

**MOLOKAI PLANNING COMMISSION
REGULAR MEETING
APRIL 27, 2011**

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

A. CALL TO ORDER

The regular meeting of the Molokai Planning Commission was called to order by Chair Mikiala Pescaia at 12:03 p.m., Wednesday, April 23, 2011, at the Mitchell Pauole Center Conference Room, Kaunakakai, Molokai.

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

Ms. Mikiala Pescaia: (Introduction made in the Hawaiian language.) Welcome to the April 27th meeting of the Molokai Planning Commission. My name is Mikiala Pescaia, the Chair. This is John Sprinzel, our Vice-Chair. To my right we have Commissioner Buchanan, Commissioner Kelly, Commissioner Dudoit, Commissioner Bacon, and Commissioner Davis. We have with us our Corp. Counsel.

Mr. James Giroux: James Giroux.

Ms. Pescaia: Substituting for Michael Hopper. And we have our Secretary to Boards and Commissions, Suzie Esmeralda. And we have also with us Clayton Yoshida, who has a fancy title that I can never remember. I was gonna look'em up. Planning Program Administrator. And we have our Molokai Planner, Nancy McPherson. So mahalo for all of you joining us today. We'll get right into business.

B. PUBLIC TESTIMONY ON ANY PLANNING OR LAND USE ISSUE

Ms. Pescaia: We'd like to open up public testimony on any planning or land issue. This is for those of you who may be taking your lunch break to come and join us, and you would like to offer testimony on an agenda item that will be coming up later and you can't wait for it. If not, if you can stay with us, we would prefer that you offer your testimony when that agenda item comes up, or anything else that you need to raise, any concerns, that we can consider for a future Planning Commission meeting. Seeing none, we'll move on to C, Announcements.

C. ANNOUNCEMENTS

- 1. The Commission would welcome any testimony relating to proposed amendments to its existing rules for its Subcommittee on Rule Changes.**

Ms. Pescaia: The Commission would welcome any testimony relating to proposed amendments to its existing rules for its subcommittee on rule changes. As we have just transitioned into a new Board, the subcommittee will need to be revised as the Chair of that subcommittee is no longer on the Board, and we still need to review those changes. So that's gonna come up in a future agenda. Is there anyone out there that would like to offer testimony on this issue? Seeing none, moving on to D, Approval of the Minutes of the February 9th, 2011 meeting.

D. APPROVAL OF MINUTES OF THE FEBRUARY 9, 2011 MEETING

Mr. Sprinzel: I propose we approve the minutes.

Ms. Pescaia: A motion by Commissioner Sprinzel, second by Commissioner Bacon.

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

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

VOTED: To accept the minutes of the February 9, 2011 meeting.

Ms. Pescaia: Motion carried. Right on. Moving on to E, Communications. Ms. McPherson, you ready?

E. COMMUNICATIONS

1. **MR. WILLIAM SPENCE, Planning Director, requesting concurrence from the Molokai Planning Commission pursuant to their Special Management Area Rules, as amended, that a Special Management Area (SMA) exemption can be issued for the following:**
 - a. **MR. GLENN CORREA, DIRECTOR, DEPARTMENT OF PARKS AND RECREATION submitting a Special Management Area Assessment application for the replacement of existing playground equipment with ADA-accessible playground equipment, installation of safety surface (slab on grade, no excavation) and ADA-compliant parking and access sidewalk at One Alii Park located in the Interim District, Kamehameha V Highway (MM3), Makakupaia, Island of Molokai. (SMX 2011/0328) (Valuation: \$150,000) (N. McPherson)**

Ms. Pescaia then read the agenda item into the record.

Ms. Nancy McPherson: Thank you, Chair. Nancy McPherson, staff planner. Zachary Helm was on call to be here and I think if we need him, I can probably check next door. I was hoping he'd be present, but if we need him, I'll try to get a hold of him to represent the Parks Department today.

And I want to apologize because on Exhibit A2a, your – that is actually annotated in red in the software that I use, Adobe Acrobat Pro, and for some reason, it's not printing out. So I actually have the shoreline setback line marked on Exhibit A2a. And it actually follows that dotted line that is between the parking and the – kind of like the sandbox and restroom areas there. There's – the shoreline setback line follows along right here, this dotted line right here. And if you look at Exhibit A2b where the numbered points are: 1, 2, 3, 4, 5, 6, that's actually the shoreline setback. And Parks was not quite able to put that all together onto one map, but the proposed improvements are occurring– This one is to scale. So the proposed improvements are occurring about a hundred feet outside of – between 75 to 100 feet outside of the shoreline setback area. So back from – well, I'll say 50 to 75 feet back from the shoreline setback area. Now I'm sorry that couldn't all have been represented on one map for you.

Originally, this project was proposed with some footings that would have to be excavated. And when State Historic Preservation stated that that would require an archaeological monitoring plan, what Parks then did was they went back to the drawing board, and they were able to come up with another base for the playground so that no excavation has to occur for the installation of the playground. So they're putting in the rubber safety mat underneath. They have various means for assembling the structure, but it will be safe. And they don't have to do excavation in order to install it.

And this is also a kokua project. It's gonna be volunteered labor. They got a grant to actually purchase the project, to purchase the playground. And they're also needing to provide accessibility that conforms with the Americans with Disability Act requirements. So that's why they are doing the parking there. And my understanding is, is that they're not gonna be grading for that area. So they're just gonna be pouring for sidewalk and that sort of thing. So if you have questions for Parks, I can go ahead and try to get a hold of someone from Parks. If you have any questions for me, please go ahead.

We are recommending exemption based on removal of the play structure that's there now and alterations to existing structures that do not increase intensity of use or expand square footage area of structure. And on Maui, these get exempt on a regular basis, so just to let you know.

Ms. Pescaia: Commissioner Kelly?

Ms. Debra Kelly: Okay, I have a question. What kind of slab are you putting on the grade?

Ms. McPherson: Well, it's actually – the playground, it's not a slab. It's a rubberized safety play surface. And so that's – the term "slab on grade," just means that they're not using footings. They're not really putting in a foundation. And they're just laying it on top of the ground.

Ms. Kelly: So you're not gonna grade? You're not gonna smooth it out? Nothing?

Ms. McPherson: Parks is not going to be doing that. That's my understanding. That's how this project was represented to me in the application.

Ms. Kelly: I just find that kind of unreasonable.

Ms. McPherson: Okay, well, if you'd like, I can go grab Zach.

Ms. Kelly: No. Okay, and there won't be— You know, that's where everybody parks when we have parties and things like that. Is there going to be protection around the playground area?

Ms. McPherson: Well, my understanding is that from what I can tell from the plans that were submitted, the ADA parking is going to be only for the handicapped parking. And that's actually going to act as – you know, then there's a sidewalk, and that's going to be sort of the barrier for the playground. But no, my understanding is that there's not gonna be a fence or anything around it.

Ms. Kelly: Okay, so where's the sidewalk going to be?

Ms. McPherson: The sidewalk is going to be between – if you look at Exhibit A2a, the little blue area, the blue is – that's going – perpendicular to the shoreline is the parking spaces. And the blue that is going between that and the new playground area is going to be the sidewalk.

Ms. Kelly: Okay, do you have the specs for that? They have to excavate. They have to do some ground disturbance.

Ms. McPherson: Well, no, I wasn't provided with that information so—

Ms. Kelly: Alright. Thank you.

Ms. McPherson: Would the Commission like to have a representative for the applicant, Parks Department, come over? Yes? No? Yes.

Mr. Nathaniel Bacon: Yeah, I think it would be helpful if we had somebody come over to clarify some of those questions. And the other one was the removal of the old stuff, which I don't think is even there anymore.

Ms. McPherson: Okay.

Mr. Bacon: The sandbox is still there, but I think the rest of the stuff isn't.

Ms. McPherson: The playground's already gone? That might've happened when they were doing the – there was a previous project, and that was the installation of the septic system, and that came before you also. So, okay, if you can give me two minutes?

Ms. Lori Buchanan: Okay. Chair?

Ms. Pescaia: Yes?

Ms. Buchanan: I'm not so inclined to ask any questions of staff. Representations made by staff on this application state that there will be no grading. If there is grading, then a request for service can go in with the Department's Zoning enforcement officer. If they said they not going grade, then they're not supposed to be grading. And that's how we can do it is just go on, on what they represent. So I wouldn't have questions for staff at this time. If the specs were not attached to this, then they must not have it. So that's just my manao.

Ms. Pescaia: Well, given this is an exemption and a short form, but yet there's – I mean, I have questions about moving the playground takes it out of where it used to be in a protected side of the park into where there's vehicular traffic. And I just want – I wanna make sure that there's gonna be some sort of barrier or protection separating the playground area from the open field or from that other access. Currently, there's an access between – like coming out to the back of the pavilion that people use all the time, if they're gonna modify that and block that off permanently. And I'd like to welcome Mr. Helm. Are you up for some questions, sir, on this project?

Mr. Zachary Helm: . . . (inaudible) . . .

Ms. Pescaia: I do. Can you come up to the mike right now, please?

Ms. Zhantell Dudoit: Chair, can I just ask Nancy a question before she leaves?

Ms. Pescaia: Sure.

Ms. Dudoit: In the Department's recommendation, to do the exemption is based on what? Just because that's what you do normally?

Ms. McPherson: No. On the first page, we have – on our short form, the Commission previously approved the list of activities or proposed actions that they consider to be exemptable, and if it was one of those actions that we could use the short form to bring it to the Commission. Normally, we may not even bring exhibits but because – you know, we knew that there might be some questions about this project, we did include the assessment itself and some exhibits. So it's under no. 4, repair and maintenance or interior alterations to existing structures that do not increase intensity of use or expand square footage area of structure. This is basically, maintenance and replacement, and then demolition or removal of structures, although I'm hearing that the playground structure is already gone, so I wasn't aware of that. But – and then, if you need more details, I'm gonna have to defer to Mr. Helm here.

Ms. Dudoit: Okay, maybe I don't see it, but your explanation for why this is to be exempt doesn't match the request for what's gonna happen. I mean, you have an application of putting a new playground in a different location, but the reasons for which you're asking us to exempt the SMA is to repair, maintenance or interior alterations to existing structures, or – which is only one part of it – the demolition or removal structures. So at which point are we exempting a new structure to be put in a new place?

Ms. McPherson: That's a very good question. And if the Commission has a problem with the basis for the recommendation, then it's up to you to make that finding, and make a recommendation for a different action. And I think it would be helpful, since Mr. Helm is here now, to restate some of your questions and concerns that were just expressed a few minutes ago. So can I defer to the Parks' representative? Okay.

Ms. Pescaia: Thank you. Mr. Helm, welcome. Aloha. Anybody wanna ask the first question? We have a few questions for you on this project.

Mr. Zachary Helm: Sure.

Mr. Bacon: One of the questions brought up was the fact that there's supposed to be no excavation, and yet you're doing a parking and sidewalk area, which would be the concrete. And the play area, which I thought was maybe concrete and then rubber over, or is it just a rubber – integral rubber poured –?

Mr. Helm: Well, excuse me. The parking is required due to ADA requirements. And it'll be outside of the playground area, which is east of the entrance road and it goes to the pavilion. Now, I'm not sure what you have in front of you, but I can pass this around to show you kind of like a general idea of how the playground structure will look like. You have this? You have this. Well, this is not the exact playground structure that we're gonna be installing. It's just kind of to give you an idea of how it's gonna look, if you can visualize

it like from above down. But for me, I would just like to encourage you to support this request. It's been since 2008 we've been trying to get this moving.

Mr. Bacon: Okay, because you were saying that there was no excavation to be done. So everything will be poured on top of the existing grade?

Mr. Helm: Yes. Prior to this request, we were going to excavate, but because of the requirements of archaeological issues, we felt that we could do it without excavating. So what we're gonna do is to bring in material maybe six to eight-inch thick. And we'll be going with that instead of excavating any holes or tampering with the ground because of the iwi, yeah, so—

Mr. Bacon: Okay. And then the other question came up was this new play area, as opposed to the old play area, which we don't see any of that equipment still around, but that old area was in more of a protected area where there was no traffic or anything like that. This new area is going to be put in the larger area where people park all the time. And there's vehicular traffic. People go in there with their four-wheelers and stuff. Is there gonna be some sort of protection?

Mr. Helm: Yes, there'll be post and rail surrounding the playground area. And the reason that we moved to this area is the County had to meet also some requirements with the cesspool. They had to remove the cesspool and install a septic tank. And the area that we had to do the leach line was the area where the existing playground structure was. So we had to remove those. And rather than putting it away, we applied for some grants to possibly, do a playground project. And that's what we did. And we got the grant that we'd like to move forward for so this can be happening, yeah, as soon as possible.

Ms. Pescaia: So the access chained gate that comes up behind the pavilion, you know like in that corner where people usually pull up and they can off-load their stuff to make . . . (inaudible) . . . that's gonna be permanently blocked off so that there'll be no cars allowed at all on this field? Or going still be allowed and there's gonna be some sort of barrier around the playground?

Mr. Helm: Well, it's not gonna be exactly there where the entrance is. If you take a look at the area, it's pretty big from the highway into the entrance where you get to the gated area where you wanna go to the pavilion. It's gonna be further north. It's gonna be way before—

Ms. Pescaia: More mauka than—

Mr. Helm: Yeah, more mauka than makai.

Ms. Pescaia: Is there gonna be like—? You said a post and pier. Is it gonna be around—?

Mr. Helm: In the parking lot area.

Ms. Pescaia: Around the playground?

Mr. Helm: Right, so we won't have a problem where people can just drive up to the playground.

Ms. Pescaia: Yeah, or accidentally back up into somebody, something.

Mr. Helm: Right, right, we're very much aware of it because that was taken into consideration.

Ms. Pescaia: Only 'cause there wasn't any representation for the barrier. It's not mentioned in the paperwork, so we wanted to make sure there is.

Mr. Helm: We're gonna do that in-house, so, yeah.

Ms. Pescaia: And there wouldn't be any digging or nothing for that portion?

Mr. Helm: The – probably will have to, if we have to put in that post, or there could be other means of putting barriers there, too.

Ms. Pescaia: Right, I just wanna make sure, Nancy, that – what is that considered? I mean, we get people coming in to plant one telephone pole, and dig one hole in their yard, so what is that? I mean, is that a missing component. Should that be included in this? Is that gonna be a separate thing? Does it not matter 'cause it's—?

Ms. McPherson: Well, since the barrier wasn't included in the original application, I wasn't – I didn't include that as part of the proposed action. And we don't have any specifics on how that's going to be done. I would entertain Parks, if they had a predetermined idea of what they were going to do. But, yeah, if they're digging posts for a post and rail, that would be considered ground-disturbing activity. As I said, that wasn't included in the original assessment. The State Historic Preservation archaeologist actually did a site visit to One Alii, which she was here on April 4th and 5th. And based on what was represented to her about the project, she did issue a letter of no effect, but again, that didn't include the idea of – yeah.

Mr. Sprinzel: Nancy, I'm not being difficult. People who were doing the soil exploration, they had to get permits just to do a little exploration holes. So if you're gonna put up a post and rail, you've just got to have the same rules applied to them as applied to other people.

Ms. McPherson: Yeah, we do. And it makes our jobs a lot, you know, difficult, but we wanna do the right thing especially, by the iwi kupuna. So that puts us all in a challenging situation because there are some things that seem very minor unless you're in an area with a high likelihood of the presence of iwi. And then, it's perhaps not so minor. I would defer to Parks and the County Public Works Department to actually be able to say how much grading has occurred in that park in the past. I've heard that a long time ago that iwi were collected and moved. I have not found any verification of that, but again, that was all happening probably pre-1970. So it's really hard to say. I don't have documentation on the history of everything that's happened at One Alii.

Ms. Pescaia: Well, iwi was found while doing the septic system project. Iwi was uncovered during that project. So while I was on this Board, and while – that's why I'm a little bit more – I just wanna be clear that everybody understands that the likelihood of this happening is pretty high. I mean, it has happened. I mean, it's happened recently. And I don't want to happen again because it didn't have to happen the way it happened. We all know better. So I just wanna make sure that everybody is clear, we all have the right information. And if that's going what's going to happen, if we are gonna be digging that we take the proper precautions and so the project doesn't stall with an unexpected find because it takes it to a whole other level. I don't want that to happen for this project. I want this project to be expedited, I mean, just go along smoothly. So I'm not sure why it wasn't included in the plans. I'm going to assume that the applicant is not intending to install it at the same time that they're installing these improvements. That's my only assumption I can make is that they're not going to do it at the same time.

Ms. McPherson: Yeah, I'd have to leave that to Mr. Helm. Just to let you know, and I though I'm not sure if this is true, but I was told that the bone that was discovered was not human remains. But, you know, the bottom line is that it is a sensitive area. We do realize that. And my understanding when I brought this to you was that there would be no ground-disturbing activity.

Ms. Dudoit: Nancy, I just wanted to add that if you going back and have the County put in the details of what they going dig, whether it's a post or whatever, I think you should also include that ground-disturbing also includes backfill.

Ms. McPherson: Yeah, I wasn't told that fill was gonna be brought in either.

Ms. Dudoit: Okay, so, I mean, there's a whole bunch of other issues that come with that, too, so if that can be clarified so that we know what we're doing, and so that it's something that is fair for everybody, then that would make everybody's job easier.

Ms. McPherson; Correct. And I do have to give some credit to Parks because at one point when they received the letter from State Historic Preservation saying that they needed to

get an approved archaeological monitoring plan, you know, that's thousands and thousands of dollars that they didn't have. And basically, it was going to mean that they couldn't do the playground. So they changed the design of the project. And if there were other changes or other pieces that haven't been included, then we need to take a minute and talk about that. I should probably talk to Zach about that a little bit. And if they want to amend the assessment now to include that, then you need specific information in order to base your decision on. So – and I'm not sure we can actually amend that today. I think we'd have to bring it back to the next meeting.

Mr. Sprinzel: Could I suggest that if we approve it as it is without post and rail or whatever, couldn't they put up temporary wooden . . . (inaudible) . . . barriers which would certainly–? I mean, these things stick up way in the air anyway. And you gotta be a bit daft if you back your car into them anyway. But why not wooden–?

Ms. McPherson: Let me let Mr. Helm respond to that.

Mr. Helm: Yeah, the idea was to do something to prevent people from going towards the playground area, although that wasn't being part of the first proposal. We can be creative. And I just don't wanna see us– The reason I mentioned post and rail is it's kinda like a standard thing that we do with all our parks. But, you know, it's understandable about the archaeological issues in that particular area. It's been for everything that we've done there in the past so–

Mr. Sprinzel: It would seem, though, that if you include post and rail at this stage of the game, we couldn't pass it.

Mr. Helm: Yes, I understand.

Mr. Sprinzel: So if you were to withdraw that statement, and say, well, until we apply for post and rail, we'll put up a protective wooden barrier.

Mr. Helm: Yeah, like I said, you know, we can be creative and not go with that, and find other . . . (inaudible) . . .

Mr. Sprinzel: Because if you do that, then we'd have no problem.

Mr. Helm: Yeah, we just felt that– It has to be addressed, no matter what because that's the safety of the kids, yeah? It's not – we just not putting up the playground and not thinking about how to protect the children in the area. So it has to be addressed. So we can be creative. And instead of post and rail, there's other means of barriers that we could use.

Ms. Pescaia: Maybe in the meantime, maybe not allowing vehicular traffic beyond that – unto the field until – you know, in case it takes a while for you to come up with the right solution. Maybe later on, money might fall out of the sky where you can make one–

Mr. Helm: Well, there is – you know, we wanna make sure the barriers that we use, it has to kinda blend in with what we're trying to do. It's just that – you know, if you look outside, we got post and rail all over the place. It's not only to look nice, but it keeps traffic and keeps – you know, out of the parks. We're trying to keep the parks maintained properly. But, yeah, if we can go back from what I said earlier, it was supposed to be done during the construction of the playground. It would probably be done after, but rather than having it that way, we just gotta be creative and figure out a different way of putting some kinda barrier there around.

So let me ask you this, now, if we decided to plant trees and stuff, and we wanna dig the holes, is that also gonna be an issue if we wanted to plant shade trees and stuff like that?

Ms. Buchanan: The Chair is preoccupied, but I can answer that question. That question is yes. It's been pretty – we've been pretty steady about asking – as long as it's in the SMA, if they're gonna be digging more than three feet, then we'd like an archaeological monitor onsite when you're digging that hole. That – anything in the SMA should come in for an assessment. And then the Department going come back and tell you whether yay or nay, because Maui Electric had to do the same thing for pole installations. So for every pole they install in the SMA, they have to come. And it's usually really a quick thing to do.

Mr. Helm: So it's anything over three feet.

Ms. Buchanan: I believe it was either two or three feet. We kinda set the parameters within the SMA. And it's kind of a Commission standard. It's not in the rules yet, but I think it is a proposed rule change that we looking at right now.

Mr. Helm: Okay.

Ms. Buchanan: Now you thinking, eh? You get any more of that kind question?

Mr. Helm: What was that?

Ms. Buchanan: If you get question. If not, I have one suggestion for Chair in order to move things along. So after we hear testimony from the public, just a suggestion, that we defer this item and have the County go back and work with Planner McPherson on suggestions that came from this Commission. And maybe you can amend your assessment a little bit or to include – encompass everything even if that's the post and pier and whatever. To be honest, Director, I think this Commission doesn't have an issue with excavation as long the

excavation is somehow minimal, about two feet. I think we would prefer excavation over in-fill in the SMA, if that's possible. And if you can do that for the ADA compliance. And this Commission is not so much concerned with having to go through a whole archaeological monitoring plan because of the budgetary constraints, but more so, this Board is working on coming up with archaeological monitors approved by this Commission and with the Burial Council. And I think we're kinda happy with that. But I know as a government entity, you might have difficulty with that. And I see the planner standing up. But we can make suggestions for them and they can come back and submit again.

Ms. McPherson: Chair, the problem with amending the assessment to include ground disturbing activity is then that will have to go back to State Historic Preservation. And right now, I've got a three to four-month backlog of comment letters from her. She did do a site visit, however. But I think if the excavation would be two feet or less, I believe that was the standard that you were using previously.

As far as the archaeological monitoring requirement goes— Okay, here's our dilemma. We, as the Planning Department, have to transmit— The State Historic Preservation has asked us to transmit all projects to them for review. They cannot tell us which — they cannot pick and choose. They cannot tell us which ones they wanna see and which ones they don't. We are working internally on figuring out which projects like an interior only condo renovation that we probably really don't need to send to State Historic Preservation. So internally, we're working on some logical policies for what we transmit to State Historic Preservation. Because once you transmit it, you know, there you go. And we're waiting, and waiting, and waiting.

Now, as far as— So if it is something that does meet the criteria— And I think we should bring those criteria to you for your review, when we have it ready, when we have a draft ready. When — if it does meet one of those criteria to be transmitted to State Historic Preservation, the archaeological monitoring requirement, we have still not reached a memorandum of understanding with State Historic Preservation about using on-island residents trained in the Molokai Archaeological Society Training Program, which was the original intent of that program was to train Molokai residents to be able to service archaeological monitors to be able to prepare archaeological monitoring plans that SHPD could approve, and that would basically provide that service at a reduced cost, and also include on-island knowledge, you know, topographical and cultural knowledge which is really important to have. And Molokai people have that knowledge. So that was considered a win-win. But we have not actually been able to get SHPD to agree to that. So we're still working on that. So that's a goal of mine to see that happen. Until that happens, they have a list of people that they say are certified to perform this function. And none of them live on Molokai, as far as I can tell. And they all have masters degrees or whatever it is. And those are the only people that SHPD will accept. So we're kind of still stuck in that situation.

So if you'd like to defer that item, what I can do is get an amendment as far as a solution for protecting the playground area, and routing of traffic, and all of that. Get some additional information about the actual amount of fill that they are intending to bring in or not, and get that in writing. And we can bring that to you for the next meeting. If they want to do something like I said that requires excavation, then if it's more than two feet, then we'll have to transmit it to SHPD again.

Ms. Buchanan: Okay. That's fine. And I know it would be okay if SHPD actually had a Department and I could actually seriously consider anything that came out of that Department, which I don't. So that's all good. So I think we going have to work with DLNR to get that mitigation through because I think from a Commission standpoint, we already established that that's the way we wanna go. And so that's fine. So now, public testimony?

Ms. Pescaia: Yep. Is that--? Anybody? Commissioner Bacon?

Mr. Bacon: I just have one question. These drawings and stuff aren't to scale, but I was just wondering if this playground is going to be in the vicinity of the one light post that's sort of halfway down the driveway. Is that light post gonna light up the play area, I assume?

Mr. Helm: You mean if it's gonna be lighted at night?

Mr. Bacon: I mean those lights usually come on when people are having a party or things like that so the kids can play out there as well.

Mr. Helm: Well, that was the idea of having it in that area because we feel that the highest usage is in the evening. And if you notice, in that particular area where that post is between the entrance and the pavilion, there is a light on that post, but that has to be upgraded and improved. We can do that ourselves, but yeah, we had plans to have that area lighted because the lights normally come on automatically at night anyway so--

Mr. Bacon: Okay, and the other question I had was scale-wise, I wasn't sure how large. And this rubberized play area, is that on top of a concrete slab, or is that--?

Mr. Helm: On top of a concrete slab. That is the most expensive part of the project is the surface.

Mr. Bacon: Because I was gonna suggest because if the concrete slab extends considerably beyond the play items themselves, what you could do is almost put outriggers with post on them at the perimeter of that cement slab, or even beyond that, it would have post, and then you wouldn't be doing any excavation work at all. They could just be imbedded in that concrete slab and stick out.

Mr. Helm: Yeah, as you know, the reason we wanted to bring in fill is to avoid us from digging. And if I not mistaken, on the plans that you have, the deepest we gonna go is 12 inches, a foot. So it should be about a foot thick as far as the fill-in. And that could be considered, regarding what you were saying, but I'm not sure how much of a – you know, of the cement is gonna go outside of the playground. I'm not sure. I have to take a look at that. But – and at the same time, you don't want it to be all cramped up, too, 'cause– That's why I asked that question, how deep does it require for – if we do plant, do any planting. If it's less than two feet, I mean, do you have any objections of us planting anything less than two feet?

Ms. Buchanan: No, as long as it's on the certified list, the arborist list from Maui County.

Mr. Helm: Right, right, right, right. It is. That could be utilized to – a buffer as well, yeah, do you know what I'm saying? So just trying to stay within the scope of the project and also to comply, yeah?

Ms. Pescaia: Thank you. Very good. At this time, I'd like to open up testimony to the community. If anyone out there has a comment they would like to make on this project, welcome to do so. Please come up to the mike and state your name for the record.

Mr. Zeke Kalua: Well, I think it's almost afternoon. Good noon-ish, everyone. Chair Pescaia, Members of the Molokai Planning Commission, my name is Zeke Kalua, Executive Assistant to the Honorable Alan M. Arakawa. We're here today to offer our support for the project at One Alii. We understand that it is a culturally sensitive area. I know because I used to play there when I was in the seventh grade as well. And – which is under the leadership of the Planning Department and your local supervisor, Zach Helm, that everything is gonna be done to the park will be to additionally make the park more user-friendly for the people, and will be done in a very culturally respectful manner. Thank you.

Ms. Pescaia: Does any Commissioners have questions for the testifier? Seeing none. Thank you.

Mr. Kalua: And please get it done right away, yeah? Thank you.

Ms. Pescaia: Duly noted. Anyone else?

Ms. Ella Alcon: Hi. I'm Ella Alcon. And Zachary mentioned that this project was talked about since 2008. I think was further back because how this all started is a concerned parent came to our office and wanted a playground anywhere on this island. And we was trying to find a place, and we suggested over at by Home Pumehana, and other places. And then this came along, and Zachary took this responsibility as our County Director, and

that's why it's at One Alii. I support it one hundred percent. I don't want no digging or whatever, if something like that going be negative. But to have playground equipment for this island, you know, it's like come on, let's work together, do what we gotta do, and get it done. We waited forever, the playground. Thank you.

Ms. Pescaia: Any questions? No? Mahalo. Anyone else? Okay, Planner McPherson, do you have any closing comments before I entertain a motion? Okay, seeing none, our testimony is now closed. Commissioners, I will entertain a motion on this agenda item.

Mr. Bacon: Yeah, I make a motion that we defer until next meeting and possibly, if they can come up with a more definitive plan on how we might be able to barricade the play area so that the kids aren't in danger at all. And possibly on a permanent thing, there may be some way to work out – well, I mentioned like outriggers or something like that. But some way to get through that without too much ground disturbance that would be satisfactory to all of us, and without having to go back to SHPD and get that approved from them because that does take a long time.

Ms. Pescaia: I have a motion for deferral. Any second? Second by Commissioner Kelly. Discussion?

Ms. Buchanan: Chair, I think Commissioner Bacon had covered most of it, but just some extra direction for staff. That would be to work with Zachary on our concerns, because I think you know how we operate. And even if the next assessment came in and would include the probability of trees, that should be mentioned also in the assessment. Any other scenarios that might be minor and not too onerous for the applicant would be appreciated. And then we could vote on that as representations made. And they wouldn't have to come back. And if it's your purview to forward concerns to SHPD, if that's kind of the way it is, then I think you can see if they're meeting our concerns, then that wouldn't be necessary at this point as long as there wasn't major excavations done, because I do support the project. I do want it to move quickly. And I appreciate that they got volunteers, monies, and whatever because it's very difficult to do that. So it's really hard on the applicant to come this far and then just be sidetracked. I think they just need a little bit help. And then you have the expertise to do that. So we appreciate that. Thank you.

Ms. Pescaia: Any other discussion?

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

It was moved by Mr. Bacon, seconded by Ms. Kelly, then unanimously

VOTED: To defer this item to the next Molokai Planning Commission meeting pending supplemental information as discussed.

Ms. Pescaia: One, two, three, four, five. (Commissioner Dudoit was not present when the vote was taken.) Motion carried. This item is now deferred to the next meeting pending supplemental information. Moving on to our next agenda item, Item E1b.

- b. **MR. JOHN SAKAGUCHI of WILSON OKAMOTO CORPORATION on behalf of the STATE OF HAWAII, DEPARTMENT OF LAND AND NATURAL RESOURCES, ENGINEERING DIVISION submitting Special Management Area Assessment and Shoreline Setback Assessment applications for installation of a 6-inch sewer force main and a 12-inch fire protection line improvements to be placed in an approximately 2-foot wide by 5-foot deep trench constructed within Kaunakakai Place between the north end of the causeway and Maunaloa Highway (State Route 460) (water line) and Beach Place (sewer force main) for unzoned property situated in the State Highway Right-of-Way, Kaunakakai Place, connecting to TMK: 5-3-001: 011, Kaunakakai, Island of Molokai. (SMX 2011/0102) (SSV 2011/0001) (Valuation: \$793,759) (N. McPherson)**

Ms. Pescaia read the agenda item into the record.

Ms. Pescaia: Planner McPherson?

Ms. McPherson: Mahalo, Chair. We have here a request for concurrence with a recommendation for an exemption for a water line installation and – which is augmentation. This is not a domestic water line, but a line for fire suppression purposes, and also, a connection to the Kaunakakai Wastewater Treatment System for the Kaunakakai Wharf. We do have representatives of I think multiple State agencies: DLNR, for sure, and possibly – we have the consultants here also, John Sakaguchi of Wilson, Okamoto.

And about actually at your last meeting, you were given the assessment – or I'm sorry, final environmental assessment for the entire project. So the left side of the wharf is operated by the State Hawaii Department of Transportation, who also owns the entire wharf and causeway. The Department of Land and Natural Resources controls the Small Boat Harbor area east of the wharf. There's Federal Transportation funding and State of Hawaii Transportation funding, as well as funding from the Department of Land and Natural Resources that has been used for this project. Hence, the environmental assessment. It's also government-owned land and government-owned funding. So that's the trigger for Chapter 343.

We are looking today at a section that runs from the shoreline to Kamehameha V Highway, actually, where Maunaloa Highway meets Kamehameha V Highway. That's for the water line, the 12-inch water line. So that water line's gonna run up all the way Kaunakakai Place to the highway. There were plans submitted with the final environmental assessment. And in addition, there were other exhibits that were attached to the assessment. I always try to include a TMK map because that has a lot of information on it. So that is your Exhibit 1, A1 showing the subject parcel, which is actually a roadway parcel: 2-5-3-001:099, also showing the widths of the road at a couple of different points. It varies between 80 and 110 feet, I believe, then also the length.

And there is also – the distance from the shoreline is – we are looking at a shoreline setback area. So there is work occurring within the shoreline setback area. That is Exhibit A5. And the red came out on that one. So that's 150 feet is the maximum shoreline setback. And this is kind of difficult because it is a roadway parcel and the roadway does, even though it's on a separate parcel, continues out onto the causeway. And so is it really on the shoreline? But because it's Molokai, because it's this Planning Commission, and because I think I wanna do things logically, I am saying that's it's subject to the shoreline rules. The proposed actions are exemptable under the Molokai Shoreline Rules.

The work is in the Flood Zone AE, a portion of it. There is an existing four-inch water line running along Kaunakakai Place, which will remain for domestic purposes. But because there's a need for upgrading of water being, you know, served to that whole area, really, for fire suppression, we do have large fuel storage tanks on Kaunakakai Place. And it is at this time, the Fire Department's position that – and the Water Department, actually, not the Fire Department, I take it back, but the Water Department is insisting that all projects be – have a greater water delivery to their parcel for fire suppression to meet those requirements, fire flow requirements. The four-inch line is just not enough.

So hence, this is considered a public benefit not just to DLNR and DOT, but to the properties along Kaunakakai Place. And there are several projects that are trying to get permits and aren't able to right now because they don't have adequate water delivery for fire flow. So this is a public health and safety activity.

So there are two proposed improvements: 330 feet of sewer force main installation, and 1,328 feet of the 12-inch water line for fire suppression purposes. These are going to occur in the State highway right-of-way along existing utility corridors, and will require excavation of two two-foot wide by five-foot deep trenches constructed to meet County of Maui standards, which include an eight-inch base course and about four feet of cover.

Best practices for handling potentially, petroleum-contaminated soils will be employed, and water quality standards will be maintained in the area per State law. This utility work will allow Kaunakakai work to connect to County of Maui water and sewer lines in order to meet

fire flow requirements for fire suppression and enable decommissioning of the existing septic system on the wharf, an action that would be beneficial to the environmental.

For the environmental assessment and Chapter 343, a cultural impact assessment was prepared. Cultural practitioners and persons knowledgeable with the area were interviewed. And there were concerns expressed about potential impacts to coastal subsistence resources and shoreline access. The environmental assessment states that the nine months of construction activities could occur at times other than the canoe season in order to mitigate some of the impacts to access for traditional practices. And for the scope of this SMA assessment, the work that is going to be occurring along Kaunakakai Place could be completed within a two to three-month period. So less than the full nine months.

I believe that DLNR is going and DOT is going to try to minimize the impacts to that roadway, also considering that there's a lot of traffic that goes back and forth along that roadway. Causing a lot of interference with traffic flow would be an impact on the community. So my understanding is they're gonna be using best practices, and traffic control measures, and monitoring, and safety. And this is all required of the State for all of their projects. So they're going to be using all the best practices as they are required to do.

The State Historic Preservation Division did review the EA, and issued a letter stating that the proposed actions may have an adverse effect on significant historic sites. "We believe it can be mitigated with the condition of onsite archaeological monitoring during construction from the intersection of Kaunakakai and Beach Places to the County tie-ins for the sewer and water connections. If archaeological monitoring is carried out in accordance with an approved archaeological monitoring plan, we believe that a finding of no adverse effect may be made for the subject undertaking." The project does have an approved archaeological monitoring plan, and there will be archaeological monitoring during all ground disturbing activities. The construction documents will include the statement that the contractor bid price includes onsite archaeological monitoring during excavation of the trenches for the sewer force main and fire protection line on Kaunakakai Place.

The Office of Hawaiian Affairs was also consulted, and are in support of the project. Therefore, it's been determined that there will be no irrevocable commitment to loss or destruction of any natural or cultural resources.

The shoreline setback determination determines that the proposed action will neither adversely affect beach processes, nor artificially fix the shoreline, and does not interfere with public access or public views to and along the shoreline. There will be temporary

interference, but again, they're using all the mitigation measures at their disposal to minimize those impacts, and they will be only temporary.

A flood development permit may be required, and the proposed action is permissible under work being done which consists of maintenance, repair, reconstruction, and minor additions or alterations of legal boating, maritime, or water sports recreational facilities, which are publicly owned, and which result in little or no interference with natural shoreline processes.

So based on the Exhibit A, which is the final environmental assessment, and finding of no significant impact, as well as additional materials that were submitted with the SMA assessment application, the Department of Planning recommends concurrence with staff's finding that the subject application is eligible for an SMA Exemption.

And if you don't have any questions for me, we do have representatives of the applicant. And I do believe that they are here to make a short presentation and answer questions.

Mr. Bacon: Yeah, I have a quick question here. You stated that this is gonna be – the 12-inch line is not a domestic line, but it's replacing the old four-inch domestic line. And if it's not domestic, does it mean it's not potable? And does that mean that there's not gonna be any water out there other than just fire suppression?

Ms. McPherson: That was in error. It should not say "replacement." It is actually in addition to the four-inch line. So the four-inch line is going to be still providing water where it is now to the parcels in the Kaunakakai Place area. That is not – and they may have to correct me, the consultants may have to correct me, but, yeah, I do believe that line continues out to the end of the wharf. Now, what they're doing is in addition to that, they're installing a 12-inch line for fire suppression. So there's going to be dual lines: one is for domestic and one is for fire suppression. So there's still going to be potable water in the area.

Mr. Bacon: And when it benefits people along the road there, then that's also gonna benefit the Veterans' building, right?

Ms. McPherson: Yes.

Mr. Bacon: And that's going to attach to that, so there's not gonna be some question later on about whether or not they can hook to that?

Ms. McPherson: No. That will satisfy the need for the Veterans, and we also have another project, the Malama Halau Waa, that has gotten a letter from the Department of Water Supply saying that they need to have access to at least a six-inch line. And so that will

benefit them as well, and the whole Malama Park area, actually, as well as Nakoa Trucking, and everybody else that's out there.

Ms. Pescaia: Would the applicant like to make a presentation at this time, if you have one? If not, we can just ask you questions, but I don't – I hope you didn't spend like hours and hours preparing something and I don't let you the opportunity to share it.

Mr. Carty Chang: Well, first of all, my name is Carty Chang, Chief Engineer for the Department of Land and Natural Resources, Engineering Division. And I don't know about a presentation, per se, okay, but we just wanna make a couple of statements on behalf not only the Department of Land and Natural Resources, but as well as DOT, because this is a shared harbor and we both are gonna benefit from this. There is a DOT representative here as well.

I think– And we concur obviously, with the recommendation made by the County's planner. And I believe this project is a good project. As many of you know, we've been in front of the Molokai Planning Commission before. We've engaged the community as well. And we believe this is an opportunity not only for the ferry users, but for the greater Molokai community, as well as Maui County.

As you know, from the recommendation, this project is gonna provide fire safety for Young Brothers. It's gonna provide elimination off of the septic tank, which is gonna improve the environment, as well as take care of the congestion, currently, existing at the harbor. We believe this is also – this project also represents an opportunity to utilize Federal funds, as well as create jobs for the Molokai community as well.

And we just wanna say we think we adequately addressed many of the comments brought forward by the Molokai Planning Commission, as well as the community, through our Chapter 343 process, and just engaging through discussions with the Molokai Planning Commission. So we just wanna say we hope we can get a favorable decision today. And we're here. Our team here is here to answer any questions you folks may have at this time.

Ms. Pescaia: Commissioners, any questions?

Mr. Sprinzel: If we passed this, that six-inch main that you brought to us a while back, presumably, will not go ahead?

Ms. McPherson: Yeah, that's correct. Basically, Water would not have to install that six-inch line.

Mr. Sprinzel: Thank you.

Ms. Buchanan: For the record, Carty, can you define “cover,” as you said you’re gonna cover the trench? Can you define “cover?”

Mr. Chang: Essentially, the – I think it was in the staff report that this trench is gonna be two feet wide with five-foot deep. And it was represented that there’s gonna be eight-inch at the base course, and then the utility that we put in there, as well as covered by two feet of asphalt. Oh, I mean, it will be backfilled with material and with four inches of asphalt pavement. So it will be topped off and sealed by adequate cover. And that’s according to the County standards, the DOT standards.

Ms. Buchanan: Okay, I just wanted that on the record. You can go.

Mr. Bacon: Okay, I was just wondering. The two trenches are gonna be dug simultaneously or are they going to be done separately?

Mr. Chang: I think that’s gonna be a contractor option. However, we’re gonna try to minimize as much disruption to the public, obviously. The lines are gonna be in various alignments along the Kaunakakai Place. So it’s likely gonna be done not at the same time because you gonna have to allow traffic, at least one lane traffic, to allow access, egress and ingress to the harbor.

Mr. Bacon: Because these are separated by how far?

Mr. Chang: Do you know how long—the offset? Yeah, they’re basically, one in one lane and the other one is in the other lane. So they’re likely be done subsequent, not simultaneously, yeah.

Ms. Pescaia: Commissioners, any more questions?

Ms. Buchanan: I just like – and it’s on other portions, but we never going have DLNR again, well, hopefully, maybe. But, Carty, just some questions. The RFPs for this project is set to go out or they already went out?

Mr. Chang: No, there’s gonna be an invitation for bids and it has not gone out yet.

Ms. Buchanan: You guys have a timeline as – like an out there kind of when people might see these contractors?

Mr. Chang: Yes. If we’re successful today in moving this forward, we have a couple more permits that are in the works that we need to secure. The Department of Health is one of them. We looking at sometime this summer. Maybe late summer we can actually

advertise the project, and contractors can be looking forward to do that toward the end of summer, hopefully, if everything falls into place.

Ms. Buchanan: Okay. Very good. And I wanted to thank the Department for being so open to the feedback that this community gave. And that you guys actually really moved to make the project more palatable to the community, because there was a lot of concerns about congestion for the ferry project. And I wanted to also thank Young Brothers for giving up some of their space in order to help mitigate the traffic flow. And I think you guys did a good job at making the best out of a not so good situation at the wharf with the congestion. I know it wasn't the best possible plan that we wanted to see, maybe, but when you spending four million dollars on a project on Molokai, it's really hard not to try and support the best possible outcome. And I know I was asked many questions by the Department and I tried to give back some workable feedback.

And for the record, you know it's my pet peeve, but I would like the Department to keep in touch with us as far as when the hardening of the pan for Young Brothers proceeds. There was mitigation for the biological surveys done for the native algae, the clams, and other – I think it was mollusk and something else, but there was also one bad alien algae in there. And I personally wanted DLNR, as part of the mitigation, to work on removing that as soon as possible. And I hope you guys can call Aquatics or something, and I know as part of your mitigation with NOAA. But I think it's kind of – getting NOAA to come right away going be really hard. So maybe DAR and somebody in AIS can come and try to do that right away, before you start doing everything else. And that was the . . . (inaudible) . . . species. And it's the biological study.

And then other than that, I think everything was the best. The community did have concerns about the fire hydrants being located, and not being able to park or getting ticketed for parking along the causeway. But we all felt that those rules would be kinda lax. That people would still be able to park along the causeway because we all like to do that—go over there and eat lunch, and look at the island, and catch a breeze.

So I just wanted to congratulate you, Carty, on a job well done, Val, and the rest of your guys' team. And I know get one representative from Young Brothers who was real helpful in all of that. So thank you very much.

Ms. Pescaia: Mahalo. Commissioners, any other questions? Seeing none, I would like to open up to the public the opportunity to provide testimony on this agenda item.

Mr. Kalua: Aloha again, Chair Pescaia, Members of the Commission. My name again is Zeke Kalua here representing the Honorable Alan M. Arakawa. You have received some letters of support from our Directors, from our Departments: Water and Public Works, primarily, as well as our Fire Department. We believe this is gonna be a great opportunity

for the State, County, and Federal to work together for the betterment of the community. Fire suppression is a very important thing for us to have especially, on this island with limited resources. As you've seen from the proposal of the DLNR, they wanna accommodate the needs of the community as much as possible, as well as be diligent in the work that they're gonna be doing in pretty much the most sensitive island in the State of Hawaii. So thank you for your support for the project today. And this is the second project that we wanna get done right away. Mahalo.

Ms. Pescaia: Any questions for the testifier? Seeing none, mahalo.

Mr. Kalua: Thank you.

Mr. Bernie Strehler: Hi. My name is Bernie Strehler. I'm the Harbor Agent at the pier. And I've been working there for almost 20 years. I'd like to ask you to support this exemption. I think it's gonna be a very good project. It's gonna be very good. And I'd also like to thank the Commissioners for all the critical, thought-provoking feedback. And I think the project is much better for it. Thank you.

Ms. Pescaia: Thank you. Anyone else?

Ms. Alcon: Hi. Ella Alcon, Liaison to the Maui County Council. I'm sure you folks all got the support letters from our Council Chair who can't be here today. But for me, I just wanna give my support to this project. I've attended at least three informational meetings: two here, one on Oahu, one when Commissioner Buchanan asked this group 101—I not joking—101 questions from the community, from herself, from the Commission. Danny – Council Chair and I went to Oahu and also met with this group. And all our questions was answered. I feel this is a good project and I just wanna comfortably support it through my total support. Thank you.

Ms. Pescaia: Thank you. Is there anyone else? Seeing none, I would like to close public testimony on this issue. Commissioners, you ready for a motion? You have any other questions?

Ms. Buchanan: Okay, Chair, I'd like to move that we concur with the request of an SMA exemption recommendation by Planning staff to DLNR, Engineering Division, and their project for . . . (inaudible) . . .

Ms. Pescaia: Motion made by Commissioner Buchanan, second by Commissioner Davis. Discussion?

Ms. Dudoit: I have a feeling that this is gonna pass because it's important, and it's necessary, and I commend DLNR for their work. And I commend all the agencies for

getting together to come up with this comprehensive plan that going save everybody money, and going help out, and all that good stuff. But I have a message for the Mayor and the County.

Take responsibility for the things – I mean, we all – we’ve been flying around about fire suppression, and water, and stuff. And we very clear that the Fire Department said that there was adequate water before this whole issue came up. So within the County’s regulatory agencies, get you guys’ stuff together, figure out how it’s gonna be efficient for our citizens so we not in this situation anymore. And for the record, know that we all smart enough to know that get a lot of underlying issues, but we love this community, and appreciate the hard work everybody doing enough to overlook those things for the betterment of everybody. But I would like you to let our Mayor know that at least for me, as a citizen, fix the things that are wrong within the community. If you get different policies that conflict with each within your regulatory agencies and the things you demand of our citizens, then get that stuff fixed, ‘cause that is what we hired them for. That’s what they serve us for. And that’s their responsibility.

So I’m a big fan of the Fire Department. I know a lot about what goes on over there. And I just wanted, for the record, to say that at no time did the Fire Department come up with a contentious notion that there was not adequate fire suppression water over there at any time. According to their specs, it was okay.

So I commend DLNR again, and I thank everybody for working together, and thank you for coming.

Mr. Bacon: Okay, I guess this is a question for counsel, I guess. Okay, so when we exempt, that means we can’t put any conditions on. Now, they said that they’re gonna have somebody down there monitoring all the time. And because that’s in the record that has to happen whether we exempt it or not, right?

Mr. Giroux: Once that you determine that it’s an exemption, you’re basically saying that it’s not a development. However, all agencies within the State have to follow the objectives and polices of 205A. So they have to make sure that they’re not gonna do anything that’s gonna degrade the environment while they’re processing their permit.

Ms. Pescaia: And they also have to stand by whatever representations they’ve made. They need to follow what they’ve said they’re gonna do.

Ms. McPherson: Yeah, it’s all in the record.

Ms. Pescaia: Yeah. Any further discussion?

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

It was moved by Ms. Buchanan, seconded by Mr. Davis, then unanimously

VOTED: To concur with the request of an SMA exemption recommendation by Planning staff.

Ms. Pescaia: One, two, three, four, five, six. Motion carried. Thank you.

Ms. McPherson: Mahalo, Commissioners.

Ms. Pescaia: Okay, congratulations. Go forth. Do good things.

Ms. Buchanan: Chair, can we take a two-minute break so they can set up for orientation?

Ms. Pescaia: Yes, exactly. We're gonna take a short intermission before we hit our orientation workshop no. 2. Five minutes.

(A recess was then taken at 1:23 p.m. and the meeting reconvened at 1:30 p.m. During that time, Commissioner Buchanan left the meeting.)

Ms. Pescaia: I would like to call the meeting back to order. We're going to proceed with our agenda, with our orientation workshop no. 2. Jim Buika, the Coastal Resource Planner, will be making a presentation for the next five items. All yours.

F. ORIENTATION WORKSHOP NO. 2

- 1. Special Management Area Rules**
- 2. Shoreline Area Rules**
- 3. Sea Level Rise**

Mr. Jim Buika: Thank you, Madam Chair. My name is Jim Buika. And I was wondering. Is it okay? Can you guys see? Or is it okay if I address this from here? I kinda tried to make the screen as square as possible here so—

And I'm the Coastal Resource Planner. I've been with the Planning Department for four years. I've been over here several times. The latest, I guess, was for the Dunbar wetlands several months ago. And so I work with Nancy. Sometimes I advise Nancy. Sometimes Nancy advises me, mostly advises me. But I'm here to talk about the Coastal Zone Management Act, which is our State law, HRS 205A; the Molokai Planning Commission Rules under the Special Management Area Rules for the Molokai Planning Commission;

the Rules of the Molokai Planning Commission relating to the shoreline area of the Island of Molokai. And I'll just conclude with closing remarks—just one slide.

So just to begin with the Coastal Zone Management Act— Actually, what I'm gonna do is I'm gonna switch the computer around so I can look at all of you. Much better. Nobody wants to look at my bald head for half hour here along with the screen. So the coastal Zone Management Act was enacted as a statute as HRS 205A in 1977, and approved in 1978. And it serves as the State's Resource Management Policy Umbrella. So it is our environmental law for all of our development and management of the Hawaiian islands. It is a national law and adapted here in Hawaii. So it manages all the Hawaiian islands. And how it does it by designating a special management area within each of the islands, and allows for a special management area permit system that is delegated to home rule to each of the counties.

And just looking at our planning framework, we have had this slide before. The darkened areas— So the Coastal Zone Management Act is on parallel with the Hawaii State Planning Act, the Land Use Commission, and our zoning rules. So it is our environmental management policy that delegates rules to the Molokai Planning Commission and Shoreline Setback Rules for the Maui Planning Commission. And we have various permits: the major permits, the minor permits, exemptions, and also shoreline setback variances.

Again, each – through our Maui County Charter, the Maui – the Molokai Planning Commission and each of the islands is the final authority for the SMA rules. And these are designated through the Rules of Practice and Procedures, Section 12-301; our Special Management Area Rules, 302; and the Shoreline Setback Rules, which are designated as 12-4.

And the purpose and goal of the rules is to provide each of the counties with a management tool where we have a special set of controls through our permit process to assure that allowable developments are designed and carried out in a manner consistent with the State law, the Coastal Zone Management objectives and policies. And also, there are guidelines within the State law called the Special Management Area Guidelines. So I'll look at – in the upcoming slides, we'll look at the objectives and these guidelines for where we go with the rules.

So the rules further the State policies through the program to preserve, protect, and where possible, restore natural resources of the coastal zone as defined by the SMA area. So there are – again, in the State law, there are ten objectives. And just reading down through these very quickly, they are – they address areas of recreation, historic and cultural resources, scenic and open space, coastal ecosystems, economic uses, coastal hazards, managing of development, public participation, beach protection and access, and marine resources. So it's a very broad umbrella.

Going down them again, providing – the objectives are to provide under Resources, provide coastal recreational opportunities accessible to the public. We seek to preserve, protect, and restore natural and manmade Hawaiian, and American cultural and historic resources. The Act seeks to protect, preserve, and restore coastal views, open space, and scenery; minimize adverse impacts and protect coastal ecosystems; provide and co-locate coastal dependent facilities while minimizing negative impacts such as your harbor issue this morning. Coastal hazards—we certainly want to constantly reduce risks to new structures, and enhance public safety from coastal hazards. Managing development—we attempt to manage development by streamlining the permit process, but having the permit process in place, and to have public participation in the coastal community. Public participation—stimulate public awareness, education about the coastal ecosystems, protect our beaches, and conserve aquatic natural resources for sustainable development. So it is very comprehensive in nature.

And where do we have the special control here on Molokai? There's a large – if you can see the pink area there along the coastline on Molokai: Kalaupapa area to the north is rather obvious, as we go to the east end towards Halawa down – along the coast road to the east to the Kaunakakai area, and out to the west end to Papohaku area there. It's very limited on Molokai, but that is the special management area. And it is a sub-set of the coastal zone managed by the County authority, which is the Molokai Planning Commission.

So the rules, the Special Management Area Rules provide authority for both the Commission as well as the Director. Yes?

Ms. Pescaia: Sorry, I have a question. Since Kalaupapa has its own County, are they subject to these? But you're including it kind of in this SMA area. I was just wondering. Do they use our Maui County governing documents or policies?

Mr. Buika: I'll let Nancy answer that one.

Ms. Pescaia: I was just wondering because you have it marked.

Mr. Buika: It's a very good question.

Ms. McPherson: Nancy McPherson, staff planner. There's actually two jurisdictions. There's three jurisdictions, well, four, actually. There is the State conservation district. There is also – but we do administer SMA for them. There's Hawaiian Homestead land. We do not administer SMA for them. And then there's Kalawao County, which is another County, and we do not administer SMA for them. So the County handles everything else in the SMA, but Kalawao and DHHL are separate jurisdictions.

Mr. Buika: Thank you, Nancy. So within that SMA area, according to our Coastal Zone Management Act, any proposed action within the SMA requires an assessment by the authority. And the Commission is the authority for SMA major use permits, minor permits, and SMA exemptions. And the Director is the authority. The Director of the Planning Department is the authority for SMA emergency permits. And I'll give you an example of an emergency permit coming up.

But looking at your role in the permitting process, as we've kind of talked about a little bit this morning, there are two things we need to look at when there is a proposed action in the special management area. We need to assess whether a proposed activity is included in the definition of "development," what a development is and – under the Coastal Zone Management Act. And pretty much just about anything is a development. If you do activities, if you shovel dirt, if you build something, it is an activity in the special management area. So it is controlled through the permit process. However, under the rules – or under the law, they understand that that would be onerous if we managed everything going on in the SMA area. So there are a number of exemptions to the definition of development. And that's how we get into these exempted activities—the one that – or the two that we had this morning. And there are 16 categories of not development regardless of the project value.

But if we do determine that it is a development, then we have a second threshold after we determine it's a development whether it is – we look at the valuation whether it's greater than \$125,000 or whether it's less than \$125,000. If it's greater than \$125,000, then the Molokai Planning Commission authorizes this activity via a public hearing process. If it is a development and it's less than \$125,000, the Molokai Planning Commission authorizes it still, but does not require a public hearing, and authorizes it as a minor permit. A public meeting such as this is held with a review.

And as Nancy does, as we all do, and throughout Maui, under our rules, we have an assessment and an evaluation criteria for each of these projects. And there are 12 criteria in your rules under this Section 12-302-12e that each project is judged against. And under those 12 criteria, we attempt to minimize any effects from the development on the environment. And we also try to be consistent with the Coastal Zone Management Act, the objectives, as well as these guidelines. And I'll talk about the guidelines right now.

So just in general, the State law attempts to ensure adequate access to publically-owned beaches, recreational areas, wildlife and natural reserves; adequate & properly located public recreation areas; adequately controlled, managed and minimize impacts from pollution and runoff; minimize adverse effects to water resources, scenic resources, and recreational amenities; and also we attempt to minimize risk to proposed structures from coastal hazards. So you can see these words I underlined, "adequate," and "minimized,"

and that's always our goal because there are impacts. Every development has some amount of impact on the environment.

So these guidelines seek to minimize a number of these things here. We certainly do not want to dredge, fill, alter coastline areas; reduce the size of beaches; impede public access to beaches and coastal areas; lose coastal views; adversely affect water quality, fisheries, wildlife and habitat; and lose potential existing – and existing cultural areas. So really, these guidelines – the bottom line of the CZMA is through these guidelines, and through your deliberations at the Planning Commission, and through your SMA rules, we seek to minimize where reasonable, adverse impacts to the environment. So I think in all of your SMA deliberations, we need to keep that mind that we're attempting to minimize, where reasonable, the impacts. We cannot always totally eliminate impacts. And we need to balance that against the economy, development, all of our societal needs also.

So these are the 12 assessment criteria in your rules that each planner and Nancy, for every SMA project, goes through and judges the project to understand whether there would be a significant impact on the environment from the proposed action. I won't read through all of them, but they are in your rules. And certainly no. 1, that came up this morning. It involves irrevocable loss of natural or cultural resources. Cultural historic resources are very important; losing a beneficial range of the environment; secondary impacts; cumulative impacts; rare threatened endangered species; plants; habitats need to be considered. All our zoning, planning guidelines, ordinances must be followed. We look at pollution, the water, air, noise levels; and certainly, all the environmental effects to sensitive areas such as wetlands, coastal waters, flood plains, tsunami zones, etc. Grading is important. And then we get down to no. 12. It's kind of a catchall. It says we wanna make sure that it is not contrary to the objectives and policies of the Coastal Zone Management Act. So we go back and look at all of those objectives and policies of the Coastal Zone Management Act for each of our projects. So that's the criteria that we look at all these permits.

I'll just go over quickly the different types of permits under the SMA rules. Again, there's the major permit where we have criteria where you are the authority: greater than \$125,000-dollar valuation for the project; it is a development; and it will require a public hearing. Owners within 500 feet must be notified by certified mail. And there can be added to the major permit, conditions to avoid, minimize, and mitigate impacts.

Minor permits are valued at less than \$125,000. And they are not required to have a public hearing. However, all those minor permits that come to this Body can have conditions attached to it to minimize impacts to the environment.

And emergency permits, we had a few of those after the tsunami. They are really deemed emergencies. What somebody out there – somebody's project that may seem like an emergency really may not be an emergency, and you all know that. Imminent substantial

harm to public welfare, or to prevent substantial public harm to persons or property. The Director may give oral approval, and must submit a report to the Commission upon final determination. Usually at the next meeting, the Molokai Planning Commission would be notified by Clayton. And it's a conditional permit that only lasts 180 days. And during that 180 days, they're required to come in for whatever type of normal SMA permit that would be required. A lot of these are coastal projects.

This was a Maui example. And we've had three of these now where the old sea wall is undermined. There's lanais attached to the sea wall. It was built 40 years, 50 years ago on a – without rebar in the concrete sitting on a pile of sand. And the sand liquefies underneath, becomes a cavity, and it collapses. So we're working on three of those over there in the same region. So as the shoreline, the beach that once there 40 years ago, as it erodes, the waves impinge upon the sea wall. It undermines it because they usually don't have good footings, and this is what results. I have one more picture here. You can see that condo complex was evacuated for four or five months so they could do these repairs. So that type of thing where we have life safety, potential structural collapse. We had some roads that were threatened on Maui after the tsunami. Again, some of the roadways actually collapsed. They had equipment out there. The equipment . . . (inaudible) . . . right through because undermined and we had to issue emergency permits.

Then there's this category of the exemptions. So we have the major, minor emergency permits. And then we have our exemptions, which is defined, which is, "Any project which is not defined as a development such a single family home." But rest assured that every one of our exemptions– I think this question came up from the Commission this morning. Even though a project is exempted – and it means we cannot put a condition on that project. Believe me, all of the planners work with the applicant oftentimes for over a year to make sure that there is mitigation built into the project. So we make sure there's adequate drainage; few planes are not impacted; archaeology is considered; historic, natural cultural resources are considered; and any cumulative impacts.

So behind the scenes, there's a lot of work that Nancy does on some of these seemingly small projects to make sure that mitigation is in place by the time it gets to you for the exemption. And only then will we exempt these projects when we do have the mitigation already built in place. It's true we can't write in conditions with the permit, but they are part of the permit.

And then if a project that comes through that's inconsistent with State land, the General Plan, the community plan, or zoning, we occasionally do deny these, or if it has adverse impacts on the coastal resources. So both the Planning Commission or the Director could deny. Some of these are denied before they ever get to you. And they're often taken off the table because the County will not support some of these types of projects. Any questions so far? Comments, Nancy? Okay. Alright.

So again, just quickly, an exemption versus a permit, I kinda went through this. An SMA exemption cannot have conditions because it is exempted from the SMA permit application process. There are 16 categories of exemptions. And I think my next slide has some of those common ones.

The proposed action may be exempted if it includes measures to avoid, mitigate, or minimize adverse impacts such as if they were digging the playground, if they were going down five feet to put in footings, it could be exempted but only after it complied with State Historic Preservation Division archaeological monitoring conditions. So we still can exempt something like that. If it's just like a repair, a replacement in-kind of a playground, like that.

In contrast, the SMA use permit may contain formal conditions to avoid adverse impacts on coastal resources. And I'm sure most of you have seen some of the standard project conditions and project-specific conditions. We can have – some of the major projects, we can have 40 or 50 different conditions on projects.

Some of the common exemptions—now, these exemptions aren't done at the SMA rule level. They're done at the State Coastal Zone Management Act level. Single family residence, not part of a larger action; structural and nonstructural improvements to single family residence; repair and maintenance of roads and highway; routine dredging of streams as maintenance; repair and maintenance of underground utilities; repair and maintenance of existing structures; and demolition of some structures. So you can see these are common activities mostly for existing infrastructure, structures, out there. Yes, Nancy, do you have a comment?

Ms. McPherson: And also if representations were made in order to get an exemption for a proposed action, and then those representations aren't adhered to, the Commission can vacate the exemption, and require the applicant to do an SMA permit.

Mr. Buika: So I just have a couple more slides just on the rules for the—

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

Ms. McPherson: Well, the situation could be brought to the attention of the Planning Department in various ways. There could be a request for service, or it could be brought to the attention of the Planning Commission, and then the Planning Commission can then transmit that to the Planning Department. And at that point, perhaps I could defer to Corp. Counsel as to the actual mechanism by which the exemption would be vacated because I frankly, haven't done one of those before so—

Mr. Giroux: Nancy, did you guys adopt the rules that we're working on as far as the order to show cause process?

Ms. McPherson: No, not yet.

Mr. Giroux: Molokai has not adopted that?

Ms. McPherson: No.

Mr. Giroux: Okay, because absent of those rules, what you would probably do is the Department would issue a notice of violation. And then if the person who was the violator were to then appeal, then it would come in front of the Board as far as a contested case. But as far as Corp. Counsel's concerned, we want a cleaner mechanism. And we have drafted rules that would give the authority to have somebody petition the Board to act upon removing that permit being if it's a minor, major, or if it's an exemption. So we have drafted those rules, and hopefully, they come through.

Ms. McPherson: The Commission has seen those recommended, yeah, amendments. Okay, so as the rules are now, I think what would happen would be that the Department would basically, say you're in violation and we could require them to submit – and then their SMA assessment or apply for a permit. But we would have to issue a new exemption if they were gonna get exempted again.

Mr. Buika: Just to further your – answer your question, through notice of violation, there are fines associated with the violation. And in Maui, we have removed – some people have built – one person built kind of a rock wall right on the beach and refused to take it out. So we ended up fining and settling at \$65,000 and taking out the structure also. There are other violations that going on. So there is a fine structure associated with the Coastal Zone Management Act also, and that's done through the Zoning and Enforcement Division. And Francis, who will follow me, Francis Cerizo, who many of you know, can answer any more questions on that because he's in charge of that Division.

Okay, just relating to the shoreline rules, the shoreline objectives again are defined by the Coastal Zone Management Act, and they focus on the shoreline looking at the coastal ecosystems to minimize adverse impacts and protect coastal ecosystems dealing with reducing risks to new structures, and existing structures of coastal hazard, and beach protection, and access, minimizing hardening of sites. These are some of the objectives under the Coastal Zone Management Act. And the goal of the shoreline rules are to regulate development so that shorelines are protected, beach resources are conserved, visual and physical access preserved, and landowners do not incur unnecessary risk or shoreline hardening expenses.

So there are kind of a set of different actions that are the responsibility of the Molokai Planning Commission. And these include – you can see on the far hand right, the approvals there. If – there are some activities that are allowed under your rules in the

shoreline setback area, which is the area right along the shoreline and defined in your rules. If some applicant does propose to build some hardened structures or major structures that are not allowed, they require a variance, and they require a public hearing, and it requires an environmental assessment as part of that shoreline setback variance is what it's called—the SSV. So the environmental assessment must be done to show that there are no significant impacts to the coastal resources.

So these objectives—I've tried to simplify them here. The bottom line is we wanna continually move out of harm's way, out of the coastal hazard's issues, plan for the obsolescence of structures in the shoreline setback area. So we have rules that if there's an older structure right on the coast, if it's damaged by coastal hazards, and is damaged more than 50%, you cannot rebuild that in that same area. I don't know whether we've really reached that yet and challenged that, but certainly, we came close with the tsunami. If that tsunami had been significant, and we had fully damaged structures and houses, we would have had to deal with those policies. There's nothing really in our rules dealing with tsunamis, but it certainly is a coastal hazard. So we would have had to – your Commission, Maui Planning Commission, Lanai Planning Commission, and the Planning Director would have to set some rules in place for redevelopment after that tsunami. So it's something that we are looking into to try to modify rules, come up with some policies that we can reduce into rules, into the Planning Commission rules, that would deal with some of the – a major coastal storm surge from a hurricane, or such things as a tsunami. So we need to be able to deal with that.

We want to always ensure shoreline access because that is always an issue when you're developing in the setback area. And we want to limit the types of structures and activities in the shoreline area. And I'll go over some of those.

So these are the actions under the Molokai Planning Commission Shoreline Rules. There's an – the first one on top: shoreline setback determination is an administrative activity undertaken by the Planning Director, or any application, we can determine where the shoreline setback line is. And I'll show you how to calculate it in a slide or two. And we normally require a State certified shoreline survey to determine that. And that is done through a letter and a calculation working with the applicant. And there are also – there's an application where we can approve some activities in the shoreline setback that's within that shoreline setback area. It's called a shoreline setback approval. And it can have conditions. And it would require compliance with the environmental assessment rules. It would have to be an explicitly permitted activity or structure under your rules. There are some things. We can have minor landscaping, some minor structures in the setback area. And it does require a State certified shoreline. And it can require conditions to avoid and mitigate adverse impacts. And those shoreline setback approvals would be approved by your Body.

Again, what I mentioned before, the shoreline setback variance, the next one down, would be permitting a structure that is not a minor structure in the shoreline setback area such as a sea wall. We attempt to avoid sea walls sometimes. They're unavoidable. So that again would be through the variance rules in the shoreline setback rules. It would come before you, and you would have to make sure it complied with the variance criteria, and you would approve that.

And then there is a denial that can be done at the administrative or Planning Commission level where we do not have – where we don't have a – anything that is illegal such as an illegal sea wall, anything that hardens the shoreline, prevents sand transport, blocks public access to the beaches or recreation, and encroaches on State-owned land, any of those types of activities are not allowed.

So there are some permissible activities. And they're kind of – this is kind of categorical here: minor structure/activity. Our criteria at the Planning Department level is looking at we do not want that activity to impede the natural movement of the shoreline or artificially fix the shoreline such as just a rock boundary wall. We would rather have a wooden fence, or an anchor fence, or something like that, something that will not block, you know, if the shore came in, if the waves came in, it could be damaged, and it couldn't block lateral activities, and artificially fix the shoreline. Again, interfering with public access and views to and along the shoreline. Even heavy sea grape of some of these vegetation that can create vertical barriers to lateral access, we wanna make sure that people have lateral access. Don't block the views along the shoreline. The activity should not alter the existing grade of the setback area. And repairs of legal structures, nonconforming structures in the setback area, can be done, but only at 50% of the value. Again, we don't wanna be promoting larger structures being rebuilt and intensifying the use of the shoreline area.

Certain nonconforming structures again, can be repaired. That's the 12-4-11. And then new structures, any new structures that are permitted through a variance need to be elevated at least one foot above base flood elevation on pilings or columns. The County is held harmless with no liability for any damages from coastal hazards. And the structure does not harden the shoreline. So these are permissible activities that can be done close to the shoreline.

And then your role in approving shoreline setback variances – this is a – has a bunch of listed activities here. These are in your rules again, the setback rules. A variance does require a public hearing. And there are some exceptions that are minor in nature that do not require a public hearing such as the repair, maintenance of harbor facilities, adding utilities such as the DLNR project that you had this morning. It doesn't require a public hearing. And those are listed. I think there are four of them in your rules. But in general, variances require a public hearing. And the types of structures that can be allowed in the setback area along the shoreline, I think it's a list of eight of ten of these, so I'll just put

these up here: crops; aquiculture, limited landscaping not affecting shoreline process; drainage improvements; boating/water sports facilities; public facility, repairs, and improvements, or utilities; also, private facilities that have – are clearly in the public interests; and there are also some allowed private facilities that may artificially affix the shoreline provided that the erosion would cause a hardship if not allowed.

So if there is a bluff that collapses or major waves are threatening somebody's home, it's a legally-permitted structure, if would come before you. You can say, no, they can't repair it, they can't protect it, or, yes, they can through the variance process, they can protect it. And there are some criteria there for the variance. And we can also move sand within the shoreline area from one location to another.

Any private facilities that require a variance cannot adversely affect beach processes, artificially affix the shoreline, and would result in a hardship if not approved. Although hardship is not defined in the rules, it is – the burden is on the applicant to show that there is a hardship such as a house collapsing into the ocean, I guess, would be one example.

There are some mandatory conditions for the variance. I won't go through them in great detail, but they are in your rules. We need to – quickly, just – maintain safe lateral access, minimize impacts to beach processes, minimize risk to any of these structures, and minimize impacts to public views to and along the shoreline. We don't have in there complying with the flood hazard rules, but again, any new structure would have to be. If it was a shed or some recreational facility, or small structure, it would have to be built above base flood elevation. So the County rules would apply.

So just finally, I'll wrap up just with looking at how we determine the shoreline setback area. Again, it's to regulate recreational use, safety, public health, welfare of the public. We wanna provide a minimum protection from coastal hazards, which are getting more and more intense. And ensure the public use and enjoyment of the shoreline are preserved for future generations. The methodology used here, and it is in your shoreline rules, is the average lot depth. And that requires a State certified shoreline for any shoreline parcel to determine the average lot depth.

Just one example, the average lot depth, if we determine the average lot depth to be less than a hundred feet, the setback is 25 feet. Between – if the lot depth is between 100 and 160 feet, the setback is 40 feet from the State certified shoreline. And if it's greater than 160 feet, it's 25% of that lot depth, average lot depth, up to 150 feet. So the shoreline setback area ranges from 25 feet to 150 feet. On Maui, we have some large lots, deep lots, that contain hotels. Anything going on in a hotel, we wanna make sure it's set back at least 150 feet. If the lot is over 600 feet deep, we can set back things quite a bit. And I'm sure there's some – I know there's some large lots along the ocean here where we can have a very good setback.

And how you determine that is in that little figure. You take the – the wavy line along the bottom represents the shoreline. We take the end points, the distances, the one in the middle, add them up, divide by three, and come up with the lot depth. In this case, it comes up with 705 divided by 3 is 235. So in that case, the average lot depth is 235 feet deep. So the setback is 4 divided into 235, which is 58.75 feet. So that would be the setback for any major structures and development.

And just some concluding remarks, obviously, our shoreline is precious. In Molokai, it provides tourism, economy, recreation, fishing, food, cultural practices, and represents our quality of life. You know, our shoreline is becoming more and more threatened by coastal erosion. Shoreline and coastal erosion processes are a system that needs to be studied and fully understood to make sound, scientifically based planning decisions. We shouldn't just be doing these one-offs, where we look at one individual lot. You know, it's a whole process. We do have a U. H. Sea Grant person, a coastal hazard specialist that assists Nancy, myself, looking at coastal hazard systems. So we're trying to look at all of our beach cells, the bigger areas of the coastline, looking at these systems as we move out into the future, and how individual developments impact these systems, so that we can make better planning decisions as we go forward.

And – so I'll just conclude by saying that, you know, with the Coastal Zone Management Act, through our SMA guidelines, and your Molokai Planning Commission SMA rules, again, as development goes on, we're seeking – our goal really is to seek to minimize, where reasonable, adverse impacts of the environment. You know, we all want to be ideal and not have any environmental impacts, but our goal really, is to minimize those impacts as we go forward.

And the last slide just has three references. Certainly, Nancy works with us. You can work through Nancy. Here's my phone number. We also have Anna Benesovska who's done a few projects out here on Molokai assisting Nancy. And then Tara Miller Owens is our Sea Grant Extensive Program coastal hazard specialist, who sits in our Maui office. And I know she's helping with one of the upcoming fish pond projects here, and can be of assistance to Molokai. So I'll end there. If there are any – I'll entertain any comments, questions, at this time.

Ms. Pescaia: Commissioners, any questions? Seeing none, thank you for wonderful comprehensive presentation.

Mr. Buika: Thank you very much. Thank you for Nancy and Commissioners for hosting us and allowing to give this presentation. Mahalo.

Ms. McPherson: I also wanted–Nancy McPherson, staff planner–that we do have erosion rates generated by Chip Fletcher and the coastal geology group of the University of Hawaii

for one section on the coastline on the west end for Papohaku Beach. And those have not been officially adopted yet, but I think we're gonna be looking at using those at some point in the future. So I just wanted to let you know that we do have data for that area of the coastline that would provide us with erosion rates. But those also need to be regularly updated so—

4. County Policy Against Discrimination

Mr. Francis Cerizo: Well, this is your annual sexual harassment policy briefing. We do have a policy that's been in effect for many years. And we're required to be mandated to give this also to boards, and commissions, and employees.

It starts with a definition. What is sexual harassment? Well, first of all, all of this, yeah, I might be going a little too fast. We have a policy in your packet that explains this in detail. So if you'd like to reference this later on, please feel free. If you don't have a copy, we can send you a copy.

Sexual harassment, what does it mean? It means unwelcomed sexual advances, request for favors, or other verbal or physical conduct, a visual display of a sexual nature directed by an officer or employee to another officer, employee, or a private individual.

As Commissioners and as staff, all personnel must refrain from the following conduct. As noted before, these are sexual advances, request for favors, any remark of a sexual nature, gender-based or sexually abusive language/innuendos, displaying of calendars or pictures of a sexual nature, and physical contact, and any other similar actions. We have a zero tolerance on this behavior. And it's something that is not condoned and not tolerated in the workplace.

How do you file a complaint? Anyone that feels that they have been subject to harassment should report immediately either to one of the supervisors of the staff or the Commission. You can report to your Vice-Chair or your Chairperson. And if the Chair or Chairperson is the subject of the complaint, then you go up to the – come to see us, our Director, or you can go further up to the Mayor's Office – I'm sorry, the County's EEO Officer, and that's the Director of Personnel Services. Finally, if you don't have the results from the County, you can actually go up to the Hawaii Civil Rights Commission, and lastly, the Federal Equal Employment Opportunity Commission. The complaint can be informal, verbal or written, or formally written and signed.

The investigation will be conducted in an unbiased, fair, and discrete manner. And we will try to be – have all the appropriate safeguards to maintain confidentiality and protection from embarrassment as much as the law will allow. Anyone found after an investigation to be an offender will receive an appropriate warning and discipline. Any disciplinary action prior to implementation will be reviewed by the Director of Personnel Services and approved by the County's EEO Officer. One of the main things during an investigation

is retaliation. It's against the law. If you're found to retaliate to the complainant, it's a separate offense, and will be pursued likewise. Any questions? Okay, thank you for attention on that one.

5. Flood Hazard Districts

So moving along, today, my presentation is on the flood hazard districts. I'm gonna through the ordinance that created the district. I'm gonna explain the maps and the changes to the maps. We are in a community rating system island where we have – part of the CS program similar to the fire rating system where we have discounted rates. And finally, what is your role? What is your role in developing an island that will be resistant to flooding?

As you can see in these pictures, you know, there's been a lot of damage, hundred billion dollars in Katrina's Hurricane. We recently read about 33 million dollars during this recent tsunami incident. And on Kauai, nearly three billion dollars was – losses was created.

So the flood hazard ordinance was created in 1981 and it was part of the Federal effort to reduce these flood damages. You know, there are a lot of times people will – in the olden days, you would have a house near the shoreline. Just build a house. It gets damaged. And then they'll ask for assistance in rebuilding it in the same place, same construction. Ten years later, it's all destroyed. So they found out that, okay, we have to do it better. So back in the '60s, they had this – the law came about from the Fed's side. And then finally in 1981, it was adopted–the code for the flood hazard districts.

In recently as 2009, we revamped the ordinance, so it's a little more stringent from the original.

Permits are required for all development. And what is a development? Any manmade change to improve or unimproved real estate, including walls, buildings, structures, filling, grading, excavation, mining, drilling, dredging, paving, storage of equipment or materials. So whenever they're in the flood zone, like some people don't know, maybe you store equipment there, these – all of these items here are required to get a permit.

And we have two types of flood zones. We have the AE zones and the VE zones, and we'll go through those in detail in the following parts of my presentation.

So as we talked about before, the main purpose of the program is to protect human life, for the protection of property from flood damage, and to reduce public costs. We recently went to the digital format, which is available online. A few years ago, we gave you a presentation on how you can actually get your flood information online. It's been improved since then. On your handouts, you see the web site. There's a search engine on the right-

hand side. If it's really hard to understand, on the bottom, there's a tutorial on actually how to use this page.

An example what you'll see is here in Papohaku Beach. We have several types of flooding that's shown on the panel. The A zones are riverines and that's the blue and the purple. And then we have the V zone, which is the coastal flooding. And typically, when we have coastal flooding, it's more destructive. We've seen the tsunamis in Japan, for instance. That is unforgiving. It just wipes good swaps on land. Even over here in the islands, we've seen just some minor effects of those waves. You know, just a few feet had havoc in many areas of the islands.

(Ms. Dudoit left the meeting at approximately, 2:20 p.m.)

Mr. Cerizo: The maps are being changed, as we speak. A few months ago, I came in and gave you a presentation on the new maps that are being proposed. They came out in 2010. And on the left is the map that we have now. You can see on left, the green area, that is an area that is protected by the levee. And because the levee wasn't certified – Many communities have not certified their levees. So a lot of those areas behind the levees are being shown as flood zones. We've seen those as recently as last night in Missouri. The levees are just barely – in some areas, it broke through. And that's what they wanna tell the public. These levees are there. If they don't have a high rate of flow, it's gonna fail. Ours is a little different. Ours will probably flood like a couple hours, overnight, you'd have a big flood, and then all of a sudden it's gone. On the Mainland, it just stays for days and days and days, and just gets bigger and bigger. So it's really – we're kind of fortunate because we're on an island.

On the right-hand side is the new map. It shows that – the levee being failed. So we have an area that's in the pink. That is an area that now is going to be required to get flood permits. They're gonna have to elevate these structures for new construction. If you're building anything that's reconstruction, you'll be limited to just 50% of the value of the structure. On the lower side, the light blue, that's from the new tsunami maps – I'm sorry, the new hurricane maps. A study was recently done in the past couple years that evaluated all the hurricanes that happened for the record time that we have in the islands. And we have flood heights that go all the way into the corn field, almost around the County building. So that's all from tsunamis. So we have areas where it's gonna be like two, three feet, maybe more deep in the – along the coast. This actually extends all the way around this side of the island almost to – I wouldn't say to the west end, but a substantial area that is being affected by the coastal flooding. I'll be coming out for more – an outreach project before it becomes effective. One of the things that you folks wanna do is to get flood insurance just before it being effective so you can get locked in to the cheaper rate.

The map is gonna be effective 2012 or thereabouts. There's been a move on the national level that a new policy on levees be made because there's a lot of levees out there that provide a certain degree of protection, and they wanna keep that – keep that in consideration. Instead of failing all of us, we can take care 50 years. So the policy is in draft. It's being drafted. And it may take another year or more to get that. So that's what the pluses of . . . (inaudible) . . .

Same picture in Kaunakakai, we have your stream there in the white area. That's where the sewage treatment plant is. It's high enough so it doesn't get flooded. It's obvious that that's all water inside that white part, right?

Well, anyway, the blue part on the makeup of a stream, we have the AEF zone. The dark blue is called the floodway. And that's where the worst part of the flooding occurs, the highest velocities. And the lighter blue is the flood fringe area.

Photo of the stream. And this is your cross section, typical cross section. And what's allowed here is on the perimeter where it says, "Encroachment," that's where you can fill. And we have an area that's the floodway. I'm not sure if you can see the light blue part. That's the actual floodway part. So we have the high velocity part and the encroachment area where development can occur.

So how do you build in this area? In the floodway areas, or the flood stream, or the stream areas where it's low velocities, lower velocities, coastal runoff where the water isn't that deep, less than three feet, we require you basically, to elevate your structures. And our code was revised so that's one foot above the flood height, and to design the structures to withstand the floods so that it doesn't like, float away, get undermined. Protect the utilities.

In the V zones, it's very similar. What we're saying is that you have your footings deeper into the ground, and you have to elevate the structure so that the lowest cross member has to be a foot above the base flood elevation. That's the – we have the high structures there. On the right-hand corner, you see one that was damaged because it did not elevate.

So this is a typical section. It looks like – from a view on an elevation. So on the right-hand side is your low velocity. And the front height can actually go up to the floor of your building. But right now we have that one foot freeboard. So that part there has to be elevated another foot.

These are your typical permits. It's kind of hard to read, but on the left it explains if you're in a floodway, you need these types of certificates and applications. And these are all available online.

The County is part of the community rating system. It's a system where the Federal government recognizes communities that do a little bit more than the minimum. One of the activities that we do – added value activities is that instead of just having the building – like this floor at the flood height, we raise it a foot higher than the flood height. So typically, if this floor was flood proof, the water would just hit the door there, the edge. But if this was a new construction, the water would be outside there on the grass. It'll be a little higher. So we do that.

We also have now a new code revision where if you're building – rebuilding an old building or renovating an old building, usually we'd limit you to 50% of the value of the structure every time you do renovations. But now we accumulate the improvements over a ten-year period. You cannot – your limit is 50% over ten years. So the house was valued at a hundred thousand today, your limit is fifty thousand. And that fifty thousand would be checked against your improvements every time you improve it, up to a maximum of fifty thousand dollars.

So what this does is that since we have higher standards, we have reduced premiums. Right now, the County saves approximately – all those homeowners that have insurance, their gross savings is about three million dollars. So that's pretty substantial.

So lastly, we're gonna look at your role. How can the Molokai Planning Commission have a better community that takes in effect all these hazards that may happen on the island? There's two ways. One of them is your definition of open space. Your opportunity will be coming up in the next year or so when you – or in fact, even now when you're planning your community plan. The use of open spaces is intended to limit development in those areas that are subject to flood plains, tsunamis, or shoreline areas where we like to have buffers.

So we have on the left, the current community plan, and on the right we have the flood zone. So when you're reviewing your community plan, one thing is, is your development in harm's way? On the right side, the dark blue is the heavy, high flowing, deep water, house-busting flows. Now, do you wanna continue having people living there in harm's way? Now, one thing, you know, it could be flooded, but when you go out there, how deep is it? Is it gonna be—? So you're gonna have to decide if it's like one foot deep, two feet deep. Because these maps sometimes it says your elevations are "X" and "Y" but how deep is it? So you're gonna have to make a call and it's very subjective. If you're gonna proceed on saying no more development in the blue areas.

So this is one example. You can see on the lower side is Kaunakakai Town. Along the south coast going towards the east coast to the east end, we have a lot of streams on the right photo, on the right flood plain maps. And then you have the zoning or the community plan maps on the left. So I would think these dark blue areas, it's a good time to reconsider if we should have development in that area. And if you feel that development should be

restricted, that's a good time to put in the open space. In the other areas, this map does not – right now, it doesn't include the V zone. That was just – that's part of the hurricane study. So that, you know, perhaps during your review, that should be identified and see if the heights there are really high. In some areas on the west end, it could be 50 feet high. And 50 feet high is like you're gonna have to elevate your building 50 feet high, and then build your house on top of that. Maybe no build in that area, no build in this area.

The other area where you have influence is the special management area. So we know that along the coast of Molokai, that's where your jurisdiction encompasses. And our SMA rules or your SMA rules requires an evaluation on the adverse and – adverse environmental and ecological effects on areas such as flood plains. And these coastal areas are – and the tsunami areas are all in the flood plain areas. So when they develop in those areas, the evaluation should be is it gonna cause the impact? So you have your say in there that, you know, move the development, move it back, make it smaller, you know, there's a lot a ways of mitigating impacts on these flood plain areas. Thank you for your attention. Do you have any questions?

Ms. Pescaia: Questions, any Commissioners? Seeing none, thank you, Mr. Cerizo, for a wonderful presentation.

Mr. Cerizo: Thank you very much.

Ms. Pescaia: We've all been caught up to speed. Alright, Commissioners, thank you for hanging in there. It's dark. The wind's blowing. It's cool. Francis has a soothing voice. Nobody fell asleep. Awesome, job, Francis.

G. CHAIRPERSON'S REPORT

Moving on to Item G on our agenda which is the Chairperson's Report. I have none. I mean, I don't even know what I'm supposed to report on, but, oh well. Director's Report. Wait. Let me just check. This concludes our orientation workshop, right? Like there aren't any more—?

Mr. Yoshida: That's correct, Madam Chair.

H. DIRECTOR'S REPORT

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

Mr. Yoshida: Moving to Director's Report, we have circulated the lists of open and completed Molokai projects. If you have any questions, I would again note that it is helpful for the Commissioners to familiarize yourself with the special management area rules and shoreline rules as probably the most predominant type of application is the SMA assessment or SMX. So that's just the development pattern of the island, you know, lot of development either immediately abutting the shoreline or close to the shoreline.

Ms. Pescaia: Clayton, on page 2 at the very top, there's an entry for Paddler's Inn, but there's no information attached to it other than the permit name.

Mr. Yoshida: That might be a continuation of what was on the previous page. I guess they wanted to put—

Ms. Pescaia: Okay, I see, I see, the Sprint – the Nextel.

Mr. Yoshida: Regarding antennas, various antennas for cell phone companies on top of the roof at the Paddler's Inn.

Ms. Pescaia: Okay.

Mr. Yoshida: Is there any other questions of the open and completed Molokai projects?

Ms. Pescaia: Melvin Chang.

Ms. McPherson: Okay, I did check on that for you. And I talked to Trish Kapuaala who is working on that. And evidently, it's an appeal of being required to do an SMA assessment for an after-the-fact grubbing. And they don't wanna do an SMA assessment, for some reason. So Trisha is researching that more and basically, that's all we're asking them to do is do an assessment. So hopefully, by the next meeting, I'll have some more information for you about that. That's down by Kalokoele. I believe it's old subdivision.

Ms. Pescaia: Okay. Commissioners, do you have any other questions about the pending projects' report?

3. Discussions with Maui Electric Company on liability for power pole installations on private property. (N. McPherson)

Mr. Yoshida: If not, regarding the letter from Maui Electric Company regarding the installation of power poles, we're still waiting for a copy of the written letter. I guess it came up in the context – most recently in the Estefania Acoba power pole installation. So as soon as we get that, we'll send that to the Commission.

4. Agenda items for the May 11 Molokai PC mtg
a. May 11 Public Hearing on the Molokai Health Clinic at the former Pau Hana Inn site SMA Application

Mr. Yoshida: Moving to coming attractions, at your next meeting on May 11th, we have scheduled the Molokai Health Clinic at the former Pau Hana Inn site special management area application. This is from Desiree Puhii, as well as the Commission deferred action at today's meeting on the Parks Department, Onealii Park playground project. So those would be the two major items.

Ms. Pescaia: Can we do the Parks' first?

Mr. Yoshida: Yes, okay.

5. May 25 Public Hearings on the Waiele Cinder Pit Special Use Permit and amendments to the Industrial Districts sections of the Maui County Code

Mr. Yoshida: For the meeting on the 25th, we have scheduled the Tri-L Construction, a Land Use Commission special use permit for the Waiele Cinder Pit on the west, southwest end of the island, as well as we have some amendments to the industrial district section of the Maui County Code.

On the June 8th, we may have some SMA assessments, and had arranged with Malia Akutagawa to do workshop no. 3 on case law on water cases.

Ms. Pescaia: You talked to her about that already? And she said she can do'em on June 8th?

Mr. Yoshida: Yes.

Ms. Pescaia: Okay.

Mr. Yoshida: Yes. I've been saying, you know, we've kind of been deferring and deferring and deferring. So the 8th is the – she can do it on the 8th.

6. June 22 Public Hearing on Council Resolution No. 11-24 regarding Short-Term Rental Homes

Mr. Yoshida: On the 22nd of June, we're doing the public hearing on Council Resolution No. 11-24 regarding Short-Term Rental Homes' bill. Any questions on upcoming meetings, or anything that you wanna add to upcoming meeting agendas? Okay, if not–

Ms. Pescaia: Try wait. I sorry. You went update on the—? What you said on the vacancies? Sorry, Vice-Chair and I was saying we might not be here in June, so we're trying to align who going be here what day. Okay, sorry.

7. Update on the Molokai Planning Commission vacancies.

Mr. Yoshida: The Mayor did nominate Oliver DeGray Vanderbilt to fill out the rest of Commissioner Leong, Napua Leong's term since she resigned. That was considered by the Council Policy Committee on April 15th. And they deferred action because there were concerns from – well, they received several e-mails from Molokai residents questioning the residency of the nominee, if he was a Molokai resident or not. So that is deferred. But the Council has 60 days to act on the nomination or it rolls into an approval. So they have until early June to make a decision on that or it rolls into an approval.

With regards to Commissioner Williams, the Executive Assistant of the Mayor, Mike Molina, has been trying to contact Mr. Williams regarding whether he can and is able to serve on the Commission at this time as the last time he was at a meeting was in June of 2010 – or July of 2010. So Mr. Molina is – or Mike Molina is trying to contact Commissioner Williams on that.

Ms. Pescaia: Has he gotten a hold of him? Any response? Or has he not even made contact with him?

Mr. Yoshida: I think he's only been able to get his voice-mail and he's left several messages on his voice-mail to call him back.

Ms. Pescaia: Okay. Commissioners, you have any questions? Okay.

Mr. Yoshida: With that, we'd like to thank you for your attendance. So far we've had two meetings with one hundred percent attendance of the active Members.

Ms. Pescaia: Keep it up, gang.

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

Ms. Pescaia: Thank you. Thank you to the Molokai community for allowing us this opportunity to serve you.

I. NEXT MEETING DATE: MAY 11, 2011

Ms. Pescaia: This meeting is adjourned. Our next meeting is – will be held on May 11th. Thank you.

J. ADJOURNMENT

There being no further business to come before the Commission, the meeting adjourned at 2:53 p.m.

Respectfully submitted by,

SUZETTE L. ESMERALDA
Secretary to Boards and Commissions

RECORD OF ATTENDANCE

Present

Mikiala Pescaia, Chairperson
John Sprinzel, Vice-Chairperson
Nathaniel Bacon
Debra Kelly
Ron Davis
Lori Buchanan (12:03 p.m. to 1:23 p.m.)
Zhanell Dudoit (12:03 p.m. to 2:20 p.m.)

Absent

Don Williams

Others

Clayton Yoshida, Planning Program Administrator
Francis Cerizo, Staff Planner
Nancy McPherson, Staff Planner
Jim Building, Staff Planner
James Giroux, Deputy Corporation Counsel