflict of interest too because if it's somebody an appointee by a given governmental administration, that just, to me, seems like there could be some conflict.

Mr. Rodrigues: Yeah, James told me early this morning he's going to write a brief.

Mr. Giroux: As a matter of fact -- no. Hinano, just for clarification, is that appointment done by a government -- I mean the governor has it like an executive order that says the chair of DLNR shall be -- I mean --

Mr. Rodrigues: It's either existing as a Hawaii Administrative Rule or a statute that the chair of the DLNR shall serve as a historic preservation officer.

Mr. Giroux: Is that per DLNR rules?

Mr. Rodrigues: You know, I'm really not sure.

Mr. Giroux: Cause that would be interesting because I mean like the way we have it in the County where it says, "shall be appointed," "shall be appointed," it's, you know, the mayor appoints the heads of the departments, the departments appoint their heads, and that's all per charter. So I'm interested to see if -- if it's the DLNR rules itself, it's almost like the DLNR appointing itself as king, and then I shall be king and now I'm king, and -- you know,

I mean if they're creating their rule to be their self -- it's the governor who's supposed to be doing it, right? I mean according to that, right? I mean --

Mr. Rodrigues: According to this, yes, but I think it's a statute that said that the chair shall serve as -- the DLNR chair shall serve as the historic preservation officer.

Mr. Giroux: But then you need the other end - if appointed.

Mr. Rodrigues: Yes.

Mr. Giroux: It's like when in the County Code, when we have something in the charter, we would say, like the Board of Variances, right? In the County Code it says, "The Board Variances" -- no, in the charter it says, "The Board of Variances shall serve as the hearing body if the County Code says they should." So then you gotta look at the County Code and it says, oh wait, it says it's the Board of Variances. You know what I mean?

Mr. Rodrigues: Yeah. Yeah.

Mr. Giroux: You need the two. You can't just say the Board of Variances is the hearings officer for everything that we don't know what they should be the hearing officer of.

Mr. Rodrigues: Right.

Mr. Giroux: There should be another document that -- that actually has authority to say that you -- you know what I mean? Like I could write rules to have our chair be a member of the Board of Variances. It doesn't make him a member of Board of Variances.

Mr. Rodrigues: Right.

Mr. Giroux: Because the County Code has to say and the chair of the Cultural Resources Commission can also be a defacto member of the Board of Variances, or it has to say that in the charter.

Mr. Rodrigues: Right. I see. Yeah.

Mr. Giroux: You know what I mean? I'm just trying to run down the line here and say, logically, what's the next document we need to look at.

Mr. Rodrigues: My concern is more with the qualifications of someone who serves as a historic preservation office, okay, cause that's the person that actually signs memorandums of agreement, memorandums of understanding, all these legal documents.

Mr. Hutaff: What's Chapter 76? It says, "Without regard to Chapter 76 we appoint . . ."

Mr. Rodrigues: I don't know if you go back --

Mr. Giroux: I think that's your civil service code.

Mr. Hutaff: Is it?

Mr. Giroux: Yeah. Your -- you know, he's not a -- it's almost being an at-will employee. You're not covered by your civil service requirement.

Ms. Chandler: Chair?

Mr. Fredericksen: Yeah, go ahead.

Ms. Chandler: Hinano, I have a question.

Mr. Rodrigues: Yes?

Ms. Chandler: If we agree with you that that is not what anybody -- I don't think people know that, really, I don't think it's like really public knowledge that the State Historic Preservation Officer is the chair of DLNR, who is appointed by the governor, and I don't like how that sounds, like if we don't like how that sounds, is there anything that can be done about that at all?

Mr. Rodrigues: Probably legislation.

Ms. Chandler: So would that be like this body writing a letter to legislators, or would that be like individually writing letters, or would that be -- how could we do anything about that? That's my question.

Mr. Rodrigues: I think if this body writes a letter, then in that letter you would have to provide justification for actually questioning it versus if you write a letter as an individual, it's -- it's a lot more open. Or you could do both.

Mr. Fredericksen: Hinano?

Mr. Rodrigues: Yes?

Mr. Fredericksen: If what is -- what defacto is occurring right now, and it has been occurring, it appears - well, not appears, it does -- Hawaii does fall short of what's in the statutes in that regard, and I'm just kind of thinking out loud here, that might be possibly

something that if the Commission addressed it as a -- this is an agenda item, and it'd be pretty brief, it's like, well let's see, does the chair of the DLNR ever -- Stanley's shaking his head? Here, Stanley, come up and -- don't go away though, Hinano. Thank you.

Mr. Solamillo: I'm just going to offer my two cents. Our administration will soon be changing because we have elections coming up, and if there would have been any need to do anything, it would have been during this whole period of, you know, of who's in office currently. So at this point, I'm reticent to get involved in some political fire fight because of the impending elections as well as one other thing, and I'm going to speak from somewhat maybe a selfish point of view, but we receive money from SHPD, okay. That money comes from the Feds. Ultimately, the Feds ...(inaudible)... work products and what we submit but, you know, SHPD serves as a pass-through. The conditions for SHPD staff that has remain has been, you know, trying at best, and I'm being --

Mr. Fredericksen: Abysmal.

Mr. Solamillo: Yeah, abysmal, so for those people who are qualified and have been working hand-in-hand with Maui County as well as the other counties, you know, I will always, you know, offer my kudos. I just think, at this point, we're at the tailend of an admin administrative period or, you know, a term of elected officials and we need to see what exactly shakes out. And if, quite frankly, if you want to stiffen it, it has to happen in Maui County, if you really want my honest opinion, it needs to be happening in the code here because we're a political subdivision and we're allowed to go, you know, and develop our own ordinances and refined our own codes to meet the needs that we see that are present rather than trying to tackle the bigger issue, which is the entire State.

Mr. Fredericksen: We'll -- do we wanna -- I guess we can -- we don't have a whole lot of folks here, we can have some public comment involved in this briefly. Dana?

Ms. Dana Naone Hall: Thank you, Mr. Chairman, Members of the Commission. My name is Dana Naone Hall. Actually, historically, the governor has appointed the chair -- or the director of the Department of Land and Natural Resources, who's also the chair of the Board of Land and Natural Resources, who's also the chair on the Commission on Water Resources, to be the State Historic Preservation Officer, but when SHPD has been properly operated, in fact, the person who fulfills, largely fulfills the role of the State Historic Preservation Officer is the administrator of the State Department of -- the State Historic Preservation Division, that administrator. And the last qualified administrator that we had was Don Hibbard, and Don had a PhD in architectural history, and he had a staff of people who were qualified by National Park standards, Department of the Interior, NPS standards. Since Don left and Melanie Chinen and now Pua Aiu took over as administrators, and this is all during the Lingle tenure, SHPD has been gutted, the staff. It has not been fulfilling its regulatory role and so -- and that's one reason why there's so many issues that are

unresolved today or badly resolved. In any case, I don't think that this Commission needs to get involved with trying to change 6E-5 because -- I mean I agree with the planner, I believe that, you know, with a new administration, things will, hopefully, go back to where they had been, which is that the State Historic Preservation Division will have a properly qualified administrator who will serve the function of the State Historic Preservation Officer.

Mr. Fredericksen: Thanks, Dana. Yeah, thank you for --

Ms. Veronica Marquez: I have a comment.

Mr. Fredericksen: Oh, go ahead, Veronica.

Ms. Marquez: For this lady. So in essence, in black and white documentation, the State Historic Preservation Officer is listed as the chair of the DLNR, however --

Mr. Fredericksen: It's on paper.

Ms. Marquez: It's on paper, however, the person actually executing --

Ms. Hall: Yes.

Ms. Marquez: Would be SHPD administrator?

Ms. Hall: Correct.

Ms. Marquez: But in record and documentation it shows DLNR?

Ms. Hall: Yeah, and usually, you know, the chair of the Board of Land and Natural Resources, the director of the DLNR doesn't really get involved directly in historic preservation issues. It's all meant to be handled on the administrative level through the division. I mean, you know, the only time that they get involved is if there's something huge, like for instance, during the Honokahua controversy, the burial controversy, the person who signed the documents resolving that controversy was William Paty, who at the time was the State Historic Preservation Officer so -- and also the chair of BLNR. So usually it's more or less a formality but the real work gets done at the SHPD level.

Ms. Marquez: Thank you.

Mr. Fredericksen: Thanks, Dana. Hinano?

Mr. Rodrigues: Okay, who started this?

Mr. Hutaff: You did.

Mr. Rodrigues: 6E-6. Oh, 5.5 is fine. Yeah, we'll just skip that. This is our State Historic Places Review Board. I don't have much -- much participation with this. I think Stan would know more about the Historic Places Review Board than I do. But anyway, basically, what it is is just a -- those are the guys that normally handle registering of historic places. It's a very powerful board. And from what I can see so far, it consist of people, at least administratively, people who are very, very, very, very dedicated to historic preservation.

Okay, the department shall serve -- serve as or shall determine the depository for all field notes, photographs, etcetera, etcetera, etcetera. I think one of things that was discussed in the NPS study was whether or not we maintain these facilities that actually do that.

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

Mr. Rodrigues: Yeah. The answer is "no" we don't.

Mr. Hutaff: That was my question.

Mr. Rodrigues: Yeah, we don't. Next.

Mr. Hutaff: Why not?

Mr. Rodrigues: Money. Money.

Mr. Hutaff: How much stuff is there?

Mr. Rodrigues: What we do is we normally -- when we come across stuff, we normally ask that the landowners curate all this stuff. There aren't that much stuff within our facilities. I believe that there are a lot of stuff that we could actually receive and take possession provided we had the facilities. There are Federal rules with regards to the standards of curation; one, which is air conditioning 24 hours a day, which we don't have that facility.

Ms. Hall: Actually, one of the interesting things I'm reminded of by looking at this particular provision is there are two processes of review in historic preservation; one is under 6E-42, which is for private landowners, and the other is under 6E-8, which you will get to shortly, and that's for government projects, State or County or Federal, and, you know, the projects under 6E-8, that's what I wonder about. What happens to any artifacts and mitten, etcetera, that are found on State or County or Federal lands? And that's an unknown thing, yeah, Erik? Because I mean, you know, we -- I mean, generally, the private landowners take possession of articles found during projects on their lands, which, you know, I mean there's

something debatable about that, but, you know, as for government lands, I don't what happens to all of those items.

Mr. Rodrigues: So we kinda jumped the gun here under 6E-8 and 6E-42. So let me just add to -- just go back to what Dana was talking about, 6E-48, that has to do with governmental projects, DOT, etcetera, roads. In my possession in the Maui office, I really don't have anything that comes from the State. When I think about it, the only thing that would be governmental would be Hawaiian Homes possessions. I have that. I have the Kahikinui and I think some Keokea, Waiohuli, but other than that, Dana's right. Where are the -- if items were found as a result of a governmental contract, where are those items because actually we're supposed to serve as the depository.

Okay, basically, I think was 6E-7 says is anything found, any historic features found on State property belongs to the State. That one's kinda easy. Why it's important to understand that is, and Dana had stated it, anything found on private property belongs to the private property owner. There is a misconception out there that, oh, it's historic. Oh, well, SHPD steps in and we protect that thing. That's not true at all. We got a lot of calls every single day about things found on private property and they want me - "they," the public - want me to take possession of those items and I can't do that. I can grab stuff that are on State property. But what is really interesting though is that a lot of the State properties, and I just found that out because I worked with the Fire Department with the last fire that we had, a lot of the State properties are un-inventoried. So really, we don't know what is out there. We do know, I think professionally speaking, we do know there's a lot out there that has yet to be inventoried. Yes?

Ms. Marquez: Okay, so on 6E-10, privately owned historic properties, the operative word then is "may?"

Mr. Rodrigues: Go to 6E --

Ms. Marquez: "May be commenced . . ." You know, it has this thing about what they should do but maybe that word is "may?" Does that make all the difference? I'm trying to understand what you just said.

Mr. Rodrigues: Which language?

Ms. Marquez: 6E-10.

Mr. U`u: 6E-10.

Mr. Rodrigues: 6E-10?

Ms. Marquez: Cause you just said that whatever is private property is private property; however, when you go to 6E-10, if you read that - I'm sure you read it, I'm sorry - is the operative word "may" so he doesn't have to go through all this protocol? That's the operative word?

Mr. Rodrigues: Yeah.

Ms. Marquez: You understand what I'm asking?

Mr. Rodrigues: I gotta look.

Ms. Marquez: Oh, you gotta look?

Mr. Rodrigues: I gotta look at the language.

Ms. Marquez: Oh, sorry. Everybody has it. It was in the packet. Okay. No, no. I just wanna understand because what you just said sort of contradicts what's in 6E-10, however, I think if I look at the word "may," counsel, maybe the little word "may" makes all the difference.

Mr. Fredericksen: Yes, "may" is may. Yeah, it's like may, that's sort of like, hey ...(inaudible)...

Ms. Marquez: You don't have to.

Mr. Fredericksen: If somebody does somebody does something but it's may.

Ms. Marquez: So you don't have to?

Mr. Fredericksen: Right.

Ms. Marquez: That's my question.

Mr. Fredericksen: It's not "shall."

Ms. Marquez: Thank you.

Mr. Rodrigues: Okay, you know what? Watch the language on 6E-10 because 6E-10 makes specific reference to property that is on the Hawaii Register of Historic Places, not just normal private -- not just regular private property, so there is a qualifying statement, "Historic property on the Hawaii Register of Historic Places," not just general historic

property on private lands. So a step had actually occurred and that was that that property was deemed to be historic and is on the register.

Ms. Marquez: Before the private owner owned it? No?

Mr. Rodrigues: It possibly, but it already has -- it has already been tainted with that label that it's on the register versus property that is not on the register.

Ms. Marquez: Okay.

Mr. Rodrigues: Okay, yeah, we probably don't need to -- what you going to realize as we go through this is that the laws relating to burials and the discovery of human skeletal remains are a lot stronger than the laws relating to other historic sites, yeah. And if I'm not mistaken, I think Hawaii has the strongest laws relating to human skeletal remains.

Okay, this was the 6E-8 that Dana and I were talking about. You basically have two items: 6E-8 and 6E-42 that has to do with construction. Okay, this is how it works. This is the reality. We do not get involved, with the exception of burials, we do not get involved until there is an actual trigger. For the most part, in terms of practice, the trigger has always been somebody comes to the County and -- somebody comes to the County for let's say a permit or a land use change or something like that, so they come to the County, the County, under the law, I believe, is obligated to notify us that someone came in for a permit and what do you guys have to say about it, SHPD? Okay? If the County does not send that permit to us, we're stuck. We do not get involved. Okay, so the County comes to us, the County sends -- the County forwards a permit request down to us, we review the permit, and we go, wow, this house that this guy is going to build out at Haiku is in an area that has a lot of archaeological sites, and we heard about these archaeological sites, we didn't see it. What we would do or what we should do is request that there be an inventory survey. So we hire people, not we, the developer or the owner hires an archaeological firm. The archaeological firm goes out there - and this holds true for 6E-42 and 6E-8, for the most part, that's why I'm discussing it at the same time rather than we just do it two separate times - so the contracted archaeologist -- SHPD says you guys gotta do an archaeological inventory survey. The contracted archeologist goes out there, looks, and doesn't find anything, okay. His inventory, his survey is transformed into what is known as an assessment. But if he does find stuff out there, his survey turns -- his survey is verb survey turns into a noun, an archaeological inventory survey, and that's the kind of stuff that you guys see a lot. So they do an archaeological inventory survey and they find 1600 features, okay? So let's say they find 1600 features, what that archaeologist must now do is he did his survey, in his survey he's going to recommend what kind of mitigation should -- he's going to recommend the mitigation. Oh yeah, the significance and then the mitigation. The mitigation can find itself in the form of a preservation plan. So you look at this book, it was an archaeological inventory survey; the next step is a preservation plan. So he writes a

preservation plan. And after he writes a -- each one of those things, the inventory survey, the preservation plan, and, eventually, a monitoring plan has to be accepted by SHPD. The standards for reviewing and accepting those three plans are found in Hawaii Administrative Rules, and that would be 13, I think, 276 to 284. Each one of those chapters deal with something different and it's a little bit too detailed to go into that. What I'm trying to say is that you gotta through all these steps, not you gotta go, you're supposed to go through all these steps. But again, remember, if the County doesn't kick something down to us, we're never going to get to that step.

Ms. Hall: But if you look at the language of 6E-8, and it's the same language that begins 6E-42, it says, "Before any agency or officer of the State or its political subdivisions," meaning the county, "commences any project which may affect historic property, burial site," etcetera, "the agency or officer shall advise the department," meaning DLNR and DLNR has said that SHPD will deal with these issues, "and allow the department an opportunity for review of the affect of the proposed project on historic properties." Okay? So it doesn't have to -- you know, you know that there's an effect. If it may even have an effect, it has to be reviewed by SHPD. An interesting thing -- one of the interesting differences between 6E-8 and 6E-42 is that for government projects, DLNR, through SHPD, must concur that the project will have no significant effect on historic properties. For private properties, it's a slightly lesser standard. DLNR, through SHPD, must be given an opportunity to comment. So for government projects, the department must concur; for private projects, must be given an opportunity to comment. But all of it has to happen before the permit or the entitlement or the license is granted.

Mr. Rodrigues: Yeah.

Mr. Fredericksen: Bruce?

Mr. U`u: Hinano, just a question. So you guys dependent on the County to submit to you guys the permit to see if -- so what part of the permitting process or whose kuleana is it when they see it and they go, here, this is yours now? Who's the person?

Mr. Rodrigues: Based on my interpretation of the law, all permits are supposed to come down to us. No one should be using discretion in determining what comes down to us and what doesn't. That's my interpretation of the law. We know -- we know that that has not been happening, and I think I've worked on several projects with Erik on that where I think Hanakao`o Park was a good example where a burial was found and we had to records of a permit request or a request for comments from SHPD and so it wasn't sent down to us.

Mr. U`u: My next question. The upcoming general plan that they potentially might adopt, and James could correct me or maybe he doesn't know, isn't it one of -- isn't it law? Isn't it going to take place where everyone has to go through this? Or it's written now, to my

understanding, but the general plan coming up, I think under historical and culture, I think there is wording that saying that we must, which shall. Is that true, to your understanding?

Mr. Rodrigues: You know, funny you ask me that question cause, you know, I served the GPAC, yeah, and I remember distinctly when that came up and my response to the other 24 members were: But the law already exist.

Mr. U`u: That's why I'm asking.

Mr. Rodrigues: But they went and put it in anyway. Yes, the thing about GPAC, I think it's simply advisory. This is law.

Ms. Marquez: But, however, maybe and whoever has the checks in verbiage to the law, maybe there's a little word in there that has "may" as opposed -- and I'm not being facetious -- as opposed to "shall." Maybe we need to revisit that.

Mr. Rodrigues: Yeah, when we get to the 42, I think the language does say "shall" in 42, yeah? Oh, this one say "shall" also?

Mr. Fredericksen: "Shall advise."

Ms. Marquez: Yeah.

Mr. Rodrigues: You know, there was a short time period when -- when both the County and SHPD was trying to cut down on its workload and someone came up with the idea that, well, you know, actually, maybe the County should be using discretion in determining what should be sent down to us. My understanding is, and I wasn't a part of that so I'm not really sure, but my understanding is that a stop was put to it because you are actually -- you're rule making, yeah. The rule says this and now you're going to change the rule. Well, if you're going to change the rule, then you better go to public hearing to change that rule. And so that idea was stopped. At this point, and maybe James can correct me, at this point, they're supposed to send everything. If you're going to build a dog house and it requires a permit, you send the dog house permit to us. That's my interpretation.

Ms. Marquez: So what happens when they don't?

Mr. Rodrigues: You know --

Ms. Marquez: Is there any consequence?

Mr. Rodrigues: No. In terms of civil and criminal penalties, I don't think so. But, as we all grow older, we learn that if you think you can get away with something, it ain't going to

happen. And what is interesting, and, again, Hanakao`o was a perfect example, yeah, so these guys go and they're going to do this and do that. Guess what? The iwi shows up and everything comes to a complete stop. Yeah? Had it been done the right way, things would have moved a lot -- yeah. But now, because we're showing up where a permit was required and it was not obtained, oh, the whole tone of that entire situation changes.

Ms. Marquez: But that's being reactive as opposed to being proactive.

Mr. Rodrigues: Right.

Mr. U`u: Question, Hinano.

Mr. Rodrigues: Yes?

Mr. U`u: Having said what you said earlier, would your staff have the ability to go after each and every permit pulled in Maui County? Are you guys staffed where you guys could take on all that responsibility or you would need the funding or --

Mr. Rodrigues: We would probably need an increase in staff. I think we're best at 35 personnel and we're far from 35.

Mr. Fredericksen: There's still no SHPD Maui Archaeologist in residence at this -- as we're speaking next week, but that's been vacant for six months, I think, or four months.

Mr. U`u: And a followup question. Just for myself. Say I had a piece of property, residential, and I wanted to build. What would be the cost factored in, granted I know the importance, what would be the cost to factor in when you gotta do one archaeological inventory survey, potentially? I'm saying, what would trigger for you to say we need one survey and after that process begins, what would be the cost of implementing a survey to the homeowner?

Mr. Rodrigues: That would be all dependent upon where your property is located. For the most part, we can look at it -- we would look at, let's say, which ahupua`a you were in, and then within that ahupua`a which 'ili you were in, and we would look at -- and that is a part of the process that a contracted archaeologist go through. He would come to our office or he would go through his database and look at surrounding properties. That would give him a very good indication as to the probability of finding anything upon your property. Let's say if your property was located in Sandhills or Maui Lani, the red flags all go up already, okay, and in that case, out of precaution, we would ask that maybe an archaeological inventory survey be performed. The cost. The cost varies depending upon the archaeological firms. There's another thing --

Mr. Fredericksen: And what's found.

Mr. Rodrigues: And what's found. I'm sorry I'm not prepared because our office is having new carpet put in so the four offices have been shoved into one conference room, so I don't have all my paperwork, but I think in my past review of Hawaii Administrative Rules, there is language there that says that you can be proactive and you can actually go out -- the landowner can be proactive, go out there, and sort of do his own archaeological inventory survey, and you would come in with convincing and persuasive evidence that the chances of you guys finding anything are very slim. If you look at that language, in my opinion, that provision in the law was written when archaeology was pretty new. And the reason why I say that is, if I'm not mistaken, that language makes reference -- one of the standards that you have to meet is you have to prove that that place was previously cultivated and when it was previously cultivated, it went down to a certain depth and nothing was found, but archaeology has changed since then because we no longer can make that assumption. Hali`imaile being the perfect example for pineapple and Olowalu being the perfect example for sugarcane. Things are found below the cultivation depth.

Mr. Fredericksen: And the cultivation depth varies in different regions, like Hinano just brought up Olowalu. We did the inventory survey there. The area makai of Honoapi`ilani Highway was very sandy and so they didn't even need to plow, they just disked the surface and so the plow zone, if you will, was probably no more deep than maybe one to not even two feet, and the kinda the conventional thing was three to four feet, well there was -- we found all burial ground and sites that were quite close to the surface, and there's other examples all over the island that's different, so that has -- that's new information.

Mr. U`u: And I agree. On a personal note, I found a poi pounder next to my house after HC&S graded.

Mr. Fredericksen: Yeah.

Mr. U`u: So it's everywhere I guess. Interesting.

Mr. Solamillo: One point to offer. The Cultural Resource Management Plan update is coming and that's part of the general plan, and that's where we actually get into language about goals and recommendations. So that will take what was put into the general plan and actually go into more depth and provide more detailed recommendations.

Mr. Fredericksen: And, Stanley, what -- where are we in terms of the database that all of this is being drawn from or, you know, what's the foundation? I mean are we looking at two years back, four years back, at this point, or, you know, here's the general plan, you know, this is the next reiteration? When -- where is it?

Mr. Solamillo: Where is what - the general plan?

Mr. Fredericksen: Yes. The database for the general plan is based on what - 2000, 2005?

Mr. Solamillo: I don't know -- understand what you mean by database? I'm sorry.

Mr. Fredericksen: The information that they're looking at in the general plan --

Mr. Solamillo: Right. It's based on 2000.

Mr. Fredericksen: Okay. Thank you.

Mr. Solamillo: Yeah.

Mr. Fredericksen: Rhiannon?

Ms. Chandler: Hinano, I have one more question. Thank you. The language says, "State or political subdivisions commences any project which may affect historic property," and you're saying that sort of the way the law is written right now any kind of permit for anything really should be going to SHPD, right? My question is: Is there a designation -- I mean, because the language is kind of loose, which says, "may affect historic property," there's probably a lot of people that say, oh, it's not a historic property. They make that assessment on their own, right, when in fact anything could potentially be -- we should just say all property is historic, I mean because there's the -- there's the ability to find things anywhere on this island, right, so --

Mr. Rodrigues: You think like me, alright.

Ms. Chandler: Okay, I was just wondering.

Mr. Rodrigues: And getting to that part that says "may," I would be willing, and because when you use the word "may" there, you're making a judgement call, right?

Ms. Chandler: Yeah.

Mr. Rodrigues: Yeah, so the guy who works in lets say DPW looks at a sewer installation and decides I don't think it may affect, yeah, which is cool, yeah. But it really should -- I would have no problem if there was somebody in the County who would more or less have the same kind of job that I do or an archaeologist does and make the judgement call, yeah. I know I was being very facetious when I talked about the dog house. But, you know, something little bit more than that or -- well, I might have to eat my own words, but let's say they're going to dig up this parking lot, and this parking lot was dug up six times since 1920;

in that case, if there was somebody in the County who would look at that permit and say, well, this place was dug up six times since 1920, it may not affect and let's not send it to SHPD. In that situation, I would agree. I did ask someone, well, so how in the world did the Planning -- how in the world does the Planning Department decide what to send us and what not to send us? That "may" language was brought up to me, yeah. And my defense to that is, well, what is the qualifications of that person to make that decision? Yeah, what is historic has to be 50 years. That's the definition of historic. I think we need to revisit that.

Ms. Chandler: That's just for a building though, correct? Like if --

Mr. Rodrigues: No, artifacts and everything.

Ms. Chandler: So -- and then that was another question that I had that it's actually dated in something that we were reading recently that it was 19 -- anything -- oh, that's the County Code. Okay. Yeah. But it doesn't have language that says more than 50 years?

Mr. Solamillo: It's never been updated. We'll get to that.

Ms. Chandler: Okay.

Mr. Rodrigues: Cause, technically, I'm historic.

Mr. Fredericksen: Yeah.

Mr. Rodrigues: And they need to do a significance evaluation of me and then decide whether or not they're going to preserve me or -- no. FONSI.

Mr. Fredericksen: Oh gosh.

Mr. Rodrigues: Okay, next. Yeah, this is -- I'm sorry if we're really going through this fast cause this is the junk stuff. This is the technical kinda stuff that you really don't see coming in front of you. If we went through all of the 6E stuff, it would take a whole week to do this kinda training. I just wanted to do really the 6E-8 and the 6E-42, and then the burials.

Ms. Marquez: But it helps to summarize the so-called "junk," we don't say "junk," but ...(inaudible)... the link between what we focus on and what, you know, aligns and supports our effort. So, yeah, summarization will be appreciated.

Mr. Rodrigues: Okay. Yeah, oh, I think it's somewhat related to this. You know what is really interesting is that the law says that we have the right to comment. We have the right to comment, period. Alright, so if we say, well, we want you to do this; you can turn around and say, well, no, I disagree. I don't wanna do that. However, we have a working

relationship with the County and whenever we recommend something, whenever we comment and make a recommendation, the Planning Department has, for the most part, transformed that into a --

Mr. Fredericksen: Condition.

Mr. Rodrigues: Condition. Yeah, pretty much the whole County agency has pretty much taken what we say and turn it into a condition. That being said, now you step back and you look at it, really the burden switches to the County. I know that a lot of people call me up and say, well, can you do this and can you do that, and no. The answer is no. I can comment on it, and I can try my best, but really, if you wanna make a difference, the County is one who can put a condition on that property -- on that permit. Yeah, next, cause I don't know where that special fund is.

Okay, let's jump into burials, yeah, cause that's another thing that might come in front of you guys. Pretty much, burials come in two categories: previously identified and inadvertent. When it comes to previously identified burials, jurisdiction is almost wholly - I know those two words contradict each other - almost wholly with the Burial Council. If it's an inadvertent, then it would become an SHPD kuleana. Any questions? Cause I think we did this before, yeah? Last year. We did the burials thing last year. Another thing you might wanna keep in the back of your mind that most people don't understand unless you actually do this job is anything that is found to be historical is not saved, and that's why Dana was talking about significance. There is a standard to determine significance. And when you apply that significance, that's when you decide what is going to be saved and not saved. We love to use this word "mitigation." Mitigation sounds a lot -- a lot less strong than destruction. So every site that is found is not saved. I do have a lot of calls everyday, wow, this guy's taking down the stonewall. Number one, did it require a permit? If it didn't, I don't have that much jurisdiction over that cause there's no trigger for me to get involved but guess what? I'll drive up to Makawao and come and look, and talk to the landowner cause maybe it is significant but maybe it's one of those things that fall through the cracks of the law. But everything that is -- everything that you think is important is not necessarily preserved except human skeletal remains. Okay?

Mr. Fredericksen: Hey, Hinano, while everybody's thinking, I just wanted to make a comment and then get some of your insight. The different -- Hinano mentioned the different, there's five in Hawaii, five criteria that are used and the one that I have the most kind of the biggest issue with is what's known as Criterion D, and that's information content sites, and in Hawaii there are a lot of I would say, well, certainly the majority of the sites that are located during inventory surveys qualify for significance under Criterion D only for their information content and after a certain level of information's obtained, then it's, quite often, possible for a landowner to just eliminate the site, and I was wondering if there's been any -- there's probably been no movement at all, but if this issue -- I brought this up when Holly

McEldowney was here, but has there been any move to revisit some of these -- of this Criterion D? I mean I know it'll be a humongous undertaking, but has anyone at SHPD -- is there any concern about the loss of the majority of the sites that are found to be significant under Criterion D only?

Mr. Rodrigues: No. I think the trick there would be apply Criterion E. E is something that is not in the Federal regulations but is only in Hawaii regulations and, basically, what it is is it is an item or a feature that is significant to the Hawaiian culture or native Hawaiian. Apply that, and that gives it a brand new label. I think what Erik is saying is, and it took me two years to realize this, when -- what we're doing in terms of historic preservation is we decide -- we found this and we decided whether or not it was important or not important, and if it was important, we'll save it. And then we did this, and then we did this, and then we did this, and we did this. Well, what we've ended up with all these years is all of this and that all over the place, but you never see it because the this and that is in somebody's backyard. What we don't have and maybe what we should be moving towards are cultural landscapes. We need to look at things as a whole and not in pieces. If we don't do that, what's going to happen is the Hawaiian culture, and other cultures too, let's say the Chinese culture, cause that's what we also cover at SHPD, other cultures, those cultures will be cultures in textbooks, but you will not see them out here, and your great-great-grandchildren are going to open a textbook and say my tutu did this but I don't know where my tutu did this. And that's a new thing too because a cultural landscape is something that's only about 20 years old. It is something that we very rarely apply here in Hawaii. But we need to think about that kinda stuff cause we don't wanna exist as a people in a textbook. We wanna exist as a people living our lives today.

Mr. Fredericksen: Are there any examples -- just a sec., Dana, and then I definitely would like you to participate. Just one more question before I forget. Any examples of the term cultural landscape being applied in recent memory? Anything in Maui County?

Mr. Rodrigues: Stanley said Keanae. I have a pet project, it was going to be Hinano's thing but you know how life goes on, you kinda like lose track of what you're doing on a daily basis and then two years later you go auwe, I didn't do this, okay. My thing is the Ahihi `Kina`u Reserve. We own -- the State owns about 1500 acres. What perfect cultural landscape out there, and you got a lot of archaeological features, a lot of habitation sites, a lot of caves. You got a lot of out there where you can actually create an entire 1500-acre cultural landscape.

Mr. Fredericksen: Dana, you had a comment?

Ms. Hall: A couple of comments. Actually --

Mr. Fredericksen: Several?

Ms. Hall: The Federal historic preservation review process, which is often referred to as "Section 106," and you folks probably have reviewed some 106 projects have you not?

Mr. Fredericksen: We've had a couple.

Ms. Hall: Alright. Well, that process will recognize cultural landscapes and vernacular landscapes and --

Mr. Fredericksen: But only on Federal land.

Ms. Hall: Well, yeah -- no, but you know, I mean, you know, contributing properties are obviously going to be part of that review. Anyway, yeah and Stanley was referring to Keanae. There was a cultural landscape study done by Davianna McGregor and so that still stands as the only we have so far. But, you know, to talk about, okay, Criterion D, these are the National Historic Preservation Act significance criteria; A has to do with settlement and broad patterns of settlement; B has to do with I think important people and events; C is excellent site type, like an excellent heiau or an excellent wall or something of that nature; D is for information content; and C is, Erik said, refers to cultural significance. What Hinano was talking about when he said, well, maybe we can apply Criterion C in addition to D, and I know Erik has done this in some of his projects, where when sites are significant for multiple criteria, in other words, more than one criteria, let's say D in addition to C or B or A, then the likelihood that that site will be preserved definitely increases. But there's no reason why sites that are significant for Criterion D are looked down on because the person who came up with these significance criteria, William . . . well he wrote these criteria, said that it is a fundamental misreading to apply Criterion D as being the -- that the proper mitigation is either you obtain enough information or you will conduct what is called "the data recovery study" on that site, extract certain information rendering the site no longer valuable or no longer significant, and he said that's a misreading. He says, "A site can retain its value." Let's say it's a site significant to Hawaiian people and, you know, we don't fundamentally want to have just data extracted from that site, we want that site to continue to exist on its own because it's part of our cultural landscape, it's part of a cultural patrimony, and we rely on upon it in order to maintain our identity as a people, all of which is recognized in Federal historic preservation law. So, you know, when you see D, we have a lot of archaeologists who get paid a lot of money to just render all sites in a project area, or the great majority, as significant for Criterion D only, rendering them vulnerable to destruction with or without further data recovery, and I'll ask you to consider, when data recovery occurs and the so-called information is gathered, do we ever see that information? No, 99.99% of the population is never informed of the information gathered from that -- from those sites. So in fact, it's of no use to us. The site is gone. The information is lying in a dusty shelf somewhere or in a database. No use whatsoever.

Mr. Fredericksen: Thanks for that comments, Dana. Something that we do when there's a -- when they're a Criterion D site, that's a site that qualifies under Criterion D, we would still encourage the landowner to preserve the site, and we've done that quite a bit. My frustration is that there are other firms that do not do that and it -- and that's where my frustration is is it's kind of a loophole, if you will, for sites to be -- some sites to be eliminated after mitigation's been carried out. Take care, Bruce.

Mr. U'u: Okay, thank you.

<Commissioner U'u was excused from the meeting at 11:50 p.m.>

Mr. Fredericksen: Any other comments? Hinano? Stanley? Who's on?

Mr. Solamillo: I would like to propose that we take a ten-minute break --

Mr. Fredericksen: Okay.

Mr. Solamillo: Before we begin the next review of the code.

Mr. Fredericksen: Stanley?

Mr. Solamillo: Yes?

Mr. Fredericksen: Stanley, just before we take our break, Rhiannon had a question.

Mr. Solamillo: Okay.

Ms. Chandler: When do we review the Maui County Code about that?

Mr. Solamillo: When do we review the Maui County Code?

Ms. Chandler: Well, the one about the date, you know?

Mr. Solamillo: Oh, the dates that -- it will be part of the CRMP update.

Ms. Chandler: Thank you.

Mr. Fredericksen: Okay, so ten-minute break. Be back around noon.

(A recess was called at 11:50 p.m., and the meeting was reconvened at 12:03 p.m.)

Mr. Fredericksen: Go ahead and reconvene when you're ready.

Mr. Solamillo: Alright, everybody, pull out your blankets. Alright, Chapter 19.52, Regulations on buildings and uses, architectural style, review of plans, signs, repairs, demolition or movement of structures. Alright, and that's the handout with the really fine print. This is the Lahaina NHL. The Federal district is turquoise, that's the larger boundary going out into the ocean. Historic District No. 1 is a dark blue district and it actually includes some discontinuous parcels, and then, unfortunately, only two slight of color differentiation, but purple identifies Historic District No. 2, which we had discussed before as being theme oriented with the statement that there were no historic buildings located within that district, and I mentioned to you that that statement was incorrect and had to be revised as part of the CRMP update.

Mr. Fredericksen: Stanley?

Mr. Solamillo: Yes?

Mr. Fredericksen: Before we -- thank you for going back to that slide. Historic District 2. What is the likelihood of having that district modified based on the fact that it was when that district - actually both districts, but when this particular historic district two was that the concept was developed it was based on, whenever it was, in the mid-'60's, that -- the knowledge base that was available at the time and it was primarily architectural -- architecturally based, what's the likelihood of expanding that district because I think the, what it's based on, is kind of dated as it were?

Mr. Solamillo: I would probably question whether we can expand it and the reasoning I'm going to give you as follows: There's been so much in-fill, there continues to be so many demolitions that it's really -- the limits right now that we have are probably what we can maximize or what we can support from documentation.

Mr. Fredericksen: So it's still architecturally based ...(inaudible)...

Mr. Solamillo: It's still dominantly architectural because there's no -- I mean there's no open land. Moku`ula is Historic District 1, that's open land, and then we've got some small parcels, but it's just we've got shopping centers and all these other things that have been added in adjacent to Historic District No. 2 and that would preclude, you know, making that kind of a determination. What might or one thing we might consider would be to combine Historic District 1 and 2 into one large district so --

Mr. Fredericksen: That was my next question because Historic District 1 is, again going back to the same thing that this came out of 1966-ish, and again, based again -- it was based on architectural, above-ground architectural structures.

Mr. Solamillo: I mean you have to keep in mind that in order to do any kind of district amendments, we are going to have to have property owners support. I would love to see the historic district extended along Front Street, taking in all the old plantation middle management houses going all the way to the old Moyer, Burns Moyer house, which is the old plantation manager's house, but again, I couldn't get support for that. Everybody that, you know, knows people who own those houses say they all wanna drop 'em and build --

Mr. Fredericksen: Right.

Mr. Solamillo: Build beachfront mansions. So that's really our problem. We are thankful that the Federal district was in fact established and that the Federal district boundary stand.

Mr. Fredericksen: Right.

Mr. Solamillo: The unfortunate part is is that Maui County, through time, never enforced the Federal district, really, in practice.

Mr. Fredericksen: Question/comment on the Federal district. Again, that -- my understanding is that the Federal -- from Federal recognition is, again, architecturally based. There's no or essentially no -- almost no traditional Hawaiian based component that's credited, if you will. It's limited.

Mr. Solamillo: Well, if you look at -- to the right of Historic District No. 1, which is blue, right, and it'll move along the shoreline from left to right, in the blue, across all those subdivisions, those subdivisions were added after the Federal district had been established, long after. Okay, they were cane lands. And in all those aerials that I repeatedly showed the Commission, we see how cane or agricultural lands were urbanized over time, which means, you know, those things, those subdivisions were all built probably '50's and early '60's.

Mr. Fredericksen: Right.

Mr. Solamillo: Actually, from into the '70's too. If there were Hawaiian remains there, you know, there's a good probability they would have been destroyed in the creation of those subdivisions, correct?

Mr. Fredericksen: But that's not necessarily correct.

Mr. Solamillo: Okay.

Mr. Fredericksen: We -- I've been personally involved in a project that's mauka of Honoapi'ilani Highway --

Mr. Solamillo: Right.

Mr. Fredericksen: Where there are - and that was in sugarcane for a hundred years --

Mr. Solamillo: Okay.

Mr. Fredericksen: And there are, well amongst other things that were found that we identified, actually two separate surveys, to in-place burials, but also site remnants, agricultural component site remnants and habitation site remnants. As an example, King Kamehameha III Elementary School, that property's been pretty substantially disturbed over the years. There is a lot of subsurface site features that still remain on that property, and elsewhere in Lahaina too, but again, this goes back to that comment that I made, these historic districts are based on or primarily based upon architectural remains, which, not all, but for the most part, do not necessarily reflect the native Hawaiian component, cultural component.

Mr. Solamillo: That is agreed.

Mr. Fredericksen: Has -- have the Feds ever acknowledge that or is there some -- I guess where I'm leading with this is I hear periodically that, oh, you know, Lahaina's in danger of losing its status as a -- or the district as a National Historic Landmark because of the demolition by neglect, whatever you wanna call it, the numbers of homes qualifying or qualifying structures are decreasing over the years just because there are -- some people are sometimes choosing not to -- to try to rehabilitate them. Is there a way to help ensure that the district retains its significance and stays intact?

Mr. Solamillo: There are several things, actually. I was -- my instructions from the National Park Service, which were delivered to me in 2008, were that I must amend the Lahaina NHL nomination, okay. That physically is not going to be possible until the CRMP comes out. If we need to make any changes with regards to districts, we'll make them in the CRMP and then carry those recommendations further. Given -- well, two factors: termites and owners. Termites love plantation buildings. They love them so much they will eat them until they collapse. That's your demolition by neglect and that's what's been happening. The other thing is that Lahaina, for all its importance, has been over developed and there has been a real kind of laissez-faire attitude with regards to the NHL district status. I will remind the Commissioners that at least one Commissioner had actually queried the Feds about de-listing the NHL for that very fact. The only thing that will support probably the continuation of the NHL through time is going to be its Hawaiian resources and its Hawaiian history, and that's why I've been trying to focus, in little bits and pieces, you know, this Commission on the fact that Moku`ula is such an important component to redefining the identity of Lahaina in recognizing its Hawaiian history and it's important to Hawaiian culture that that's the only way to go really, logically, given just the development trends which are continuing to happen

in Lahaina, and there's the real resistance, you know, by the commercial establishment to change and go with the new identity, and I think maybe once Moku`ula happens, you know, maybe they will come around at that point. But right now, they still wanna keep doing the same thing they've been doing for 30 years.

Mr. Fredericksen: Rhiannon, did you have a comment?

Ms. Chandler: No, actually. It was -- it was just addressed by Stan because you kept alluding to subsurface cultural features and possibly extending the Hawaiian cultural resources that are maybe not covered under the current designation, but it was specifically about Moku`ula that I was asking that, of course. I mean whether or not the buildings remain from the whaling period, you know, and --

Mr. Solamillo: They never did -- they were never there from the whaling period.

Ms. Chandler: I mean the commerce that was generated by the whaling period. All of the people that came to settle in the harbor. Whether or not those buildings remain, that area is a historic landmark and can it be preserved as such just for Moku`ula alone?

Mr. Solamillo: I'm going to -- my statement that there were never any whaling buildings is quite true, even if we go back to, you know, the courthouse. The courthouse post dates the whaling period. So I think it was kind of this misnomer that got caught in with the original nomination. I actually have been able to gather -- in preparing the nomination amendments, I've got a full list of whaling vessels, the dates they arrived, and their names, and we can actually track, you know -- you know, who came to make a -- make the port of call, you know, so -- but all of that will be revived. But the most important thing is that the identity of this place and its importance to the Hawaiian people, to the monarchy, the constitution, everything, has to be brought to the forefront, and plantation period stuff will settle behind.

Mr. Fredericksen: But in your estimation, I mean certainly Moku`ula would be - what's the right term? Maybe the cornerstone, if you will --

Mr. Solamillo: Correct.

Mr. Fredericksen: Or centerpiece of a more appropriately evaluated or qualified historic district. My -- I guess my comment/question again is, okay, so that's fantastic that Moku`ula is, you know, that process is underway and certainly, as a Commission, you know, we support what's occurring. How about these other subsurface components that would also be -- lend significance to Lahaina Historic District that aren't necessarily well publicized or not -- maybe not even identified at this point?

Mr. Solamillo: I would probably need information.

Mr. Fredericksen: ...(inaudible)... safeguarding that area.

Mr. Solamillo: Yeah, I would need information on those; anything that you might know that can be transmitted to me to support that. Essentially what we're doing is backing up the NHL boundaries and kinda reinforcing that, but, you know, to be quite frank, it's, like I said, it's been looked on and still continues to be looked on as an area to develop and urbanize --

Mr. Fredericksen: Right.

Mr. Solamillo: And it's a constant battle.

Mr. Fredericksen: Okay.

Mr. Solamillo: Okay.

Mr. Fredericksen: Thanks.

Mr. Solamillo: If everyone wants to get their lunches, we should probably get them now and I'll just continue when you have your lunches. Section 19.52.010 is Architectural Style. This will be one of the sections that will need to be updated. It states: "The exterior of all new buildings constructed within a historic district must be in keeping with the architectural style of the district so as not to impair the value of other buildings in the immediate vicinity in order that the general character of the district shall not be injured. For Historic District No. 1 and Historic District No. 2, the styles of architecture are defined as follows: Native Hawaiian style characterized by thatched construction; 19th century New England style tempered by the availability of materials, tools, and skills, as exemplified by the Baldwin house; Monterey or wester type, defined as a one or two-story structure with wooden balcony or overhanging wooden or corrugated iron roof awning; for single-family dwellings, any architectural style prevalent during the 19th century in Lahaina or which evolved from 1900 to the present in Lahaina, being unpretentious in style and painted in muted tones" During this time when this was written, we had Colonial Williamsburg happening on the eastern seaboard of the United States and it was aimed a lot towards reconstruction. So, originally, I think the intent of the Lahaina NHL was to do a lot of reconstruction and that's how we have mentions of 19th century New England style, and I'll re-correct the comment I made earlier. The missionary buildings, such as the Baldwin house, I believe all pre-date the whaling period. So those do. The Hawaiian churches do. Hawaiian walls do. The courthouse was rebuilt by Maui County in '20's so it's been altered. So those actually are the oldest buildings. If we go forward with the plan to reconstruct the royal buildings associated with Moku`ula, then we will have the thatch construction reappearing in Lahaina. The Monterey or western type, I think, is a misnomer, and I'll probably redefine that as well as the use of 19th century New England. Those will go through some kind of review and probably correction that'll come out with the CRMP.

District No. 3 is actually here in Wailuku and it says that all new buildings or structures shall be of an architectural style that shall be compatible with the architectural styles of those historic buildings listed in Section 19.5. The architectural style shall not be limited to any particular style or styles, however, certain architectural styles and certain architectural elements that shall be not be allowed in Historic District No. 3 are as follows: European and Asian styles in general; excessively decorated styles; flat-roofed, modernistic styles; styles, forms, colors, and lighting that is gaudy; large areas of reflective materials such as glass and aluminum, unless completely in the shade at all times. And remember, the Wailuku Historic District covers all the institutional buildings associated with the County, the State, as well Kaahumanu Church.

Ms. Chandler: Chair?

Mr. Solamillo: And the Alexander house.

Mr. Fredericksen: Yes, Rhiannon?

Ms. Chandler: Stan, it seems like some of those are up to interpretation again. Is that -- can that be tighter or do you have to leave it loose on purpose?

Mr. Solamillo: That's actually probably a question for Corporation Counsel. I think I'm going to go and review them.

Ms. Chandler: Because who decides what a modernistic style is or what is gaudy? You know, I mean --

Mr. Solamillo: I guess we can -- we can remove the kinds of adjectives. Modernist is a definite period so that's going to be anything probably after 1950 when everything has a flat roof, and where you have CMU is your primary material, and, you know, large sections of glazing contained in ...(inaudible)...

Mr. Fredericksen: Stanley, would then King Kamehameha III Elementary School would be modernist?

Mr. Solamillo: Yes, it would, but that's in Historic District 1. This is the Wailuku District, Historic District 3.

Mr. Fredericksen: Okay, I'm just -- but it would be --

Mr. Solamillo: Yes, it would.

Mr. Fredericksen: Modernist?

Mr. Solamillo: Yeah. And I've had a cow ever since I saw the original Kamehameha III School cause that was a really important building.

Mr. Fredericksen: Yeah.

Mr. Solamillo: So was the armory and that was also dropped after the NHL had actually been established. Lahaina lost a lot of buildings after the NHL had been established. Okay,

Review of plans, 19.52.020. Within any historic district established in this article, the commission shall have the power to approve all plans, and that's usually what we get; application for an appropriate permit to construct, alter, repair, move or demolish any structure, or modify existing structures and appurtenances thereto, in the historic districts shall be made to the superintendent of building inspection, and this probably needs to be changed because it's DSA, Department of Public Works. The historic commission shall meet within 15 days after notification. And that's impossible. So that needs to be revised. And under D, the commission shall approve or disapprove such plans and, if approved, shall issue a certificate of approval, which is to be signed by the chair and attached to the application, and this doesn't happen today either. Essentially, this whole section needs to be revised just to represent what currently occurs within the County permit approval process. The other thing that we don't currently do is No. F, the failure of the historic commission to approve or disapprove such plans within 45 days from the date of application, unless otherwise mutually agreed upon by the applicant and the commission, shall be deemed to constitute approval, and that hasn't been actually done and practiced as well.

Mr. Hutaff: Has that ever occurred?

Mr. Solamillo: Not while I was here, no. But, technically, if an applicant wanted to press it, since it's codified, the applicant could -- could win. 19.52.030. This is our biggest problem. It has always been our biggest problem in Lahaina. And it's -- we go through these periods where the County tries to enforce and then there's such a tremendous outcry that comes from the commercial establishments in Lahaina. They -- the last time I think that they tried to enforce was during the '90's and the merchants went to the Mayor and the Mayor called off the inspectors, and we're going through another period right now where the inspections are up and you can look at the district and a lot of people when -- when they go to Lahaina, their first immediate comment is too much signage or it looks like Disneyland or, you know, and then we were getting this increase in street vendors, that's the photograph on the left, you know, and anything goes. It's that laissez-faire. So, really, no one thinks about the historic district ever. It's kind of like -- and it's ongoing headache. It really is. When you go to other places, this is --

Mr. Fredericksen: Honoka`a.

Mr. Solamillo: Where is this at? This is Big Island, right? Yeah. You get a sense of the history of this place just from looking at any building, alright. You are not hit over the head multiple times by signage or by paint colors. And the difference is here palpable. And I don't know. I'm going to try and design a presentation and try another run on the chamber. But when you look at this, if you're standing on the street, and just look down the sidewalk, all you see are signs, and it's really visual pollution. Then when you amplify that with signage that are going on columns for menus, then signs that go on windows, I mean I've got people with as many as twenty-something signs on that building even though the limit is like three, right? And then the during business hours signage comes out, and that's on the sidewalks, and the doorways, you know, and it's just all over. So it's something that, as I said, we'll see what the outcome of this current run of the inspectors are. We've got really courageous inspectors, you know. One is Sonny Huh and he's getting -- getting beat up a lot, but he's trying to enforce the ordinance and we'll see, like I said, how far it will actually go. But this is what a historic district should look like. And there should be a limit. And the paint colors should be muted in this kind of a way.

Alright, this is my other big concern, and it's the demolition of historic buildings, structures in the NHL. Although we have an historic district, actually two historic districts, 1 and 2, and we have a Federal district on top of that, we cannot prevent demolitions. The Feds don't own the property, neither the County, and unless the County is willing to buy the property for the appraised value or better, or market value, then we have no way of stopping the demolitions. We've had a couple of great landowners who have come in, great property owners, one was the owner of the Kaluakini house. I mean people who really wanna do something. But the average person no care. Take it down. And that's the constant thing that we deal with.

Ms. Chandler: Stan, I have a question.

Mr. Solamillo: Yes?

Ms. Chandler: Is there any precedent for having a requirement that people who own property within an NHL have the houses tented once a year or once every five years or something to prevent termite damage?

Mr. Solamillo: I can defer that to Corporation Counsel but I'm sure it would infringe on ownership - use of a property.

Mr. Hutaff: A lot of the times you can petition the lender to require them to tent.

Mr. Solamillo: Okay.

Mr. Hutaff: A lot of times they want it tented to preserve the value of it. Unfortunately, sometimes if they bought the home 40 years ago, there's not much of a note left, if any, even if they refinanced a few times and the value of the home that the bank owns is non-consequential as far as requiring tenting, but sometimes you can actually write the -- we've actually done it on Oahu with our neighbors because if they didn't get rid of their termites, then we had the termites too --

Mr. Solamillo: Right.

Mr. Hutaff: And they required them for five years, every five years.

Mr. Giroux: Yeah, that's a -- that's a good question. I think if you look at 6E, there is -- there is a statute that says that the counties can promulgate ordinances that would prevent, you know, dilapidation, which is consistent with your nuisance laws, you know, nationally. If you were to do that, it would have to be done in the Maui County Code. And if you look at our subdivision code, under sidewalks, you'll notice that the County actually makes it the landowner's responsibility to clean sidewalks fronting his property, so not even his own property, but property fronting his property. So the idea of this type of maintenance is more under the nuisance, you know, category of your police powers of a county, it's not to say that somebody wouldn't challenge it, but that would be the methodology to go by trying to create a none -- a non-neglect, I guess, a non-neglect.

Ms. Chandler: Yeah, I mean even if there was some sort of like hardship exemption or something like that that -- that some people will challenge it but the majority of people maybe would just comply and tent their houses, you know. I mean if that's -- if your number one problem in the NHL is termites and people --

Mr. Giroux: Yeah, if you review the County Code, the stop gap is basically that, for the sidewalk issue, that the County would come in, and clean it, and then charge the homeowner and --

Ms. Chandler: So what about the one that you mentioned that is to prevent dilapidation?

Mr. Giroux: Yeah --

Ms. Chandler: What -- did they give any examples of things that would --

Mr. Giroux: No, it's pretty silent and it's kinda hard to look at to see if any of the other counties have picked up on that, but if you look at 6E, you look at the language, it does have an encouragement to have the counties look at that and see if they could frame something within their police powers to try to prevent this type of neglect.

Ms. Chandler: Thank you.

Mr. Solamillo: I tender it as a proposal for a revision. Currently under demolition, the demolition or moving of structures of historic or architectural worth shall be discouraged and the commission shall not issue a certificate for demolition except when a structure is deemed a hazard to public health and safety by the superintendent for the State Department of Health's authorized representative. The commission may, at its own discretion, issue a certificate of approval for demolition or for moving a structure within the historic districts but shall be guided by the following: 1. The superintendent of the State Department of Health deems such structure to be a hazard to public safety or health and repairs are impossible; 2. Such structure is a deterrent to major historic restoration or preservation program; 3. The retention of such structure would not be in the interest of the community as a whole. To my knowledge, no one has used this one. They usually come in and file for a demolition permit, and it's usually handled administratively. If I can get an agreement on mitigation, and has Hinano told you, mitigation means that there's a destruction involved, and I usually make a determination as to what level of mitigation, which is Historic American Building Survey, HABS Level 1 through 3; 3 is just a floor plan with black and photographs, and 1 are full architectural plans. This is occurring on less than 1% of the buildings and I only reserve HABS Level 1 for buildings which are, for the most part, intact with original doors, windows, finishes, and roof materials, and shape. The vast majority of stuff that we get are HABS 3 or less. Lots of changes sometimes in Lahaina to residential properties especially and the vast majority of them are probably just clearing with less than a HABS 3, so it'll be just a site form. What I'm using is the State rule, which addresses Item B: For the purpose of this article, buildings and structures of historic significance shall be deemed to be those within any historic district constructed prior to the year 1910. That's dated. We use the State rule, which is the 50 years of age or older, and apply that across the board.

I'm going to digress just a minute here. We use, currently, two and we'll initiate a third type of documentation for Maui County. The first is Historic American Building Survey and the second is Historic American Engineering Record. The survey, or HABS, was actually started by the Park Service in 1933, and it was a program of the Federal Emergency Administration of Public Works, the Civil Works Administration, the Federal Emergency Relief Administration, and the Works Program Administration, or WPA. The American Institute of Architects located and supplied manpower, which consisted of unemployed architects and draftsmen, and the Library Congress received the records and arranged for the use of the collection. Formal agreement for the program came in the following year, which was 1934, and that as an agreement between NPS, the AIA, and the Library of Congress. And then in 1935, and this was your first historic preservation law in the country, the Historic Sites Act was promulgated and it authorized the Secretary of the Interior to secure, collate, and preserve drawings, plans, photographs, and other data of historic and archaeological sites, buildings, and objects. And this was the first time so the first HABS program in the country actually picked up a lot of stuff that was still remaining from the

1700's and the 1800's and things that were looking like things today look from the plantation period weren't picked up in that first run under the Federal program. For Maui County, we started the first HABS project, I actually worked on that one with a graduate architect names Nate Gonzales in 2007, and we began with the Matsumoto house in Wailuku. And then we've got an architect named Brandis Sarich who's continued some of the work in 2009. We had to gather a whole list of contractors because the quotes that we were getting from Honolulu contractors were extremely high and we had to find cost competitive contractors and we got folks from University of Hawaii School of Architecture who participated as well. We've applied CLG money to this program as well as received funding directly from the County Council, but it's been decreasing.

Historic American Engineering Record applies to engineering resources, so that's everything from bridges to sugar mills, and I think the first HAER project was done by Planner Dawn Duensing with her documentation of the Hana Bridges, and that involved students that came from the Mainland and worked on that with her, and she prepared the HAER history for that document.

Mr. Fredericksen: Excuse me, Stanley?

Mr. Solamillo: Yeah?

Mr. Fredericksen: Would that also -- that would also apply to say plantation era water delivery systems?

Mr. Solamillo: Correct.

Mr. Fredericksen: And that sort of thing.

Mr. Solamillo: Swinging bridges; stuff like that. Absolutely. We've continued doing HAER work. Again, I worked on Pioneer Mill with Nate Gonzales. We worked on Maui Agricultural Company's Paia Mill. And then Conway Carter, who came from UH and now has his PhD, produced a sizeable amount of work, and we've done everything from Kahului Trucking and Storage Company to the Scale House, which is on this particular sheet -- or, excuse me, the bulk sugar warehouse, which is on this sheet. So we've got a lot of great work. And right now we're hoping to get the work posted on the internet by the end of the year. A lot of what we're doing is documenting what I'm calling, you know, it's part of the cultural patrimony of Maui County and whether it's here or not, you know, several decades down the road is not the issue. The issue is to record what we've got. A lot of our plantation towns or -- there's a number of plantation towns which disappeared and actually we'd probably redefine it as plantation camps which have disappeared since the 1970's. I think Elizabeth Anderson was the first one who decided that she would at least do, you know, a walking survey of Maunaloa and photograph every building that we had that was going to be demolished. We

continued, when we did Lana`i City, to have a recording component to -- to the work there and architect George Ricksy actually produced the first measured drawings of Lana`i plantation houses and buildings pulling together town plans so that we have -- have this kind of information because for those of us who are not Hawaiian, the plantation camp or the town is the first place, that's the beginning of our history here, and that's why there's an emphasis on trying to at least get the records together so that people, especially descendants, later on in life can come back and find out what the camp looked like if it does not survive, and most of them will not survive. So we pulled together Maunaloa, Hali`imaile, Lana`i City. And this work is actually ongoing.

I'm going to continue going through 19.52 to kinda wrap that one up.

Ms. Marquez: Stan?

Mr. Solamillo: Yeah?

Ms. Marquez: Before you move on, back to .5 -- .050, No. 3.

Mr. Solamillo: 050 --

Ms. Marquez: "The retention of such structure would not be in the interest of the community as a whole."

Mr. Solamillo: Yeah.

Ms. Marquez: Help me understand "the community as a whole." What constitutes "the community as a whole?"

Mr. Solamillo: I don't know but I think probably the closest physical example to that was when we went to Lana`i City and we had actually in the -- the community plan where a specific building, which had been identified for preservation, which was the Lana`i -- the former Lana`i Library, which had been used as the Lana`i Senior Center, when that was specifically identified for -- to be preserved, right, in that community plan, but when the people came out and said they wanted it dropped for the construction of a new senior center, and that is kind of one of these things which defies our reasoning because if, you know -- but that's in the process of ten years, and ten years passing between the time that the community plan was drafted and adopted, until now, there has been a change where people no longer feel that that building is important to remain. So that would be probably the best example.

Ms. Marquez: So "community as a whole" also ...(inaudible)... to whoever comes and testifies?

Mr. Solamillo: Well, I mean that's the only way we gauge community as a whole whether we are adopting legislation or whether we're adopting a community plan.

Ms. Marquez: Thank you.

Mr. Solamillo: Yeah. Any questions? One thing I wanna add, what we haven't done and what I want to do is to take the HABS, HAER into a new direction, which is HALS, and I forgot to talk about HALS, which is Historic American Landscape Survey, and that's when we get into the range of cultural landscapes that Hinano was actually talking about, and I don't have a slide for this. The thing that's been sorely lacking, and I don't mean to offend the archaeologists, I still have this ongoing problem about will someone please show me a Hawaiian village and where the ali'i lived and where everybody else lives, right, and because I tend to be visual, and I'm kind of dumb that way, I need to have a picture, and that's kind of where I would like to see our HABS recording go because there's some incredible places and incredible landscapes, which have not been documented, you know, in the way that I would like to see them documented, which is, I mean, I want to see, you know, walls, kuleana walls -- everything was kuleana walls to house foundations, and actually do the development of some kind of typology of house types from foundation remains that we have of, you know, pre- or post-contact Hawaiian communities because I think there are so many that are bound but nobody's actually done, you know, that type of study to put things in perspective and say, okay, this is associated with Kaupo or this is associated --

Mr. Hutaff: I can show you places.

Mr. Solamillo: Yeah, but I mean --

Mr. Hutaff: We can't see much because of what's been growing but if you walk around and you map it on paper, you begin to see it.

Mr. Solamillo: Right, and that's what I wanna see happening. That's another kind of extension of -- of the HABS work is like, okay, we've done all this historic European stuff and let's get back to doing more to record Hawaiian history and Hawaiian communities over time. There's -- is it Kahakuloa? The Hawaiian community? Yeah. That is a really important place and I would like to see places like that go through a much more thorough, you know, study because they're very unique places and it's like -- but they all fall within this term of "cultural landscape" that are so --

Mr. Fredericksen: And there are also some examples of relatively intact cultural -- oh, I don't know, not necessarily cultural -- a partial cultural landscape on ranch -- ranch lands, which of course most of that has not been inventoried at all. There were some early studies, Bishop Museum and a couple of other organizations, but mostly Bishop Museum that carried

out studies, but there really hasn't been much done since except for, let's see, the landowner, Department of Hawaiian Home Lands, there has been some -- a fair amount of work done Upcountry, Kula side, but not -- it hasn't been widely disseminated.

Mr. Solamillo: I mean optimally what it requires is that we get Hawaiian educational institutions or institutions that have, you know, large numbers of Hawaiians. As far as young people and whether they, you know, get training doing surveying and doing AutoCAD work or get exposed to those skills at the high school level and then going into the first few years of college so that we can actually develop the -- or the teams to do the work. That is optimally what I would like to see. The other thing is to use folks coming to the best program, which is a rehabilitation program for former prisoners. A lot of artists, I suspect, have been incarcerated, and this is whole new thing that -- that would provide an opportunity to become more culturally aware as well as more proud of what your ancestors have created here that hasn't been documented. I'd like to see something grow that way, but to do that, it takes help and NGOs to participate in that type of thing. But optimally, that would be the most incredible thing so in a perfect world, we would have everything documented from local, you know, to house foundations and -- and shrines, and then we can move on from there and you can do cemeteries, you know, historic cemeteries for every cultural group because that has not been done here at all and a lot of cemeteries are being destroyed.

Okay, I will move on. Any more questions? Okay, the rest of 19.52 deals with nonconforming uses, variances, and appeals, so that'll take you from 19.52.060 through 080. Then you get to 19.52.090, which is Regulations for Historic Districts 1 and 2. The establishment of plan, use of regulations as well -- and latter refers to the actual uses, which are permitted within the historic districts, 52 in Historic District Nos. 1 and 2. There's some discussion about historical tours as well as definitions, off-street parking. Those remain problematic within the Lahaina district or the Lahaina NHL. Height regulations, yard spacing. Selling in public places, which in one of the signage shots included things, which are now, you know, being deposited on parking lots, the individual vendors just begin to appear in places and then disappear, specifically, were identified within this section of the code when it said, under E, "Selling in public places that it is unlawful for any person to carry out or solicit business in any location on any street, highway, or sidewalk." And that, again, is an enforcement issue for our inspectors. The other hot item at the time for these regulations was drinking in public and, obviously, we won't be looking at trying to amend this, but I thought it was interesting that okole hau and sake were specifically identified among the alcoholic beverages which were deemed unlawful for consuming. Historic District No. 3 has, like 1 and 2, has its own regulations, its own uses, which are limited to six as well as building height and special spacing regulations, off-street regulations and yards. What's peculiar to this one is F, which is the protection of trees, which this is probably one of the few districts in the whole County where we actually have the call to protect trees. My attempts to get something similar in the general plan failed, but it does

say, "The purpose of this regulation," under F," is to preserve the many fine trees that now exist in the historic area and are deemed invaluable to the historical setting of this district. Written approval from the county historical commission shall be required before any large tree can be removed. A large tree shall be defined in the subsection as any tree with a trunk circumference greater than 60 inches." So that's like the only place in the Maui County Code where we protect trees. Okay, any questions?

Ms. Marquez: Stan?

Mr. Solamillo: Yes?

Ms. Marquez: Going back though to one you didn't tap on but I wanted to understand it.

Mr. Solamillo: That's fine.

Ms. Marquez: Is 060.

Mr. Solamillo: 06 --

Ms. Marquez: Nonconforming uses.

Mr. Solamillo: Okay.

Ms. Marquez: Help me understand the part that goes, everybody can read, but it says, "at the time this article is adopted may," and so on. So anything past the time the article is adopted is a no-no? Or how do I interpret that?

Mr. Solamillo: I'll defer to Corporation Counsel.

Ms. Marquez: Yeah, 060.

Mr. Solamillo: Nonconforming uses. Any lawful use of land and/or buildings or structures existing or under construction in any historic district at the time this article is adopted may be continued provided that such nonconforming use may not be enlarged nor changed into a different nonconforming use. I would read it as being a grandfathered use.

Mr. Giroux: Yeah, this is in accordance to 14-6 that gives the County zoning powers.

Ms. Marquez: Okay.

Mr. Giroux: And, basically, the State Statute says that we've gotta give some kind of stopgap because if there's -- if there's a use, like say somebody built a house and yet the

zoning zoned that place, you know, public/quasi-public, the County can't come in and just bulldoze your house because now your zoning doesn't match. So what it does is it'll -- that zoning will remain. Your house will remain. But if you go to expand that structure or you demolish it yourself, you can't rebuild that house if that new zoning, the public/quasi-public, doesn't allow for residential use. So what you can -- what you can do is you can live in it. You can live in it. You can paint it. You can --

Mr. Solamillo: Repair it.

Mr. Giroux: Change the windows. You can do the plumbing. You can maintain that structure in a livable manner, but what you can't do is go and demolish it and rebuild it. So what you gotta look at is at all the -- all the lawful uses of that property and then see what, you know, as a homeowner, you wanna know whether your uses is nonconforming or conforming. It's -- if you were using that structure for that purpose prior to the change in law, you can maintain that use.

Ms. Marquez: But nonconforming use.

Mr. Giroux: Yeah, it's going to be labeled as "nonconforming," but it's actually called "preexisting nonconforming" is the technical term, but sometimes we just say "nonconforming," but really the phrase in the legal world is preexisting nonconforming.

Ms. Marquez: So anything past when the article was adopted then negates that?

Mr. Giroux: Yeah, they can't make -- the law can't make you illegal, right?

Ms. Marquez: I need coffee for that one.

Mr. Giroux: The law can't make you illegal, basically, per the Hawaii Revised Statute. They say the County can -- you guys can do anything with your zoning, whatever you want. You have full laissez-faire, go for it as long as it's not spot zoning, legislature, County Council, go ahead, you know, take properties, zone it whatever you need to as long as it's in conformance with the general plan and it's not spot zoning. Those are really the two largest restrictions on zoning. But while the County Council may be doing that, they can't ignore the inhabitants who are using those properties because you can't just extinguish somebody's use that already has a preexisting use. So you can't make a structure illegal and the framework in that is if the structure existed, and you're going to use it, you can use it, but you can't expand it. We have a situation - I'll try to give you some examples and this might help a lot - in Paia, somebody prior to 1960's, so in the 1920's, somebody was running a hotel on Hana Highway, okay. Now, that hotel is running till the 1930's, 1940's, hotel, hotel, hotel. Now, in the 1960's, the County Council passes a law, a zoning ordinance, that basically says in your commercial districts, a hotel is not a permitted use, okay. Then they

zoned all of Paia commercial. There's still a hotel there. As long as that owner continues to use that structure as a hotel, they're permitted to do it all the way till today. If they keep using it as a hotel, they keep using it as a hotel, the County can't come in and say you need to shutdown this hotel. You're illegal. You're in an area where this use isn't permitted. They just have to keep showing the inspector, no, I -- this is a preexisting nonconforming use. I know in the zoning today I wouldn't be able to build a hotel, but because this hotel existing before the law, I can still continue to use it. Now, the owner goes and adds a wing to his hotel.

Ms. Marquez: But it's still a hotel.

Mr. Giroux: It's still a hotel. Now the County comes in and say, eh, guy, we know you're preexisting nonconforming but, man, this is a huge addition. You're really pushing it here, okay. And so now that's when this -- they gotta really look at the law and it says nonconforming provided not -- may not be enlarged. Oh, this law says may not be enlarged. Oh, so adding 15 rooms to your nonconforming hotel is an enlargement, so that's when the County gives the person a warning, warning, notice of violation.

Ms. Marquez: However, going beyond the not enlarging, it's still being used, that wing is still to be used as a hotel but because "enlarge" is in there, that's ...(inaudible)...

Mr. Giroux: Right, you're expanding your nonconforming use. Just because it's legal - it's legal, it's not conforming, so you can't expand it. So that --

Ms. Kanuha: May and shall.

Mr. Giroux: Shall, yeah.

Ms. Kanuha: What about the "may" and the "shall?" Cause I heard "may."

Mr. Giroux: Yeah, right. "May not be" and that's the funning thing. Yeah, that's actually a shall.

Ms. Kanuha: I never hear "shall."

Mr. Giroux: How convenient, huh? And then the other one is the discontinued use. Is there a one year -- and also, the "nor changed into a different nonconforming use" is if let's say this commercial use doesn't allow a meat market, just some crazy zoning, but the guy says, well, it's commercial and I want to -- I want to change that a nonconforming -- I'm going to go from a hotel to a meat market. Well, that's from one nonconforming use to another, a different nonconforming use, and they would say no. No, your zoning is what it is today once you change your use.

Ms. Chandler: I have another question. This one is specifically about trees, Stan. It says, "Written approval from the county historic commission shall be required before any large tree can be removed." There is now an Arborist Committee so is that -- does that go to them or does that go to us or --

Mr. Solamillo: Probably go to the Arborist but we would get it because it's in the historic district or we should get it.

Mr. Giroux: It's kinda like your sign ordinance because it's in that section so you would see it.

Mr. Hutaff: Question on 19.52.090, number 53, historical tours.

Mr. Solamillo: I know that would ...(inaudible)...

Mr. Hutaff: I think --

Unidentified Speaker: ...(inaudible)... zip right through it, right?

Mr. Hutaff: Well, no. Actually, I think this is wrong. I think it says "that only motor vehicles shall be used. . ." I'd like to see it as only --

Mr. Fredericksen: Walking.

Mr. Hutaff: Walking, which is already taking place.

Mr. Fredericksen: Yeah.

Mr. Hutaff: You know, you can really do a vehicle tour, I mean you can, but the people behind you would get really upset cause you kinda gotta go slow to explain everything but to walk around, I mean this would take them out their vehicle and walk around because this is saying it's illegal.

Mr. Solamillo: Okay, good.

Ms. Kanuha: Good one.

Mr. Hutaff: So I'm forgiven?

Ms. Marquez: Very good.

Mr. Solamillo: You're always good, Ray, no matter what.

Mr. Hutaff: Yeah. Thank, huh?

Mr. Solamillo: Okay, no more. Nap time is over. Alright, now we get some dicey stuff. Alright, next meeting, October -- under the Director's Report, next meeting is August - why am I thinking October? - August 3, 2010. Alright, the big one is coming down the pike, Honua`ula.

Ms. Marquez: Which one?

Mr. Solamillo: Honua`ula.

Mr. Giroux: Stan, can I just go back real fast --

Mr. Solamillo: Yeah.

Mr. Giroux: To Ray's question.

Mr. Solamillo: Okay.

Mr. Giroux: Ray, if you look under - this kinda reveals the history, the motive --

Mr. Solamillo: Reveal.

Mr. Giroux: If you look at 53.b. where it defines motor vehicle --

Mr. Hutaff: Yes.

Mr. Giroux: This is what the other lawyer was saying earlier.

Mr. Hutaff: Yes.

Mr. Giroux: Look at what it excludes. It does not include any vehicle propelled by human or animal power.

Mr. Hutaff: It does not include?

Mr. Giroux: It does not include.

Mr. Hutaff: Well, I'm talking about to walk around. I'm not talking about pull a cart.

Mr. Giroux: I think there might have been some debate at that time about rickshaws and, you know, so you can see this debate going on.

Mr. Hutaff: Oh, I get it, motorized rather than human or ...(inaudible)...

Mr. Giroux: Right. Right. And I don't think it clearly identifies it. I don't think it actually addresses the issue. But if you see the language, you start to see what people were thinking because, historically, when you look at the Honolulu rickshaw issue, if you look at the horse-and-buggy tour issue, you can see where people would start to kinda start to think, oh, what other types of tours are there? I think in our generation we think walking. You're either walking or you're in a car.

Mr. Hutaff: But if I were to say, hey, man, these guys are doing these walking tours. They're violating the law ...(inaudible)...

Mr. Giroux: I'm not arguing with you.

Mr. Solamillo: Can you tell us about the rickshaw tours?

Mr. Giroux: I'm not going to argue with you.

Ms. Marquez: But I can see that though, you know, cause it's not well defined, but the way people think.

Mr. Giroux: Yeah, it's how they were thinking and that's why --

Mr. Hutaff: Which means that - what is that? That one that went in the water and on the ground? What was it called? The duck?

Ms. Kanuha: Oh yeah, and they ...(inaudible)...

Mr. Hutaff: Okay, and that was actually legal by this definition.

Mr. Giroux: Because it had to be --

Ms. Marquez: Wheel motorized.

Mr. Giroux: It had to be motorized. But that's why your laws are supposed to be organic, you know. You're supposed to be looking at your laws and when you write a law, you should be looking will this last my lifetime and another lifetime?

Mr. Hutaff: Well, I'd kill the guy who did this one.

Mr. Giroux: You know, because I mean we -- as advising commission and councils, I mean I -- just the other day there was a condition that says you shall call SHPD at 242-03 -- I was like are you kidding me?

Mr. Hutaff: Yeah, yeah, yeah. It might not be there.

Mr. Giroux: That telephone number could change tomorrow, you know, and we have to, when we're writing laws, we have to think of what are we trying to prevent and are we writing this clear enough so that it'll stand the test of time, you know, and like this example, you know, here they are trying to get rid of rickshaws and horse-and-buggy and they just eliminated walking. We gotta -- you know, then this is the enlightenment that comes with reviewing these laws in totality because you get to see the archaicness of, you know, we still refer to haberdasheries and Turkish baths in Title 19.

Mr. Hutaff: Really?

Mr. Giroux: You know, we just reviewed some laws that talked about the superintendent of, what, health or something?

Mr. Fredericksen: No.

Mr. Giroux: It doesn't exist. We gotta really look at that and say, hey, maybe we ought to do some house cleaning. Maybe we gotta look at policy. Maybe we gotta do this. Maybe we gotta do that. But we really do have to look at it and say does -- is the law working? Does it function? And will it work in the future?

Mr. Hutaff: The other thing to do is can like something like this 53 here, in a short period of time, real easy, I mean you get to make a short comment, okay, you just like gotta make it like "and this shall include walking tours" or "not exclude walking tours" like right now?

Mr. Giroux: Right.

Ms. Kanuha: ...(inaudible)... is not going to be too happy.

Ms. Marquez: But, you know, James, you talk about laws and things of the future, things change. Laws change.

Mr. Giroux: Yeah. Technology changes. Technology changes.

Ms. Marquez: Right, so how do you deal with that and, at the same time, balance the keep in mind in my lifetime or whose lifetime?

Mr. Giroux: Right.

Ms. Marquez: How do you do that?

Mr. Giroux: Well, I think one of -- you know, when I was in law school, one of the huge challenges that was facing my generation was the internet. We don't even think about that today but when I was going through law school taking a copyright class, they didn't know what to call metadata. Metadata didn't exist. How do you own metadata? What the hell is metadata? I've never seen metadata. But this is what exist. This is the energy in your computer that has information that transmits information. If you don't own it, somebody else can take it and use it, and they don't have to pay you money. But you created it, shouldn't you have a right to that? You know, that's where you have to -- that's why you see lawyers any and all dada dada deede, repeating themselves over and over and over again because they're trying to think of that other thing that might pop up. And so you have to look at if you simplify it to the fact that you just want -- you don't want horses on public roads, just say it to all tours are allowed except for horses.

Ms. Marquez: But then they'll go -- then you there's a mule.

Mr. Giroux: Right. Then you gotta use the word, you know, or, you know, no bovine and, you know, equestrian, you know, any, you know --

Mr. Fredericksen: You can have a pig ...(inaudible)...

Mr. Giroux: You can go on and on.

Ms. Marquez: Yeah.

Mr. Giroux: But the simplest thing is to really, you know, call it what you're trying to do or just say animal, you know, no animal. No tours using an animal, you know. Or you know what I mean.

Mr. Hutaff: The guy could -- the guy could be on a motorized skateboard. That'll work.

Mr. Solamillo: Right.

Mr. Giroux: Right, motorized skateboard tours.

Ms. Marquez: True.

Mr. Giroux: But when the law breaks down to the point where the administration cannot even process, that's where you really gotta get in there quickly and just look at what's on the

ground and say if we're being told that we can't do this, then what in the law needs to be changed that will allow us to do it? And is it within the framework of the Constitution, right? You know, as long as you're not violating takings laws, as long as you're within your powers of zoning, as long as you're, you know, not creating an absurd result, then you have to look at that. And a lot of times, you know, for your government lawyers, me, my tough situation is I can't tell you what law to write because that's creating policy. The policy should come from debate. It should come from either your elected officials or your appointed officials who are to discuss these matters, and look at it, and say, hey, this isn't working. Let's fix it and how's the best way to do it. Once that's on the table, once that ball is rolling, the policy has been created, and then the lawyers can come in and say, well, you need to put the comma there because that would do this. But if you leave the comma out, it would do this. If you wanted to do that, I can put a comma. But if you don't wanna do that, you should tell me to take the comma out. And that's where you see these laws because as it goes from this body, it goes to Council, it goes to Committee, it goes to Council, then goes to second reading, and a comma can come in, and a comma can come out, and this is what happens in drafting legislation.

Ms. Marquez: But each segment has its own corporate counsel, right?

Mr. Giroux: Well, it has a different review, but as far as the legal -- you know what I mean? As far as the legal advice, it's -- well, it depends, right? So you always hear the lawyer, oh, don't tell us it depends. No. It does depend. It depends on you. What do you want. And that's where the review of legislation is very important because that forms the policy. The law is always based on some policy, and we have to look at that. And that's where the debate goes. And Stanley, in any revision, is going to do his best job to take the tone and tempo and tenure of this body and give you a draft and say, from the Department's point of view, this is what needs to happen. We want to see this happen. Then you debate it and you say, well, we agree; we don't agree, right? And then you create the language. You create the language. And you say this is the language we want. This is the language we would wanna see. And then it's transmitted to Council. It goes to Committee. And then they look at it with fresh eyes and say, well, Cultural Resources Commission, we kinda like the way the law reads now, or we want more added, or less added, and so that's the framework that you should understand as Commission Members under this code because you're regulated by it. This regulates you. It helps you to do your functions under your empowerments. So in your experience and your expertise, you look at the law and you say is this helping me do my job. If it's not, what needs to be changed.

Mr. Fredericksen: Okay, while we're still awake, thank you, James.

Mr. Solamillo: Thank you, James.

Mr. Fredericksen: It was good. No, it was good.

Ms. Marquez: Excuse me though. One question for James. So the -- my turn. So the law is based on policy, not the other way around - policy is based on law?

Mr. Giroux: Well, the chicken and egg.

Mr. Fredericksen: Yeah.

Mr. Giroux: Because that's why people are do adamant about our general plan. Our general plan is your basic policy document. Your community plan is your next policy document. These policy documents are supposed to be driving zoning, and that's what we're dealing with in Title 19, zoning. So if in your general plan it say all permits shall go to SHPD, until a law is passed in Title 19 that says all permits may go to SHPD, or, you know, it doesn't happen. It just doesn't happen. It's a policy. And if you look at the general plan that we are working with today and you see what is not in law, but is in policy, it's mind blowing because you're going why isn't there a law? Why didn't anybody pass a law? Shouldn't there be a law? Where's the law? It doesn't -- it says we should. It should be shall. It says this. It says that. Well, that general plan that has those problems was this thick. Your next general plan is this thick. So that's what the Council is struggling with now. They're looking at that policy document. And when it's passed, yeah, it will be a law, but it's a policy document. And until a law is changed in Title 19, it may not be the law. It may not ever happen. It has to be reviewed and that's why I used the term "organic" because when your policy document changes, then your law should follow. But if it doesn't, then you have a disconnect. And that's why looking through this is a good exercise because you see that if we don't have an administrator called the department of superintendent of building, maybe we should change, you know, maybe we should change that. You know that's -- that's where -- and one of the policies in the general plan is to update our zoning codes to make them usable. It's a policy with nice ideas.

Ms. Marquez: But interesting. Thank you. Good.

Mr. Giroux: So that's the framework.

Mr. Fredericksen: Take it away, Stanley.

D. DIRECTOR'S REPORT

3 August 5, 2010 CRC Meeting Agenda

Mr. Solamillo: Okay, next meeting, this is -- I'll begin the Director's Report with the agenda for the next meeting, which is August 3, 2010 --

Ms. Marquez: It's 5th.

Mr. Solamillo: Honua`ula draft environmental impact statement has now cleared SHPD. The CRC is the accepting agency. You received a CD Rom as background from Lucienne deNaie a couple of meetings ago. If you haven't looked at it, you should begin looking at it now. And then I will try and help Suzie get out the document as soon as I can get it from Munekiyo & Hiraga. This meeting will have one agenda item because the Deputy Director of the Planning Department, Ann Cua, has stated that she'd like to have it all done in one meeting.

Mr. Fredericksen: Have what done?

Mr. Solamillo: So depending on what kind of public comment we get, because it could be substantial --

Mr. Fredericksen: Could you repeat that, please, the part about at one meeting?

Mr. Solamillo: The Deputy Director has given us a directive that she would like this review and comment to take place in one meeting. Sorry, for getting away from the mike.

Mr. Fredericksen: How -- when does this draft environmental impact statement come before the CRC?

Mr. Solamillo: It will come --

Mr. Fredericksen: This is the only time, right?

Mr. Solamillo: Officially, yeah. Originally, I had wanted to do two meetings, remember? One was informational because of the amount of material, and then have the action item on the following meeting. The directive has come down from our administration that we do it all in one meeting.

Mr. Fredericksen: Well, that's not -- that's not -- that's not doable. We need to -- because there needs to be information. This is like what happened with the Molokai La`au Point.

Mr. Solamillo: La`au Point.

Mr. Fredericksen: And that's just not doable. So what do we -- what do we -- what can we, as the Commission, do about that? It's not on the agenda right now but --

Mr. Giroux: No, it's under Director's Report.

Mr. Fredericksen: I don't see it under Director's Report.

Mr. Giroux: As far as procedurally what -- I mean it would be a deferral if you're not complete with your review.

Mr. Fredericksen: Okay. Okay, so it comes with the intention of having it all decided. I'm, right now, that's not -- I don't feel comfortable with a project, especially something that large, when one meeting we're presented information, and, oh by the way, let's just make the decision too. But anyway, that's -- okay, so we have that. That's certainly within our purview of -- to defer.

Mr. Giroux: Stanley, what's the time frame for this draft report? I mean --

Mr. Solamillo: Well, it has cleared SHPD, okay, so they've given their comments. The public comment period I think was this week for the document that was at SHPD. After it clears SHPD, we're the receiving agency because we can establish further conditions beyond what SHPD has done.

Mr. Fredericksen: Okay, yeah, because we haven't looked at it --

Mr. Solamillo: Correct.

Mr. Fredericksen: At all and -- okay, so SHPD has looked at it.

Mr. Solamillo: Now it's coming to us.

Mr. Fredericksen: Initial or whatever public comments so far has been turned in but there's going to be, because this is a Cultural Resources Commission meeting, there has to be opportunity for additional public comment based on whatever come out in the draft EIS. Okay.

Ms. Marquez: So, in essence, we do not want to approach this with the mana`o that we have to get it done in one meeting?

Mr. Fredericksen: No.

Ms. Marquez: So -- but that needs to be said because --

Mr. Fredericksen: At the next meeting.

Ms. Marquez: If we're going to go with that mana`o and then say, oh, but we're going to defer, that's just playing games. It needs to be said that we are not, and not that we're not going to adhere to this one meeting, but that's highly impossible.

Mr. Fredericksen: Well, the meeting will be, the way I view it is, that will be the informational portion. That's be an informational, it should be at least, excuse me, informational, which would be the next meeting, and then -- then after that, there would be a meeting following that in the following month. That's how I would -- that's how I view it.

Ms. Marquez: Right, so that would negate the one meeting?

Mr. Fredericksen: Yeah. Yeah.

Mr. Hutaff: I kinda think the way we need to look at it is, you know, Stan has been provided with information that they'd like to have this all on one meeting so he needs to be prepared for that. The truth of the matter is we can't predict the future, okay. It's possible that everything goes along smoothly, and I don't get to speak, and so things get settled. Or -- right? Or we need a lot more time, in which case we need to say, at some point, or may have to say, cause we can't predict the future, I'm sorry but we have to end this. We need to continue at the next meeting.

Mr. Fredericksen: Yeah, this is a square mile we're talking about --

Mr. Hutaff: Right?

Mr. Fredericksen: Of project area. One square -- it's over a square mile actually, 670, not 640 acres. It's a big, big piece of property.

Mr. Giroux: Stan, what -- I have that document that's like four volumes. Is every Commissioner going to have a copy or disc or something?

Mr. Solamillo: We're going to have to get it probably on CD and it'll have to be distributed.

Mr. Giroux: This request maybe ASAP.

Mr. Solamillo: Yeah, it's going to go out as ASAP, but I'm going to be real frank with everyone here, I do not feel that my coming back with a statement that, you know, no can to the administration is --

Mr. Fredericksen: Yeah.

Mr. Solamillo: Going to be substantial enough. So I'm going to need probably -- you guys need to do some kind of recommendation formally on what you really wanna do.

Mr. Hutaff: I don't think you should do that either, Stan. That's actually what my point was.

Mr. Fredericksen: You mean you're talking about trying to make some recommendations now?

Mr. Solamillo: Yeah, I need you to make a recommendation. My directive is strictly to set aside a single meeting for this project and with the intent to have an action at the end of that meeting.

Mr. Fredericksen: And this project is specifically?

Mr. Solamillo: Honua`ula.

Mr. Fredericksen: Specifically what?

Mr. Hutaff: The whole thing?

Mr. Solamillo: Yeah, the whole thing. So that's what I'm saying. So you --

Mr. Fredericksen: So this isn't --

Mr. Solamillo: So as the Commission, this is with regards to the DEIS, so you, as the Commission, need to instruct me on what you want and then I have to take that back to management.

Mr. Fredericksen: Okay, so just so I'm completely clear, what project are we going to be looking at? What is the acreage we're looking at qualitatively?

Mr. Solamillo: I don't have the document in front of me so I can't give you --

Mr. Fredericksen: Is this one particular development?

Mr. Solamillo: No.

Mr. Fredericksen: Or all of Honua`ula?

Mr. Solamillo: It's going to be all of it.

Mr. Hutaff: I think our silence says volumes.

Mr. Fredericksen: That's too -- it's too -- that's too large of an area to try to just go, oh yeah, we can take -- that can be tackled in one meeting. That's my opinion.

Mr. Solamillo: Do I we have a second?

Mr. Hutaff: I'll second it.

Ms. Marquez: Oh, to recommend?

Mr. Fredericksen: Yeah, I think there needs to be an informational component in one meeting, and then, hopefully, the following meeting there could be some conclusions and recommendations made, it might even take more, but minimum of two meetings.

Ms. Marquez: So we should move to not to limit this effort to this one meeting --

Mr. Fredericksen: To this one meeting, yeah.

Ms. Marquez: Or something to that effort.

Mr. Hutaff: How about if we move to express our concern that the amount of information that needs to be presented to us and a decision made may not -- or one meeting will not be enough time.

Mr. Fredericksen: Yeah, it's insufficient.

Mr. Hutaff: Yeah. Why don't we move to that; just make that statement because Stan is just relaying information.

Mr. Fredericksen: Sure.

Mr. Hutaff: And we really can't predict the future. I think, based upon the way we do things and how things have gone and how big that project is, asking to have it done in one meeting is not reasonable, wanted absolutely, we'd all like to have things done in one meeting so we can move on to more things, but that one's pretty heavy duty. So we need to, you know, let, as a body, let his supervisor know that it's highly unlikely. Would that be okay?

Mr. Solamillo: I mean whatever you, as a Commission, decide.

Mr. Hutaff: Well, actually, we kinda, from what I understand, we kinda realize it can't be done in one meeting so how do we relay that to you without having you being the bearer of bad news and, at the same time --

Mr. Solamillo: I will be the bearer of bad news regardless.

Mr. Hutaff: Okay, well, then let's see what the future holds.

Mr. Giroux: Was the intent not to put more stuff on the agenda that when they have to deal with the Honua`ula issue? I mean was that the intent that they just get it clear from this board that you're not going to put anything else?

Mr. Solamillo: Yeah, I mean that -- I would --

Mr. Giroux: Because if you're ...(inaudible)...

Mr. Solamillo: If we agenda this -- if we agenda this item, which I'm presuming that we are going to agenda this item for the next meeting, then I'm sending out an email that says to all Planning, you know, the agenda for August 5 is full.

Mr. Giroux: I think you've got concurrence here.

Mr. Solamillo: Yeah.

Mr. Giroux: I think they're saying that --

Mr. Solamillo: And that this is the only item that we will be doing. But given our experience with La`au Point, and for those of you who were here, we ended up having to do special meetings and all sorts of stuff, at least one called special meeting, and I don't remember what the length of the testimony that determines -- it really is determined by who shows up. Today I expected people because I was getting emails about, you know, when is the 6E, you know, workshop going to be and nobody showed, so there's no way to determine that either, you know. What I'm most concerned about is that the Commissioners have enough time to become familiar with this project, through what they get, that you have sufficient time to be familiar with it. I will make sure that we have, you know, both the people who are supporting the project as well as public comment, enough opportunity for those views to be heard and then you have to make a decision.

Mr. Fredericksen: Okay, I've got another question.

Mr. Solamillo: Yeah?

Mr. Fredericksen: When you say "supporting the project," fill us in on the project.

Mr. Solamillo: I don't have the details to fill you in on the project. I'm sorry.

Mr. Fredericksen: Does anybody have any details? Rhiannon?

Ms. Chandler: I'm sorry, no, I don't have any details on the project. I didn't know that this was going to be on the agenda for the next meeting and I have to tell you all now that I'm

going to be traveling so I will not be here, and if this all happens in one meeting, I would be surprised, but I would just ask that we take as much time as needs to be taken.

Mr. Fredericksen: What entity or entities are funding the draft EIS?

Mr. Solamillo: Including Munekiyo & Hiraga.

Mr. Fredericksen: They're -- okay, they're not funding it. Who's --

Mr. Solamillo: I don't know who is. I mean this is Charlie Jencks is the developer I believe on the project.

Mr. Fredericksen: Okay, so -- now see that 's why I was asking before what is this because this has been -- this has been identified as Wailea 670 --

Mr. Solamillo: Correct.

Mr. Fredericksen: And other things, so this is Wailea 670?

Mr. Solamillo: Yeah, I'm sorry.

Mr. Fredericksen: Okay. I was on the CRC a long time ago when this came before the Commission and there were some -- a lot of problems at the time that needed to be addressed and I never saw anything to indicate that the problems that we'd identified at that point were addressed. I don't know if that's the case now. I don't know. You know, the draft EIS is out but this project has got a lot of complexity and I can't -- I can't possibly conceive of how we would be able to do this in one meeting.

Mr. Solamillo: Okay.

Ms. Chandler: Can we review the minutes of the meeting when that was considered last?

Mr. Fredericksen: I don't know. It was in --

Ms. Chandler: Is that -- is that -- I mean it's public record, right, so --

Mr. Fredericksen: Yeah.

Ms. Chandler: Okay.

Mr. Fredericksen: It was probably in early 2000 but I -- I'm not sure. I don't know when it was. It was some time ago.

Mr. Giroux: Yeah, Stan, the draft EIS already went through Planning Commission, I believe, so there's also a record of, you know, what comments came out of the Planning Commission also so --

Mr. Solamillo: Would you like also?

Mr. Giroux: Just to focus, you know, I mean to focus the discussion, that might help.

Mr. Solamillo: Okay. Mr. Chair, when you last heard this project, how many meetings did you complete your review and comments on?

Mr. Fredericksen: I can't -- it was one meeting, it might have been two meetings, but there was no -- it wasn't like, okay, that's the project's all good and -- uh-uh, it was like more work needs to be done. Come on back.

Mr. Solamillo: Okay.

Mr. Fredericksen: And that -- I mean that was years ago cause I -- my first term finished in 2000 -- March or April 2004. That's a fair piece of change to go now, and this was a couple years, I think, before I went off the Commission, I think.

Mr. Solamillo: Okay. Probably it might be a good idea, if you, as Chair, would send me an email and then I could forward an email.

Mr. Fredericksen: Would it be better if we, as a Commission, say something? I mean just ...(inaudible)...

Mr. Solamillo: Well, I mean if you, as the Commission, say something, that means I've gotta do the letter and, you know, it's --

Mr. Fredericksen: I mean minutes of the Commission instead of just one, you know, one person.

Mr. Hutaff: Well, I think too what Stan is saying is give me some material to show them, based upon our statements or your -- yeah, our statements, as a Commission, on how many meetings it actually took the last time.

Mr. Fredericksen: And that was no -- this was --

Mr. Hutaff: And there's no ...(inaudible)...

Mr. Fredericksen: It sounds to me that now this is -- everything's ready to go; here you go, approve it in one meeting. That's not -- that's not doable, in my opinion, and that presents it in a less than positive ...(inaudible)...

Mr. Hutaff: I don't think we have to abide by that.

Mr. Fredericksen: Oh no. Not --

Mr. Solamillo: No, what I'm asking you for is I would like to get an actual communication from you that says that, okay, so then I can forward your community to the administration, alright?

Mr. Fredericksen: Okay, again though, I'm one person --

Mr. Solamillo: Right, but all I'm saying is if -- let's just go through the basic brass tacks of how it works at Maui County. You can give me all your comments and I gotta go back and pen the letter myself --

Mr. Fredericksen: Right.

Mr. Solamillo: Then try and track you down, you know, later on for a signature, and then it's gotta through formatting and several pairs of eyes.

Mr. Giroux: Stan, who you gotta work the letter to?

Mr. Hutaff: To his boss.

Mr. Solamillo: I would have to write a letter to -- to my boss so it would go out as a memo.

Mr. Fredericksen: Could we pass a motion saying --

Mr. Solamillo: Yeah, I mean you could pass a motion, that's easy, which is why I asked you, you know, do you wanna -- can we do something formally on it.

Ms. Marquez: Apparently he got a directive to have this --

Mr. Solamillo: Yes, I have.

Ms. Marquez: Mana`o pau? Okay, there's a directive. How about we, as the Commission, we would like to address this, whatever name of this project is --

Mr. Fredericksen: Honua`ula.

Ms. Marquez: In meeting number one, informational, followed by meeting number two, hearing and, if need be, more meetings to make decisions. I mean be very specific as to why you want these separate meetings.

Mr. Fredericksen: Yeah, we need one meeting to have information presented.

Ms. Marquez: Right. That's my --

Mr. Fredericksen: And public testimony --

Ms. Marquez: Right.

Mr. Fredericksen: With that presentation of -- because we're a commission, we need to hear what the public has to say at that point in time. It doesn't matter what they've said prior.

Ms. Marquez: And not only hear it, you know, you need to understand what you're hearing.

Mr. Fredericksen: Right. Sure.

Ms. Marquez: And then with previous, you know, experiences we've had with projects similar to this, gee, that didn't happen in one meeting, neither did it in two. So what I'm saying is we let Stan represent us and say meeting number one, we'd like the informational segment, hopefully; meeting number two is the testimony, you know, that the -- the sequence --

Mr. Fredericksen: Right.

Ms. Marquez: Not to be limited to one solo meeting.

Mr. Fredericksen: Yeah, and we're not -- yeah, that's not reasonable.

Mr. Solamillo: Suzie's going to go see if Ann can come down and talk to you directly.

Mr. Fredericksen: Well, then it come into politics and stuff and --

Mr. Hutaff: It also could come into budget and --

Mr. Solamillo: Well, it's budget because I mean it was expressed that, you know, because of budget, we've gotta work smarter so --

Mr. Fredericksen: Well, this is too big of a project to work smarter. I mean that's not working smarter.

Mr. Hutaff: The let's delay it in the beginning until we have money. Can we take maybe a five, six, seven minute break?

Mr. Solamillo: Not from Stanley.

Mr. Hutaff: Not for Stan. Okay.

Mr. Giroux: I think it's more of an ...(inaudible)...

Mr. Fredericksen: Yeah.

Ms. Marquez: He need a break.

Mr. Giroux: I mean I would not think that they're mandating that.

Mr. Fredericksen: No.

Mr. Giroux: It seems like a hope, plea, if you could.

Mr. Fredericksen: No, this is big and I know there are some outstanding issues that were expressed to me by members of the community about the level of the archaeology, you know, the competence, whatever you wanna call it, that was done and other issues as well, and there's a lot of information that needs to be presented.

Ms. Marquez: Okay, I'm sorry, off the record. Off the record. Big, I mean it's relevance, I know the La`au mana`o, is big. Compare that. What's the "big?"

Mr. Hutaff: Okay, we're not --

Ms. Marquez: That's off the record.

Mr. Fredericksen: Yeah, it's --

Mr. Giroux: We're till on the record.

Ms. Marquez: Are we on a break?

Mr. Giroux: No.

Mr. Solamillo: You wanna go for a break?

Ms. Marquez: We could take a break.

Mr. Fredericksen: Okay, let's take a like five-minute break.

(A recess was called at 1:40 p.m., and the meeting was reconvened at 1:49 p.m.)

Mr. Hutaff: I have a fresh outlook.

Mr. Fredericksen: Yes, Ray?

Mr. Hutaff: I'd like to make the suggestion, kind of understanding the dilemma that we're faced with, is that as individual Commission Members, okay, we email Stan, or whoever we're supposed to email, as individuals, representing ourselves a Commission Members, stating that we save this information to do it in one day and that we believe that much more time is needed in order to totally understand, have public input, and come to a decision. And leave it right there.

Mr. Fredericksen: Yes, Veronica?

Ms. Marquez: We're all sitting here, I highly encourage that we, not as individuals, we, as a Commission, do the exact the same thing you said, I mean not emailing it, but make a decision here as a we, as opposed to a me, via email.

Mr. Hutaff: Well, the reason I kind of came up with that suggestion is that each of us probably has a different method of writing it, okay, and -- or presenting that idea. As a Commission, we have to come up with one idea. See what I mean? In a way, that's a limitation.

Mr. Fredericksen: Yeah, but also, we're here as a Commission and to send things in individually, there's, what, five us here sitting, and we each send an email individually to Stanley, I think -- I'm more on the side of where Veronica's coming from as well. I mean we're as a Commission, let's just say this is what our intent is. Next week's meeting is -- or excuse me, next month's meeting is for informational purposes, and we'll get the information and go from there.

Mr. Hutaff: If we were to do that, Stan, what would you have to do?

Mr. Solamillo: I would just send an email that says --

Mr. Fredericksen: That's what the motion ...(inaudible)...

Mr. Solamillo: That a motion was made to do this. And that's it.

Mr. Fredericksen: And I mean is that -- it just seems if we're sending individual emails, it's not as -- we're not as a Commission then.

Ms. Marquez: It's not a we thing.

Mr. Fredericksen: It's individuals and, you know, and we're sending them, we're not -- yeah, we're still Commission Members, but we're not in a meeting. That's all.

Ms. Marquez: All I'm saying is we're here.

Mr. Fredericksen: Yeah.

Ms. Marquez: And this is a Commission and we can make that motion ...(inaudible)...

Mr. Hutaff: Let's begin. I make the motion that we notify blank that we are most likely going to need much more time to review the information, to have -- I think we wanna limit it to that, okay, to provide more information or to be provided with the information, to allow public input, to have a comment time from the Commission Members, and make a decision, and we don't believe it can be made in one meeting.

Ms. Marquez: Or and not be limited to a single meeting.

Mr. Hutaff: I move.

Mr. Fredericksen: Okay, is there a second?

Ms. Marquez: I second.

There not being any further discussion, the motion was put to a vote.

It has been moved by Mr. Hutaff, seconded by Ms. Marquez, then unanimously

VOTED: to notify blank that the CRC is most likely going to need much more time to review the information, provide more information or to be provided with the information, to allow public input, to have a comment time from the Commission Members, and make a decision, and that it not be limited to a single meeting. The CRC doesn't believe it can be made in one meeting.

Mr. Fredericksen: Okay, motion carries. Now, Stanley?

Mr. Solamillo: Yes?

Mr. Fredericksen: On discussion on this, is this -- is that -- that's real straightforward. There's no -- you don't have to write a letter or anything.

Mr. Solamillo: You've just made your motion. That's all.

Mr. Fredericksen: Yeah. Okay. Okay, great.

Mr. Solamillo: Okay, that means next meeting is Honua`ula.

Mr. Hutaff: And thank you, Commission Members.

Mr. Solamillo: Thank you, Commission Members.

Ms. Marquez: We go to No. 1 instead? I'm not being facetious.

1. Moloka'i CRC Meeting (requested by Chair Erik Fredericksen and Moloka'i Commissioner Veronica Marquez)

Mr. Solamillo: Okay, this one begins with James making an investigative report.

Mr. Giroux: Since Ray didn't think I had enough work to do --

Mr. Hutaff: You know, he's smiling all the time.

Mr. Giroux: Well, I did look into this. The interesting thing is the question that Ray raised is can the CRC receive money donations or receive tickets to travel, rent-a-car, etcetera, from a private source so that this body could get to Molokai. I interfaced with Kalbert Young, through email, and I also interfaced with Kathleen Aoki, through email, and I also checked with some people in my office about, you know, have they handled this kind of stuff before. Basically, the County Code has Chapter 3.56, and basically that's your gifts and donations section. In 3.56.040, Section B, it says that the Mayor may receive and authorize the use of gifts and donations of personal property having a fair market value of 750 or less, not including money or equivalent to money, subject to the following, and then it just says that she's gotta tell the Council so they can balance their budget and all that stuff. There's -- that code section is also consistent with the charter that talks about that the County Council can receive gifts of donations. So in the analysis, we would probably have to talk to Stan, and I think he put it on the board up there about possible cost. I was looking at \$750 being probably the whole - what is that? Conservative cost for one member to go to Molokai or

maybe two. So the question of can we do this and not have to bother the Council about it, I think the answer is no. If we did receive such a gift for everybody to go, Council would have to approve it. It would probably have to be approved through a I believe a resolution.

Ms. Chandler: It can happen. That's not to say that it can't happen.

Ms. Marquez: My goodness.

Mr. Fredericksen: And can that -- and then there's a cap, \$750 is the max?

Mr. Giroux: No, no.

Mr. Fredericksen: Or is that the minimum?

Mr. Giroux: No, 750 is the trigger for having to go to Council via the charter, so then that would trigger the charter section that would require -- that would require Council action in order --

Ms. Marquez: So, Rhiannon, what was your comment?

Ms. Chandler: That it's very doable, according to what he just ...(inaudible)...

Mr. Hutaff: Yeah, with a resolution.

Ms. Marquez: A resolution.

Mr. Hutaff: By the Council.

Ms. Marquez: It doesn't take like ions?

Mr. Fredericksen: It takes time but --

Ms. Chandler: Well, they're starting on the new year now so ...(inaudible)...

Mr. Hutaff: Those figures up there are per person?

Mr. Solamillo: Yes, roundtrip.

Mr. Hutaff: Roundtrip per person?

Mr. Solamillo: Yeah.

Mr. Fredericksen: What's Commissioner's per diem rate?

Mr. Solamillo: I don't know. I'd have to find out.

Ms. Marquez: I get 45 when I come.

Mr. Solamillo: Forty-five?

Ms. Marquez: When I come and just share my smiles ...(inaudible)... I get a \$45 per diem check from the County.

Mr. Solamillo: Wow.

Ms. Marquez: I'm not being facetious. I just cashed it.

Mr. Solamillo: That's the per diem rate? Okay.

Ms. Marquez: That's your answer?

Mr. Hutaff: But you won't get that if you're already on Molokai, right?

Ms. Marquez: I pay for lunch.

Mr. Hutaff: She doesn't get it, right? Okay. But we get it? So that's 45 per person. Okay.

Mr. Giroux: The comment I got from -- from Kalbert was that, you know, there was an issue because of the -- there was civil service issues about, you know, people who -- whether or not they were allowed to waive their per diem, and the answer was no, but that was because of civil service law. You're not under civil service law, but the suggestion was is that it would become very awkward unless everybody waived it. The other caveat or kind of warning is that the source of the money shouldn't be from somebody who's expecting this Commission to review any, you know, foreseeable matters, you know. I mean anybody who has a permit already filed and pending -- waiting for review, probably shouldn't be a source.

Mr. Hutaff: Should not be a source?

Mr. Giroux: Should not be a source. An agenda item person who's going to be on the agenda, definitely shouldn't be a source. And if it's in the foreseeable future that they would be, you know, on review, they shouldn't be a source.

Mr. Hutaff: What if it came from a former commission member or a existing commission member?

Mr. Giroux: That shouldn't be a problem. But I mean I don't think that would raise an ethics issue. And again, it would -- we would have to look at what is on the agenda, you know, and that would probably solve most of the -- that question.

Mr. Hutaff: And what about staff? How much -- well, staff is you pay for the meeting anyway, right? So the ferry is going to have to also include Stan --

Mr. Solamillo: Suzie.

Mr. Hutaff: Suzie, and you?

Mr. Solamillo: How do we get from either ferry landing to or airport to a meeting place?

Mr. Hutaff: So only three, right?

Mr. Solamillo: Only three staff is correct.

Mr. Hutaff: Only three staff. Okay, how about getting to the meeting place with materials and equipment?

Ms. Marquez: So you're bringing like -- don't they have all that stuff on Molokai, I know we're behind, but don't they have their own mike system and everything? You don't have to bring all that do you?

Mr. Fredericksen: No, we had to bring ...(inaudible)...

Mr. Solamillo: Suzie goes.

Mr. Fredericksen: Yeah.

Ms. Marquez: I thought ...(inaudible)... you have? Okay, so you're not hauling all this stuff. What are you hauling?

Mr. Solamillo: I'm just hauling a laptop and a projector.

Mr. Hutaff: Okay.

Ms. Marquez: And so your question is?

Mr. Hutaff: How do we get from the ferry --

Mr. Solamillo: The dock.

Mr. Hutaff: Or the airport to --

Mr. Solamillo: To the meeting place?

Ms. Marquez: The airport. If you're getting in on the ferry, you can walk. But you're coming from the airport, you gotta ride something. Motorized vehicle

Mr. Hutaff: So ferry can walk, right?

Mr. Solamillo: The ferry is it. No motorized vehicles.

Mr. Giroux: No rickshaw.

Mr. Hutaff: Obviously lunch, right?

Mr. Solamillo: Yep.

Mr. Hutaff: What is that going for - 12 bucks a person?

Mr. Solamillo: I don't know.

Mr. Hutaff: On Molokai double. No, actually --

Mr. Hutaff: No, no. I don't know. That's why I'm asking.

Ms. Marquez: Yeah, Molokai pretty high priced.

Mr. Hutaff: Pretty high priced. So 20 bucks a person would cover drink and a --

Ms. Marquez: Maybe 15ish.

Mr. Hutaff: And a small sandwich? Any other known costs? I'm just trying to put together what it would cost.

Ms. Marquez: Yeah, yeah.

Mr. Hutaff: No other ideas for costs?

Ms. Marquez: But then the ferry schedule now would get you all on Molokai at 915ish.

Mr. Solamillo: And when does the last one leave?

Ms. Marquez: It leaves at 4ish.

Mr. Solamillo: Whoa. That's not a lot of meeting time. So we start 10:00 to 3; 10-11, 11-12, 12-1, 1-2, 2-3; that's only 5 hours.

Mr. Fredericksen: Gotta go on an airplane.

Ms. Marquez: Well, look at us. We come here, we start at 10, we pau at what - 1ish?

Mr. Solamillo: That's on a good day.

Mr. Hutaff: Okay, what are the air times, do you know?

Ms. Marquez: Oh gosh, not to Molokai.

Mr. Hutaff: Okay, so we can see if there's something different with that. Okay, from airport to meeting place, what's the transportation possibilities? You're looking at 11 people.

Ms. Marquez: Oh, you're asking me?

Mr. Hutaff: Yes. I don't know anybody else to ask.

Ms. Marquez: Why don't we ask the Molokai planner? Do we have one?

Mr. Solamillo: Yeah, we got one.

Ms. Marquez: Can that person take charge of that?

Mr. Solamillo: I don't know if they can take charge.

Ms. Marquez: Can that person -- wrong --

Mr. Solamillo: Maybe assist.

Ms. Marquez: Wrong word. Help?

Mr. Hutaff: Who do you know over there that has transportation?

Ms. Marquez: Who do I know?

Mr. Hutaff: How big are the vehicles?

Mr. Fredericksen: Probably four-seaters.

Mr. Hutaff: And who drives it?

Mr. Solamillo: County people.

Mr. Hutaff: Okay, so what's the time from the airport to the meeting place?

Ms. Marquez: Say on a day of heavy traffic, one car in front - one car in the back, about 12 minutes.

Mr. Solamillo: Alright, got it down. Yeah.

Ms. Marquez: I'm serious.

Mr. Hutaff: No, no, that's -- I'm commenting about the traffic.

Ms. Marquez: Okay, maybe on the high side - 15.

Mr. Hutaff: Fifteen minutes. Okay. I'll put together something and see what I can ...(inaudible)... out. See how it goes. Is that okay?

Mr. Solamillo: That'll work.

Mr. Hutaff: You want me to email this stuff to everybody or -- what would be the next phase? I mean obviously there's going to be a check. I have to give it to somebody along with a letter.

Mr. Giroux: Yeah, I think the difficult part is the resolution part because that, as far as -- it would probably have to come out of Planning to at least draft, and then get to the Corp. Counsel, through our, you know, review.

Mr. Hutaff: We're already getting to Corp. Counsel.

Mr. Giroux: Hey, don't get me fired - no.

Mr. Hutaff: Well, begin -- well, basically, begin your draft and we'll fill in the blanks.

Mr. Giroux: Hey, you already made me do the report.

Mr. Hutaff: And you thought that was the end of it?

Ms. Marquez: Wonderful.

Mr. Solamillo: It's just the beginning.

Mr. Giroux: Yeah. Well, just as far as the way we would process the paperwork, I'd have to get Stanley onboard and then he'd send me something up as a work order.

Mr. Hutaff: Can you ask him to work on what we just discussed?

Mr. Solamillo: Yes.

Mr. Hutaff: Thank you.

Ms. Marquez: Stanley is already onboard.

Mr. Giroux: And then, let's see, and then the Planning Department would transmit, through the Mayor, down to Council to have the appropriate committee put it on their --

Mr. Hutaff: ...(inaudible)... as a heads up to facilitate this, would it make sense to start to make contact with some of the Council member to try to give a heads up so that maybe we can seek permission, well not permission, but get some people on our side?

Mr. Giroux: Yeah, I would just interface firstly with the Molokai representative, and then -- he's also the chair, so that's who the first correspondence would go to from the Department so --

Mr. Hutaff: So it wouldn't hurt for me or somebody to say, hey, just to let you know this is what's coming up and --

Mr. Giroux: Yeah, courtesy --

Mr. Hutaff: Could we, you know, count on your cooperation and facilitate it quickly?

Mr. Giroux: Just to let them know.

Mr. Hutaff: Yeah. It wouldn't be a bad idea? Okay.

Ms. Marquez: So to piggyback on Ray, with a smile, James, to piggyback on Ray's, I can talk story with Danny, who is Molokai, and not be at all noncomformance with whatever we have and say what we're talk about. That's not no-no?

Mr. Giroux: It's fine.

Mr. Hutaff: You're just talking about a donation.

Mr. Giroux: It's fine.

Mr. Hutaff: It's talking about a donation, not subject matter.

Mr. Fredericksen: And as long as --

Ms. Marquez: A donation but we don't know where it's coming from?

Mr. Hutaff: Not at this particular point because of what the question I asked. I think it would be most easy if one of us donated the money.

Ms. Marquez: One of us what?

Mr. Hutaff: Donated the money, rather than why, where, how come? I could attach my rationale and my reasoning.

Ms. Marquez: Cause I can easily talk to Danny. I mean I see him every time before I come to the meeting, so I will make mention.

Mr. Hutaff: Cool. And email feedback if there is any.

Ms. Marquez: Is that like breaking Sunshine Law ...(inaudible)...

Mr. Fredericksen: No, because only you two are doing it. Nobody else is.

Ms. Marquez: Oh, email you?

Mr. Hutaff: Yes.

Ms. Marquez: Not you?

Mr. Hutaff: No, and it's just --

Ms. Marquez: I'm afraid to email anybody nowadays.

Mr. Hutaff: And it's just about the comment -- it's just a comment to facilitate accepting --

Ms. Marquez: Yeah, do you take phone calls?

Mr. Hutaff: Yes. Okay.

Mr. Solamillo: Use the land line.

Mr. Hutaff: After I screen it.

Mr. Fredericksen: Unmarked phone calls.

Mr. Solamillo: Private number.

Mr. Hutaff: No. Restricted.

Mr. Solamillo: Restricted number.

Mr. Hutaff: I give them back but --

Ms. Marquez: ...(inaudible)...

Mr. Hutaff: You can call but most likely I don't answer the phone. I wait to see who it is.

Ms. Marquez: Okay, give me the number that you won't answer. I'm serious.

Mr. Hutaff: 283-5507.

Ms. Marquez: Okay, that's you, right?

Mr. Hutaff: Yes. And if I'm on a Hana tour, I don't answer during the day.

Ms. Marquez: I'll call you at night.

Ms. Kanuha: Call at midnight.

Mr. Hutaff: This is what I like to do, I mean figure stuff out, and then put it ...(inaudible)... and get everybody onboard to do the same thing. And thank you, James, okay, and it won't be the last time.

Ms. Marquez: And thank you, Ray, for your big heart and soul. Are we still on No. 1?

Mr. Solamillo: No. 1.

Mr. Fredericksen: Okay, now we're Item No. 2.

Mr. Solamillo: Okay, I'm going to -- let me go back to this one. Ann came down and said schedule it for one meeting and then let it -- if you end up deferring an action, that's fine. But the whole deal of purposely setting up two meetings, she doesn't like.

Ms. Marquez: Excuse me. Excuse me. So we are approaching this -- we are approaching this in a meeting essence, however, we're going to play the game and defer it? That's ridiculous.

Mr. Hutaff: No. No. We're going to see how it goes.

Mr. Solamillo: I'm going to send what you made a motion on --

Ms. Marquez: Okay.

Mr. Solamillo: And then that's it.

Ms. Marquez: Alright. Thank you.

Mr. Solamillo: Alright, but I was just -- since she came down. Alright.

2. Ka'ahumanu-Naniloa Overpass, Wailuku

Mr. Solamillo: The big one, Ka'ahumanu-Naniloa Overpass. I got lots of telephone calls on this one, mostly from Japanese attorneys.

Mr. Hutaff: Really?

Mr. Solamillo: And this was kind of weird because it was really difficult to get the State to act on this one, and this was obvious this State-owned property. Okay, this bridge, I believe it's built in 1936 using Federal funds, under PWA, and it was for work being done without a permit, for being done on Hawaii DOT property, on a property that was already listed in the Hawaii Register of Historic Places as well as the National Register of Historic Places. Here's the overpass. It's makai side of Wailuku going towards Kahului. There are some wonderful stone abutments and the stone abutments are shown in the lower parts of the photographs, but what happened was that property owner began to actually build a wall on top of the historic rock abutments.

Mr. Fredericksen: And modified what was there.

Mr. Solamillo: Yeah.

Mr. Fredericksen: I mean removed --

Mr. Solamillo: Well, actually, there had been a modification, which shouldn't have been made, probably between 10 and 15 years ago that nobody said anything about so it was presumed that it was okay. The background on this one was we had a Japanese property owner who had the land adjacent to the road before it was widened and before the bridge was built, so this is an old family who had been here a really long time, okay. Then what happened was is that the bridge was built, the abutments were built before the bridge was, and then the bridge was put in, and he maintained. The State did not maintain the land behind the abutment, which was when the right-of-way was actually taken it took part of his land. So as a matter, you know, routine, he mowed the grass and did things like that. And then he got into a situation where a fence was put up, it was a chainlink fence, and then it rusted away and it was never replaced by DOT. As a result of that, we had people who walked along the backside of the abutment and, inadvertently, through his yard at a rather consistent basis, and that's what prompted him, at this point, to build this wall to keep his property free of people coming in. The only deal was he built the wall on DOT property. So I first went to Hinano, and Hinano was really helpful, and then I was told to go verify right-of-way, so I had to contact DOT right away in Honolulu, and he was the most responsive guy, this guy just fired back and said, yeah, it's DOT. Send me copies of the plats. It was great. To get, you know, DOT here, from Kahului, to respond was -- was not as quick. And then to get kind of an action, a fine action, tell 'em stop work, take it down, nothing formal has come from DOT. So, finally, Maui County jumped in because a permit had not been filed. I had told them, I visited the site three time, first when the rock wall was first going up and I started getting the attorney's calls, and then I went and told the stone workers, you know, and they were, I think, Samoans, and they were really -- the problem is everybody's really nice on this job. The owner's old, he's like in his 80's, and he's really nice, and the stone workers are nice, and it's like you hate to burn 'em, but I told them to stop work, go file a permit. There was some question, when he got to DSA, they said, well, we don't require a permit for a wall. Well, this is a wall in a historic site. I think you need to have a permit. So, it turns out, he still hadn't filed a permit. When the County did jump in and we got an inspector that said stop work and he said pull it off, pull the wall off the old abutments, he went even further and said pull everything off of the State right-of-way. So there's all kinds of anxiety about this, and how it's going to come out? I don't know. But I needed to let you know. This is kind of an ongoing thing. And Hinano has visited it with me twice. I've gone there three times. And we don't have a finality to this case at so this is ongoing.

Mr. Fredericksen: Okay, so I'm understanding this clearly, who told them to pull everything off of the --

Mr. Solamillo: A County inspector.

Mr. Fredericksen: Okay, the County inspector --

Mr. Solamillo: For work being done without a permit.

Mr. Fredericksen: Told them to stop doing something on State property and remove things?

Mr. Solamillo: Right. So the State guys would come by in their trucks and they do the shaka signs and everything.

Mr. Hutaff: Well, I kinda feel bad for the owner. I mean --

Mr. Solamillo: Yeah.

Mr. Hutaff: You know, if something was taken away from him and, you know, somebody else was supposed to take on the responsibility, which they didn't live up to, in which case he went ahead and took on the responsibility, and then something becomes a problem and he has to take action for his own safety and for his property and now he's getting tagged, I mean it's obviously not a happy situation for anybody.

Mr. Fredericksen: Yeah, it's unfortunate all the way around.

Mr. Hutaff: Yeah.

Mr. Fredericksen: And DOT is not renown for their quick response to anything, unfortunately. Stanley, what has SHPD said about this?

Mr. Solamillo: We don't have an official letter yet. We're waiting.

Mr. Fredericksen: Who's -- you know who's writing the official response?

Mr. Solamillo: It may come out Roz or it may come out of Nancy.

Mr. Hutaff: I certainly think the land -- the owner needs an apology, it's gotta come down, but he needs an apology. That would be minimal.

Ms. Chandler: Is it possible to remove the rocks that have been put up without damaging the ...(inaudible)...

Mr. Fredericksen: Well, yeah, it can't.

Mr. Solamillo: What he's done now is he's gone back in and actually removed here ...(inaudible)... comes down this way.

Mr. Fredericksen: Right.

Mr. Solamillo: And here's -- so this has been removed now.

Mr. Fredericksen: Okay.

Mr. Solamillo: Okay? So we're back to this abutment, you know. And there was an earlier wall, which is this one here. That was done 10, 15 years ago.

Mr. Fredericksen: That's when the house was built.

Mr. Solamillo: Yeah, and nobody said anything.

Mr. Fredericksen: Right.

Mr. Solamillo: Okay, so the ...(inaudible)...

Mr. Fredericksen: I did but I went to SHPD.

Mr. Solamillo: So anyway --

Mr. Hutaff: So that's just for information?

Mr. Solamillo: Yeah, so --

Mr. Hutaff: Well, that's sad then.

Mr. Solamillo: Okay, that's it.

Mr. Hutaff: Any word on Lana`i how that's going?

Mr. Solamillo: No, we were supposed to have another community meeting and the other community meeting has not been scheduled.

Mr. Hutaff: So is the landowner still trying to negotiate with the Planning Department on a smaller version of the historic district?

Mr. Solamillo: Actually, it was rather interesting. They came back and they said, in pure company fashion, well, why don't we just nominate the whole town?

Mr. Hutaff: Okay. They're idea? Fine.

Mr. Solamillo: Yeah, it was really bazaar, but the basis for that would be to try to get access to -- access tax credits, plus whatever floats your boat, you know, I mean I don't care. Sure. Why not? But again, it's like one of those things when you deal with that particular property

owner, you never know. It'll come out of left field and so I can't really hold my breath on that one right now.

E. COMMISSIONER'S ANNOUNCEMENTS

Mr. Solamillo: Oh, I have one announcement. July 27 my wife and son will finally arrive from the Philippines so, yeah, school starts August 2. So thank you all of you for being supportive. Any Commissioner's announcements?

Ms. Chandler: Yes, on July 15, there is going to be a workshop for -- it's a cultural workshop at the Hawaiian Islands Humpback National Marine Sanctuary about whale and other mammal iwi, actually it might include turtles too. It's really about what the Hawaiian community would like to see in terms of management of these cultural resources, so that's coming up July 15.

Mr. Fredericksen: Cool.

Mr. Solamillo: What time?

Ms. Chandler: At 8 p.m., 6 to 8 p.m., at the Whale Sanctuary on South Kihei. Yeah, South Kihei, next to Kalepolepo Beach Park.

Mr. Fredericksen: Alright. We're all set? Okay, who wants to make a motion?

F. NEXT MEETING DATE: August 5, 2010

G. ADJOURNMENT

Ms. Marquez: Move to adjourn.

Mr. Hutaff: Second.

Mr. Fredericksen: Okay, everybody be safe. See you in August.

There being no further business brought before the Commission, the meeting was adjourned at 2:30 p.m.

Respectfully submitted by,

SUZETTE L. ESMERALDA
Secretary to Boards and Commissions

RECORD OF ATTENDANCE

Present

Erik Fredericksen, Chairperson
Raymond Hutaff, Vice-Chairperson
Makalapua Kanuha
Veronica Marquez
Bruce U'u (Excused at 3:00 p.m.)

Absent

Jacey Laborte

Others

Stanley Solamillo, Cultural Resources Commission
James Giroux, Deputy Corporation Counsel