

**MOLOKAI PLANNING COMMISSION
REGULAR MEETING
JULY 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 12:10 p.m., Wednesday, July 27, 2011, at the Mitchell Pauole Center Conference Room, Kaunakakai, Molokai.

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

Chair Mikiala Pescaia: Aloha, and welcome to the July 27th meeting of the Molokai Planning Commission. My name is Chair Mikiala Pescaia. To my right is our Vice-Chair, John Sprinzel. Joining us today are Commissioners Buchanan, Commissioner Kelly, and Commissioner Bacon. To my left is our Corp. Counsel, Michael Hopper. We have our Maui guy with a fancy title from the Planning Department, Clayton Yoshida. We have our Secretary to Boards and Commissions, Suzie Esmeralda; and our Molokai Staff Planner, Nancy McPherson. Aloha. We have a light agenda today. So nice. Okay.

B. PUBLIC TESTIMONY ON ANY PLANNING OR LAND USE ISSUE

Chair Pescaia: Calling this meeting to order, I would like to open up and offer the opportunity for public testimony on any planning or land use issue. This is if you are here on your lunch break and you cannot wait for your agenda item to come up, and you would like to offer testimony on something that's already on our agenda; or if you'd like to bring something to this Commission's attention for us to review at a future Planning Commission meeting, now would be the time. Seeing none, we'll continue. We'll close the public testimony, Item B, and we'll move on to C.

Communications is our first order of business. The Planning Director, Mr. William Spence, is requesting concurrence from this Commission under the SMA exemption for the following Item a: DAGS, the State Department of Accounting and General Services is submitting an SMA assessment for replacing and relocating four civil defense warning sirens at Duke Maliu Park, Kamiloloa, and One Alii Beach Park. Planner McPherson?

C. 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. **STATE OF HAWAII DEPARTMENT OF ACCOUNTING AND GENERAL SERVICES submitting a Special Management Area Assessment for replacement and relocation of four civil defense warning sirens at Duke Maliu Park, Kamiloloa, and One Alii Beach Park, sirens to be omni-directional and solar-powered, TMKs 5-3-003: 012, in DOT Right-of-Way fronting 5-3-003: 012, 5-3-002: 052, 5-4-006: 999, and 5-4-003: 023 located in Kaunakakai, Kamiloloa, and Makakupaia, Island of Molokai. (SMX 2011/0133) (Valuation: \$340,000) (N. McPherson)**

Ms. Nancy McPherson: Mahalo, Chair Pescaia. Aloha kakou, Molokai Planning Commissioners. Nancy McPherson, Staff Planner. I'd like to request the Chair's indulgence. If I may sit over there behind the laptop while I make the presentation? Okay. Thank you.

This application is for civil defense sirens that are to be installed in the SMA. There are a number of other ones on Molokai that are not going to be in the SMA, or if they are in the SMA, they're going to be in – on DHHL land, and we don't have jurisdiction to review SMA on DHHL land. And so what we have is we have the siren replacements in Kaunakakai, Kamiloloa, and Makakupaia, which is where One Alii Beach Park is, and those the ones before you today. There are also sirens going in at Molokai High School, Kalamaula. Let's see. I have – in your exhibits, there is an archaeological report and that has – that's actually a section of an archaeological report.

I think I'm having technical difficulties here. This thing has got a mind of itself right now. I don't know what we're gonna do.

But anyway, the list in the SHPD approved archaeological monitoring plan is – has got all of the sirens listed on it. They're actually gonna be installed countywide. So Lanai has three or four. Molokai has ten. And Maui has tons. So what we are recommending is that these replacements be – they're actually upgrades. They're upgrading the sirens. And we know from the time when the siren fell off the pole in Maunaloa and crashed to the ground that they need to be replaced. So these are upgrades. We also have Steve Arce here who is our Molokai Island civil defense person, and he can answer any of your questions about the particulars. I think he knows somewhat about the project and the particulars.

And it's an improvement in the entire warning system, is my understanding. And they are going to be directional sirens. So there's also an omni directional siren that's being installed in other places. But the ones that are being installed for these sites are omni – are directional. So that means I think – what it means is the speakers go in three directions. What they're trying to do is not impact nearby residents when they do it directionally. Omni directionally means there's nobody living in that area, and it can just go all the way around. They are also not going to have any lights on them because of birds. They wanna protect the shore birds. They have also gone through the process of getting SHPD recommendation for the archaeological monitoring plan. So that's going to be implemented per SHPD's recommendation letter, which is your Exhibit – okay, okay, yes, Exhibit 22. And they did look at all the sites. They have them all listed there so I think for the whole County. And I did read through that. They have specific recommendations for each site. So they did take the time to thoroughly go through that monitoring report, in my opinion. The sirens are being replaced to improve the reliability and effectiveness of the civil defense warning system.

The one that – there's one that's going to be relocated. It was on Kaunakakai School property and it's being moved to Duke Maliu Park. So that's actually being relocated. The other ones, they are being relocated – well, they're gonna put in new poles. The poles have big bases: 12x12-foot concrete bases. They are gonna be excavating to install those bases. So I believe they're going to be making them stronger, probably hurricane-resistant, would be my guess, which – you know. I don't know once the hurricane has come and gone, you know, the siren isn't quite as important, but you never know, so – tsunami, you know. So they are going to be bigger footprints, but in some cases, they're only moving them a few feet from where the siren pole is located now.

So I hope you've had a chance to go through the memo, and the assessment, and the exhibits. And if you have any questions– We're requesting that you concur with our recommendation for exemption based on the fact that construction, installation, maintenance, repair, and replacement of civil defense warning, or signal devices, and sirens is eligible for exemption under Chapter 205A, Hawaii Revised Statutes. So if you have any questions for me or for Mr. Arce.

Mr. John Sprinzel: Ms. Nancy, the whole point of these things is that people hear them. So why would you want them directional to not be pointed at houses? That sounds ridiculous.

Ms. McPherson: Well, it's a very good question. I don't exactly know the answer to that question: why they would want them directional versus omni directional. I personally think the omni directional ones are more attractive. But Mr. Arce's here; maybe he can give it a shot. Steve, do you know anything about the directional part of it?

Mr. Steve Arce: The only thing I know about the directional is the old type of sirens were directional. And especially the ones right now at Kamiloloa is facing mauka away from the homes and away from the shoreline. And the one in Kalamaula faces mauka, and the sound just hits the people up on the hill directly. So with the new type of sirens, the omni one, it'll go around instead of just in one direction. It is louder and it is quite disturbing. It sores the ears, but I'm sure the new ones will be just as effective. The new ones will be – you know, the sound will carry all around instead of in one direction.

Mr. Sprinzel: Are all these poles omnis?

Mr. Arce: There are several old ones left. One is up Kamiloloa, and the other is right by Coconut Grove right across the Church Row.

Mr. Sprinzel: So none of them will be directional?

Mr. Arce: None of them. They will be replaced with the omni one.

Mr. Sprinzel: Good. Thank you.

Chair Pescaia: So there's existing poles now, right?

Ms. McPherson: Yes.

Chair Pescaia: What–? I cannot find it in here, but maybe it is, about removing the old poles, filling in holes, or whatever. One part of this–

Ms. McPherson: Yes, that's part of the action, actually. If it isn't in the description, it should be. It may be in the assessment. They are – once the new poles are operational, obviously, they can't remove the old ones until the new ones are fully operational, the whole system's been tested out, and all of that. And at that point, they will be removing the poles and filling in the holes. It wasn't really outlined in the application, but that is a necessary step. I think I did articulate that for the–

Chair Pescaia: Wait. Hold on. I losing quorum.

Ms. McPherson: Oh, we lost somebody, okay.

Chair Pescaia: Okay. Continue.

Ms. McPherson: I did articulate that for the one that's going from Kaunakakai to Duke Maliau because it's going on to a different parcel. But they're going to be doing that for all of them.

Chair Pescaia: Okay. I just mentioning it so that work is–

Ms. McPherson: Covered.

Chair Pescaia: Needs to be covered in here. And I don't see it in the description of the project, and I'm kind of looking for it. There's a lot of talk about what – you know, as far as putting in the new ones, but it doesn't really say – or I couldn't find where it says about removing the old ones, where that – how they're gonna dispose of it, what happens to whatever infrastructure is already there as far as – I don't know if there's already existing cement or what it's connected to.

Ms. McPherson: Well, that might be a question for Steve again.

Chair Pescaia: Is the existing structure – like is there a – how is it being powered? Because I know the new ones are solar-powered. Were the old ones solar-powered? Or is there gonna be–? I don't know. Is it connected to anything?

Mr. Arce: The old sirens are powered by electricity. You can see it cross over the road from the electric line to the siren itself. And as far as the construction is, they will have archaeological people onsite while they doing the excavation for the new poles. The old poles will be removed. When I say "removed," that means the pole. And right now, they're sitting in concrete blocks. It's 12 square feet. It's 12x12x12 – I mean, 3x3x3 and 3 again. But it will be dug out, and it will be taken away, and backfilled with proper material.

Ms. Lori Buchanan: I have one question for staff on this staff – on the staff report. That's all.

Chair Pescaia: Okay. Coming back to this application, in the description, it says "directional." They said the new sirens will be directional and solar-powered. So just for clarification, is it–?

Ms. McPherson: To be honest, the application was a little bit confusing. There were a lot of sirens in there, and originally, they had brought all ten in for SMA review. And we had to – so I had to kind of sift through everything. I thought it said they were going to be directional, but Steve would probably know better than myself. What's probably happening is that the original sirens are directional and they're gonna be replaced with the omni directional sirens. But they did provide plans and photographs for both types so–

Chair Pescaia: Because even in the SMA assessment, Exhibit A, on page 2, there's another table that shows Siren No. 502, 503, and 514. And it says "siren type." It gives – it's a directional.

Ms. McPherson: Right. Well, from what I went through in the application, that was what I gathered, but again, because of budget constraints, they weren't able to send anyone from the State over here for this meeting. So they could best answer that question, but Steve's understanding is that they're all going to be omni directional now. So I'm sorry I can't get a better answer for you than that.

Chair Pescaia: Okay, thank you. Commissioner Buchanan?

Ms. Buchanan: I just need maybe clarification on the staff report. So on the staff report, page 2, under Cultural and Historic Resources, about the fourth sentence down where it says, "Excavation for 12-foot square concrete pole bases will range from 6'3" to 10'3" deep." And then it says, "An archaeological monitoring plan for the countywide project was transmitted." And then it goes on to say, "Onsite full-time monitoring is recommended for those areas which have a high potential for inadvertent discovery of human remains or other evidence of traditional high potential historic activity," etc., etc. Then it says, "An on-call intermittent monitoring will occur in locations where archaeological sensitivity is low as follows." And then it has the TMK numbers for what I'm assuming – I've tried to validate against the table we had in the back is the ones that we are applying for today?

Ms. McPherson: Yes. The ones that you're reviewing today are all going to have onsite, full-time monitoring.

Ms. Buchanan: Okay, I just wanted to clarify that on the record that it's not gonna be an on-call intermittent monitoring.

Ms. McPherson: No, the agreement is– Well, this is in the approved monitoring plan. There will be one archaeological monitor onsite for each piece of ground-altering machinery and operation during the project. They are mandated to hold a coordination meeting with the construction crew and all other pertinent parties. And the monitoring archaeologist has the authority to halt work, etc.

Ms. Buchanan: Okay. I was confused because it says "on-call intermittent," and then it actually has the TMKs following that.

Ms. McPherson: Right, but each one – right before it or right after it, it says "onsite" in parentheses. As I've said before, there were ten sites that were originally submitted. And once we realized that actually, three needed SMA review– That might've been left in there, accidentally.

Ms. Buchanan: Okay, thank you. So under the applicable regulations, my understanding is that this project was exempted from Chapter 343 through DOD's declaration through OEQC?

Ms. McPherson: Yes. So I'm sorry I didn't mention that in the staff report.

Ms. Buchanan: Okay. So, Nancy, have you ever seen the agency exemption list that OEQC has from DOD?

Ms. McPherson: Yes, I have.

Ms. Buchanan: Do they specify or is it just a list of things, because my next question is, the poles are 50 feet, and is a variance required for that? Or are they under some other exemption for the height variance?

Ms. McPherson: Well, again, that's also a very good question. That might be a question for Mr. Yoshida, actually. They did submit a letter from the State describing the exemption, basis for the exemption. So they did give us a copy of that. As far as the height limit goes, Clayton, I think I need you to give that shot.

Mr. Clayton Yoshida: The height would be reviewed by the – the height of the poles, this will be reviewed by the Zoning Administration and Enforcement Division.

Ms. Buchanan: Does the County of Maui have a comprehensive kind of exemption for all utility poles? But Molokai is – the limit is 30 feet for any structure in the SMA. So doesn't that require a variance? Just asking.

Mr. Yoshida: I guess, yeah, that would be a better question when it's reviewed by the Zoning Division.

Mr. Sprinzel: Ms. Nancy, it clearly says on page 3 that the three references of the four are low archaeological sensitivity and intermittent monitoring will take place. Yet you said it will be full-time. And also on page 2, it says those three will be directional, and yet your expert says they'll be omni. So we really are a bit contradictory.

Ms. Buchanan: Well, I'm basing my memo and my assessment on the information that was provided me by the Department of Accounting and General Services, DAGS. And I went through that documentation. They had a planner who prepared the application. When I went through that application, it looked to me like they were saying that the sirens were gonna be directional for those three sites. Other sites on the island are gonna be omni directional. And in the letter from SHPD, and in the approved archaeological monitoring plan, there are two different kinds of monitoring that are recommended: onsite full-time and on-call intermittent.

The structure of the sentence may be what's confusing you. What I tried to do was list the TMKs, and for each of those sites, for each of those three sirens, the monitoring listed

afterwards in parentheses is onsite, which is full-time monitoring for those three sites. The reason for that is because they are along the shoreline, because they are in potentially sandy soils, and if you read through the archaeological monitoring plan, it states that very clearly that they did analyze the project in the context of the soils and the likelihood of inadvertent discoveries. And that is why they are recommending full-time onsite monitoring.

I spoke to the planner who's working for DAGS, and she said, "Oh, yes, they're fully committed to doing things properly as far as the SHPD approvals go." So there's – I have high confidence that they're gonna be doing this properly.

Mr. Sprinzel: But in two places it clearly says, "Where archaeological sensitivity is low as follows," and list these – I mean, you know, you've written it twice in here.

Ms. McPherson: Well, my grammar may be incorrect, Commissioner. I may have to work on my English grammar. But what I'm saying is–

Mr. Sprinzel: No, it's a statement, Nancy. It says absolutely–

Ms. McPherson: Where?

Mr. Sprinzel: On page – oh, I don't know, the second sheet, and then–

Ms. McPherson: In the memo or in the assessment?

Mr. Sprinzel: In the memo. And then in the assessment, it's on page 3. And in both says, "On-call intermittent monitoring will occur in locations where sensitivity is low as follows." And you list the TMKs. I mean, it's clear.

Ms. McPherson: Okay. Can I strike the second part of that sentence, then? "And on-call intermittent monitoring will occur in locations where archaeological sensitivity is low." I should've put that first or left it out. And the only section that applies to these sites and this application is:

Onsite full-time monitoring is recommended for those areas which have a high potential for the inadvertent discovery of human remains or other evidence of traditional or historic period activity within subsurface strata as follows.

That's what I meant.

Mr. Michael Hopper: Can I just ask a question? Because the applicant's not here, and no one here can make statements on their behalf, or make changes on their behalf, is that what the applicant clearly said they were willing to do? Is it just that it was a mistake in the report? Or does the applicant definitely know, does the State know, that they will be paying for a full-time or sometime employing a full-time onsite manager for these projects? Because if they think that they're doing what's in the application, and I don't know because I didn't talk with them, I mean, we need to make sure that they're not going to be – have to come back and get an amendment.

Ms. McPherson: No, no. What I just said that those sites are going to get onsite full-time monitoring is in the approved archaeological monitoring plan. It's also in the assessment application. What was done was in the memo was the way that the sentence was written made it a little bit unclear as to which– Because there had been additional sites originally, and then I took those out, I should've taken out the section of the sentence that referred to on-call monitoring because it doesn't apply for this application.

Mr. Hopper: So to be clear for the Commission, the State has represented that for all of these SMA exemptions, it will employ a full-time onsite manager while excavation's being done.

Ms. McPherson: For each machine that's operating, which obviously, there's only going to be one at a time, but, yes, that's what the State has represented.

Chair Pescaia: Now, is it the Planning Department's stance that it is a recommended action or is it a required action?

Ms. McPherson: It's required because they approve the monitoring plan. And the archaeologist, once the projects are done including, I believe, pulling out the poles and putting the dirt back in, they have to submit a report, a final report to SHPD. And then SHPD reviews that as well. They have to do what they said they were going to do in the monitoring plan. That has been approved by SHPD. The only way that SHPD can say that there is no effect, or that they – actually, what they don't – they don't say there's no effect. What they say is that the effects will be mitigated by the implementation of the archaeological monitoring plan. So that's the mitigation. There are a number of different mitigations. One of them is an archaeological survey and report. In this case, they're recommending archaeological monitoring because I think – because the footprint is fairly small for the structure. So they're saying that archaeological monitoring – that an approved archaeological monitoring plan is sufficient. And you folks were given the excerpt from the monitoring plan for the whole County that pertains to Molokai, the sites that pertain to Molokai. And that's your last exhibit or the second to the last exhibit.

Mr. Sprinzel: But it still does say "recommendations." It doesn't say they're gonna do it.

Chair Pescaia: I know we getting technical, but that's true. This is – the monitoring report, the monitoring plan is a recommendation. And then in our – well, in the application, it says “a recommendation,” where we've in the past required people to do certain things. So we're just trying to be careful. The other – and then it brings up the other things. How are they gonna get the existing, gigantic block of cement out of the ground? They're gonna be digging more. You know, that needs to be out – now, it brings to light that we're gonna be using machines probably to get – either break that apart or dig it out. And there's a further disturbance, the potential for further disturbance in the removal part. And that's not clearly outlined in here either. Commissioners, what do you think?

Ms. Buchanan: On Exhibit 22, Exhibit 22, let me get back to 22. Exhibit 22 is a letter from State Historic Preservation dated February 13. And under subject it lists all the sites where the poles are gonna be erected. And all except for Puu Hauole Park is – has an “on-call” way at the bottom, the second to the last sentence. So I think with – in conjunction with Exhibit 22 validates what Planner McPherson is stating for the record that her understanding will be that all onsite full-time monitoring will commence on all sites that are deemed onsite. And right now, they're all onsite except for Puu Hauole which clearly says in parentheses “on-call,” which if I use the reference under cultural and historical resources would say “intermittent.” So it kinda makes sense that it should be in conjunction with Exhibit 22.

Ms. McPherson: I think that's where I got that.

Ms. Buchanan: So I think that that would suffice. I think we can hold their feet to the ground that saying that they will need– Yeah, “recommended” is not a great word to have in your application. I would've liked to see the word “will” instead of “recommended,” but the intent was there. I'm sure that they going have full-time monitoring and it's already in the budget.

Ms. McPherson: It also cites HAR 13-279 on page 2 of the letter from SHPD which states that, “Your agency and the archaeological consultant performing the work are subject to the rules and regulations for that, or involving monitoring studies and reports.” So it sounds like there are rules in the Hawaii Administrative Rules regarding this as well. I don't have that citation in front of me. I don't know, Mike, if you wanna try to pull that up or if you can. We're working on our Internet access at Mitchell Pauole. But, you know, my understanding is that the State is held to this monitoring plan and they can't just decide they're – now they're not gonna do it after it's been approved, and after they've gotten a letter from SHPD. I mean, I know things haven't always been done properly in the past on Molokai, but I can definitely pass your concerns on to the applicant after this meeting, whichever way it goes.

Mr. Sprinzel: I think we should substitute the word “recommended” to “will.”

Ms. Buchanan: Commissioner Sprinzel, we cannot do that.

Mr. Sprinzel: Then maybe they can come back with it written properly.

Ms. Buchanan: That's a suggestion.

Ms. McPherson: The thing about what SHPD does, and I've had conversations with several SHPD archaeologists about this is that their enabling legislation – they have Federal law that backs them up. NAGPRA, Native American Graves Protection and Repatriation Act, is one of those laws. There's also case law in the State of Hawaii. But what they don't have is they don't have teeth in the sense that they can – for all kinds of things basically say you shall do this, and if you don't, there will be these huge fines. We're not there yet. I wish we were, as a planner. I wish we were there. They do, however, have the ability to fine heavily for any impacts to historic sites listed on the National Register or the State Register of Historic Places. And then we – unfortunately, we get into this territory of inadvertent discovery. The Burial Council doesn't get involved in that, unfortunately. SHPD deals with that directly. And it's been difficult. It's a difficult situation for both the people who want to do projects and for the descendants of the kupuna whose iwi still lay in the ground here. So we're trying to find our way. And I know that SHPD would like to have more teeth and be able to say "shall," instead of "recommend," but at this state in the evolution of the law, they can only technically say "recommend." But Mike knows better about the stuff than I do. Our Corp. Counsel can fill us in on that if you need to know more about that. Several of you are very familiar with it already.

Ms. Buchanan: Nancy, I have a question. How many sirens in total going be on Molokai?

Ms. McPherson: Ten.

Ms. Buchanan: Ten. Okay, not too bad. I was just thinking 12x12-foot concrete times what and where. Just to get back to the variance thing because I know when we put in the poles in Kaunakakai, they call came in for one variance. So I just wanted to follow up because if there is some exemption that I'm unaware of, then I'd like to be educated.

Ms. McPherson: I would also like to know that. I apologize for not checking on it prior to this application coming before you. It does go through ZAED to check the zoning, but they don't check all the other stuff at SMA assessment level, evidently.

Ms. Buchanan: Well, I totally support any safety for this community. So I totally support the project. Just because they represent a County and State agency, more so they should dot their i's and cross their t's. Okay, thank you.

Chair Pescaia: Public testimony. At this time I'd like to open up public testimony. Anyone who wishing to offer some thoughts or comments on this particular item, please come up to the mike and state your name for the record, please. Alright, seeing none, I'm gonna close the public testimony portion. Okay. I guess I didn't realize at first that it was an exemption. So that kind of – we cannot put on any conditions. We don't have the actual applicant here to make the – not the compromises, but give their reassurances that this is exactly what they mean on all these little details. For me, it's incomplete. How does everyone else feel?

Ms. Buchanan: I think because of the exemption, the blanket exemption from Chapter 343, even though they're exempted from Chapter 343, I think this Body provides that assurance that the Chapter 343 was supposed to provide, and by default, is not providing. So I'm comfortable what I've heard on testimony today for the record that we can hold their feet to the fire, but that's just my thought.

Ms. Kelly: I just have a question. There's three sites: Kaunakakai, Kamiloloa, and One Alii, but in our packets, we have sites for Papohaku too. Is that included? Is that in an SMA area? I mean, it's not in the application.

Ms. McPherson: I asked for direction from my Department, and I was told that because the siren is actually mauka of the SMA line that we weren't going to include it in this review. And because of the—in my professional opinion—relatively minor nature of the installation, and because the location is not near the dune system, I said okay, but don't be surprised if the Commission asks about it.

Ms. Kelly: Well, it's only because, you know, SHPO made comments on it. It's supposed to have onsite monitoring. So will they still do that?

Ms. McPherson: Yes, yes. They're doing that for everything whether or not it's in the SMA, whether or not it gets exempted. There are other processes that they have to follow. Evidently, they have to go still get some kind of building permit. So that's good. It's gonna get reviewed again, and Zoning's gonna weigh in on it, and then we'll get to find out about the 50-foot height limit deal. But I can ask Zoning, I mean, depending on what you decide today, of course. I can ask Zoning as soon as we're done with this meeting, or tomorrow morning, and then I can get you that information before your next meeting.

Chair Pescaia: I'll entertain a motion.

Ms. Buchanan: Okay. Chair, I'd like to move that we concur with the recommendation from the Planning Director find exemption for the State of Hawaii, Department of Accounting and General Services, with the recommendations – I mean, with the discussion that we had during this review.

Chair Pescaia: Motion by Commissioner Buchanan. Is there a second? Commissioner Kelly. Discussion?

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

It was moved by Ms. Buchanan, seconded by Ms. Kelly, then

VOTED: ***To concur with the recommendation from the Planning Director to find exemption for the State of Hawaii, Department of Accounting and General Services with the discussion during this review.***

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

(Dissenting: M. Pescaia.)

(Excused: R. Davis, Z. Dudoit.)

(Absent: D. Williams.)

Chair Pescaia: Motion fails. I'll entertain another motion.

Ms. Buchanan: Chair, for discussion, I'd like to move that we consider this at the next Planning Commission. So we're deferring, and pending your disapproval, we can talk about that after this motion.

Chair Pescaia: Okay, motion by Commissioner Buchanan. Second? Commissioner Kelly. Okay, discussion. For me, I really would like to see in here information/description of the removal. I think that's really important. If not, they're gonna have to come back because that whole action, that's major, to remove a 12x12 foot block out of the ground, and whatever other wires coming across the poles, or whatever they're gonna do to deactivate the current system. I think it's just as important, safety-wise, as installing the new poles because the new ones are independent and, you know, I can see it's an isolated project. It seems a lot more simpler, but because the other ones are connected, I just wanna make sure that those actions are outlined, and we have time to consider them and make sure that those actions are aligned with the things we need to make sure they're aligned with.

Mr. Sprinzel: I voted for it because I didn't wanna be the person who if – no, if there was a tsunami or something, and three people were killed because we hadn't given approval, I– But not nitpicking, we still don't know whether they're omni or directional. We still have two opinions. We still really don't know whether they will be onsite. We don't know anything about the 50-foot exemption, and we know nothing about removal or deactivation. If this were a normal person coming to us with a building, boy, would we throw it out fast. Thank you.

Chair Pescaia: And along those lines, because it's an exemption and we have no power to put any other conditions, I just want to make sure that as a complete package that this is exactly what the State is agreeing to, and that we're really clear. That's just me.

Ms. McPherson: I realize you're under discussion, but can I ask if you would like to formally request that a representative from the State attend the next meeting, if that passes?

Ms. Buchanan: I just was going say, once this got kicked back, they might find the plane fare for somebody to come over and represent them next time that can say yes or no.

Ms. McPherson: Not that Mr. Arce hasn't done a great job.

Mr. Sprinzel: Especially for a quarter of a million-dollar project, yeah.

Chair Pescaia: Any further discussion?

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

It was moved by Ms. Buchanan, seconded by Ms. Kelly, then

VOTED: To defer and consider this at the next Planning Commission meeting.

Chair Pescaia: Unanimous. Motion carried. Okay, so, Staff Planner?

Ms. McPherson: So I have my list of information that you folks need, and I will make sure that we get those responses to you very quickly.

Chair Pescaia: If they can confidently answer all of our – or address all of these concerns because it's pretty clear, yes or no, here's the plan.

Ms. McPherson: Right. I can probably do it via e-mail. That would be faster.

Chair Pescaia: Yeah, because I don't want to make people come out here and spend money if we can get it done in other ways. Okay. Thank you.

On to our next order of business, Item B, under Section C-1, we have the Ke Nani Kai AOA submitting an SMA assessment—I believe this is also an exemption—for the after-the-fact reroof of the office building and patio roof, and the installation of solar photovoltaic panels, and proposed relocation of glare-producing panels, and trenching for electrical—I don't know, electrical whatever, it's kind of open-ended—at 50 Kepuhi Place, Kaluakoi. Planner McPherson?

- b. KE NANI KAI AOA submitting a Special Management Area Assessment for the after-the-fact reroof of the office building (2520 sq. ft. in area) and patio roof (624 sq. ft. in area) and installation of solar photovoltaic panels and proposed relocation of glare-producing panels and trenching for electrical at TMK: 5-1-003: 013, located at 50 Kepuhi Place, Kaluakoi, Island of Molokai. (SMX 2010/0445) (Valuation: \$120,486) (N. McPherson)**

Ms. McPherson: I'm gonna go two for two? We have – you have before you a request to concur with a recommendation for exemption. This project – the reroof and the photovoltaic panel installation was done without SMA assessment. So that is after-the-fact. They did receive a fine for that, or fee, after-the-fact fee, and they did pay that fee, the Ke Kani Kai Apartment Owners Association. And since the installation of the PV system, which was installed to provide, I believe, net metering and a – so they have a smart meter. And the idea is that it's going to save them, I believe, at least \$600 a year on their utility bill for the condominium association's office and operating energy usage.

Once that was installed, however, it seemed that there were some impacts that were noticed by adjacent condo residents, people who are there year round. And there were complaints made about that. And so the vendor, Sunetric, has been working with the AOA, and listening to the concerns, and they have proposed that those offending panels be relocated, so the panels on the north side of the office rood, that they be relocated to the building north – to the roof of the building north of the office.

And they will have to run some conduit. They will have to trench the conduit going from the office to the – because the meter is still gonna be on the office, so they have to run some electrical cabling. And then it's gonna go up the side of the building, and connect to the PV panels on the roof. That is not after-the-fact. That has yet to happen. And that is to mitigate the impacts that have been experienced from that north-facing set of panels, which is at least 30 panels. We do – we have representatives of the AOA here today, and I believe the vendor also, Sunetric. Okay. And they can answer any of your questions about the project as well.

Mr. Sprinzel: Could somebody from the organization explain why this wasn't presented before they did it because it's a pretty big project?

Ms. McPherson: The Commission asked if a representative of the AOA can–

Mr. Sprinzel: Or the electric company.

Ms. McPherson: Or the vendor, right, can come up and respond to questions. Take your pick. The question is, why wasn't an SMA assessment application submitted before the project was constructed?

Chair Pescaia: Can you come up to the mike and state your name for the record, please?

Ms. McPherson: Yeah, state your name, please.

Mr. Kevin Comcowich: So it's Kevin Comcowich. I'm from Sunetric Capital. So we're actually not the vendor. We're the investor. So we had a contract with the vendor, Sunetric, to provide us with a project, which is completed, which would obviously include having the permit closed out. Why did they not do it ahead of time, I have no idea. You know, the fact is once we found out, and more importantly, once we recognized the glare issue, which was substantial, we had two choices. We could let Sunetric try to do it, which I think we probably all could imagine when you fully pay the contractor, and you want to kind of have him come and spend \$15,000 to move things, it's not gonna happen very fast. Or we could sort of take the ball and roll with it. So that's what we're trying to do is mitigate the glare issue. And the proposed solution is to put – move it from an area that absolutely is impacting Darryl and his group, and put it on a rooftop which is above Darryl's house, and that should clear up any of the glare issue.

Mr. Sprinzel: Thank you.

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

Chair Pescaia: He did, but he can do it again.

Mr. Comcowich: Yeah, it's Kevin Comcowich.

Ms. Buchanan: Chair, I have questions for staff. Nancy, just to clarify, there's three or four different actions under the purpose of the application. And one was the review for the after-the-fact replacement of the shake roof with asphalt shingles. So that's one. The second was the after-the-fact installation of the photovoltaic system. And the third to me would be the relocation, which actually is a new application, or a new request for an exemption, because it's a new action on a new piece of structure. It's a relocation. It's a new location of a – I mean, solar photovoltaic. And then the next action would be the trenching for the conduit. Is that correct?

Ms. McPherson: They came in for an amended scope of work. So – and we have done this in the past where we combined an after-the-fact with a new portion of the work. But the new work that isn't after-the-fact is the relocating of the panels as well as the trenching for the conduit.

Ms. Buchanan: I read the report and it doesn't state how much trenching there will be, you know, our little stickler about that whole two feet, three feet. So are you aware of how deep the trenching is gonna be?

Ms. McPherson: Yes, I think they gave me that number, and I may have omitted that from the staff report, and I apologize for that. But can someone speak to the issue of the trenching? Okay, wait, please use the mike.

Mr. Comcowich: I think code is you gotta be three feet deep. And I think it's 50 yards maybe, something like that.

Ms. Buchanan: Okay, wait. You might as well give Kevin the mike. You can sit down, Kevin. Thank you. So you know, I can see how you were unaware of the possible need for a permit; however, the Board at Ke Nani Kai, this is not their first dance. And so they're aware that in the past, every action that they take down there is needing a permit. It was clear when we did the ADA improvements, and we made other improvements that – so they're aware that that action needed to be taken. And I understand they have an after-the-fact fine for that. Usually on the record I ask for disclosure of what the fines were and how they were calculated. And I might still do that—the after-the-fact fee, excuse me. It's not a fine. It's a fee. . . . (inaudible) . . . fees before. So I may wanna know that except this Commission has really been pretty consistent when the action is along the shoreline to have the applicant agree to an archaeological monitor onsite when there's trenching in excess of two feet. Do you think that that would be acceptable to this Board? They do have it? Is willing to retain? Okay. It's willing. I just saying if he going—

Mr. Comcowich: Yeah, we will.

Ms. Buchanan: Okay, that said, Nancy, are you aware of the after-the-fact fees, or do we need them to tell us what the after-the-fact fees were for the actions?

Mr. Comcowich: I think we paid it to expedite things. So my understanding it was between six and seven thousand dollars, if I recall correctly.

Ms. Buchanan: Yee-ha. Okay.

Mr. Comcowich: I was incorrect, it was \$1440 and \$5719. So slightly over seven.

Ms. Buchanan: So what was the total more or less?

Mr. Comcowich: About \$7400, roughly.

Ms. Buchanan: Okay.

Mr. Comcowich: Good incentive not to screw up in the future.

Ms. Buchanan: Yeah. Okay. I was just wondering if the after-the-fact fees were significant or insignificant. Thank you for that disclosure.

Okay, so my only trouble with this, Nancy, now, is the four things being all lumped in together, and you're asking for an exemption. So I think that's my only discussion concern at this point. You can hear from the rest of the Commissioners.

Ms. McPherson: If I can respond to that? If you feel that a portion of this scope is not eligible for exemption, you can recommend an SMA minor permit be done for that portion. Also, if you can find grounds to say that the after-the-fact may have an impact, you could include that also under the SMA minor permit.

Ms. Kelly: I just had a question. Because of the glare, was there other options?

Mr. Comcowich: I mean the glare was pretty shockingly bad. I mean, there really was not another option rather than relocating it. And it was clearly something that should've been caught. There's no doubt. In fact, I think there was concern by the installer that there would be a glare issue. And then they went ahead and installed anyhow. So to be fair, it should've been something that was caught in the design process. And I don't know if Darryl has pictures of it, but it was pretty bad.

Ms. Kelly: I'm just kind of curious because I have solar panels on my house, and it's not shiny, you know, glare. So couldn't there have been like a film that could go over so it's not so shiny?

Mr. Comcowich: No, not that we were aware of. I mean, ultimately moving, this is a pretty expensive event, so we've kind of went through what the options were, and couldn't find a reasonable one other than moving it.

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

Ms. Buchanan: No, but I was just thinking about in order to have some kind of maybe administrative continuity for the Board, I don't know how they could do this, maybe by reviewing or amending their CC&Rs, or something to reflect that they are located in a special management area. And any activities within the complex does need an assessment and a review. And whether Darryl's there or any long time residents are not there, at least they'd have something in writing that gives direction to any admin person at the time where any new projects come on whether it's building a new swimming pool, or tennis court, or ADA, or whatever, because that after-the-fact fee is horrendous. It bites.

So I don't know how you want to proceed, Chair, with the motion to approve separately or all as one as it's currently being recommended.

Chair Pescaia: I'm gonna open public testimony while we carefully consider this. So anyone out there wanting to offer some thoughts or comments, please state your name as they come up to the mike.

Mr. Robert Marusich: Madam Commissioner and the rest of us, all the chairs, my name is Robert Marusich. I am a resident of Paniolo Hale, part-time, when I'm not fishing. And was elected to the West Molokai Association Board of Directors in 2009. I served as Chairman of the West Molokai Design Commission in 2010 when this particular project was brought before us. On December 22nd or thereabouts of 2010, West Molokai Association rejected the photovoltaic array installation, but did approve the sample that was submitted for the re-shingling of the roof. Our concerns had been primarily glare which was obvious to us from the beginning. And there are also provisions in our own CC&Rs that preclude the conduct of a commercial operation in a multi family residential lot as that lot is characterized in our CC&Rs.

We have been against this project ever since the beginning because the applicant did not provide any sort of glare analysis or view analysis that would indicate the aesthetics of the project or what it would look like upon completion. And the contract that was provided to us made it evidently clear that this was a joint venture between the Ke Nani Kai AOA and at that point, Sunetric. In essence, Ke Nani Kai AOA leased the roof of the building to Sunetric, and Sunetric in turn agreed to install, operate, and maintain the photovoltaic array for the 20-year term of the agreement.

I resigned from the Board and the Design Committee last month for reasons that have nothing to do with this project. But I can tell you that as of June 22nd, we had not received any further information from the applicant as to their plans, or their procedures, or much of anything. And so although I cannot speak for the Board as a whole, as an individual, I would recommend – I would certainly recommend that you reject the SMA exemption until such as they get their act together, and get it approved by the overriding association, the West Molokai Association. Any questions?

Ms. Buchanan: Chair, I have questions. I think it's my failure to understand the dynamics of the West Molokai Association Board, whatever, with the Ke Nani Kai AOA. I am not aware of the relationship or your hierarchy of saying that you're an overriding Board. So I not understanding the dynamics.

Mr. Marusich: The West Molokai Design Committee, which is a group established by the Kaluakoi DCRs has the sole authority to review and approve any improvements within the West Molokai Association, which is the three condo associations: Kaluakoi – I'm sorry, and

the Papohaku Ranch Lands. In total, we, WMA, represents approximately, 800-some members. Many of those who are individual residents or individual owners of the condominiums. By ownership, each condominium owner becomes a member of the West Molokai Association. It's in their deed restrictions.

Mr. Nat Bacon: So all this work, I take it, was done without any contract, was not contracted.

Mr. Marusich: Without any approvals from us. We do not—

Mr. Bacon: But there was no signed contract to have them do this work then?

Mr. Marusich: We do not represent the individual association, the condominium associations, but only the umbrella association.

Mr. Bacon: Okay, so I just— you know, our job here is to uphold the SMA rules. It's not to back up any of your covenants or anything like that. So even asking us to do that is out of line. We're not here to enforce any of your covenants. So that's not an issue here—what we're talking about.

Mr. Marusich: Okay.

Mr. Bacon: Okay.

Chair Pescaia: Okay, Commissioner Bacon. Nancy, the applicant is Ke Nani Kai AOA, correct?

Ms. McPherson: Are there any more questions for the testifier?

Chair Pescaia: Let me just clear this up so we—

Mr. Sprinzel: Just one question. When you guys turned it down, did you tell them they had to get an SMA exemption?

Mr. Marusich: Not at that point.

Mr. Sprinzel: Did you know they had to?

Mr. Marusich: Oh, yes. Oh, yes, we knew that they had to do that, and that they had to get a building permit, but that was really beyond the purview of our review. We were concerned primarily with the proposal as it pertained our DCRs. We've identified those things, but we have no mechanism to enforce the Building Department's rules as much as

you have no methods to enforce our DC&Rs, the adherence to our DC&Rs. So it's kind of a mutually exclusive set of rules.

Mr. Sprinzel: Except ours count.

Mr. Hopper: Okay, just for clarification, for further questioning for testifiers, the Planning Department, the issue is whether or not this qualifies for an SMA exemption based on your SMA rules. As far as authority, the Planning Department needs to make sure that whoever applied for the SMA permit is allowed to apply for the SMA exemption. Typically, you do not need the consent of all owners. If there are association issues, that doesn't mean that someone would not be subject to enforcement from an association if they violate some CC&Rs or something like that. The Department and the Commission doesn't have the ability or the authority to review and approve things as they pertain to CC&Rs. But if there's concerns as far as with the environmental impact is of the project, whether it qualifies for an exemption, that's, I think, well within the purview of the Commission—what kind of adverse impacts this may have on the environment with the SMA rules. So just for further questioning, just to clarify it, as we move forward just for everybody's benefit, I think.

Chair Pescaia: Thank you, Corp. Counsel. That's what we was trying to get to. The applicant is Ke Nani Kai. The landowner or – do they have the authority to submit this application? Yes. If there's conflicts with their other, other entities, then that's a civil or a separate issue than – but it is enlightening for us to see where other people stand, and as it has an impact on the neighbors. And that – not character assessment, but if they have these issues or concerns were raised before them, and they disregarded those concerns of glare, now we're in a not only in an after-the-fact action application, but now we have to have a secondary action because the first one wasn't carefully considered. That's a big thing for me—if people did raise those concerns, they were ignored, because that would've come up in the first process. Had we – had the applicant come before us the first time around, we wouldn't be having four actions. We hopefully would've had just one. So, sorry. Back to you. Does anybody have any more questions for this testifier? Seeing none, thank you, sir. Is there anyone else out there who would like to offer testimony?

Ms. McPherson: And I also have some written testimony that was brought for you. I think you received some of it via e-mail, but this is a hard copy provided by the testifier.

Chair Pescaia: Thank you.

Mr. Darryl Canady: Thank you very much. Chair and Commissioners, my name is Darryl Canady. My wife, Jodie, and I have lived here on Molokai and at Ke Nani Kai for 30 years. Some of you may or may not know us. History on myself: I am past President of the Ke Nani Kai Board of Directors. I am past President of the West Molokai Association. I'm a

Member of the Maui County Urban Design Review Board currently, although I'm here speaking on behalf of myself only. I'm also a member of the Ke Nani Kai Building Committee, which I think has some influence here on why we are here now and where we shouldn't have been back in October – pardon me, November of 19 – 2010.

A little history, pretty quick. This project was brought – the solar panels was brought to the attention of the ownership of Ke Nani Kai at the annual meeting in March of 2009 – pardon me, 2011. The contract with Sunetrics was signed two to five days after that meeting with the association owners. And they started the project without any further ado in October of that year. And at that time, none of us owners or anything else knew that they had not gotten permits. The only thing that we knew was that the project was going along very well. What in fact happened was that the Sunetrics and the Ke Nani Kai Board found out that what they had presented to the owners at the annual meeting of Ke Nani Kai they couldn't fulfill without getting additional approvals from owners of Ke Nani Kai, i.e., the extension of the patio over the pool decking area. Had to double it. In their presentation, that is what it was. None of us knew at Ke Nani Kai that they had changed that from what they had proposed and presented to us until after the thing was built, basically, and we saw the panels added to the east side and the front of the office building.

They were required, I understand now, to reroof because the solar panels could not be installed on the tile roof that covers all of the buildings at Ke Nani Kai. And by the way, if it is relocated where it is proposed now, they will to re-tile, redo that roof because if they – testimony will be shown that if they put the solar panels on the roof, it'll tear the roof apart and it'll probably leak.

There's also a State law, 514B, Section 140, that pertains to what owners have a right to do if condominiums are going to change and put things up like solar panels, T.V. antennas, and this type of thing. And I think if you check it out, it shows that an owner has the right to object in the beginning to have that process.

I sent a letter dated in which the County has through the Board of Directors objecting to the installation of the panels back in October of – pardon me, of March of last year. No approval has come to the owners or to anybody else. There has– Let me – pardon me, let me put my glasses on so I can read my large print, please. Obviously, as been stated, there has been no WMA approval.

I don't think I have anything else to say other than it seems to me as an owner that the Board of Directors apparently had a haste to get this job done and get it done before the end of the year. And they were hellbent for election to get it done or else somebody might lose some money somewhere. Apparently, there was some monies provided by the Federal government to get this thing done by a certain time. But as an owner, what this means to us in our annual – in our monthly dues is with this project what we will make, if

and when it is up and up and running right, it will save us \$2.83 per unit owner, period. It was not offered to us in any way the owners that live there full-time could get any use of the solar voltaic panels for our own electric bills. Never came up and has never been discussed. Kevin and I discussed it briefly once. But at this point, let's say we have a two hundred dollar monthly electric bill in a one-bedroom condo, we have no way to get any help from these solar voltaic panels. Thank you. Pardon me, any questions?

Ms. Buchanan: Darryl, I just had a question. You were referring to some type of 514-B, Section 140. What was that? What were you referencing that from?

Mr. Canady: That's the 514B. That's the condominium bylaws that govern the condominiums.

Ms. Buchanan: At Ke Nani Kai?

Mr. Canady: At all condominiums statewide. It's a State statute. That was amended about a year ago by Linda Lingle to include solar voltaic panels. Thank you.

Chair Pescaia: Okay, thank you. Any other testifiers?

Mr. Bob Aldrich: E kala mai. I'm gonna sit 'cause my back is very bad. Real quickly, 514B, 140, and it's Subsections—

Mr. Sprinzel: Your name, please.

Mr. Aldrich: My name is Bob Aldrich. And I'm a full-time resident and owner at Ke Nani Kai for about five years. I'll get into my background in just a second, but just to get right back to Commissioner Lori Buchanan, 514B, basically, Subsection E, "Directly affects the installation of solar energy devices in a manner which would specially, personally, and adversely affect an individual unit in a manner not common to unit owners as a whole." This particular section is designed for specifically condominiums, not State of Hawaii, per se, 'cause we all know that the State wants a 30 percent reduction in fuel energy, and certainly, this was one of the exemptions in most of the statutes that have been passed.

My background: I'm an assistant rep. with the Kaluakoi . . . (inaudible) . . . I'm Chair of the Ke Nani Kai Fire Safety and Security Committee. I'm a past member of the California North Coast Regional Environmental Crime Task Force, and I did joint investigations with USEPA, FBI, FEMA, and others. I want to start out by saying I believe in maximum feasible participation in planning in order to approach what is the greatest good for the greatest number. And there may be some philosophical problems with that, but I think by in large, that's where I'm coming from.

Aloha kakou, Madam Chair, Commissioners, Counsel. I want to thank you for the service that you give to the Molokai ohana, and thank you for hearing my testimony today. Let me preface what I'm going to talk about by saying this is not in my opinion an indictment against Ke Nani Kai, which is correctly called the Ke Nani Kai AOA, Association of Apartment Owners. That's the name of the corporation. This is not indictment against Mike Jennings, who's the best resident manager we've ever had. And it's not an indictment against Sunetric, who installed a hundred thousand dollar plus solar energy system for Ke Nani Kai at no cost to us. Rather, this is an illustration of how things can go sideways with inadequate planning. Some may view this Commission as alii or enforcing kapu. I tend to see your role in this situation as a coach who called a timeout at the right time. Now is the moment. Now is the time. This project needs to go back to the drawing board, and when it does, planning needs to include Maui County, full-time owners at Ke Nani Kai, and Sunetric reps.

This part of my presentation may be sweet, but like some sausages, there's also a sour part. Mr. Chair, with your permission, instead of taking 30 minutes – or Madam Chair, excuse me, instead of taking 30 minutes to go over my testimony, I would just like to highlight the important parts in about three minutes. I'm asking the Commission to delay any decisions until they've had an opportunity to read my full testimony.

This project got off to a bad start, as you can tell, because key owners and the County were not involved. The President of the Ke Nani Kai Board allegedly signed a contract with Sunetric on March 30th 2010. The signature date's important, and I'm asking the Commission to delay permit decisions until I can see the contract as required by HRS 514B-154. Counsel has appropriately stated that it's not your business to enforce our bylaws, and house rules, and everything, but I think these kinds of State laws have a broader application not only to Ke Nani Kai, but to the rest of the community as well.

The original design did not include a possible installation of the PV cells on the ground where there was adequate space, a better use of the property, and may not have conflicted with later owner concerns. Additionally, owners did not get the rest of the story. The officers of the Board were planning one thing and doing another in terms of a proposed roof extension that did not receive review or approval from our owners or this Commission.

Now, some of the dates that I have I can't validate 100 percent. They were derived predominantly from the Ke Nani Kai Newsletter. On September 2010, Sunetric applied for an electrical permit that was subsequently approved. Ironically, work had already started on the office roof. Tile roofs were being replaced with a composition roof in order to accommodate the solar panels. And, Kevin, if I say anything that's not correct, you have my permission to raise your hand and say, "Hey, Bob, that's not true," because I'm not an expert like you are. A stop work warning was posted on the Ke Nani Kai Office on October 3rd 2010 by Inspector Anthony Fukuoka, but construction continued, and the posting

disappeared several days later. November 10th 2010, Ke Nani Kai applied for an after-the-fact permit. During September 2010, the solar installation of the roof began without an SMA permit. Ke Nani Kai reasonably knew they needed to comply with County permit requirements per HRS 514A-1.6. Is that the right section, Counsel? The Association had already applied for the after-the-fact permit. Additionally, Ke Nani Kai employs an association attorney. And at least one owner, Darryl Canady, has been repeatedly advising of the requirements months previously. Nevertheless, KNK and the solar contractor continued installing the solar panels without a permit and completed the solar installation of January 12th 2011.

Sunetric allegedly paid a \$1440 fine for no building permit and another \$5719 fee was assessed for a possible violation of the SMA permitting process. And I hope I'm using the correct terminology here. It is believed that Ke Nani Kai was responsible for the permits and fines per HRS 514A-1.6. It appeared that Ke Nani Kai planned and intended to violate permit statutes. I'm requesting that the SMA exemption or after-the-fact work be delayed pending review of the lease contract agreement with Sunetric, and it be delayed due to possible violations of State and County laws including, but not limited to Maui County Code Building Code, 16.26 et sequel.

Another reason to delay approvals involves possible hazardous waste issues. It is alleged without seeing the lease contract that Ke Nani Kai would own the PV panels after 20 years, which sounded like a good idea when presented to owners late in the process. And I'm gonna call it "PV" instead of photovoltaic because it's kind of a tongue-twister. PV technology is evolving rapidly and to address today's global climate and energy challenges. The panels that were installed at Ke Nani Kai, I believe, are Trina, but I'm not sure of the model, so I haven't been able to get an MSDS, Material Safety Data Sheet, to see what's really in there, but the manufacturer, I believe, is predominantly in China. The substances that are probably on the safer side, they only cause cancer, would be multi crystalline, ingots, wafers, and cells. And of course, when they're installed— I know Sunetric takes cares of their employees to make sure they're not exposed. There's also a poly silicone, also called a mono crystalline, which can also cause cancer. It's not really classified as a toxic waste, but in California, it's listed as a Prop. 65 substance, which is cancer-causing.

Now, the reason I talked about how the industry is progressing is because – I'm not sure my research is up to date on this, but this is what it says, "PV panels reach the end of life utility at about 20 years." We have a contract where we are gonna own the panels in 20 years. Research also shows that PV panels contain many hazardous materials, like I mentioned. Lead is one hazmat and is the greatest end of life risk to public health. It is highly toxic to the central nervous system, endocrine system, cardiovascular system, and kidneys. Because lead accumulates in landfills, discarded solar PV panels have the potential to pollute drinking water. Polybrominated biphenyls, PBPs, are carcinogenic. Hexavalent chromium is carcinogenic. And although I was wearing protective equipment

during an investigation in earlier years, I was exposed to some of the stuff. I got cancer. I also believe, and my doctors believe, it caused me to be sensitive to some kinds of pesticide sprays. Cadmium—and I'm gonna cut this short, because there's a lot of them, potential health facts— impacts include kidney, liver, bone, blood damage from ingestion, and lung cancer from inhalation. It is also extremely toxic and carcinogenic. And selenium – I'm not gonna go any further.

The big issue that must be looked at in the contract that I have not been allowed to read that they will not give it to me at this point without jumping through a bunch of hoops, which is ridiculous, is the issue of hazardous waste disposal and who is going to take care of it. Solar PV manufacturers or the installed contractor should have a program to take back decommissioned solar panels, and recycle the panels responsibly. If there's nothing wrong with these panels, forgive me, Kevin, and Sunetric. But this is all I know at this point. I think it's going to take some more research.

As an owner, I don't want to be stuck with this stuff. And when the PV panel has reached its end of life use, I don't want to have to pay to recycle it or try to find much less pay for an approved hazardous waste disposal site. Should Maui County be reviewing the contract for PV installations? Maybe you do with me. I don't know. I sure don't want to see Erin Brokovich doing an investigation on Molokai.

Should the sale of PV solar panels containing hazardous materials be restricted? And I'm gonna do an about face and I'm gonna say, I don't think so. They're safe when installed and when they're being used. You agree with that, Kevin? That's probably improper for me to do.

Chair Pescaia: Yeah, can you wrap it up, please?

Mr. Aldrich: Say that again?

Chair Pescaia: Can you wrap it up, please?

Mr. Aldrich: Yes 'm. In fact, I'd rather see PV panels on Molokai than big wind. I hope there are companies around like Sunetric that can install it. It just needs to be a framework for handling disposal or recycling. And I wanna know if it's in the contract with Sunetric.

Let me go with more sentences, Madam Chair? This is more than a feud between a couple of ours and Ke Nani Kai. This is an opportunity for this Commission to be the alii, the coach, even the ice and Advil for Ke Nani Kai's black eye. This is an opportunity for Sunetric and Ke Nani Kai owners like me and Darryl Canady to redesign the proposed mitigation, resubmit it to the Commission, and fix what is broke. This 30kw solar project is one of the first on Molokai, and needs to be a model for the rest of the island to follow,

but there's a need for adequate planning, a delay in granting after-the-fact permits, and review of the lease contract with Sunetric. If anything, perhaps this Commission can grant an SMA minor permit with a stipulation with a sizable bond requiring a redesigned plan that is affordable, safe, and approvable. Thank you. Any questions?

Ms. Buchanan: Bob, I have a question. When you started your testimony about hazardous waste, I was just waiting for you to get to the bottom ground because am I safe to assume that you're alluding to a possible adverse impact to your health because of the installation of these panels?

Mr. Aldrich: I'm sorry. I missed the first part of your question again.

Ms. Buchanan: When you started your testimony about hazardous waste as a concern, was the point that you were trying to make that you thought the installation of these panels would have an adverse impact or effect on your personal health?

Mr. Aldrich: I do not believe so. And I think while they're being used for 20 years, I don't think they're a problem. To me, the issue from what I've read is what happens when they're not recycled, or how do we – you know, what do we do with them at the end of 20 years if they're not usable anymore? Thank you.

Chair Pescaia: Okay. Thank you. Any other testifiers? Seeing none, public testimony on this issue is now closed. Commissioners?

Ms. Buchanan: Chair, I would have had a question for, I guess, the association manager or president. I understand he's here today. If he wouldn't mind coming up, I had a question for you, if you don't mind. Just state your name for record. State your name for the record on the mike, maybe.

Mr. Mike Jennings: Yes. My name is Mike Jennings. I'm the manager at Ke Nani Kai and have been since November the 1st of 2010. Preceding that, I was – started out here as the golf pro at Kaluakoi for the Ranch. And then went from there after they closed the golf course, I went to Kaluakoi Villas. And was there for two years, and then stated at Ke Nani Kai exactly November the 1st of 2010. Okay.

Ms. Buchanan: And you noticed for the record, he said you were the best.

Mr. Jennings: Yeah, yeah. And I paid him the two dollars.

Ms. Buchanan: Well, I guess I was gonna scribble down my own timeline from all the testimonies given today on the timelines of different actions. So my question is, I'm not an expert in photovoltaic, but I do know that in order to put PV on top your roof, or to have it

installed on Molokai, you pretty much have to wait in line for that agreement of – I don't know what type of agreement you guys have with Maui Electric concerning those PVs.

Mr. Jennings: What happened was, and this all happened before my time, so maybe Kevin can help me, but Tri-Isle Construction, they came and did our roof. And that was before I came on. And then the gentleman came over and did our panels. As far as the paperwork and everything that I see, I just get the bill and then I send it to the Board. So I don't really get to see the actual how much it's saved us in a time period because really, I haven't been there long enough to where I can make that – I don't wanna make an assumption. And – but I can tell you that of the five– What are the five–? Yeah, area in the back of my office that we've got four of them that are running. We have 32 panels shut down that glare into Mr. Canady's side of it. And it does. I mean, Kevin made the statement, and I'll make the statement, too, that it is. It's very, very – it's a tough glare. It really is.

Ms. Buchanan: Okay, I guess, in my mind what I was trying to get at is this just didn't happen overnight.

Mr. Jennings: Oh, no, ma'am.

Ms. Buchanan: So somebody had to have approached Maui Electric with a plan that you were gonna install PVs. You had to find out if Maui Electric had met their threshold for alternative energy. And you would've put a stake and line – lined up to be the next recipient should that award of alternate energy be awarded to the community. So this just didn't pop up overnight.

Mr. Jennings: No, ma'am. In fact, I understand – I think it actually started maybe in April or May of 2010, I think, or somewhere – or March.

Ms. Buchanan: Or even the – probably have gone in before even 2010.

Mr. Jennings: Yes, ma'am. Yes, ma'am.

Ms. Buchanan: Okay. So this wasn't just something that – it was being considered for a length of time. And the argument that people didn't know about it or whatever is kind of not justified or valid because this is an ongoing project that was over a year in happening. So I just wanted to hear from you, the Manager, because I'm not sure who's on the Board, and I don't know how it was approved, but anyway, it was approved and installed. From our perspective as Commissioners, had this come in as a new project, all these questions would've been asked. The same concerns that Bob had and Darryl had would've been questions that were going to be asked of the applicant. And at this point, that's all moot because it's already a done deal. And the fines were significant. For me, I think I would

want to see the memo that you received from the Planning Department that outlined how they calculated your fee is more important to me at this point of concurring with an exemption for the after-the-fact permit to insure that the Department had adequately calculated those fees.

Mr. Jennings: . . . (inaudible) . . .

Ms. Buchanan: Yes. Do you have a memo?

Mr. Jennings: No.

Ms. Buchanan: You don't have a memo.

Mr. Jennings: I do not. I do not.

Ms. Buchanan: Okay, that's all my questions for you. Thank you, Mike.

Mr. Jennings: Yes, thank you.

Chair Pescaia: Anyone else?

Ms. Buchanan: And there's nobody from Zoning, Chair, or Planning that I could probably – unless Clayton. Can we take a five-minute recess to review this?

Chair Pescaia: Sure.

Ms. Buchanan: It's an agenda item. I just wanted to take a look at it. Is that okay?

Chair Pescaia: Can I ask Mr. Jennings a question?

Ms. Buchanan: Sure, yeah, go ahead. I'm sorry. I thought nobody was interested.

Chair Pescaia: No, real quick. So you came on board—?

Mr. Jennings: November the 1st.

Chair Pescaia: November 1st.

Mr. Jennings: Yes, ma'am.

Chair Pescaia: That's the same day that Sunetric discovered that they needed an SMA? I mean, that's according to this testifier's information, but I just checking. So when you

started, you walked in, first day of work, there's construction going on already? Is that true?

Mr. Jennings: No, no, there was not.

Chair Pescaia: There was no construction.

Mr. Jennings: No, no, there was – no, they hadn't started any construction. When I came in, signed, you know, and started – walked into the door of my office, they – I believe maybe Tri-Isle Construction was – was close.

Chair Pescaia: Okay, so was the reroofing going on?

Mr. Jennings: Yeah.

Chair Pescaia: So that phase of the construction, the reroof project, the shingle change-out was underway?

Mr. Jennings: Oh, yes.

Chair Pescaia: Okay. So there's a picture of a stop work warning two days after you're there. The Inspector comes out. The Building Inspector comes out and says, "Hey, you folks need a permit for this."

Mr. Jennings: Yeah.

Chair Pescaia: Did the work cease?

Mr. Jennings: You know, I don't really–

Chair Pescaia: Or did it proceed until completion?

Mr. Jennings: I can't – you know, I can't go forth with that. I do not know. I think we – not we, I shouldn't say "we." Please don't hold me to "we." I believe the construction company, Tri-Isle, continued on with that, with the roof.

Chair Pescaia: Was it because the building was compromised that the roof needed to be replaced? Or– I mean, there are other options. They could've tarped it and they could've– I'm just wondering if given the County coming out there and saying this wasn't done properly, and a stop work order was issued, if there was blatant ignorance of that instruction, and if the work proceeded.

Mr. Jennings: I can't – I can't really answer that question. And I'm not trying to–

Chair Pescaia: I can't understand why not because you were – don't you work there?

Mr. Jennings: Oh, yeah, I do work there, but they went ahead and continued on with the construction of the roof. And, you know, I, myself, I had nothing to say to that as that was already started.

Chair Pescaia: Okay. You're the Manager, though, right?

Mr. Jennings: That's right, I'm the Property Manager.

Chair Pescaia: You're the Property Manager, so that includes the buildings and whatever is going on with the buildings.

Mr. Jennings: Yes, ma'am. Yes, ma'am. Yes, ma'am.

Chair Pescaia: Okay. So I'm trying to figure out where everybody's kuleana lies like, who's submitting – like someone is submitting an application that is going to affect the buildings and property of this shared common area. It's coming from the Board of Directors, I'm guessing, that's signing contracts and submitting a permit application. You're the Property Manager, so you're employed by the Board, but you're not aware of these very big actions taking place, and you haven't caught with the history of it, or haven't been paying attention to what's been happening since you've been there?

Mr. Jennings: Yeah, you know, I mean, yes.

Chair Pescaia: Okay. Trying to get a feel for this.

Mr. Jennings: Okay.

Chair Pescaia: Because this is kind of establishing a relationship of what people are saying, what they know they're supposed to do, what they did, what they were told to do, again, what they did, and now, they're proposing another action. So I'm trying to lay out this track record, because if I say it is the will of this Commission to grant this exemption or here – you know, this is what we expect you to do, I wanna have some assurances that they're gonna be followed. I'm not seeing that goodwill, wanting to comply kind of attitude so far. So I'm trying to see on your – you're the other professional. The Board of Directors is not here, so you're the next official Ke Nani Kai representative, right?

Mr. Jennings: Yes, ma'am.

Chair Pescaia: So – but you don't know.

Mr. Jennings: No, what they're saying to me is, you know, okay, let's get the roof done. I mean, there's nobody that ever said anything to me, Madam Chair, that, "Okay, Mike, stop the whole thing."

Chair Pescaia: This right here. There's a picture, unless it's a fake picture. But right here, the County, the representative, the Building Inspector, said stop work.

Mr. Jennings: Right, but we just continued on with it.

Chair Pescaia: Right, okay.

Mr. Jennings: Okay?

Chair Pescaia: That's what I wanted to hear admitted that despite this being posted and duly notified on our building, we continued.

Mr. Jennings: We continued on.

Chair Pescaia: Yeah, okay. Thank you. That's important.

Mr. Jennings: Okay. I'm sorry to—

Chair Pescaia: No. Okay, go ahead.

Ms. Buchanan: Chair, right now being circulated is two separate memos from the Department of Planning with the calculation memo on the after-the-fact fee. What I don't see, Nancy, and this is a question for you, on one of the memos, which is the larger fee, there is a valuation placed. So I can calculate the valuation of that fee. On the first memo, there is no valuation. So I don't know how the County arrived at that fee, because there's no valuation attached to the fee. And because the exemption is lumped in for four separate actions, it's difficult. You need to piece them out.

Ms. McPherson: Madam Chair, did you wanna see if there's any more public testimony and kind of continue with that until—?

Chair Pescaia: We already closed public testimony and then we asked Mr. Jennings to come up to address our questions.

Ms. McPherson: Okay. Yes, calculating the after-the-fact fee was a little bit challenging. The first one was done by another Planner before I kind of came back on board. And it

was just for the reroof. When the application was originally submitted, it did not discuss the solar PV project. It was for SMA assessment. It was just the reroof itself. And so the previous Planner didn't catch that, and so she did a request for an after-the-fact fee of \$1445. The valuation of the reroof was \$5000. So it was \$1000, the minimum fee, plus 10 percent of the project valuation. We can go basically from zero to 50 percent of the valuation depending on various factors including, cooperativeness, egregiousness, that sort of thing. So that was the first one. When I got the project, I realized that there was a solar photovoltaic project involved with this. And so I got additional information. We amended the scope. And then the second letter was sent out. It does not include the valuation of the relocation of the panels because that's not after-the-fact. And I was given a valuation for the project of – well, there was – yeah, there was one number that was ten thousand dollars. And, yeah, I think it went to over a hundred thousand dollars, basically. And so in the second– But, see, the confusion was because the AOAO isn't actually paying for the panels, but under our SMA rules, it's the valuation of the project as if you were paying for it and constructing it yourself. So the second fee was–

Chair Pescaia: Okay, wait, can we back up to the first fee?

Ms. McPherson: Okay.

Chair Pescaia: First fee, this letter, dated November 18th 2010 is addressed to Sunetric for the reroof.

Ms. McPherson: Right.

Chair Pescaia: But they just said that it's two separate things and that the reroof was– I just wondering why the first one went to Sunetric and then the second one went to the AOAO.

Ms. McPherson: Different Planners, is part of it.

Chair Pescaia: Sunetric is the applicant for the reroof or–? I mean, how did that name get–?

Ms. McPherson: It was another Planner processing the application. That's the best answer I can give you.

Chair Pescaia: I mean, I just wanted – where did she get – or he–?

Ms. McPherson: That was – maybe the – and we do have a representative here who could probably better answer that question, but my guess is what was happening was that Sunetric was handling any permitting that would go with the installation of the PV system,

which included – it triggered the reroof. The reason they had the reroof was because of the solar installation.

Chair Pescaia: Right, so I'm wondering how can you just process the reroof and not – if Sunetric was on the radar, how did they wind up just not including it in the calculations at one time? The reroof part– You understand what I'm saying?

Ms. McPherson: Maybe that's why they brought me back.

Ms. Buchanan: My guess is the Planner's on Maui and it just–

Ms. McPherson: They try to do things quickly. They have a lot of projects. Molokai is just one of the islands they have to deal with, and they try to crank it out, and–

Chair Pescaia: Okay. We cannot be making excuses for people. We need to be up on our game all the way across the board. Okay.

Ms. McPherson: Point taken.

Chair Pescaia: Continue. Sorry.

Ms. McPherson: So then I got the project and I did a site visit. Actually, I did two site visits. One was to observe the glare from Bill Canady's lanai, actually. So I came at about 2:00 or 2:30 p.m. I also came and met with the representatives of the AOA, the treasurer. And Mike Jennings, I think was there. And they toured me around. And we looked at the various options. They did mention the patio extension. And I said, well, if you're gonna do that, you need to include that in your SMA assessment. I'd be happy to amend it again and include– Because I think one of the options they were looking at was extending the patio and moving the panels on to that, but I also heard that some of the homeowners weren't in favor of that idea either. And just to get it on the record, the homeowners didn't approve – vote in favor of this project. So there wasn't the majority support or whatever it is that they're supposed to have. That's what I was told, anyway.

Chair Pescaia: So does the County – does the Planning Department somehow review documentation that says the applicant has the legal right to engage in this activity? I mean, normally when you have a homeowner, there's no question. The homeowner is the applicant. But in this kind of complex situation, we don't know that. The application comes before us. I just want to make sure that somebody at some point actually pulled out and said whoever is submitting the application has the authority to do so.

Ms. McPherson: Well, they submitted the required verification that needs to be submitted with the SMA assessment. Now, as to whether they have the legal authority, I think that's a question for our Corporation Counsel, actually.

Mr. Hopper: The Planning Department needs to monitor that when the application comes in to make sure whoever is applying is a valid applicant and there are standards for that. Corporation Counsel does not review the applications when they come in. The Planning Department reviews and makes sure they have the adequate authority to apply in this case. If you have a question, you can ask it, but in this case, it was apparently verified that whoever applied for this permit has the authority to apply for the permit. So that's what we have in this case. We're talking about condominium association laws, and the breach of those laws. That is a matter between the owners. The County does not have the authority to enforce HRS 514. It can enforce HRS 205A, which is the special management area law. And there may be breaches of 514. I don't know. That's a matter between the owners. That's up to them. It's not something that you can adjudicate here. Even if you did, you'd have no authority to do that. So that's our situation.

Ms. McPherson: But, Mike—

Chair Pescaia: I guess the question is if we grant a permit to someone who doesn't have the right to grant the permit, would we be subject to lawsuit by the rest of the owners?

Ms. McPherson: Well, I guess, it's how we define legal authority to submit the application, and again, that's kind of a legal question, because basically, they submitted documentation that they are authorized, in general, by the homeowners to submit these kinds of applications. But for this specific project, the — do they have the blessing of the homeowners to proceed with and do this project? Well, they did it without SMA assessment in the first place, but, you know, I think that's a legal hairsplitting exercise, probably.

Chair Pescaia: Okay.

Mr. Hopper: What did you receive?

Ms. McPherson: I received a copy of the articles of incorporation, Section 415B-34, Hawaii Revised Statutes.

Mr. Hopper: What letter did you receive? Who was it signed by? What did it say? You receiving the articles of incorporation wouldn't establish anything. What letter did you get or approval did you get saying I am applying on behalf of blank for an SMA assessment?

Ms. McPherson: Well, now that I look through the file, it looks like I'm supposed to get a notarized letter of authorization, and I'm not seeing that in the file. The applicant on record for this application is Ke Nani Kai Association of Apartment Owners. That's who's on there. And Mike Adamo, Ke Nani Kai President, signed it and dated it.

Chair Pescaia: So the President of the Board?

Ms. McPherson: Yes.

Chair Pescaia: Is acting on the behalf of the entity?

Ms. McPherson: Yes. And the AOA is supposed to represent the owners.

Chair Pescaia: And we have somewhere documentation that says that this person has the authority to take these kinds of actions?

Ms. McPherson: Yeah. There are names listed on the articles of incorporation.

Chair Pescaia: Okay.

Mr. Sprinzel: Just a comment, I find it so sad that we get – with the ins and outs of this association, and the owners, and the other associations making decisions, which we really don't know about. And our task is the SMA and the effect it has, not who's in favor, and who's against, and who voted, and who's this. My particular street in the heights is a very small street with 20 houses. Ten of them have photovoltaics far in excess of what you've got up there. And I'm sure we didn't have nearly this sort of a fuss. I mean, it's – I'm a big cheerleader for photovoltaic, but I really don't want to spend my afternoon listening to the ins and outs of the association and the owners of the–

Chair Pescaia: Okay, so we'll stop talking about it. But I think the point was just that we're making sure that we're granting a – the applicant has the right to – we have that on record.

Mr. Hopper: And then just – yeah, for the record, you've got something signed by the President of the condominium association. They're purporting to have the authority to sign this application and apply on behalf of the association. If there's a problem, there can be a civil lawsuit. And if the County is defrauded in some way that that person's different, then there's another issue. But it sure looks like in this case, you've got what you need to meet the basic application requirements under your SMA rules. And so I think we can proceed with that issue at this time as it appears.

Ms. McPherson: Thank you, Corp. Counsel.

Ms. Buchanan: Chair, I just wanted valuations again. Nancy, the valuation of the roof, reroofing, the valuation of the PV panels, and the valuation of the new roofing for the relocation, because if I concur with the recommendation of exemption on the after-the-fact fees, which I'm not sure I'm clear on, I may need the valuation of the new reroofing for the relocation, if I either deny that portion of this application. And then the valuation would then be important to find out if it's an SM1 or SM2. Maybe the applicant can give us—

Ms. McPherson: Okay. I did find my calculation, though, so— You can come up.

Ms. Buchanan: But it would've been great to have that for the record in black and white

Mr. Comcowich: The current plan is that we're not gonna reroof when we move it. We're gonna use the existing roof which was the most expeditious way. And then the roofer is gonna be one who's gonna provide the lease warranty issue. So we're not at this point, planning on doing a reroof. We plan on using the existing.

Ms. McPherson: Okay, the valuation for the reroof was \$5,000. And these are all valuations that I verify in the building permit section of our KIVA system. The — and the original valuation that was submitted for the solar PV I asked them to revise. So that was stated at \$110,000 for the after-the-fact work that was done. And then what was subtracted was the— Oh, man, I did a couple of versions. What I didn't want to do was double count anything regarding the reroof. So I went through it very thoroughly. I made sure that we were not double counting so that \$5,000 fee was brought down to the lowest percentage. I think it was 1 percent.

Ms. Buchanan: One percent?

Ms. McPherson: Yeah, I think so. Let me double check here.

Ms. Buchanan: Because the scale is zero to 50 percent. Is that correct?

Ms. McPherson: Right. Yeah.

Ms. Buchanan: Okay

Ms. McPherson: No, it was actually calculated at 5 percent. They have some standard stuff that's in our system. And we've struggled with that percentage number, and basically, it's up to the Planning Director. He makes the decision as to ultimately what the percentage should be.

Ms. Buchanan: Chair, can I ask one more question of Mr. Comcowich? Sorry, Kevin. It struck in my notes that the installation or the panels were a gift?

Mr. Comcowich: The structure is – it's a PPA. So what we do is we calculate and charged the AOA in this case, a discount to the current rate. So we don't charge anything up front. And effectively, the return's generated by charging at a discount. And then as they stated correctly, at the end of 20 years, they get the panels for free, which most people who've looked at it is a favorable issue because those panels will still be very productive. And I don't believe the 20-year life – I think these things should extend at least 30 years is sort of the thought process. So, you know, over that 20-year period, we get our return. And then the last, you know, whatever that period is, those panels are now electricity-generated for free.

Ms. Buchanan: Okay, I understand. Then that was out of context that it was a gift. So thank you for clarifying that.

Chair Pescaia: Commissioners, any other questions pertaining to the application? I don't see any real details in here about the trenching, like where the trenching is gonna go from here to there.

Ms. McPherson: They showed it on the exhibit that you received.

Chair Pescaia: Okay, maybe I missed it.

Ms. McPherson: Which is hard to see, but Exhibit 7, there's a black line that's drawn from the roof where the meter is, which is where the little patio roof, which is black and has panels on it on this is – joins to the main roof of the office building. And it goes across, and then it kind of does a kitty-corner to connect to the building.

Chair Pescaia: Okay, so it's gonna follow that exact line?

Ms. McPherson: Well, I certainly hope so. And I was told that there were irrigation lines in there already. I'm not sure where the location of the irrigation is. I asked for any grading plans or irrigation plans or anything that they might have, and I haven't been given anything yet. I'm sure they're very old, and who knows where they are by now.

Chair Pescaia: The roof over the patio, was it replacing the existing roof that was already there?

Ms. McPherson: Yes.

Chair Pescaia: Because it sounded like they were gonna extend–

Ms. McPherson: They reroofed the office building and the patio roof, correct? And then there was some discussion about extending the patio roof to place panels, but they haven't

done that yet, and I guess they're not going to right now. Do you wanna – and state your name for the record? Chair, who do you wanna recognize?

Chair Pescaia: I'm sorry?

Ms. McPherson: Who would you like to recognize, Chair?

Chair Pescaia: Mr. Jennings, because you have the authority to speak and you're supposed to know what's going on, yes.

Mr. Jennings: Madam Chair, as far as the extension of the patio, we are not going to be doing that. If we do, do that, it'll be down the road a piece. We did take a look at it. It just was not feasible. It just did not work out in what we had planned to do.

Chair Pescaia: Okay. Okay, so the new building where the panels are going to be moved, the surface of that building is the same now? Is it the wood shake shingle thing or is the asphalt shingles?

Mr. Jennings: Madam Chair, it's the asphalt shingle.

Chair Pescaia: All ready – the new ones are all ready—?

Mr. Jennings: Yeah, it's all ready. All we gotta do is just take the panels and move them right straight across.

Chair Pescaia: I'd just like to make sure. Anybody else have any questions? Clarifications? Yeah, just a reminder, public testimony is closed. So at this point, it's only when we have a question that we might pull someone up to address our questions. Sorry. Anybody else?

Mr. Sprinzel: Nancy, in view of the fact that they're digging at least three feet, which is more than the two feet we normally allow, I think this needs a minor permit. I really do.

Ms. McPherson: If you did make a finding, then we could make a condition that they hire an archaeological monitor. They've already expressed willingness to do that, but it's – and that's the basis for the exemption, but it's up to the Commissioners.

Mr. Bacon: I have a question, I guess. This three feet, usually electrical stuff is down 18 inches, and I'm wondering why this has to be three feet. Is it because it's a commercial thing?

Chair Pescaia: Sorry. Come speak in the mike for us, for the record.

Mr. Comcowich: It's Kevin Comcowich again. I thought three feet was what Maui County required. So we're gonna go to whatever the code would be for the electrical trenching. So my understanding was at three feet. If you guys have a better sense of 18 inches is the standard, that's what we—

Mr. Bacon: Yeah, I would check that because I think it's 18.

Mr. Sprinzel: We only ask you to speak in the microphone because everything is recorded. And if you don't, your words will disappear.

Ms. McPherson: My sense is that it may be related to the voltage traveling on the line or something? No? Okay. You're the architect so—

Chair Pescaia: Any other questions?

Ms. Buchanan: Going off Commissioner Sprinzel's lead, and maybe making a motion, too, to ask for an SMA minor permit – was that correct? Minor permit?

Mr. Sprinzel: Well, if they're going down three feet, I would, yeah.

Ms. Buchanan: Okay. I know that in this they said they would have onsite archaeological monitoring while trenching. I was just wondering if we required an SMA minor permit for the trenching because of the valuation does not automatically require the SMA-1 that we would have to have findings of fact and conclusions of law to support that request.

Mr. Hopper: Well, first of all, your determination would be that you would find that this might have an adverse impact, so then it would be an SMA permit. And minor or major is decided by the law. I think major you gotta be \$500,000 now based on State law. Your rules haven't changed, but I think up to \$500,000. So sounds like most likely a minor permit, but again, you approve that as a Commission and can place conditions on that. As we go over on our orientation, any condition you place on has to have some kind of finding and conclusion that first of all, your decision that this might have an adverse impact needs to have some kind of findings and conclusions. And then you are – any condition you would place on a minor permit, yes, would have to have a finding that you think that by going down as far as they're digging, it might have an adverse impact. So you want an archaeological monitor there. It's not saying you have to do much more than have a monitor onsite. So I don't think you would need a huge finding of potential impacts in order to make that a condition, but, yes, you would want to have some basis for a condition like that on a minor permit.

Mr. Sprinzel: I'll bow to whatever Lori and . . . (inaudible) . . . say about that. I'm just worried about digging in that neck of the woods. That's all. And, "Yes, we will do it," doesn't always seem to carry a lot of weight on this island.

Ms. McPherson: Staff Planner Nancy McPherson. I was told the applicant that when they built the condos, the whole site was graded, but I haven't seen any grading plans. So I have no substantiation for where it was graded, and how deep it was graded, or whatever. I'm seeing heads shaking.

Also, this is a question for our Corp. Counsel, Mike, if they find that there may – might have an impact, do we have to bring this back to the next meeting because the item hasn't been agended as an SMA minor or do we? Because we might have some conditions that we want to put on it too.

Mr. Hopper: Once it's a minor, once it's determined to be a minor, you need to have this – first of all, at this meeting, they would have to determine the reasons. They can do that orally. They're gonna be different from your reasons listed here because you determined – you said it was an exemption . . . (inaudible) . . . say minor permit. To grant that minor permit, it does have to be re-agended. It would have to – if there's any additional information you're required to obtain like more agency comments or something for a minor permit versus an exemption, you would have to look at the rules and make sure you do that. And it would have to be agended. I do not believe a minor would require notice in the newspaper or a 30-day window for a public hearing. But you definitely could not do that this meeting. You would have to make the finding at this meeting and do that at a future meeting. Then, yes, you could recommend conditions as a Department and any of the Commissioners could recommend conditions.

Ms. McPherson: Oh, I need to revise my assessment as well?

Mr. Hopper: Absolutely. You would need to have a report. There needs to be findings and conclusions made by the Commission as to why there is a – why this is – why this might have an adverse environmental ecological effect, or why it's otherwise not subject to an exemption. That's actually right in your rules. I can read the section for you. It's Rule 13.1. It says you need to determine within 30 calendar days after the application is reviewed that it's either exempt or not exempt. And then it says, "Applications determined not exempt shall be transmitted to the Director with findings and conclusions, and the Director shall process the application under Section—" and it references the section for an SMA permit. So you have to make what the rules say, findings and conclusions. And you can assist the Commission with drafting those right now, and the Commission can orally tell you those reasons, make those findings. And then if they're comfortable with you transmitting that, you would then transmit that as a letter to the applicant saying we're now processing this as an SMA minor, and saying whatever information you need.

Chair Pescaia: So on that note, here's my thoughts: the original – the two portions that are coming in under the after-the-fact, which is for the roof, reroofing, and the installation of the original PV system, if that came to us in a timely manner, I would've asked for a minor permit because the same concerns that were raised today were – by people in the community would most likely have been raised back then. And I would've had the same concerns as far as its adverse effect not only on the environment, but on the people around them. So under Section B, does it significantly curtail the range of beneficial uses of the environment? Yes. The glare issue probably would've come up. Personally, I'm allergic to glare. Glare can make me pass out immediately. That's why sometimes when I'm sitting, I'll move. I have to have my glasses on as it gets later in the day. It's a health condition and concern for me. When I'm driving and there's glare, I can immediately pass out and get into an accident. I don't know if I freaky or get other people like that out there. I'm just saying glare can cause migraines. It causes– I mean, there's a lot of adverse effects of significant glare. Like a huge panel of that, I can see where other people would've been concerned. So had this come before us in a timely manner, I'm sure this Commission would've raised some of the same questions we're asking today. Had it been done in a timely manner, we wouldn't be with two new proposals of action. We might've taken care of all of this, and thought it through, and came up with a very well thought out project the first time around. So with that, I don't feel comfortable granting an exemption on the first two portions because it'll go on record that that was an acceptable action, and for me, it wasn't. Obviously, it wasn't because the evidence says we were gonna go back and fix it. That's where I'm– But I can't make motions. So I'm just putting my manao out there. But I will entertain a motion from anybody else. And you probably wanna cover the whole project in one motion.

Ms. Buchanan: Well, that's not gonna happen.

Chair Pescaia: Okay, give it a shot.

Ms. Buchanan: Well, without making a motion, I think that discussion on the first two issues is a separate issue. The two after-the-fact fees should be – can be taken cared of in one action. And I agree with you, Chair, and all the testifiers that we all really don't like to see after-the-fact fees asking for exemptions. However, it is after-the-fact. And so you're at a place now where maybe what you might want to do is direct staff to go back to the Planning Department to see if the appropriate fees were incurred for the action. There's a question that maybe the fees – it's arbitrary. There's a big sliding scale on the amount that you can charge for a fee. Whether you agree or don't agree with that fee, could be another question. But the fact still remains that an action was done, period. And so we're trying to mitigate that action at this point. This is the recommendation from staff as to how to mitigate that. And then you may want to treat the other action as a separate SMA action. That's something else to consider. So I can make several motions. I can make one motion. Or we can still have discussion amongst ourselves.

Mr. Sprinzel: I would make a motion that the whole thing comes under an SMA minor and they bring it back to us. I mean, I cannot see how all these directors and people went ahead with this work knowing full well they needed Planning Commission permits and SMAs, and didn't do. I mean, I just don't understand it.

Ms. McPherson: Commissioner, can you make findings and conclusions as to why you think this is not eligible for exemption?

Ms. Buchanan: We're still in discussion.

Chair Pescaia: Well, he just made a motion.

Ms. Buchanan: Oh, he made a motion.

Chair Pescaia: So—

Ms. Buchanan: You need a second.

Chair Pescaia: Right. Motion by Commissioner Sprinzel. Do I have a second? No?

Ms. Buchanan: I'll second for discussion.

Chair Pescaia: Second by Commissioner Buchanan. Discussion?

Mr. Bacon: I may be missing the point here, but I think what we're trying to do is either concur with this SMA review for the after-the-fact, and it has nothing to do with what the fine is. I mean, all we're doing is we're saying, okay, these guys put a roof on. They reroofed the house and they put photovoltaics on the roof. That's what the issue is. The fine has nothing to do with it. If we fine them a million dollars, it doesn't change the fact that that was what was done. That's what we're supposed to be giving our attention to.

Chair Pescaia: You're referring to the fees?

Mr. Bacon: Not the fee, right. The fee is — the fee isn't our purview. That isn't our purview. We're trying to make sure the people don't build something that's wrong. That's what we're trying to do.

Chair Pescaia: Do you think the actions that are already taken and the proposed actions, should they be reconsidered under a minor permit? Or do you think — find everything to be within the exemption guidelines?

Mr. Bacon: I think if they came in and they said this is what we wanted to do that we would've done that as an exemption because they're not changing footprints. They're not changing anything. Actually, they're helping the environment by putting up these panels. The issue about the glare is something that may have come up with public testimony. So that part of it is good. I mean, as you say, if this whole thing went through the first time, we would've picked that up, and we wouldn't be going through the rest of this. But what they did – the idea, the concept, of putting a photovoltaic on the roof and reroofing ahead of time so that they're not making it a leaky roof, that's all very reasonable. And it seems like that would fall under an exemption. So that part of it, I don't think we don't need to go back and say, okay, it's gotta be an SMA minor or something like that because they're not doing anything. If that was resolved, we would've said it's a minor.

Mr. Sprinzel: I'm only suggesting a minor because of the trench. That worries me. That's all. I would vote for an exemption if we were sure it was going to be done properly and not down to three feet.

Mr. Bacon: I think that's what the issue is, too, is how deep this thing actually has to go. And the other one is, if they come in and they simply say – I mean, apparently, we're gonna have them back anyway at some point here. And if they come back and they say, you know, we're going for an exemption, and part of that exemption is we will have somebody onsite at the time when the digging is done that – and if that's included as part of their proposal–

Chair Pescaia: It's already in there.

Mr. Bacon: That's what I thought. So – but if we're asking them to come back for something, that's – if it's in there, we don't have to make it a minor.

Ms. McPherson: Well, we don't exactly have a letter from the AOA saying that they will hire an archaeological monitor signed and dated by somebody. We don't have that. We have an assurance that was made to the Planner, and also here in this public meeting that they would do that.

Mr. Sprinzel: And they didn't stop working when they had a stop work order. So there we go.

Mr. Bacon: Okay, but in the past, you know, we've accepted the fact that on record, they have stated that's what they'll do.

Chair Pescaia: Yeah, but the representative is not here. The person who – Adamo is the person who submitted the application and they're not here. Or they haven't designated

someone as their representative. Mr. Jennings just said that he – this is where his line is. You know what I mean?

Mr. Bacon: Okay, so, well, I said if we come back and as part of this exemption they state clearly in there that they will have somebody there during digging, and somebody just said it's already in writing. So if it's already in writing, then it's already in writing.

Chair Pescaia: No, I just said it isn't in writing.

Mr. Bacon: Oh, okay, but that's what I'm saying is if we ask them to come back and we say, okay, this can be – it doesn't have to be a minor; it can be just an exemption. But as their application states what they're going to do, they would like to dig a trench. They would like to put the – move the solar panels, then they can also say, and we will have, in fact, in writing stating that, and then we don't have to go through the SMA minor. We can just do a–

Ms. McPherson: Yeah, they can check and tell us exactly how deep the trench is gonna be. And they can assure us that it's going to be in a location that's represented on the site plan, etc.

Chair Pescaia: Any further discussion?

Mr. Hopper: Again, if the motion is gonna be to require a minor permit, you need to make a finding of why you believe this either doesn't qualify for an exemption, or why this is – this may have an adverse environmental or ecological effect. I think there were some statements made, but I think that should be part of your motion to state those reasons, just for the record, so they can be part of what Nancy provides to the applicant and it's required by your rules.

Ms. Buchanan: Chair, the reason I brought up the valuation and the after-the-fact fee was because that's the enforcement bite of what the Planning Department has. That's the only enforcement that they can levy besides the regular enforcement when you take your Zoning Officer out there. And I thought maybe the motion was made by Commissioner Sprinzel because of the egregious part of continuing to work in spite of a stop work permit. That's why you have the sliding scale of 10 to 50 percent of your fees, but then it's pretty arbitrary and capricious on the part of the person that actually writes the fee up in order to come up with that fee. And it's there to whether make you feel better that they learn their lesson, or whatever it is, but that's what it's there for. So the fees are pretty significant at this point. More significant than what we usually see. So I wouldn't want to have them to incur more fees because I know that the board is not heavily financed, had testimony in the past from the ADA, and I still remember them. We took a look at their structure back then. So that's all I have to say. So if we have an issue with the ATF, the fees, then I would say

you can defer and ask – direct staff to go back and ask for an amendment to that. Or if not, we should concur.

Mr. Hopper: Just to remind the Commission, the Commission has no authority over the fee. It's the same thing as the building permit fee or their standard fee. If you think the standard fee is too low, that's not a basis for determining what the impact is or not. The impacts would be things like the visual impacts that were mentioned, any kind of excavation or digging would be potential adverse impacts, other things like that, any environmental or ecological effect on the special management area. Just to get some on the record as to what the problem was. I think past instances of noncompliance was mentioned could be a consideration for requiring a minor permit, perhaps, and conditioning that minor permit if – but this is all things that I think should be part of this motion and some Commissioner should bring up just to satisfy the rule requirements of your own rules in this case.

Another direction would be to direct Staff Planner to please draft something for the next meeting. The next meeting, you could adopt that as your findings, but then you'd need another meeting after that for the SMA minor permit after you've accepted that. It's been done before, but I don't know if that's required to have two more meetings on this issue for a minor permit.

Ms. Buchanan: Corp. Counsel, I've never seen an SMA minor permit for an after-the-fact fee.

Mr. Hopper: They've been granted before. Maybe not Molokai. I guess we typically exempt them. I think this is actually more common to probably see permits rather than exemptions for after-the-fact actions. But there's been after-the-fact– There's after-the-fact permits. There's actually separate fees. There's an after-the-fact assessment fee and an after-the-fact permit fee, I believe. I think that's correct. I think they're both the same. I don't think there's any differences. I don't think that would change here. But, yes, after-the-fact, it's basically treated as if it was before the fact. So you do the same assessment of impacts. Eventually, if you deny the permit, then it could be a requirement to remove the work. I don't know if I've seen that, but there certainly have been minor and major SMA permits for after-the-fact, unfortunately.

Mr. Sprinzel: Does the manager have the authority to tell us – to state to us that they will have the people there when they're doing the digging?

Mr. Jennings: Mike Jennings, Manager at Ke Nani Kai. Yes, we will have the proper people there when the trench is dug or when this work is done for your ecological survey.

Mr. Sprinzel: Thank you.

Chair Pescaia: Can you repeat your motion?

Mr. Sprinzel: Well, I wanted a minor permit for this whole shebang mainly because of the digging, but also because I'm really teed off that they did all this work without telling us and without coming for a – planning.

Chair Pescaia: Would it also include some of the adverse impacts that has come to light?

Mr. Sprinzel: Oh, yes. The glare, particularly. I mean, that was terrible that they went ahead kind of knowing that this would happen.

Chair Pescaia: Alright. So that's the motion. Is there any further discussion?
There being no further discussion, the motion was put to a vote.

It was moved by Mr. Sprinzel, seconded by Ms. Buchanan, then

VOTED: ***that the whole project come under an SMA minor and be resubmitted to the Planning Commission. Further, to include some of the adverse impacts that have come to light.***

(Assenting: J. Sprinzel, L. Buchanan.)

(Dissenting: D. Kelly, N. Bacon.)

(Excused: R. Davis, Z. Dudoit.)

(Absent: D. Williams.)

Chair Pescaia: So zero affirmative. Two– I mean, right, so it winds up with two affirmative. Well, zero affirmative, two against, two non votes equals – counts as affirmative. Motion fails.

Ms. Buchanan: Either way, the motion fails.

Chair Pescaia: Okay, a non vote is an aye vote, a passive– Okay. So seeing as we are just barely meeting the quorum, this is the minimum quorum, it means that we need to all agree for any motion to carry. So I will entertain another motion.

Mr. Bacon: I make the motion that we concur with the Department's recommendation with the stipulation that the manager's word that we will have somebody onsite when the digging is done is included in that somehow.

Chair Pescaia: Okay, motion by Commissioner Bacon. Is there a second? Second by Commissioner Buchanan. Discussion?

Mr. Hopper: Just for the record, that was a representation made to the Commission that there be an archaeological monitor onsite by someone purporting to have the authority who is the Chair of the AOA, apparently. And, yes, so that's been represented. And that will be considered as part of the application, not a separate condition, but that's basically something that's been stated to you as part of the application.

Mr. Sprinzel: I'm cool with that.

Ms. Buchanan: Discussion. Chair, or maybe Corp. Counsel, there was testimony provided earlier by a Mr. Canady concerning the relocation of the PVs to a roof, which he's a resident of. Can I call that testifier back to ask him a question which would pertain to the relocation of the PVs?

Chair Pescaia: Sure.

Ms. Buchanan: Okay, Mr. Canady—

Chair Pescaia: Get the mike to him.

Ms. Buchanan: I take notes so damn good. It's a pity. That's my fault.

Mr. Canady: Thank you very much. My name is Darryl Canady. Would you repeat the question to me, please? Do you want me to stand up?

Ms. Buchanan: No, no, no, don't stand up.

Mr. Canady: It's almost as hard to sit down as it is to stand up on my okole.

Ms. Buchanan: Okay, Mr. Canady, in your testimony, you testified that you believe placing the PVs on the roof that was not redone would pose a risk of falling in under the weight.

Mr. Canady: No, I did not.

Ms. Buchanan: You did not. Could you please tell me what you said in your testimony?

Mr. Canady: I said and I have here a picture which is Exhibit no. — oh, she's gonna put it up there, which I'll explain it first. The reason that they had to reroof the office from shingles, which were originally not designed for roofing, they were designed for walls, and they break, and they crack. And the — again, if that happens, you have leakage in the roof. And so the Sunetric, the contractor, said, no, we can't put them on that. We must reroof for a regular shingled roof. And the picture that you have shown to you is what can happen and is happening as of right today in another building that has the shingle shake roof. Okay? It breaks like crazy. And it could very well leak.

Ms. Buchanan: Okay, Mr. Canady, your roof – how is your roof – what kind of material do you have on your roof where these panels are gonna be relocated?

Mr. Canady: We have a shingle shake roof, not a composition roof. It was – all the buildings were reroofed some, I think, eight to ten years ago, maybe longer. And what you're looking at there, that picture, is of another building on the property. Also, I have been told by the West Molokai Association, their design committee, if the shingles were to be moved to the shake building, to Building I, which is in the one that we live in, it has a shingle or shake roof. And the action of people walking up there, working up there, nailing – would make the roof end up looking the way the picture that you guys saw.

Chair Pescaia: Asphalt shingle, wooden shake, wooden – like the one out there, wooden shake roof?

Mr. Canady: No, these are not. They're different.

Chair Pescaia: Yeah, what is it? Shingle– Is it wooden?

Mr. Canady: No. I can't– They're a composite. They're like a material that cracks and breaks, if you walk on it.

Chair Pescaia: So it's not like asphalt, like flat shingles?

Mr. Canady: They're not asphalt. Asphalt is the material that is used in the shingle. It has some resilience. If you step on it, it doesn't crack the shingle, 2x – you know, 6x6 shingle or whatever.

Ms. Buchanan: Mr. Canady, my questioning is bottom line. Bottom line, do you have a concern that placing this PV panels maybe – have some impact to your health down the road? Or are you concerned that the installation of these panels will be hazardous in any way to you as a resident?

Mr. Canady: The only hazard that would be to the residents of Ke Nani Kai would be in that building because if on the installation of the solar panels, the shingles broke like they did on that building, we would have leakage in the building like we have in that building now. The roof would leak.

Chair Pescaia: Which is the reason why they reroofed the first building?

Mr. Canady: That is correct.

Chair Pescaia: To make a more stable–

Mr. Canady: To make it so it would not leak, period.

Ms. Buchanan: I'm trying to establish here because these panels are gonna be relocated to where he resides.

Chair Pescaia: For the next 20 years. So the roof underneath there has to be—

Ms. Buchanan: I'm trying to determine if he has an issue because that would go to findings of fact and conclusions of law.

Chair Pescaia: Absolutely.

Ms. Buchanan: If he feels that he's gonna be impacted by the relocation of these panels, then my next move would be to treat this as a separate issue, to possibly concur with the ATF, and then treat this as a separate issue, if he feels that the installation of these PVs would compromise your living in any way, your health.

Mr. Canady: It would compromise the living at Ke Nani Kai for those owners in that building because the odds are that the shingles would crack and break, and cause leakage in the building.

Now, there's another reason also that came up to me from the West Molokai Association Design Committee. In their rules and CC&Rs, if you change one of the residential buildings from shake and shingle to felt, then the contractor or Ke Nani Kai would have to have all of the residential buildings changed to shake and shingle. I think I mentioned that to Kevin at one point.

Chair Pescaia: Okay, thank you.

Mr. Canady: Thank you.

Ms. McPherson: Chair, may I just interject that I'm hearing conflicting information about what exactly the material is on the building? I've heard tile from other people. So we may want to collaborate the facts.

Unidentified Speaker: It's like tile.

Ms. McPherson: It's like tile. Okay.

Mr. Canady: I couldn't remember that name.

Ms. McPherson: Okay. But there – I think there is some controversy about the – how well the material would hold up, but it is clear that they can't just change that one section of roof. They'd have to like change – reroof all the buildings, basically.

Chair Pescaia: Okay, we're still in discussion.

Ms. Buchanan: No, we just wondering if there was – there's nobody here to testify of any adverse impacts to them as a resident of the people who are having the PVs put on their roof. No, there is no one here, okay, for the record.

Chair Pescaia: Okay. Corp. Counsel just mentioning that because it's not an environmental or ecological effect that that would probably come under the purview of the building permit that they would need to go get to take that action, and that the integrity of the roof would be evaluated at that time.

Mr. Hopper: Just related to that, remember, this is an SMA permit. It's – the building structure issue, if – you know, that would apply regardless of whether you're in the SMA or not. Someone would have to get a building permit and get that approved. I'm not saying that it's something that's outside of your purview, necessarily, but typically, if a building permit would be required, that would be the review for the structural integrity and issues like that. And I don't know if they would allow mounting photovoltaic on certain types of roofs or what needs to be done. But typically again, this is adverse environmental or ecological effect dealing with primarily coastal impacts and things like that. So that's to be considered.

Mr. Bacon: So as part of the discussion, I guess, then that throws the ball back in their court in terms of they could either go to their association and get some sort of a permit to only do – or permission to only do part of the roof, which is gonna be covered by solar panels anyway, or whatever they wanna do to make that roof sound for whoever's living under it. And that's their problem, not ours.

Chair Pescaia: You ready to vote. Any other questions? Concerns?

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

It was moved by Mr. Bacon, seconded by Ms. Buchanan, then

VOTED: ***To concur with the Department's recommendation with the stipulation that it's the manager's word that there will be an archaeological monitor onsite when the digging is done.***

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

(Dissenting: M. Pescaia.)

(Excused: R. Davis, Z. Dudoit.)

(Absent: D. Williams.)

Chair Pescaia: Okay, so there is – no, there is three ayes, one opposed. Do I vote now? Sorry, I thought I vote on the fourth – I mean, on the third one. Okay, so I vote nay. And there's one non vote, which is affirmative, which is four to one. Okay. Motion fails.

Ms. McPherson: Chair, can I indulge you to ask for a short recess? The Planner needs to use the restroom.

Chair Pescaia: Me, too. Okay, sounds great. Can we take a two-minute break, please, and we'll be right back? Thank you.

(A recess was then taken at 3:00 p.m. to 3:07 p.m.)

Chair Pescaia: Okay. I'm officially calling this meeting back to order. Where were we? New motion. Hold on. Do you wanna make a clarification?

Mr. Hopper: Yeah, I'll make a clarification. I just clarified that a photovoltaic system on top of the rood does not require a building permit. If it's mounted sideways, or mounted on the ground, it would. But apparently, on the roof, does not. So my statement that a building permit would be required was – I was wrong on that. I just checked with Anthony, the Building Inspector, and he said you do not need a building permit, so just to correct the record. Don't know if it makes a difference, but I wanted that to be clear.

Chair Pescaia: Well, the only difference is that the integrity of the roof would not come under the review by someone else like we had assumed. Okay. I will entertain another motion, or if there's any further clarification that this Commission needs, please state it.

Ms. Kelly: Just kind of see if I'm wrong, if I can do this, I'd actually like to separate the after-the-fact thing to the proposed action. Okay? I have no problems – I would go with the – I would concur with the exemption for the after-the-fact, but for the proposed, the new – moving the panels and the trenching, I'd like to see a little bit more. Can we ask for a minor permit because I don't know if the glare is going to affect anybody else? I think it is, because it's on a higher building. It might not affect the next building over, but I'd like to know that it didn't affect anybody else but a plane flying over because it's on a higher building. You know, I think it's a concern.

And then the trenching, I'd like it to have a little bit more information. If there's irrigation lines; if you're trenching for electrical; you gonna go over or under; if there's leaks; whatever, I think that's a concern. So I'm not sure how deep the irrigation is, so are you gonna go under the irrigation lines? Are you gonna go above? You know, I just – I'd like to separate these actions.

Chair Pescaia: Mike, would you recommend she make two motions, then? Two separate motions?

Mr. Sprinzel: That's what I recommend – that's what my proposal was in the first place about an hour and a half ago. I said that we should have the extra work as a minor permit.

Mr. Hopper: I think that's fine. I think you stated some reasons on the record for potential adverse environmental or ecological effects of one. I think you could do it all in one motion. I don't necessarily see that as a problem. To clarify, you would be exempting all after-the-fact work, concurring with the exemption. And not concurring with the other exemption and requiring an SMA permit be issued for the reasons that you stated. So I think as long as the Planners is clear and that the rest of the Body is clear, I think you could that all in one motion.

Mr. Sprinzel: I'll second that.

Chair Pescaia: So motion made by Commissioner Kelly, second by Commissioner Sprinzel. Discussion?

Ms. Buchanan: I think discussion should direct staff as to what additional information you would require if you're not gonna exempt the relocation, and be specific.

Chair Pescaia: Okay. So the first issue is the trenching. The second is obviously, on their first act, their first installation of the PV system, they didn't do due diligence in the impacts that it would have to their community, and the construction, and deciding if that was the best way. Maybe they did, and they just didn't foresee, but knowing that it can happen, we want some sort of assurances that they have looked at the other buildings, maybe take in some readings, even – they can even get out there with an unmounted panel, and just put it up there, and see throughout the day what the glare looks like from other points of view. Or something that says that they've already addressed something that has been an issue. We want to make sure that it doesn't – that they're not coming back to us a third time to say we need to move it again. So we want to make sure everything is – these impacts, these environmental impacts, the social impacts, to the community are addressed.

Is there any—? I mean, and then back to this sheet where it's checked off "a nonstructural improvement to existing commercial structures," I think that's applicable to the first – to the after-the-fact portion, but it wouldn't be applicable to the second portion because it's the residential building and not the commercial building. So I think that kind of adds to the discussion of separating out the minor. Anything else?

Ms. Kelly: And would there be the archaeological monitoring when they're doing the trenching?

Chair Pescaia: The archaeological monitoring, following up with that in writing.

Ms. McPherson: What I'm going to do is request that the applicant draft a letter discussing the trenching and more specific detail including, your concerns about irrigation lines, etc., etc. Also, the monitoring to state that they will be willing to retain someone during all excavation or ground-disturbing activity. Also, that they're willing to do some form of glare analysis, method to be determined. And I guess the last question would be that they think that the rest can handle the PV installation.

Chair Pescaia: Absolutely.

Mr. Sprinzel: May I ask where the inverter is on this system?

Chair Pescaia: Because details of that secondary building aren't provided. That would be nice to see.

Mr. Jennings: Vice-Chair, all five inverters are in the – my – right from the office there behind my . . . (inaudible) . . . right behind my office. They're all enclosed.

Mr. Sprinzel: So you're buried cable is 12 volt or 24 volt?

Mr. Jennings: The inverters go from the roof right down the side of the building right to the back where all five of the inverters are put in, and then they go inside the building right to the panel box.

Mr. Sprinzel: So the digging for the cable is 12 volt?

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

Mr. Sprinzel: That can be 12 or 24, according to how you wire them, yeah. Good. So we're not talking about having to comply with any regulations other than intelligence. Eighteen inches will probably be fine.

Mr. Jennings: If I could just speak really quick about the—? You talked about the irrigation and everything. The everything that we have there, Ms. Kelly, is ours. So it would be – we wouldn't – we know where the sprinkler heads are. We know where the pipes are. So that would be something that we know all about. And we would be there. My men would be there the whole time.

Mr. Sprinzel: Good. So that actually – as the inverters aren't on the panels themselves, there's no real big danger. So I would withdraw any objections I had to the digging because it doesn't have to be very deep.

Chair Pescaia: Any further discussion?

Ms. Buchanan: Maybe only that they provide the paraphernalia on the panels themselves, and any data related to it as testified earlier like an MSDS sheet, because that would go to potential hazards and impacts. If that could be provided to the condominium owners.

Chair Pescaia: Okay. Very good. Okay, anything else?

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

It was moved by Ms. Kelly, seconded by Mr. Sprinzel, then

VOTED: To concur with exempting all after-the-fact work, and not concur with the other exemption, and requiring an SMA permit be issued for the reasons that was stated by the Commission.

Chair Pescaia: Five in the affirmative. Motion carried. Thank you, everyone.

Ms. McPherson: So we'll bring this SMA minor back to you for the next meeting.

Chair Pescaia: Thank you, ma'am. Alright, carrying on with our second half of our agenda: D, Communications. July 13 Molokai Planning Commission request to discuss various proposed charter amendments. Those mentioned in the last meeting were district voting and abolishing the Commission on Fire and Public Safety.

D. COMMUNICATIONS

- 1. July 13 Molokai Planning Commission request to discuss various proposed charter amendments:**
 - a. District Voting**
 - b. Abolishing the Commission on Fire and Public Safety**

Chair Pescaia: Does anyone want to give any comments? We put it on our agenda to kind of talk about our stance, if we wanted to offer our thoughts, because we already submitted that I think is included over here somewhere that said our only concern was – or suggestion was to retain our Board Members until their replacements were made.

Ms. Buchanan: And I think after attending that Charter Commission meeting, my understanding is that they're gonna come out with a draft. And I think we going have to have time to comment at that time. Is that correct, Clayton, on the draft?

Mr. Clayton Yoshida: Yes, I believe that they will be kind of going back around to the communities after they've kind of gotten some firmer proposals. But this first go-around, they did hear from the various communities on how they feel about various things that are on the table like district voting and the abolition of the Commission on Fire and Public Safety.

Chair Pescaia: So what is the will of this Commission? You wanna offer any thoughts now or we'll just wait till it comes out?

Ms. Buchanan: I didn't have a change to go over the whole charter, but my understanding is that the Commission Members are submitting their own testimony. And I just read one from one Commissioner which I responded to in person. So I guess we would have to wait unless somebody has already read the charter and the proposed amendments.

Chair Pescaia: Yeah, I think Commissioner Dudoit had a few thoughts. She had time to go through them, and she had identified a few instances where it directly pertained to us or would affect us. And she's not here, so can we keep that for our next meeting, this issue? Can we keep this agenda item on the agenda for the next meeting?

Mr. Yoshida: If that's the wish of the Commission.

Chair Pescaia: Yes, please. Thank you. Chairperson's report. Hey, that's me. Status of the subcommittee.

E. CHAIRPERSON'S REPORT

1. Status of the Commission's Subcommittee on Rule Changes Report

- a. Rules of Practice and Procedure**
- b. Special Management Rules**
- c. Rules Regarding Special Uses in the State Agricultural and Rural Districts**
- d. Shoreline Area Rules**

Chair Pescaia: Have we received any comments from the Planning Department?

Mr. Yoshida: No, but Joe is back from vacation.

Chair Pescaia: Yay.

Mr. Yoshida: So we are – it's assigned to him. So we don't have any real status update from the last meeting.

Chair Pescaia: Alright, we'll keep this on the agenda as well. Director's report?

F. DIRECTOR'S REPORT

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

Mr. Yoshida: Yes, we've submitted a list of pending and closed Molokai applications. If there are any questions from the Members on that?

Ms. Buchanan: Chair, I have questions on the proposed projects or completed projects. Clayton, let me see, would you know – what is that project from Model Railroad Hill on the grading tunnel - Papohaku Beach Molokai?

Mr. Yoshida: I guess Nancy is assigned to that. So she probably could – she could answer that.

Ms. Buchanan: Okay. You know anything since–? Okay. We also have an SMA exemption for a new construction. That's not related, eh, for Thomas Lether?

Ms. McPherson: Okay, the Model Railroad Hill was grading that was done without permits. And we are in process of reviewing whether or not the work occurred within the SMA. And there are other enforcement issues out there, and DSA is looking at it, and that sort of thing. So it's taking a while to sort it all out, but I will let you know. This may just get closed, but I don't know yet.

And the Lether is for a property out at Papohaku Ranch Lands. And they – SHPD has asked them to do an archaeological survey. So that's where they're at right now.

Ms. Buchanan: Okay, one more question: the four-lot subdivision, Elizabeth Jackson.

Ms. McPherson: The Jackson four-lot subdivision requires a rezoning. So there's a change in zoning and an SMA assessment. And so that change in zoning application needs to be transmitted out to agencies. I'm checking the application for completeness now. And it's gonna be transmitted out, and I've been told that there may be wetlands and all kinds of stuff out there. So I'm gonna do all the Federal agencies, and everybody, State, and whatever.

Ms. Buchanan: Yes, we're on page 2 of 3. Can you tell me what the SMA appeal was for, for Melvin Chang?

Ms. McPherson: Melvin Chang is a cousin of the Chow Family. And this was for the subdivision that's one of our paper subdivisions on Molokai at . . . (inaudible) . . . Fishpond. And behind the Chow Restaurant, which is now collapsing, and what they did was they grubbed the entire property, and an RFS was filed for each TMK. That's why you see so many of those there because we were told, well, I need to do it for each TMK. So that's in process, and I haven't checked with Trisha Kapuaala, but she is the person assigned to that. Evidently, they've appealed that they have to do an SMA assessment because that's all we asked them to was submit an SMA assessment for after-the-fact work, and they've appealed that.

Mr. Sprinzel: Nancy, do we have any authority to make them do something about that incredible wreck there of that house? I mean, it's a terrible eyesore. It's dangerous.

Ms. McPherson: Well, before it started falling down, it was – I mean, it's still a historic structure. And I did talk to Mr. Chang at length.

Mr. Hopper: Just to note: is this coming before the Commission as an appeal?

Ms. McPherson: Oh.

Ms. Buchanan: I think that's why I went ask if it's an appeal.

Ms. McPherson: Yeah, we probably shouldn't be talking about it, then.

Mr. Hopper: I wouldn't go into any of the facts if it's gonna before the–

Ms. McPherson: Sorry, Mike.

Mr. Hopper: Yeah.

Mr. Sprinzel: But even so, do we have any authority about buildings falling down?

Ms. McPherson: Well, at this stage, they would need to come in for a demolition permit, but they would also have to do a historic preservation review.

Mr. Sprinzel: Okay.

Ms. McPherson: This is demolition by neglect.

Ms. Buchanan: Okay, one last one: page 1 of 1, the four permits from Molokai Ranch is requesting comments for Renewables. Can you tell me what that is for?

Ms. McPherson: That's--

Mr. Yoshida: Yes, we had reported at our earlier meeting that that request was withdrawn and will be refiled at a future date.

Ms. Buchanan: Thank you, Chair.

Chair Pescaia: What happened to the Matsons? Did I miss them?

Ms. McPherson: There was a clerical error and that was listed as "done," in our computer system. And I went ahead and -- the last time I was on Maui, got that fixed. They are coming to you to your next meeting.

Chair Pescaia: Okay. I knew they were coming up, but I didn't see them here.

Ms. McPherson: Yeah, I couldn't figure out why it wasn't on there either.

Chair Pescaia: Okay, thank you. Okay, that's done.

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

Mr. Yoshida: If there are no further questions, I don't know if you have an update on the Maui Electric liability for power pole installations on private property. I guess we don't have an update on that.

Ms. McPherson: They hadn't paid the fee, the application fee, so now it's been paid and now it's being processed. Oh, wait. Molokai -- wait, which one? Maybe that was the other one, the Public Works' one.

Mr. Yoshida: The liability for power pole installations.

Ms. McPherson: Oh, oh, no, I still haven't gotten any response from them. I'll try again, but--

Chair Pescaia: Alright. Vacancy?

4. Status of Molokai Planning Commission vacancy

Mr. Yoshida: Regarding the status of the Molokai Commission vacancy, I believe that Janice Kalanihuia was confirmed by the Council at Friday's meeting. We are waiting for the paperwork to come down from the Mayor's Office: the oath of office, the congratulatory letter, etc. So she may be able to participate at your next meeting.

With respect to Don Williams, we are trying to find his letter of resignation. He said – they say that they submitted something to the Mayor in early June. The Mayor's Office says they have no record of receiving it. They transmitted a letter of resignation, but it's not signed. And the Council will only accept a signed letter of resignation. So we're contacting the parties to see if we can get a signed letter of resignation, which has kind of been this two-month chase, but hopefully, we can resolve it shortly.

5. Agenda items for the August 10, 2011 meeting

Mr. Yoshida: And respect to agenda items for the August 10th meeting, we have the deferred SMA assessment for civil defense items that was deferred at today's meeting. We have the Robert Matson Kolapa Place house additions. Part of it is after-the-fact. And we have the Wavecrest reroofing SMA assessment. And then we are continuing this charter amendment item. And I don't know if we will bring back the Ke Nani Kai item for the portion that the Commission did not exempt from today's meeting. So those are the items for the – that I know of for the next meeting. If the Commission has any other items that they wanna add?

Chair Pescaia: Anything else?

Mr. Bacon: Sir, just a general question. I guess it sort of goes back to the Chairperson's report: rules regarding, you know, special uses and all that kind of stuff. Sort of to simplify things, I've been thinking about it, and Ke Nani Kai is a situation similar to Wavecrest where if somebody does renovations inside there, they have to come before us. Can we make some sort of change in our rules or practices or something like that so that if somebody isn't actually changing the footprint of the house, isn't increasing the occupancy rate of the house or building, isn't increasing the height, or isn't doing any excavation or fill, or if they're doing – no, anyway, so if they're not changing any – the height, the footprint, or the occupancy rate that they don't really need to come through all this? And but if they're doing anything like excavation, filling, changing the occupancy rate, things that would influence their neighbors and influence the community, and limit it to that rather than somebody changing their kitchen sink at Wavecrest? I mean, that's – they're not gonna do it for one thing except for over there now, they have to do it because the management says you can't have any work done over there unless it goes through the process. But we could simplify some of this stuff maybe.

Ms. Buchanan: I think it's in the amended rule change for the SMA for the Molokai Planning Commission. You know when Steve left? They made amended changes. It's circling the – it's in there. Exactly what was, I gotta go back and look.

Chair Pescaia: Okay, so go back and look at the draft. And then find the section, you know, where that pertains to. What we're waiting for right now is for the Planning Department to send back their comments. And so maybe we should collect that and–

Ms. McPherson: Yeah, if the Commission would support a change like that, I would support it, because that means I could approve – you know, exempt certain things over my desk. And I think that would speed up the process. I think that if the Commission thinks I have the ability to do that, and were actually very, you know, specific about which kinds of projects you'd be willing to let that happen for like interior only renovations. We could craft language to that effect. My understanding is that some of the revisions apply to the shoreline rules, and waiving the requirement of the State certified shoreline, which is different than exempting from SMA rules. To my knowledge, we don't have language in there that enables the Department to exempt particular projects from the SMA rules. They all have to come before you the way the rules are drafted now. So if we got direction from you that you would like us to craft that, I could go ahead and submit that unless you want to see it before I submit it, etc., etc., or you wanna talk about it some more, or you wanna wait until the recommended rule changes come back to you.

Mr. Sprinzel: Could you bring us something at the next meeting?

Ms. McPherson: Sure.

Mr. Sprinzel: And then we can discuss it, okay it, and bring it in.

Ms. McPherson: I'd be happy to.

Chair Pescaia: Okay, anything else you guys wanna see?

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

Chair Pescaia: Huh? Yeah, it is. That means we're here too long already. Okay. Anything else? Nothing? With that, our next meeting date: August 10th 2011. This meeting is adjourned. Thank you all for your time.

There being no further business to come before the Commission, the meeting adjourned at 3:34 p.m.

Respectfully submitted by,

SUZETTE L. ESMERALDA
Secretary to Boards and Commissions

RECORD OF ATTENDANCE

Present

Mikiala Pescaia, Chairperson
John Sprinzel, Vice-Chairperson
Debra Kelly
Lori Buchanan
Nathaniel Bacon

Excused

Ron Davis
Zhantell Dudoit

Absent

Don Williams

Others

Clayton Yoshida, Planning Program Administrator
Nancy McPherson, Staff Planner
Michael Hopper, Deputy Corporation Counsel