

**MOLOKAI PLANNING COMMISSION  
REGULAR MEETING  
OCTOBER 26, 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 12:22 p.m., Wednesday, October 26, 2011, at the Mitchell Pauole Center Conference Room, Kaunakakai, Molokai.

Chair Mikiala Pescaia: Aloha. We would like to reconvene our October 26<sup>th</sup> meeting of the Molokai Planning Commission. We've already previously introduced ourselves for today, so we're just gonna get along with our agenda.

**B. PUBLIC TESTIMONY ON ANY PLANNING OR LAND USE ISSUE**

Chair Pescaia: If there is anyone in this community who would like to offer public testimony on any planning or land use issue, now would be the time. You can offer your comments on anything. If it's not on the agenda, we will consider it for our future agenda, if there's anything you want to bring to our attention. We have a very light agenda. There's really one particular issue, so if it's gonna be related to our upcoming application, then I would ask that you wait for then. Seeing none, public testimony now closed.

**C. APPROVAL OF MINUTES OF THE AUGUST 10, 2011 and SEPTEMBER 14, 2011 MEETINGS**

Chair Pescaia: I'd like to move on to the approval of minutes of the August 10<sup>th</sup> and September 14<sup>th</sup> meetings. I will entertain a motion.

Mr. John Sprinzel: I would propose a motion with one small exception. On page 9 of the September 14<sup>th</sup> meeting, it says "perforation," and it should be "proliferation."

Chair Pescaia: Proliferation.

Mr. Sprinzel: Otherwise, I propose acceptance of the minutes.

Chair Pescaia: Thank you. Is there a second? Okay, second. So proposal, Commissioner Sprinzel; second by Commissioner Bacon. Discussion?

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

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

**VOTED: To accept the meeting minutes of August 10, 2011 and September 14, 2011 as corrected.**

Chair Pescaia: Okay. Unanimously carried. Moving on, Unfinished Business.

**D. UNFINISHED BUSINESS (matters previously discussed at the October 12, 2011 meeting.**

- 1. KAMEHAMEHA SCHOOLS requesting a Special Management Area (SMA) Minor Permit for after-the-fact (ATF) improvements for an aquaculture operation of a former lessee D&J OCEAN FARMS consisting of construction of a 1,680 square foot storage building and hatchery, 160 square foot pump house structure, and 2,200 linear feet of road improvements at TMK: 5-6-006: 008, 024, and 034, Keawanui, Island of Molokai. (SMX 2011/0002) (Valuation: \$26,400) (N. McPherson); and**
  
- 2. MR. WILLIAM SPENCE, Planning Director, requesting concurrence from the Molokai Planning Commission pursuant to their Special Management Area Rules, as amended, that Special Management Area (SMA) exemption can be issued to KAMEHAMEHA SCHOOLS for the balance of the ATF improvements of D&J OCEAN FARMS not covered by the SMA Minor Permit comprised of the construction of an ancillary groundwater well; grading for shrimp ponds, ditches, and drainage improvements; construction of a two-story, one bedroom, two-bathroom, 3,344 square foot farm dwelling with carport, a 1,000 square foot accessory storage structure, and two 3,300 square foot shade structures dismantled and removed in 2007 at TMK: 5-6-006: 008, 024, and 034, Keawanui, Island of Molokai. (SMX 2011/0002) (Valuation: \$190,000) (N. McPherson)**

Chair Pescaia: This is a continuation of a matter that was previously discussed at the October 12<sup>th</sup> meeting. This is Kamehameha Schools requesting an SMA minor permit for after-the-fact improvements for an aquaculture operation of a former lessee, D&J Ocean Farms, that consists of construction of a 1,680 square foot storage building and hatchery, 160 square foot pump house structure, and 2,200 linear feet of road improvements at these particular TMKs. We did do a site visit this morning and this is a continuation of this agenda item.

Ms. Nancy McPherson: Mahalo, Chair Pescaia. Aloha kakou, Molokai Planning Commissioners. Nancy McPherson, Staff Planner. It looks like you have just received a handout for this meeting, additional information on after-the-fact improvements related to D&J Ocean Farms, Inc. I, myself, have not had a chance to go through this material. So if the Commission would like five minutes or so to go through the material, the Chair might be willing to let us do that, but if – whatever time you need.

Chair Pescaia: Will the applicant be walking us through this material anyway?

Ms. McPherson: Okay. Well, what I'll do right now is I will defer to the applicants to make their presentation. They can walk you through and we'll proceed that way, if that's acceptable.

Chair Pescaia: Yes, go ahead. We'll proceed.

Mr. Mark Roy: Good afternoon, Chair, Members of the Molokai Planning Commission. My name is Mark Roy. And I'm here today again before you representing the owner of the property: Kamehameha Schools. I'd like to thank the Commission very much and also Staff for visiting the property earlier this morning. We sincerely hope that we were able to answer at least most of the questions that were asked during the course of the site inspection.

The purpose of today's review is you may recall from the last meeting is to review two requests: one for an SMA minor permit, and the other for an SMA exemption determination. These requests represent the culmination of an SMA application process that is being completed to address after-the-fact permitting requirements for some improvements that were put in place by previous tenants during the establishment and early phases of operation of the aquaculture facility on these lands.

The aquaculture facility was originally established by Ohia Shrimp Farm Corporation in 1986. Ohia operated the facility through the use of six shrimp ponds for a period of about five years until 1993. Now, for a couple of years of inactivity, D&J Ocean Farms took over the lease from 1995 to 2007, and further expanded the aquacultural operation by creating ten additional ponds, as well as some related drainage improvements that were designed to minimize localized flooding problems on the parcel of land. A new tenant, John Austin of Keawanui Farms, took over the lease in 2010, and has been refurbishing the facility into a productive operation over the last couple of years.

This next slide, the matrix on the power point here, just summarizes the after-the-fact improvements that we went over during the site inspection today. It consists of grading alterations, a storage building and hatchery, pump house structure, and ancillary well which is a seawater well, a farm dwelling and accessory storage structure, two shade cloth

structures that have since been removed, and also, some repairs that were put in place on an existing access road along the shoreline.

The next slide, I'm sorry it's not that clear, is an aerial photo showing the configuration of the aquaculture operation at the time that the improvements were put in place. I'll briefly point out the location of the after-the-fact improvements I've just mentioned.

This shows the grading alterations that I mentioned that includes 16 ponds, raceways, and drainage improvements that are identified in yellow on this slide. This yellow circle, the hatchery and storage building is located in the middle of the site as shown here. Water for the aquaculture operation is provided by a ground water well situated in a small pump house along the shoreline portion of the property. The farm dwelling, accessory, storage structure is located here on the right-hand side of the slide. That's where we met for the site inspection today. And the next slide shows where the shade cloth structures used to be prior to their removal from the site.

And finally, this was the completed elements of the site inspection was the portion of the access road along the shoreline that was resurfaced by a previous tenant with gravel, and as identified mostly by this yellow line. This yellow line is intended to show the – I guess, the entire alignment along the shoreline of that access road.

We wanted to organize our presentation today a little bit differently to provide some information in response to the six comments that were issued to us by the Commission during the last meeting. We put together a handout for today's meeting containing hard copies of a number of exhibits that I'll try to refer to during the course of the remainder of the presentation.

The six comments, the Commissioners may recall, relate to after-the-fact fines, wetland mitigation on the property, repairs to the existing access road, status of the seawater wells, State Department of Transportation culvert improvement plans up on the highway, and also, if there were any available construction plans for after-the-fact structures on the site.

The first comment asked for additional information on the notices of violations and after-the-fact fines that have been issued in relation to this matter. This information is presented in Exhibit A of your handout. There have been a total of seven notices of violation issued by the County in relation to the improvements that were put in place by the former tenants on the property. All initial fines related to these violations have been paid to date. There are also, however, recurring daily fines that will continue to accrue until the after-the-fact SMA approvals and building permits have been obtained for the improvements. Since becoming aware of these violations, Kamehameha Schools have been diligently working with the former tenants, and also, the County administration to really bring the property

back into compliance so that the current tenant, John Austin, can continue operations at the facility.

During the last meeting, the Commission also asked for some additional information on the ongoing wetland mitigation process that is occurring on the property. A little bit of background—the mitigation plan was prepared following the issuance of an administrative order by the Environmental Protection Agency back in 2006. This plan was required in order to remediate some wetland impacts that had occurred during some of the grading alterations on the property that were completed by D&J Ocean Farms. Following approval by the Environmental Protection Agency in 2006, on the issuance of an SMA exemption by the Molokai Planning Commission in 2008, work was initiated on implementing the wetland mitigation program that was set forth by the plan, which included the removal of fill material, and also, replanting of some impacted areas of wetland. While all removal actions have since been completed in accordance with the plan, replanting efforts are still underway, and are currently being monitored by Kamehameha Schools. Once complete, EPA clearance will be requested by the Schools for the mitigation work to essentially, be deemed complete. Copies of the mitigation plan – there are a number of copies, actually, of documents. There's the mitigation plan itself, the Environmental Protection Agency letter granting approval of the mitigation plan, a letter confirming that there are no Section 401, Department of Army permitting requirements for the wetland mitigation, and also, the information relating to the SMA exemption determination that was issued for the wetland mitigation work. These are provided in Exhibits B, C, D, and E in the Commissioners' handout today.

The third comment from the last meeting asked for some additional clarification on the access that runs along a portion of the shoreline fronting the property from the pump house structure. And this stretches most of the way to the island, although I don't think goes all the way. Mr. Desmond Manaba of D&J Ocean Farms who worked on the property I believe since the 1980s was interviewed as part of the SMA preparation process. He had submitted an affidavit as part of the SMA process that in his words, verified that the shoreline access road was in existence on the property prior to the aquaculture facility first being developed. A copy of this affidavit is provided in Exhibit F of your handout.

Repairs consisting of minor grading, and placement of gravel, and it seems like some other material based on our site inspection today, were undertaken by D&J Ocean Farms to allow the raceways to be maintained during operation of the aquaculture facility. So it seems that they undertook some repair and maintenance of that existing access along the shoreline as we discussed in our site inspection today. We'd like to note that the repair work itself that really is the subject of the SMA application before the Commission is not the initial establishment of the road, which occurred sometime in the past before the development of the aquaculture facility. As I think that could be observed today during our site inspection along the shoreline, we took some photos, and we've got some proposed

language for possibly, an additional condition that the Commission could consider adding into the SMA minor permit should the Commission decide to take action that would really obligate the landowner now, Kamehameha Schools, to work with both the State and County agencies to really address this issue, and remediate the portions of the shoreline that we identified today during the site inspection to essentially, remove that material. And that would be the portion beyond the end of the raceways given that the current tenant still requires access to those raceways to essentially, maintain them as part of the operation. We just have a couple of photos. I know you guys saw it today but – of the road along the raceway and along the shoreline.

The fourth comment received at the last meeting, the October 12<sup>th</sup> meeting, conveyed a request for some additional information to be provided on the two wells that were developed over the years to service aquaculture operations on the property. Before proceeding, I'd first like to apologize again to the Commission on the record as I referred to these wells as being brackish at the last meeting. I've since been informed that these are indeed, seawater wells, and they are pulling up saltwater, not brackish water, and are in no way utilizing any fresh or semi fresh groundwater resources.

This next slide shows the location of the two wells. Well No. 1 is the primary well. And as you can see, it is enclosed within the pump house structure that we visited today. We've researched this well, and the State Well No. is 0350-01. This had been requested, I think, by Commissioner Buchanan at the last meeting. The second well is not housed within the structure, but is in fairly close proximity to the primary well. In the two weeks since the last meeting, we've been researching the status of these two wells, and have been able to confirm that the State Commission on Water Resources Management did issue water use permits for both of these wells in 1998 and 2003. And I'd like to point the Commissioners to Exhibit H and I of your handout, which presents copies of these water use permit approval letters from the Commission. And as discussed at the last meeting, the backup well actually received SMA approval from the Commission back in 2002. And a copy of the County records documenting the SMA approval is provided in Exhibit J. And so just to tie up our response on this particular comment, it's the primary well that we are requesting SMA approval from the Commission as part of today's after-the-fact SMA application.

Moving on to the next comment from the last meeting, it was a request for a copy of the State Department of Transportation plan for the Kamehameha V Culvert Improvement Project that is in the process of being planned by the State. As we discussed at the last meeting, the existing State-owned culvert system was installed many years ago, and consists of two deteriorated 24-inch pipes that are intended to convey storm water flows coming down from Keawanui Gulch under the highway. Unfortunately, the present culvert system is substantially undersized, which is acknowledged by the State to handle the volume of runoff that flows down from the mauka lands during storm conditions. This is

generated localized flooding conditions along this area of the highway in recent years during intense periods of rainfall.

This next graphic shows the large area of – I think we showed this the last time, the large area of the mauka lands that are essentially, drained by Keawanui Gulch. And at the bottom you can see the pinch point which is created under the highway. And on the makai side is the D&J Ocean property that we're talking about today. The culvert is essentially, creating a pinch in the system due to it being insufficiently sized. And this next photo just shows the current condition minus some of the vegetation that was there today of the existing deteriorated culvert pipes.

The improvement project that's being planned and proposed by the State will increase the capacity of the existing culvert system by essentially, replacing the existing drain pipes with a 12-foot wide by 70-foot long concrete box culvert. Grouted, rubble, paving structures on either side of the culvert are also reflected on the State's plans for this project essentially, I believe, to reduce the speed of runoff being conveyed under the highway through the new system.

This next slide is the plan that was included in a recent SMA application that was filed by the State for the project. And this plan, I know it's a bit difficult to see on the screen. We included a copy in Exhibit K of the handout at the request of the Commission at the last meeting. I think if you look at the plan, you can see the box culvert called out going underneath the highway. And on either side, so on the left side, you've got the mauka, grouted, rubble, paving improvements that would be put in as part of that project. And on the right side, the makai side, this is mirroring the condition of the drainage ditch as it flows down below the highway. The grouted, rubble, paving would extend out below the culvert and then around the corner of that drainage ditch improvement. Kamehameha Schools really recognizes the importance of this community improvement project, and as owner of lands on both the mauka and makai sides of the highway, they fully support the implementation of this culvert improvement project by DOT. As such, they're fully committed to working alongside the State as the project progresses to ensure that all easements that may be necessary for the new culvert system to be put in place are granted to the Department of Transportation.

Moving now to the final comment received at the last meeting, it was a request for construction plans that may be available for the after-the-fact structures that we're discussing in the SMA application. As a result of our research over the last week or so, we've successfully been able to locate plans for the farm dwelling that we actually parked our cars next to for today's site inspection. We've included a copy of these plans which consists of both floor plans and elevations. Hard copies of these are provided in Exhibit L of the handout.

The next phase of work as we've talked about today at the site inspection, if the Commission feels that they can move forward and grant the SMA approvals that are being requested is Kamehameha Schools would be moving into a final phase of after-the-fact permitting, which is essentially, working with the Development Services Administration to really obtain all after-the-fact construction-related building permits for all of the structures. And they're unable to move forward with that phase or complete that phase of work at this point until the SMA approvals are issued for the structures. That all of the plan requirements will certainly be addressed as part of that final phase of work which will be, like I said, working with the County to obtain building permits for the applicable structures.

Now briefly to the end of our responses to the Commission's comments from the last meeting, given the short amount of time between the last meeting and today, we sincerely hope that our responses presented and information contained in the handout has helped to clarify the Commission's outstanding questions related to this matter.

And to conclude our presentation to this afternoon, I thought I'd just offer a brief summary of the Planning Department's recommendations just as a refresher, which were identified in the staff report presented on October 12<sup>th</sup>. We're here today to really respectfully request your concurrence with the Planning Department's recommendations. The Department is recommending that an SMA minor permit be issued for those improvements that qualify as development actions. These include the storage building and hatchery that we visited today, the pump house structure, and also, the repairs that were undertaken to that shoreline access road. An SMA exemption determination is being recommended for those non development actions under the SMA rules. And improvements covered by the exemption would include the grading alterations, the farm dwelling and accessory storage structure, as well as the seawater well, and the removal of the shade cloth structures. Issuance of these SMA approvals by the Commission at today's meeting would essentially, allow Kamehameha Schools, as I talked about, to move forward with the next and final phase of permitting, which is the construction permitting phase of work.

I'd like to now just spend a couple of minutes, if you could scroll to the next slide, talking a little bit. We took photos today during the site inspection, and we've tried to get them onto the power point. We had a short amount time to do so, but Kalani and I have been speaking about the concerns that were raised towards the end of the site inspection, and really, what Kamehameha Schools can do to really show that they're committed to resolving all of these outstanding issues. But first, this is a photo of the access along the shoreline that we stopped our trucks and minivans at, and we talked a bit about the gravel. And it was identified that there was some other material placed along the shoreline in that area.

And then the next couple of photos should be, if I did this right, we went onto the island. We kinda cut our site inspection because I know we were running out of time, but there



were two structures on the island that we talked about. They're very small structures: wooden, single plywood structures that really, had just been thrown together. One, the first one that Kalani just showed actually has a toilet in it. And it doesn't look like it's been used for a long, long time. It's kinda falling apart. And then the second structure is shown here. I'm not too sure what that was used for, but we took a picture because really, the Kamehameha Schools is fully willing to resolve these issues, and remove these structures from the island. Looking back, it seems like these were connected to some kind of tamping use by the previous tenant, I think D&J Ocean Farms.

But maybe moving now, I can move into two conditions that Kalani and I have talked about in the last hour that we'd like to offer to the Commission as maybe something to consider adding to the conditions that are already recommended by the Department as part of the SMA minor permit. And this would really hold Kamehameha Schools accountable for working with the State and the County to remove all of the gravel, concrete, or any other asphalt material that were placed along the section of the shoreline between the end of the raceway and the island I think we were looking at the end of the site inspection. So I'll just read that:

That the applicant shall work with the State of Hawaii Department of Land and Natural Resources and the County of Maui to remove gravel, concrete, and any other asphalt material that was placed along the section of the shoreline between the end of the raceway and the island.

And the second condition that we wanted to propose was:

That the applicant, Kamehameha Schools, shall obtain necessary permits for the removal of the two, small, wooden structures on the island.

And with that, I'd like to thank the Commission. We're certainly available for further questions in relation to this application, but we sincerely hope that we've addressed at least most of your questions relating to the previous material that we've presented to you, and certainly, we're here to answer any more questions that you have. Thank you very much.

Chair Pescaia: Commissioners, you have any questions you'd like to ask? Commissioner Kelly?

Ms. Debra Kelly: I just wanted to know how many acres is all the ponds together? Do you know?

Mr. Kalani Fronda: It's a little shy of 30 acres.

Ms. Kelly: Of where the ponds are located, right?

Mr. Fronda: Well, it's below – I'd 24 to 25 acres because Parcel 34 and – much of Parcel 34 is where the ponds are located.

Ms. Kelly: Okay, my question pertains to the groundwater use permit for Well 350-01, which is the main one that is concerned. Okay, it's only because reading the permit, on the front cover it states, the beneficial use, reasonable beneficial use is for the agriculture/aquaculture based on three acres – shrimp. Sorry. It's on Exhibit H.

Mr. Fronda: Let me run a quick measurement on that, and I'll come back to you at the end of – in the next couple of minutes.

Ms. Kelly: Okay. And then my question is on the permit, no. 18, it says that the water use permit granted, which is this one, shall be an interim water use permit. The final determination of the water use quantity shall be made within five years of the filing of the application. Would you happen to have that one?

Mr. Fronda: I believe the two permits that you have here is what the Water Commission has in their files.

Ms. Kelly: So we don't know if the final determination of the water use was determined because this interim one, and I'm assuming this is an interim water use permit, is only for .240 million gallons a day? So I just wanted to know if that changed or whatever. Anyway, that was my question.

Mr. Fronda: Okay, thank you.

Ms. Kelly: Okay, I might have another one about the drainage. Historically, if the drainage was going over the property into the wetlands, and supposedly this drainage ditch that was constructed is supposed to be an improvement, it doesn't seem like it, because there's still erosion occurring within the ditch because of the way the water is. You know, water flows the least resistance. And creating that particular outlet makai of the highway where it has to actually make a curve, I wouldn't call that an improvement. So – and I know it doesn't flow all the time. And historically, because it used to flow over the land, was there any possibility of restoring it how it should be where it wouldn't have that diversion because it is being diverted? Was there any kind of consultation?

Mr. Roy: So to answer the Commissioner's question about has there been any comment issued to that effect, what I'll start off saying is that as part of the SMA application process, before the recommendations of the Department reached the Commission, it was about a year, year and a half process, I think, of review by both the County Department of Planning, but also a distribution out to various agencies for review and comment. This includes Federal, State, and also, County agencies. The only comment that we received relating

to the drainage ditch that we actually drove along today was from the State Department of Transportation. And they were interested really, in how the realignment fit within the context of what they're looking at moving forward with up on the highway side, which is this culvert improvement project. So in relation to the question, have we received any input or request to do so, we haven't. And there are no proposals to essentially, return it back to its original condition. But the reason for – based on my understanding and the research that has occurred as part of the SMA process is that Desmond Manaba of D&J Ocean Farms had, I think, a couple, or two or three incidents of flooding into the topmost shrimp ponds at the aquaculture facility. And so that was the reason as to why he modified the ditch and kind of realigned it more mauka so it would actually flow around those ponds so that it really wasn't compromising the ability of the shrimp operation to perform as an economic operation.

Chair Pescaia: So is it safe to assume then that the installation of the ponds and the subsequent rerouting of the ditch was a purely amateur-engineered project? Do you know of any consultant, any professional advice, professional planning engineering involved in the design and the installations that were made in that area?

Mr. Roy: I'm not aware of any specific designs that are on paper with regards to that realignment. I know it's been documented since the improvement has been made. But I believe it was undertaken by D&J Ocean Farms, the actual improvement itself. You know, going back to the last Commission meeting, there were questions, I recall, on this about the performance of that ditch. And I think we had both Desmond Manaba and John Austin available at that point to really attest to the fact that it really does perform as it was intended to perform as a drainage ditch conveying flows down beneath the highway and into the wetlands.

Chair Pescaia: But we also are charged to consider the best possible– There may have been a better way of handling it. So I was just wondering if the tenants had sought professional counsel in installing that ditch. I mean, I know that it served their purpose, but I think we can– There are impacts of that rerouting. So we're trying to figure out if those – what was taken into consideration by the tenant or by the person who implemented these things, if they were– You know, it's kind of hard because it was such a – it's 26 years we're going back and trying to figure out when things happened, and how things have changed, and looking at the time that these things were installed, what did it look like. And since then, what has– There have been mitigations that have taken place to fix what might not have worked the first time around. And when they came back in 2008 to ask to remove some of the dirt, it was because it wasn't working. Their first version of that ditch kinda wasn't working, and there were things left in the wrong place, and it created some other unfavorable conditions. And so I know right now we're looking at something that looks like it's working better, but I'm trying to go back to when these were first installed, the thought that went into it, and kinda getting a sense of the changes that have taken place.

Mr. Roy: Sure.

Chair Pescaia: So I just wondering if they – okay, protect the pond. Eh, we going move the water over there. Or was it like, okay, let's get some consultants, you know, some people who know the area, other engineers or anybody else's professional opinion of the best way to handle this situation?

Mr. Roy: That may have taken place. I don't have a definitive response on that, unfortunately. What I can say is that that improvement has been assessed as part of the SMA application process. We have done an extensive evaluation of that improvement in the context of the applications themselves. And really, there's been a number of Federal agencies involved: the EPA, National Resources Conservation Service, and also, the U. S. Army Corps of Engineers in the grading alterations that were made on the top half of the property. And as part of that process, I think maybe one of the Chair's comments relating to the Commission approving an SMA for some of the maintenance work, that mitigation plan was really specifically to address when they dug that improvement and they did the ditch, some of the material that was taken out was unfortunately, side-cast onto wetlands that fell under the jurisdiction of Federal agencies. And so as part of that process, it was identified that there had been a Federal violation because there had been fill placed on portions of wetland within the site. And the wetland mitigation plan was put together to specifically remediate the impacts that had occurred to the wetlands as a result of the side-casting of material when they had actually constructed that drainage ditch. So our evaluation and based on the input that we've got – we've had from the tenants and the previous tenants is that the ditch works. We're not aware of any specific impacts associated with that ditch that has remained unresolved. The wetland mitigation plan was really intended to address the impacts that were related to that improvement on the wetland. And while Kamehameha Schools is not entirely there yet, they have done a substantial amount of work with regards to working with these agencies, having a mitigation plan put together by a qualified consultant. That was AECOS, which are very well versed in the field of wetland mitigation. The plan was adopted, approved, and then implemented by the Schools. They're not fully at a status of completion of that wetland mitigation work at this point. And we'd like to be here before you today to say that they had completed it, and that EPA had signed off and said it's fully complete, but that's certainly another issue that really is with a Federal agency. And I think I can speak for Kalani to say that they embrace that commitment to make sure that they follow through with the completion of that wetland mitigation work. I think it's been a bit of a coordination effort to try and have the former tenants comply with previous obligations that they had made. But now, Kamehameha Schools has really taken the lead on resolving all of these outstanding issues. So if there's a condition that we could come up with during today's meeting that would really hold Kamehameha Schools responsible to completing that plan, if Kalani is okay with that, then we could certainly take maybe a short break, and come up with some language to that regard.

Chair Pescaia: I think what's tricky is that the Federal agencies you're referring to, they're looking at something that was done and how to fix it. They want it restored back. We're trying to do an after-the-fact— We cannot change— I mean, you already did it, and some of it has already been undone, and you're in the process of undoing some of it. And we gotta figure out at one point did we permit — would we have permitted this action to begin with? And so you're trying — I know we're trying to look at the end result. Now, this is what it looks like, can we permit the result? But we also have to consider that if you had come before us before any of these improvements were made, would we have approved this project? Does this project make sense? Does it have — would it have impacts? And what we're saying is there is a history of impacts. Though they are being mitigated and dealt with, the impacts still remain. So I think that's why our questioning is so pointed. I understand that you are trying to fix things. And though the Federal side has their guidelines, we're also charged with looking out for the shoreline as well. So we're only trying to work within our jurisdiction. The ponds, at the time that the ditch was installed, were illegal. So installing something else illegal to protect one illegal — you cannot do something to protect your pakalolo patch, because the patch is illegal. So you cannot use something like that to justify it. So though it's an explanation, I don't think it's a justification for why the tenant had to put in the ditch, and, you know, now, it's working. It wasn't working before. Okay, it was working. Depends. You ask different people. Some say yes, some say no. The tenant says yes, but again, we're looking at ten years, or however long the ditch was there at the time the pond was illegal. The ditch is still illegal. We're trying to make it — figure out what is the legal way to get it to exist or not exist. Okay. Sorry for the long speech. Next question?

Ms. Kelly: You know, I understand about the wetland mitigation. And I think they did a really good job, but EPA and the Army Corps, that was their jurisdiction just to do the wetland violations. And unless you have other documentation from other Federal or State agencies that said the ditch is good, I'm still questioning it.

Chair Pescaia: Commissioner Bacon?

Mr. Nathaniel Bacon: Yeah, I guess my question is, we're asking for an exemption for certain things, but it's my understanding that even with a single family dwelling, if it's not part of a greater development, then it's not exempted. So why are we exempting certain portions of this when they are part of this overall development? They're all part of that development—this aquacultural program. They're all part of that, so why are we not including them in the SMA minor? In which case, we can put these conditions on if we say, you know, certain things are happening, then we would like to be sure that if this thing overflowed, if that was ever the case, and if it ever damaged the road or something like that, that the owners would be responsible for that. We can put conditions on those, but we can't put conditions on exemptions, and some of these exemptions are things that we do have concerns about. And they are part of a greater development so—

Mr. Roy: Maybe if I could respond? Maybe the Department can shed some light on the intent of the legislative intent of a larger development. It may have been the case and I'd interested to see what the Department has to say about this is that the SMA regulations, I think, were formulated to allow certain low-scale family uses to be able to move forward because people simply couldn't afford to go through an SMA use permit process every time they construct something, for example. I'd like to say that it was part of a larger development, but the intent there was really to stop large subdivisions for residential housing from being piece-mealed out by developers, and being requested to have SMA exemptions issued by the Planning Department. So essentially, you would have one house, and then two houses, and then three houses, and then all of a sudden, you would have a large subdivision, which ordinarily would have been required to go through an SMA use permit application process. So that's just my thoughts. I know the Department is a lot more well versed with regards to the background for the legislation in this regard, so maybe I could ask Nancy to add to that?

Ms. McPherson: We could also defer to Mr. Yoshida or our Corp. Counsel for response to this question but, yes, normally, when we look at our criteria, and we do our SMA assessment, we ask, you know, is this activity—? Let's say someone's proposing a wastewater treatment system, or curbs, gutters, and sidewalks. You know, they're proposing some component, and it actually is a phase of a larger project whereas they couldn't move forward with the rest of the project unless they did these early stages. So there's a connection. There's an actual logical connection.

Now, in this case, this is an aquaculture operation. It's a permitted use by State and County land use and zoning. And in this case, it's possible to run an aquaculture farm and not have a single family dwelling there. But under the land use and zoning categories, you're allowed to have a single family dwelling there. And under our SMA rules in Chapter 205A-22 definitions, a single family dwelling can be exempted unless it can be shown that it is creating environmental effects or ecological impacts to the coastal area. So that's why we concur – that's we requested that you concur with our recommendations of exemptions for the single family dwelling and accessory because under the definitions in Chapter 205A, it's considered not development.

So we – in the case of the improvements to the accessway going along the shoreline, the applicant actually requested that that be exempted, and we denied that request, and insisted that it be included under the scope of the SMA minor permit, because we felt that that was not eligible for an exemption. So we did take a critical look at what they were requesting and concurred with most of it, but not all of it.

Mr. Bacon: Okay, so then what the Department has determined is that we can detach parts of the whole if in certain other sections of the rules and regulations those things can be exempted on their own if they're not part of a larger development. So we're saying that,

okay, this overall development can be cut up into smaller pieces and treated differently. Is that right?

Ms. McPherson: Well, if we weren't dealing with the other parts of it, then I would say that that was, you know, not very tenable. But because we are requiring an SMA minor permit for the other parts of it at the same time, and we're analyzing it as a whole, I don't think that's unreasonable. Clayton, do you or Mike have anything to speak on this issue having had longer experience with – in Clayton's case?

Mr. Clayton Yoshida: Thank you, Madam Chair, and Members of the Commission. I guess our analysis is on pages 4 and 5 of our memo report breaking down what components are – could be considered not a development, and which components are considered development. You know, if the Commission may remember the famous Ke Nani Kai PV panels, it was broken down to these components could be exempted, and the Commission exempted those components. And these other components, which are part of that project, are considered to be a development, and are the subject of an SMA permit. And so the Commission dealt with the exemption portion, and then told the applicant to come back with more accurate plans for the portion that we've been trying to review as a minor permit, but they keep revising their plans. So we haven't actually – the Commission has not actually made a decision on that portion of the PV panel project.

Mr. Michael Hopper: I would only add – I mean, it's the Planning Department's responsibility to justify why the application's coming forward to you on this basis. But you are the final decision-makers. They're making a recommendation to you, so if you find that the exempt items qualify for the exemptions in the category, you can exempt them. If you find that they are either part of a larger development, or for some other reason are not subject to exemption, you can require them to do – obtain an SMA minor permit, or a major depending on what that valuation of that part of the project is. So though you've got a recommendation in front of you, the decision on the exemption, as well as the permit, but on the exemption, it does rest with you. So if you disagree with that determination that it's eligible for an exemption, then you can make findings as to why this is either part of a larger project, part of a larger development, or that the project may have an adverse environmental or ecological effect, which would require permitting. Again, it's not the denial of a permit. That's saying it's not exempt from getting a permit, but that's your decision in this case. And you've heard the Planning Department's explanation as to why it was treated in this manner.

Chair Pescaia: How is valuation determined?

Ms. McPherson: Well, normally in the case of an application for a building permit, our Development Services Administration – you know, the applicant submits a figure. Development Services Administration concurs or it chooses not to concur with that

valuation. In this case, we got numbers that were approved by Kamehameha Schools, and Kalani can speak to this more if you'd like, but I'm sure they have their own valuation process.

Chair Pescaia: I guess my question is, is it the value of the project today or the valuation of – when is valuation calculated? For example, two 3,300 square foot shade structures, is that incorporated – a figure attached to that? Because right now they're non-existent, so would the valuation be zero?

Ms. McPherson: My understanding is that at the time that the application is submitted for those structures, the valuation is determined. And in the case of the building permits, there were building permits for the shade structures submitted in '97, I think it was, but they – those applications were closed because the structures were removed. That's my understanding. Because they were – it was after-the-fact and the solution evidently was to just get rid of them. They didn't want to keep them. But again, this was Kamehameha Schools dealing with DSA directly. And so you might want to get more information from Mark or Kalani about that. I don't have a lot of background on that. I wasn't there.

Chair Pescaia: Okay, so you're saying that those structures did at one time have a building permit?

Ms. McPherson: No, no, there was one that was applied for, but it was closed. That application was closed.

Chair Pescaia: A permit was applied for previous or after-the-fact?

Ms. McPherson: After-the-fact.

Chair Pescaia: For those two structures?

Ms. McPherson: Yeah, and I didn't look up the valuation on those.

Chair Pescaia: But say there was attached, a determination of valuation of those structures on that permit, that would've been the figure—?

Ms. McPherson: In '97.

Chair Pescaia: But would that have been included in this valuation?

Ms. McPherson: Well, we included the valuations for the improvements that have been determined to be development. I'm told that the Department normally does not require a valuation if things are exempt, but that's on Maui. Because we do things differently here



on Molokai, I'm really not sure what the— But Mr. Roy could answer that probably better than myself why those numbers weren't provided.

Chair Pescaia: I'm just asking because you're already looking at 10,000 square feet of building. The valuation is only \$190,000. That's not counting the well, the grading, grading almost the whole property for the shrimp ponds, the ditches, the drainage, all that labor cost, I mean, material, all of that, and you come up – it's only \$190,000? I mean it seems a little low, so I'm just wondering. You saying they no answer?

Ms. McPherson: Well, they can respond because that information wasn't provided.

Chair Pescaia: But it's submitted to the Department, and the Department confirms or concurs with that figure you said, right?

Ms. McPherson: If it's submitted to the Department, yes.

Ms. Zhantell Dudoit-Morris: And then I – since she's up there, I just wanted to be clear on something. So last week we received a whole bunch of exhibits and what is this? From the Department of Planning talking about the applicant and proposed applications. Okay, right on there, on Exhibit A, B, it says whether the proposed action is or is not a development. And it says over here, which is kinda confusing me now that you're explaining things that there are certain things to include the pump house structure, groundwater well, grading for ditches and all that kinda stuff that are considered a development, and qualifies for an after-the-fact work; therefore, qualifies as a development, and that a portion qualifies as not development, which includes an auxiliary well and all those things that you have under the exemption portion. But then when you go to the chart that explains what a development – what constitutes a development and what is not a development, it clearly says over here, "A development is any grading, removing, dredging, mining, or extraction of any materials." "Construction, reconstruction, demolition, alteration of the size of any structure." Okay. Then you go to the exemption portion and it says you will grade for ponds and ditches. You will do drainage improvements, and you will construct a two-story, one bedroom, two-bath square foot farm dwelling and carport. So unless the wording on your exemption needs to be changed, there are specific words in here like grading, construction, things like that. And then it also adds in here which I still not clear why we keep talking about it, but the two shade cloth structures that were dismantled. So under here, demolition or alteration of those things are also considered a development. So either this first bit of information we got needs to be taken back and redone, and then – this is not – what you telling us right now is not consistent with what we have in front of us. So I just wanted to know which we should act on.

Ms. McPherson: This SMA assessment process and Chapter 205A is something that is – well, let's just call it an attorney's playground, because there's a lot of interpretation that's

involved. Now, when we are using a category that says use of any land for the purpose of yada, yada, yada, or aquaculture, now that covers the entire farm, pretty much. So in this case, there is a category that covers it because it's an aquaculture farm. If you take it apart, if there wasn't an aquaculture farm, if all of these improvements were being done in order to build a shopping center, then it would be considered a development, because it wouldn't fall into the agricultural, and aquacultural, and maricultural uses that are exemptible. They're considered not development under Chapter 205A-22 definitions. The background for the coastal management program, there was a national law passed, then the State developed its own program. Chapter 205A was enacted. And the purpose of Chapter 205A, I don't have it in front of me, but there are multiple purposes. The idea is to balance economic development with the need to protect coastal resources, cultural and natural resources. So this project is a really good example of why Chapter 205A was important, because we have an economic activity going on very close to the ocean utilizing saltwater to make it function. But if it was considered a development and not covered by one of these exemption categories, that was considered by the State to not be supporting the development of aquacultural and agricultural uses in Hawaii. So that's why they included them in this exemption category. It's not the same as building a shopping center right there at Keawanui, or a resort, or a – you know, putting in a gas station or something like that. All of those things would be considered commercial operations that would need an SMA major permit because they're considered development. So I know it's confusing. It was confusing to me and sometimes it still is, but in this case, I took a lot of time. I worked closely with the applicants. I kept asking them questions until I was clear that this was acceptable to break it down this way. Now, if the Commission finds that there are grounds to say that this is all a development, then you can make that determination. You can disagree with us, and say that you have – make a finding that there are ecological effects that aren't covered under the SMA minor permit. That these other things, you want to condition, but that – if the valuation were to be determined, would most likely trigger an SMA major permit.

Ms. Dudoit-Morris: Okay, so I just going say this for the record because it's starting to really get me a little bit frustrated. Whether it's a shopping mall or a shrimp farm, it's a business. And your using the cultural preservation trump card in this explanation is unacceptable to me because those shrimp are not indigenous to that area. As far as pumping water, the saltwater helps the shrimp business, not the area that it's in. So all I was asking you is, you give us documentation every week in which we're supposed to make a clear and responsible decision for the rest of this community, and I asking you, unless you have other documentation that tells us or supports what you just said right now prior to me asking the question, then are we to act on the documentation you gave us the last time, because they're both different? What you telling us today and what is on here is a different story.

Ms. McPherson: Sure. I think the consultant would like to say a few words.

Mr. Roy: I just wanted to add some thoughts. I went through the staff report as well, and as the Commissioner was going through her comments, I was trying to refresh myself from my knowledge of the breakdown of development versus non development actions. And I think the question or the concern regarding a discrepancy may be partially explained or maybe fully explained. I'll try to do so and hopefully, Nancy agrees with me. And I'm just gonna give it a shot, but the assessment that the Department completed as part of the staff report— This is the report that was at the last meeting. And I guess the Department is not amending anything for this meeting because it's the same report, but where Nancy has gone through and— It's the document that's entitled, "Special Management Area Assessment, County of Maui, Planning Department, October 12, 2011." And then you've got this matrix that spreads over two pages that says, "Development Actions," and then "Non Development Actions." It's actually page 1 of 13. It's right at the end of the letter that's signed by Clayton Yoshida. I think what Nancy has done in this table is that she has checked off— Can I just pull up the slide real quick? She's checked off the applicable SMA development categories according to these three structures that the Department has determined to qualify as development actions. And so where she had checked the box, "Grading, removing, dredging, mining and extraction of any materials," I think her intent was to use that provision for the grading work that was done along the portion of the access road versus the grading work that was done in association with the development of the aquaculture facility ponds themselves. I'm just trying to explain how she's kinda checked off these provisions right now. And then when you get down to the non development actions— So these three structures, I think she's checked off these four boxes to try and justify – to essentially, justify that these qualify as development actions under these provisions. And then at the bottom, it's got a not a development section as well, and then you got a number of ones that say, "Construction of a single residence that's not part of a larger development," which we've been talking about. And then demolition or removal of structures, and then use of land for the purpose of cultivating, planting, growing, and harvesting, and it kind of goes on. But then it goes on to say, "Or aquaculture or mariculture of plants or animals, or other agricultural purposes." So she's checked off all of those provisions because all of those provisions in the matrix are under the legislation, those provisions that can be utilized to essentially, say that something is not a development.

So this next slide that I have here, this is based off the staff report. This is consistent with the staff report. The Planning Department is recommending that the actual development of the aquaculture ponds and facility itself would qualify under this SMA exemption category, which again, is use of land for purposes of aquaculture or mariculture of plants or animals, or other purposes, which really I think is embraced under the SMA rules, this use. And the seawater well would actually fall under that provision as well. And then the farm dwelling, accessory storage structure would fall – the Planning Department is recommending that it would fall under a construction of a single family residence provision

to be an exempt action. And the shade cloth structures, the demolition or removal of structures from the site. So they've already been removed at this point.

I hope that provides a little bit of clarification. I'm just going over the Planning Department's recommendations in relation to what she's checked off on the matrix because I think that may have been the source of the question was that it looked like there was some discrepancy between what was being said to be a development and then what was said to be exempt actions. So I'm hoping that helps. I just wanted to add something there.

Mr. Hopper: And just to add to that, there's Hawaii case law on how these sections are supposed to be read. Essentially, the first question is, is the project is a development? Does it fall under one of these categories? If it is a development, then you need to look at the not development category to see if it's exempt. When you read these, this is just citing the State law. Clearly, these not a developments are sub categories of the development categories. For example, it says that a "Change in the density or intensity of use of land, including but not limited to the division or subdivision of land." And among the exempt categories are subdivision of land into lots greater than 20 acres in size, and subdivision of a parcel of land into four or fewer parcels, etc. So clearly those are two types of subdivisions that even though a subdivision is part of a development, they're considered exempt, as not development. So these are, I think, intended to be big catchall categories. So the way the law operates is that unless you're listed as not development, and most stuff you do in the SMA is going to be considered a development.

And in this case, I think the Department's justification sounds like they're saying, yes, there's grading going on, which is a development, but if it's part of construction of a single family home, it's exempt. And if it's considered part of aquaculture, it's also exempt. Now, one thing that happens is if you even – even if one of these not development categories apply, that project can still be considered a development even though it's under the not development list, if it may have an adverse environmental or ecological effect, and then – so that's why there's an analysis of that done later. But this is maybe not the best way of doing this all on one table. There should maybe something like that that shows here's all of the items that are development without an exception. And here's all the items that are not development because the building maybe in the larger, broad categories of development. They're also in these exempt categories, which are sub categories of those. For example, it also says, "Grading, removing, dredging, mining or extraction of any materials," and it also says in the exempt categories that, "Routine maintenance, dredging of existing streams." So you can do dredging if it's routine maintenance of existing streams, channels, or other things even though dredging is, as a general category, something that needs to get a permit.

So I can't – you know, back up that the law is written in a great way because that's the State Law, but that's how courts have interpreted it that if you have a larger development

category, the not development sub category which takes you out of that development category, but then can put you back into development if it may have an adverse environmental or ecological effect. If you disagree with either the determination that this is a not development or that you think that it may have an adverse environmental or ecological effect, you can order that an SMA permit be obtained for all of the exempt items. And that's why it's on your agenda before you today.

Ms. Kelly: One of my concerns, again, although the grading or the development of the ponds is considered not development because of the use of aquaculture, it still requires a County grading permit. And if you have that, that's good, then it takes it – you know, it justifies taking it out of the development. But if you don't have one, and you can get an exemption from that grading permit process like developing a conservation plan, if you have that, that's just as good. So my question is, do you have either one?

Mr. Roy: I believe there have been some preliminary discussions with Development Services Administration related to the construction permit approvals that I talked to about in my presentation. Some work has been work by D&J. Kamehameha Schools is obviously trying to complete the work necessary to resolve all of the outstanding violations. I believe there was an indication that this could possibly be interpreted as an exemption from a grading permit requirement. That has not been formalized at this point because of – we're still in the SMA phase of work. And once we got beyond that, then the County would – well, Kamehameha Schools would complete the construction-related permitting process.

Ms. Kelly: So you're saying that you cannot get a grading permit for after-the-fact or a conservation plan after-the-fact until you get a determination from us for the SMA thing?

Mr. Roy: My comments, I apologize if I misrepresented anything, were intended to just convey some preliminary discussions that have occurred as part of the ongoing construction permitting process. D&J Ocean Farms has filed a couple of building permits, but the building permits cannot be completely processed until the Planning Department can sign off on the fact that all of the SMA approvals have been issued to each improvement. So I just wanted to confirm that's what I meant to say.

Chair Pescaia: Yeah, whether new or after-the-fact, SMA comes first.

Ms. Kelly: Actually, you can get a grading permit after-the-fact without the SMA exemption because you're saying that the ponds and all the grading work is exempt. You're not calling it a development. So you can actually get that. Okay? The conservation plan, you can get that without any determination from this Board. And so, you know, I think that's just misinformation because a conservation plan is a farm plan, but it is the exemption from the grading permit. And so if you can get that, that covers the ponds, the drainage, because

it will go through an engineering component to determine whether or not that drainage ditch or the rerouting of the drainage is feasible.

Mr. Roy: There have been extensive discussions with the County of Maui on the after-the-fact permitting process for this project, and while I'm not an attorney, so I'm not privy to all of the discussions that have occurred with relation to all of the violations that have been issued on this property, but what I can say is I think Kamehameha Schools is taking it in the right order at this point. And they're putting a lot of resources into really trying to follow up on all of the issues related to the SMA permit process as a priority. It's a large undertaking, and based on those discussions, I think the County is supportive at this point of dealing with the SMA approvals as a first item, and then allowing the applicant to complete the necessary work for the construction approvals such as building permits.

Ms. Kelly: Just for clarification, the conservation plan and the grading permit has nothing to do with building. It's just ground disturbance. That's kind of what it relates to.

Mr. Roy: Okay. Understood. I'm learning things today as well. Thank you. I had one suggestion. I wonder if the Chair would allow me to make the suggestion. Listening to the questions related to a non development action, I noticed on your agenda that the minor permit is taken up first. It's the first item on the agenda, and the exempt items are the second item. I wonder if at this point it would make maybe a little bit more sense to go through the Planning Department's recommendations for exempt actions, and identify which ones the Commission may be comfortable with – so kind of taking each one in turn because there's a lot–

Chair Pescaia: Right, because if it's not exempt, then we move them to the other category, to the minor permit category.

Ms. Roy: Yeah. I'm just trying to think of what would make it kind of easiest to take each issue one-by-one.

Chair Pescaia: I hate when you go, "However you like."

Mr. Bacon: Okay, you know, I think that's one of the issues that we have is like, okay, do they fall under which category? So if we've got these exempt ones, which are questionable because those are the ones that we don't have any opportunity to make conditions on, and if we think we need a condition on it, we can kick it over into the development part, and the SMA minor part, and then we can deal with that. That's what I would like to do in this case. I have a couple questions about things that need to be – that are in the exempt category.

Chair Pescaia: Okay, if the Commission so pleases, how about we go through each individual installment in the exemption category? We'll take them one at a time. And if we

discuss and agree that it stays in exemption, then that's fine. Once we— Okay. And if we get to the point where it – we decided it's not an exemption, then we'll put it on the side. And we might have to table it for the next meeting because it'll move – because it's gonna change status, and might change the valuation. So before we get into that specific deliberation, if we can open up public testimony, take care of that, then I think it'll go faster.

Mr. Sprinzel: Just one – well, not so small point, I haven't said anything so far which is a bit unusual, I know. But they've agreed to the road to the island past the pump house, clearing that up. They've agreed to removing the huts. Okay? The only other thing I can hear in front of us is the grading, and the under-the-road thing, and the channeling of the water. Okay? Now, we were told more or less this morning that before that was put in, I don't know who said it, but that water used to run across sideways towards the wetlands. So really, the ditch has only accentuated that, and moved it a little bit up on the – away from the ponds. Okay? And the Department's angle is much kinder than the 90 degrees that's shown in the dotted line. It's a must gentler angle. So that certainly will improve the flow of the water into the drainage. So what is it we're actually objecting to at this moment? I'd be very happy to hear that.

Ms. Kelly: If there was no drainage ditch, would we have approved putting it in the drainage ditch the way it is?

Mr. Sprinzel: I'm not sure that we have that permission because grading for agriculture is an exemption. No? I mean, I'm just confused.

Chair Pescaia: The drainage ditch does not service the aquaculture. It doesn't service – it's protecting property, but it's not – that's like somebody building the stone wall to divert the water flooding from the neighbors to the next guy. I mean, I think that's the difference. It doesn't – it's not tied into the actual operation of the aquaculture.

Mr. Sprinzel: Would we pass it if it came to us now?

Mr. Bacon: I think one of the points that people have been making is that it seems to have been sort of a short sleeve design that somebody came up with. And if somebody were going to be doing this for us or coming to us the first time, we would've asked for the drawings that are appropriate and have it be engineered. And I think that's – I think that's one of the things that's playing around in here. The fact that it works is fine, but I think then we're all sort of, okay, so what if it doesn't work in five years? Whose liability is that? And I think that's something that would qualify for putting it in the SMA minor or something so that we can put a condition on it that states that, okay, if something happens later on that we don't foresee, then it's clearly your responsibility to correct it.

Mr. Sprinzel: This is the only thing that we care about, is it?

Chair Pescaia: No, there's tons of things in here, I think.

Ms. Dudoit-Morris: So, Chair, just for clarification for our public and especially, for me, when we— So this is my second term on the Planning Commission, and I always thought that when we reviewed after-the-fact applications that we were to look at it as if it were a new development. As if that, that was done was not there, and would we have – if it were a new development, agreed to and saw it within our ability or within our responsibility to approve. Okay, with that being said, and that is why even though it works right now for whatever purposes that it serves right now, that's not what we're commissioned to look at. We're commissioned to look at whether or not – if it were a new development, would we have—?

Chair Pescaia: And would we have environment – yeah.

Ms. Dudoit-Morris: Okay. Okay, just so we all clear on that.

Mr. Roy: Can I just offer one comment regarding the drainage ditch? Certainly, I think Kamehameha Schools fully recognizes that that improvement was put in place a while ago. We're here today. It's in place. It seems to be functioning appropriately, effectively. Certainly, it's on Kamehameha Schools' land, so it's the responsibility of Kamehameha Schools. If, down the line, as is the case with all the structures, I mean, if I had to give an example, the DOT culvert, over time, it's eroded and it requires replacement. If anything needs to be done to that drainage ditch over the years, say ten years, 15 years down the line, it will be Kamehameha Schools' obligation to come in and present plans to the County of Maui and the Molokai Planning Commission to essentially, undertake engineered improvements to insure that it's fully functioning into the foreseeable future. So the Molokai Planning Commission will be receiving at some point in the future, an SMA permit application for any future improvements on the property, and one of those improvements could be if the maintenance ditch is – I'm sorry, the drainage ditch is not functioning to its full capacity, you will have the ability to review and assess that particular improvement at that time.

Chair Pescaia: Unlike our current situation.

Mr. Bacon: Okay, I think – because one of the things is, and I keep going back to this exemption thing is because even though you're saying that, and we don't – that's not a condition that's on it, because we can't put it on when we exempt it. And that's why I'd like to see it kicked over into an SMA minor so that we can put that condition on it. And basically, that's why we don't want to exempt it, or that's why I don't want to exempt it is because I'd like to put a condition on it. And I don't know if – and Counsel say – is it the time where he can come in and he can make that condition? He can add it to his application?



Mr. Hopper: Well, I would just say it depends on what you're talking about. If you're talking about a representation made by the applicant that they're gonna change their project somehow, that they're gonna do it in a certain manner, or do something, then I think that's something that they can represent and be held to. If it's a condition like that Kamehameha Schools will defend and hold harmless the County if someone gets injured and sues the County, or maintains an insurance policy to protect the County, which is usually done if there's any concern about the County getting sued for granting a permit, then that's not something you could put on an exemption. That's something you can add with a permit to mitigate impacts. Again, the reason for something being not a development or a development is not necessarily that you wanna condition. It's that you would see an impact that you want to mitigate that you believe a condition would be needed to mitigate. And so it might have an adverse environmental or ecological effect. And so, you would want to consider that as an SMA minor as a development, basically.

Chair Pescaia: Okay, I would like to open up public testimony at this time. Please be sure to state your name for the record.

Ms. Linda Place: Hi. I may be too loud. My name is Linda Place and I live at 6670 Kamehameha V Highway. And there's just a few things that I wanted to ask or bring up at this time. And it was on the culvert that he showed us earlier about having it the way it was diverted and stuff. If they could put a silt basin on the mauka side of the road because that land is also owned by Kamehameha Schools.

And the other thing was that on this map, which is a concern where the project ends where the yellow is, this road here, we have some issues with that because it's been manmade, and it's been made within the last 20-something years. And I think my husband brought that up today. And the reason for that is they put asphalt and all those kinda materials in there. And when my children were little, we used to camp on the island. And they would have to walk or we would have to go by boat to go to the island. And it's a beautiful – or it was a beautiful place, but because of all this driving back and forth over the years, there were a lot of campers, now there isn't as many. But when D&J, there was lots and lots of people traveling back and forth. Like if they would load up one car, and take all their ukana down to the beach, maybe it would've been not too bad. But because they kept going back and forth every day while they're camping and bathing, you know, and it was just tainting that area, how the water – how the island got eaten up where we lost a lot of land there. But I think that was all I wanted to say.

And as far as the EPA, you know, when they first started – before they even started issuing, and when they came over to the east end to look over the property, they were always – my husband had brought attention to them about what was being done there. And it was just passing of the buck over and over. It was like, oh, it was the State, and, oh,

it was the County, and, oh, it was this. And this is all we ever hear all the time is about passing the buck to one to another. Thank you.

Chair Pescaia: Mahalo, Auntie.

Ms. Place: Okay, thank you. I'd like to say one thing that we have a good neighbor and we support the shrimp farm.

Ms. Judy Caparida: Aloha. My name is Judy Caparida. I remembered when the first problem came out when Desmond and his wife were the owners of that fish – the shrimp farm. And there were stipulations that they was supposed to do before they passed it on to anybody, because things were not pono. They were illegal. They were supposed to be fixed. And it's still not yet fixed. Let's get to the bottom of this. I mean that's the way. When you build a house, the whole thing comes together, because I got a house. And you talk about permitting, man, you get the permits up your butt. That's how much permits you gotta get to get it right. So you know something? You gotta do things pono. If you wanna live here and do it right, that's the way it's gotta be. Not because somebody else is doing this, and then you going do that. Hey, make researches. Find out where's the pukas, where it's got to be fixed. And that's the way it is for me. I've been here only because I've been 12 months away from here. We have so many problems and issues that came up. But then you know what? When it comes for anything to make plans, you folks better make sure that we get it right, because you cannot build one illegal, illegal, illegal stuff. No. You gotta either be pono, so when you build something pono, it's gonna be stable. It's gonna be strong. Nobody can fut around with you. Nobody can B.S. you. But this is not the way that I feel that we should do things. And that's why I gotta come and share. You gotta do what is right. Do it in righteousness, so you no more problems. But you get to be a problem when you do something that's not pono. My name is Judy Caparida, and I love Molokai. I love our people on Molokai. And, Mister, you know what? If you no love 'em, you not going tell the truth. But if you love 'em, you going let them know the truth like when you take care of your children, your grandchildren, so that one day, they got something to be solid on. Mahalo.

Chair Pescaia: Auntie?

Ms. Caparida: Hai?

Chair Pescaia: You familiar with that road that goes on that property all the way down to the beach?

Ms. Caparida: Yes.

Chair Pescaia: Do you remember it always being driveable like a – was it a–?

Ms. Caparida: But they made it wider. They got it wider.

Chair Pescaia: You kinda know when?

Ms. Caparida: I remember I used to go there.

Chair Pescaia: It used to be a foot path before?

Ms. Caparida: Yes. But you know, the one that I really worry about is the one that is across the street. There's one that comes in and go underneath the road, that big one they had made. They did it. Desmond them did it. And then when you know when it rains hard, over there flood because the water runs over the road. You know? And that things all supposed to be fixed. That was part of the plan. So when I sit down and I listen to all this B.S., I get bored, because you either do it right, tell the truth, and finish, and get out. Thank you.

Ms. Ruth Manu: Aloha, Commissioners. We just being ourselves because we love Molokai. We no meant to offend nobody. But part is this that I'm so sorry that Kamehameha Schools gotta get involved in this. And plus, it happened when Manaba was over there. That's how they came to be D&J Farms. That's how they came to be called the Shrimp Farm. And the Places live right there where they have it. They are the neighbors. Hello?

So, for us kupunas, that's right what my sister talking about, the big ditch you guys talking about. It goes down over into that. It overflows. Even the State when put the kind stones inside there for fill 'em up. We know that. We seen them over there working. Hello? Pedro was helping them out too. The part is this, let's get this straight. For me, I'm sorry that these guys right now is taking over. Manaba was supposed to clean up his act, but he left it for them. Then now come Kamehameha along. Kamehameha Schools belong to us, Hawaiians. And look where that jam up come in. They went step in there fully into that to cover up all of that. For us, on Molokai, if you do anything that is pono, it gonna work. If you B.S., boom, you outta here. That's not right. So I'm saying I know them. I know the guys over there right now. And it's like, hello? Where's the light bulb? Manaba them was there first. He said he was gonna fix 'em all up before somebody was gonna take over the place. So you know what? Kick him out. You guys went to the site. You seen what is over there. It's over there already. It's after-the-fact now. The part is that make sure that they do what they say they gonna do. They trying to pass the buck over to somebody else. You know what? Get their act cleaned up before they can do anything. No cover up for something that the wrong was there. We're here as your Planning Commission. You guys sitting on this Board, you know Molokai. You gotta tell 'em just like I went tell the cruise ship guy. Same thing. You no ask permission, boom, outta here, bruddah. Same thing. If you know what is right, do right, then nobody hurt. You guys shouldn't be blamed for picking up somebody else's garbage right now when they never clean 'em up. And they

coming over here like they, okay, blah, blah, blah. Hah! We was there the first time and we still here. We just letting them know. We love you guys but do it right. Follow up. Get back. Go check up all your books, your notes. We get ours. We've been there. And when they went lie to us, Manabas, we told you, you will be shut down. Boom. Outta here. That's what, what happened. So aloha. I love you guys. And I'm Ruth Manu. Thank you.

Chair Pescaia: Auntie Ruth Manu, Auntie, you noticed adverse changes like bad – anything that's specifically that's not pono that you like see that hasn't been fixed yet? I know it's hard because you no go inside.

Ms. Manu: I know they get – no, they went make fence to put their horses. They get sheep. There's a lot of nice animals, you know, over there. I said, ooh, my God, he get everything all nice, but all of that not pono. So what going happen? Well, you know what? For me to say that, although I don't– Well, so far, when you look from the road outside looking in, not so bad, but to go over there . . . (inaudible) . . . is not our kuleana.

Chair Pescaia: Okay.

Ms. Manu: Okay?

Chair Pescaia: Yes.

Ms. Manu: Let's keep it straight. Thank you.

Chair Pescaia: Thank you. Mahalo. Anyone else? Seeing none, I'm gonna close public testimony and we're going to continue deliberations of this application. So let me start off with, we'll go in order, construction of the ancillary groundwater well. Start with the well. So the well is in the exemption category because it's directly tied to the aquaculture operation. What we looking at as far as paperwork, we have a permit that was an interim permit issued in '98. And then it says after five years, I guess they're going to evaluate how much water is being used, what the operation's looking like, and so there's some figures on there. And I think, Kalani, did you get a chance to update us?

Mr. Kalani Fronda: Aloha. Kalani Fronda from Kamehameha Schools. Wanted to provide a little more detail on the question that came up from Commissioner Kelly. And that was regarding the Well Permit 0350-01, as well as 0350-09. Based upon Permit 01, .24 million gallons per day for three acres. And Parcel 09, it was .75 million gallons per day. And when you apply that type of multiplier as was – as a baseline in 01, it would come out to about nine acres. And as I measured based on the scale of the shoreline certification map, the total of the 12 ponds equals about seven acres. And so when you total the – it still falls under within that 12-acre total threshold. Thank you.

Chair Pescaia: Hold on. Okay, sorry. Permit 350-01 is for the pump that we looked at today?

Mr. Fronda: That's the primary.

Chair Pescaia: And then this other permit for 09 is for the secondary pump?

Mr. Fronda: Yes.

Chair Pescaia: And the secondary pump is the one that's not being used?

Mr. Fronda: It's a backup.

Chair Pescaia: How often is that used?

Mr. Fronda: It's a backup and it's also used for the upper wells.

Chair Pescaia: So it is in use?

Mr. Fronda: Sometimes. I think today you seen it on because they were filling it and flushing the top portion of the site.

Chair Pescaia: I trying to figure out how this works, because you get one permit for that specific well to operate. Does that mean that .24 million gallons per day is supposed to come out of the primary well?

Mr. Fronda: Correct. However, the – if you take a look at the total capacity, it runs at about eight million gallons per day. However, for the permit's purposes, it was for .24 estimated mgds that would be utilized for about three acres' worth.

Chair Pescaia: That system is big enough to pull out eight million gallons per day, but the permit allows for a very small portion: .24?

Mr. Fronda: Yes.

Chair Pescaia: But you have – so you're taking the carrying capacity of the second well, like one second permit, and having it work out of the primary well?

Mr. Fronda: Let me back up again. So the primary well, as mentioned, would feed about – well, based on the initial permit that was submitted, 01, it would feed or provide for three acres. And so as you take a look at the map itself, three acres would actually fall into roughly, the initial four wells that were created back – four to six wells that were created

back when this original Permit 01 was created. When the expansion came up with Well No. 09 as a backup, that had a larger volume mgd, and that would account for the expansion area.

Chair Pescaia: So then wouldn't that make the second well more primary because it has a greater yield than—?

Mr. Fronda: It would if we were— So I know he uses it to flush. I don't know. So you know on the top portion?

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

Chair Pescaia: One pump runs at a time?

Mr. Fronda: . . . (inaudible) . . .

Chair Pescaia: Okay, so – well, maybe we need to get you on the mike so you can answer this for the record. You was following me—what I was asking?

Mr. Bacon: One point is, though, is this – the system's sustainable yield, that eight million gallons a day, that's for the Ualapue System. That doesn't refer to this at all. That's how much they can pump out of the groundwater.

Chair Pescaia: Oh, that's not his system. It's the aquifer – I mean, not aquifer system, but the—

Mr. Bacon: No, no, that's the County, yeah, the County's amount.

Chair Pescaia: Okay.

Mr. Fronda: And so for a point of clarification, we are pumping saltwater well. So it doesn't affect the eight mgd yield that's allowed from the Ualapue System because it doesn't tap on that aquifer at all.

Ms. Dudoit-Morris: And is it just me or do we not have a groundwater use permit for that other well?

Mr. Fronda: That'll be on the next exhibit, Exhibit I.

Chair Pescaia: It looks different. And it doesn't have the same kinda information.

Mr. Fronda: So it's provided by the CWRM.

Chair Pescaia: But it says, "Enclosed with this letter is your water use permit," but they didn't actually include the permit itself. This is like a cover letter to the permit.

Mr. Fronda: So this is the paperwork that was provided by CWRM to Oceanic Institute for the applicant at that time for the approval of the water use permit.

Chair Pescaia: Okay, sorry. So is it safe to assume then that you folks are operating within the guidelines of the withdrawal? I know you guys keep thinking that saltwater is like endless, like it's an endless resource, but part of the reason why there's a cap to that is the amount of salt that's coming out. And you are changing the composition of the soil surrounding it. And the way the water percolates, you know, you're pulling it up, you're putting it on a surface, it's coming back down. There is a scientific calculation for that to make sure that the ground maintains its integrity. So is it safe to assume that the pumps – the wells are operating within these guidelines that you're only taking no more than .24 mgds on average?

Mr. Fronda: So I know– I'm gonna to the operator. I will say that there is based on the – there's a yield projection based upon the number of wells that was attached to Well No. 1. And so that projection is included in the Well No. 1. Now, for Well No. 9, it took into consideration also, the expansion. And the expansion included the projection of what may be used as a – for the additional areas that are there. Now, as for your question, I am not sure on – because I don't have my use – the use reports before me on what is pulled per month. I could– I don't have it in my computer right now. It's actually in hard copy files. And I could provide that. But that would actually provide hard documentation on what is being pulled each month as far as millions of gallons per day.

Chair Pescaia: Any more questions relating to this? So do you guys want to continue discussing the next item, or you guys wanna like vote, like exemption or no exemption on this one? Do 'em one at a time?

Mr. Hopper: . . . (inaudible) . . .

Chair Pescaia: Okay, yeah. So, sorry, the recap was that if an item is found to not be exempt, then we would need to provide our findings of fact and conclusions of law.

Mr. Hopper: Just as a procedural point, I don't know if later on, I don't know if something will come up in discussions that'll make you wanna revisit any votes you've taken. It does get kinda complicated, procedurally, to go back and change something that's been voted on. I don't know if you wanna discuss all of them, and then in a blanket motion say, Items 1, 2, 3, 4, 5 are exempt, and 7, 8, 9 or whatever are not exempt. That's something you could do as well. If you're comfortable doing it piece-by-piece, that's fine, but you'd have to do like probably a motion to reconsider and stuff if you wanted to alter that vote. So just

– I think either way is probably legally, permissible, but I'm not sure how you wanna go there.

Chair Pescaia: Okay, we'll discuss first. Okay, so this is actually just for the primary well, right? Okay. Okay. Now, on to the grading for the shrimp ponds – the grading for the shrimp ponds, the ditches, and the drainage improvements. Does this include the raceway? All of it? Okay. Question: how deep is the raceway?

Mr. Roy: . . . (inaudible) . . .

Chair Pescaia: Twelve feet?

Mr. Roy: . . . (inaudible) . . .

Chair Pescaia: The raceway? No way. It's deeper than that.

Mr. Roy: You're talking about the raceway or the drainage ditch?

Chair Pescaia: Okay, wait. The one with all the water that's coming between the–

Mr. Roy: Oh, that's the raceway. That's the raceway.

Chair Pescaia: Okay. Yeah, it's deeper than four feet. I can swim in that thing. No?

Mr. Austin: . . . (inaudible) . . .

Mr. Roy: Four feet? About this high?

Chair Pescaia: Wait, that's how deep the water is, or that's how deep the ditch is?

Mr. Roy: The raceway . . . (inaudible) . . . is about four feet deep.

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

Chair Pescaia: The water or the height of the bank to the bottom of the raceway?

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

Chair Pescaia: Sorry, you gotta come up to the mike. I cannot hear you.

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



Chair Pescaia: He said the water height is four feet.

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

Chair Pescaia: Yeah, so maybe you can help. So from ground zero, how deep did the construction go, and I'm guessing, to put on – to build the berm on the side, which kinda gave it a little bit of hump, right? Yeah?

Mr. Roy: So we're talking now about the drainage ditch, right?

Chair Pescaia: No, the raceway with the water between the ponds.

Mr. Roy: How deep was it originally dug?

Chair Pescaia: Okay, before the ponds, this yellow – before the ponds, this yellow line right here by all the circles wasn't there, right?

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

Chair Pescaia: That was before the ponds? Like that was built to support the ponds, right?

Mr. Roy: Right, six ponds.

Chair Pescaia: Okay, the first six ponds because the water needed some place to go, right? So they built the raceway.

Mr. Roy: Right. Yeah, my understanding was on the Ohia and D&J, they operated – I'm sorry, on the Ohia, they operated six shrimp ponds. And then there would've been raceways connected with those six shrimp ponds, but then they enlarged the facility to what it is today, which I think is 16 shrimp ponds. And then you have the raceway going down the side of the ponds, which you've just mentioned, which according to John Austin, is four feet deep from water level to bottom.

Chair Pescaia: Okay. Why I asking is, I mean, like grading to me is like when you just scraping off the top, and you're kind of moving stuff. But this is like actually dredging. And I think dredging to me kinda implies that there was some natural formation that was being emptied out. But I'm trying to see. Was this like just flat marsh land like–? It was flat lands and this raceway was built to like – wasn't a natural stream that was enhanced, or this was a completely new installation, right?

Mr. Roy: To my understanding, correct. It's an integral component of an aquaculture facility. It accepts the used seawater from the shrimp ponds, but that was one component of the grading alterations that were completed on the property.

Chair Pescaia: Okay. Anybody get more questions about this – any of the grading for the shrimp pond ditch drainage improvement?

Mr. Bacon: Okay, I guess my question is, okay, the grading of the shrimp ponds and the ditches, I assume that's the ponds themselves, the round ponds. And the ditches would be the raceway. And then this drainage improvement, is that the ditch up by the highway that's going around for drainage? Or is that—? Because we've got ditches and drainage improvements. So I'm not getting the point of whether those are the ditch up by the road or not.

Mr. Roy: Yes, sorry, this sentence, "Grading for shrimp ponds, ditches, and drainage improvements," that includes both the raceways, which I think also referred to as ditches, but in the industry, they say raceways. And then we've got the drainage ditch that we drove along today, which parallels the highway, which is included in this overall provision.

Mr. Bacon: Okay, because that's the one I would have an issue with is that one. As far as the ditches go, which we're calling the raceways and the shrimp ponds, those are all part of the operation, and the other one isn't part of the operation. It's a stop gap measure to protect the operation.

Chair Pescaia: But even though they're a part of aquaculture operations, there's still some sort of guidelines we can follow to make them safe for the environment. So the ponds, the lining of the raceway, the lining of the ponds, have they always been consistent in the last 25, 26 years? Have they always been maintained at what I would guess – what I would call maybe industry standards? Does that make sense? Like have they always been from the point in which they installed them? Have they always been operating and maintaining by – within industry standards as far—? Because we were brought up if there were other— I know that the current tenant is an organic, all natural, clean, no chemicals, but have at any time—? I think we kinda asked that question last time.

Mr. Fronda: So I can answer. I think the way in which you're getting to— Once again, Kalani Fronda from Kamehameha Schools. A couple of things to validate I think the question that you're asking, and that is the – it was pathogen-free. So they were approved by the Department of Health as a disease-free shrimp farm. And with that comes certain protocols and best management practices.

Chair Pescaia: What year was that? How far back does that go—that certification?

Mr. Fronda: I wanna say probably around '99. It was prior to 2000. '98, '99, right around there.

Chair Pescaia: So still get like 15 years before that.

Mr. Fronda: It could've been and that was with Ohia. I'm not sure on the Ohia side. I'm speaking on behalf of the D&J. I do also wanna say that they have not used pesticides. And part of the reason why I wanna qualify that is because if they did, then it would actually kill all the animals that are in the water. And so with that, they do go through certain types of inspections by the Department of Health on an annual basis in order for them to be qualified as pathogen-free.

Chair Pescaia: Okay, has there always – I don't know if this kinda relates, but has there always been domesticated animals on the property?

Mr. Fronda: Always, meaning?

Chair Pescaia: Well, the ones we saw today, are they part of the operation, and are they permanent, and is there a history of that? Only because those kinds of animals have contributed to the erosion mauka of the road. And with the flooding and the ditch situation, their impact on the soil contributes to the situation makai of the road. So I noticed the animals. I'm just wondering if that's – how that kinda plays into the water management plan, I guess, the flood water management plan.

Mr. Fronda: I'll probably start off– I'll answer that question in a quick minute. I just wanted to start off and say that there has been history shown that prior to aquaculture days, it was ranch operations. And so there were animals on the property. When it– Over time, there were animals reintroduced again after the aquaculture farm was developed and created.

As for the current operation, I'm gonna look to the operator. I know those are more not applied to the aquaculture farm itself. And that's why you see some protection on that where he has created paddocks for the animals itself to protect the shrimp farm. I think I've kind of answered your question as far as is it applicable, or is it used as part of the aquaculture farm. I know for his purpose on the disease-free, there needs to be a separation of a lot of those because of the protocols he needs to go through in order to qualify as a disease-free farm.

Chair Pescaia: Yeah, so I kinda just tying it into the fact that why we need one drainage ditch is because of the runoff water. Why we have so much runoff water is because there's erosion occurring upland. What is contributing to the erosion? The animals. And then here, you're trying to mitigate that. We have the same culprits in the area. I just was–

Mr. Fronda: So I know in the area that – in our Kamalo area, we've had a history of working with Nature Conservancy in reducing the animal – feral animal population on that side. And the area of Keawanui in the past couple of years, there has been work with the licensee on that top area to move his animals off of that mauka area to allow some restoration to occur. We haven't really planted and reforested as we did in Kamalo, kinda working with Nature Conservancy to do that. Those were primarily goats that we were – the type of feral animals that we have. I'm gonna look at the operator right now. I believe the only animals that we've seen were horses. I don't recall seeing any goats. No goats.

Chair Pescaia: I think had cows.

Mr. Fronda: There is a couple of heads of cattle.

Chair Pescaia: Only because like one of our community members mentioned about the silt ponds, you know, creating– There's other ways to mitigate the water on the makai side besides the ditch. And I know the tenant, the D&J Farm, they did what they – what was within their scope of ability to protect their property. But as the landowner, and you do own the mauka part of that, right?

Mr. Fronda: Correct.

Chair Pescaia: So I know it's not in here, but it – since you are the owner, looking at ways you can – things you guys are committing to doing on that mauka side to kinda mitigate the concerns we're having on the makai side besides one ditch.

Ms. Dudoit-Morris: Okay. And I heard you bringing up earlier, and then Auntie mentioned about the cleanup on the parts of the roadways going towards the island. You know that we saw the asphalt?

Mr. Fronda: Yes.

Ms. Dudoit-Morris: Okay. So my question is, in regards to the drainage ditch in that big – obviously, I mean, nobody have to tell me because I grew up on that end of the island, too, that somebody dug a really deep hole where the water comes up from underneath the road from mauka to makai. Okay, so in addition to the water flowing and the natural erosion, I know that it wasn't that deep before they started digging and making that drainage, whatever you call that, way. My question is, if there are improvements needed, if we cite that we not happy or – and I know we not happy with all the asphalt that is on that road going towards that way, who–? I heard you mentioned in your presentation that you were gonna work with the State DLNR and the County of Maui to figure out cleanup efforts and all that. So my problem is, when you say State of Hawaii and you say County of Maui, you actually mean me and everybody else sitting over here because we pay our taxes, and part

of that money going be helped to clean up something that was obviously done purposely by an individual or individuals. So my question is, when you talking about the ditch, and improvements, and things that need to be made, whose bill is that?

Mr. Fronda: So if I go back to the road again, it kind of talks to what Auntie had mentioned as far as kuleana. And I believe what Mark was bringing up was the fact that these are agencies that we would need to work with in order to comply with certain rules and regulations that are – that oversee that particular walkway or roadway to the island itself. And I believe that's kind of what he was alluding to, not that we would go ahead and fix it right away, and say, okay, it's done, but not go through the process, because then we're gonna be back to where we are again. So he wanted to kind of assure you guys that we will work with them to go through the review and approval process in order for those items to be removed.

Mr. Roy: Just to add to that, the reason why we got both agencies, the State and County, is that there was a question of the jurisdiction based on the shoreline. So we have to work with both of those agencies to establish jurisdiction as the first point. And then we would obtain the necessary permits in order to remove those items from the shoreline. So it's a Kamehameha Schools' led effort. It wouldn't be funded by the County or the State.

Chair Pescaia: What you mean "jurisdiction?" I no understand the jurisdiction part.

Mr. Roy: So in the State of Hawaii where you have a shoreline, there's a jurisdictional boundary between the State and the County. And it's called – usually it's referred to as the high water mark indicated usually by the – where the vegetation grows.

Chair Pescaia: Yeah, we're very aware of the line.

Mr. Roy: Okay, so that line is the jurisdictional boundary. So I think we're unclear when we were at the site inspection as to exactly where that boundary falls in relation to–

Chair Pescaia: Okay, tell me why that matters. I'll give you an example. If something builds an illegal seawall, it is deemed illegal, the person who went put 'em up needs to take it down. It doesn't matter if– I mean, you know, wherever the water goes up and down, it doesn't matter. If it's illegal, it's illegal. And whoever went put 'em there gotta remove 'em.

Mr. Roy: I completely understand that. And–

Chair Pescaia: So, I mean, what would you be seeking from the two entities?

Mr. Roy: It's a question as to who would be approving the permit to actually allow us to remove those items from the shoreline whether it be the County or the State. And that

would be dictated by the jurisdictional boundary along the shoreline. So it's not a question as to it wouldn't be removed. It would be removed, but we'd have to get the permit.

Ms. Dudoit-Morris: And it's also not a question of whether or not those agencies, because that's within their jurisdiction is gonna be handed the bill for the cleanup.

Mr. Roy: Yeah, it's the Kamehameha Schools.

Ms. Dudoit-Morris: Okay. So we know who did it and we're--

Mr. Roy: Right.

Ms. Dudoit-Morris: Okay.

Chair Pescaia: It's just a permit for removal, you're looking for.

Mr. Fronda: Yes.

Chair Pescaia: Okay. Thank you. I don't know if you was like thinking that you gotta work with them 'cause they going help you do the-- So, okay, sorry.

Mr. Fronda: I think what he wanted to do was to assure you that we need to go through that process, approval process.

Chair Pescaia: Okay.

Mr. Fronda: Going back to what Commissioner Dudoit had asked at the site, and that was asking about the kuleana of mitigating a lot of these things, we -- and this actually goes back to what Auntie had mentioned as well, we are here working on the SMA with the intention that we knew that if we left it upon the previous lessee, we probably wouldn't be here today. And so we wanted to make sure that it's moving forward. When this is accomplished, they will actually assume that role to go back, and we'll make sure that we have that push to be able to mitigate a lot of these things. And the case of the road, because it was kind of a month-to-month type of arrangement, there's going to be a dual role on picking up the ticket for that.

I think I needed to also answer your question in regards to the ditch where the culvert is. We are still working with -- or in discussion stages with the Department of Transportation in regards to the culvert and the work that they need to provide--you've seen that--and the exhibit that was noted there. And so they have an area, subject area, of where they need to improve based on the engineering that they had created, the volume, etc., and so on. And so that's the discussion that we have with them. We've also had further discussion on

granting any type of required access at no fee to them to be able to do what they need to do within that area. It hasn't gone beyond that discussion stage as far as what's gonna happen once they go ahead and apply – or execute that capital improvement project itself.

Ms. Dudoit-Morris: Maybe this is a question for Counsel. Do we have the ability – oh, I guess not in the exemption, but do we have the ability to get a committed timeline for cleanup efforts?

Mr. Hopper: If you wanted to put that as a condition, then that would be a cleanup timeframe that they would have to comply with, or come in and have the condition amended for an extension. As long as the cleanup is related to the goals, objectives, and policies of the SMA, which I think cleaning up in this case would – you know, that that would – should be seen as something that's allowed then, yes, you could put a timeline on that. I think you should probably talk to the applicant to see if it's reasonable or they'll be back here to amend it. And it would need to be on the permit, not on an exemption. They could – something like that, they could represent that they're going to do that within a certain period of time, but it would be – it would probably be better to have that as a permit condition so that if they don't do it, you can bring that permit back up for review, and either rescind the permit, or reinvestigate the permit. It's easier to monitor compliance with a permit.

Ms. Dudoit-Morris: So because this is an after-the-fact permit, how would – what kind of – and if we were to take it away because they didn't comply with the timeline, what would we be taking away?

Mr. Hopper: Well, it would be as if you denied the permit. I mean, I know it's after-the-fact, but there's no difference in the standards for an after-the-fact versus a before-the-fact permit. So potentially, if permits are denied, or they're granted, and then there's not a compliance, you can go into a variety of options. But I would say that whatever the unpermitted action would be would have to somehow be removed or undone to put the land in the state that it was previous as if there were no permits granted. And that would have to be through the enforcing agencies going that route. So obviously, hopefully, that wouldn't happen. It happened – if you put a condition on that the parties would be able to abide by those conditions, would be the hope.

Ms. Kelly: I just had a question. In the last meeting's packet, there was an engineering report. And it talked about the drainage. And it mentions a retention basin that is located along the makai portion of the property downstream of the existing shrimp ponds that has no bearing on the drainage ditch located up above the ponds. But it addresses that in 3.2, the drainage, it does say that there was a 3.1 cfs increase of the off-site runoff to onsite. So how is the onsite – was there anything that you folks were gonna plan to do to mitigate that increase?

Mr. Roy: Just to provide a bit of background, I'm sorry we don't have our civil engineer here today. He was here last week and would've been able to do a lot better of job in responding to that question. But the drainage report was done as part of the SMA application. And really, the SMA assessment application that was done in this case was a full evaluation of all of the after-the-fact improvements and was – included a number of studies. This was one of those studies: a preliminary engineering and drainage report. The civil engineer was tasked with evaluating the conditions on the site, and to document any drainage increases that had occurred by D&J and Ohia putting in the shrimp farms and the various improvements that we're talking about today. Through the process of going through the calculations that they do in relation to the County's drainage requirements and the rules that dictate the preparation of these studies, they came up with the increase that was generated by those improvements being put in place. The retention basin that is mentioned in the report is actually in a position where it is accommodating the increase in drainage runoff that was resulting from those improvements being put on the D&J properties. Also, there was a 3 – I think it was cfs increase? I can't recall. I don't have the report. 3.1 cfs increase in association with those improvements. But the detention basin or retention basin that's put in place at the lower elements of those ponds, it's actually on the makai side of all of the ponds, I can point it out from one of these slides. It's actually in between the two yellow circles that you see on this slide. It's kind of a – it's a retention area, ultimately. That is sized according to the civil engineer sufficiently to accommodate the increase in runoff that was generated by these improvements. So they're essentially, required by the County's drainage rules to accommodate the increase when you're– Say we're developing a new project– That's why it's a lot easier to look at this. If you're developing a new house, you assess the increase in drainage runoff associated with the impervious surfaces that are being constructed as part of that house. And then you're required to retain the increase in runoff somewhere on the property so it doesn't flow further downstream onto someone else's land. So through the process of doing that analysis, this retention basin was deemed appropriately sized to accommodate the increase in runoff associated with the improvements that we're talking about today such as the single family house, the farm dwelling, and the pump house structure, and so on.

Ms. Kelly: I understand about the retention basin and all that. It's just that the location of the retention basin, it doesn't flow there for the entire project area, is what I'm trying to get at. And so the increase– You know, the whole drainage– Okay– And I understand that whatever improvements, I guess the six ponds above the pump house, that was part of the improvements. And a lot of the runoff is directed to the raceways, not specifically, to the retention basin. So I'm assuming that the runoff is from the other four – yeah, the other – the bottom, below the pump house. And that's because those – you know, not the original six ponds, but the other four, I'm assuming. Anyway, so it's not really the retention basin I'm asking about. It's about the actual increase. When you're saying that the off-site runoff increased, and you're taking it from mauka to makai, that drainage above, you know, by the highway is taking everything mauka to makai, and you're just redirecting. Okay? So my



question about because the – in the engineering report, it mentions the retention basin, and I understand about the improved ponds, and that takes care of it, but there's no mention about the increased off-site runoff and where it goes. It's only talking about the pond improvements. 3.1, okay, that would be for the project site.

Mr. Roy: The surface runoff, right?

Ms. Kelly: Yes, I mean, the surface runoff. But the ones from across the street, we're not – yeah, where does that go? What was the increase? Because that's what you folks were talking about. There was an increase from the mauka portion onto the makai portion. So in the engineering report, was that considered? Was that increase considered? And, you know, it says it's going to the wetlands. So what was the increase? Because we know there was an increase.

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

Mr. Roy: Right. Right. Yeah.

Chair Pescaia: For the record, nah. Is there still a question?

Mr. Roy: Yeah, the drainage, the civil engineer is required by the County's drainage rules to assess the increase in runoff that was generated by the improvements on the actual site itself, and then to identify a location as to where an incremental increase in runoff that had occurred by the various hard surfaces associated with the structures that are being constructed to essentially, identify a location as to where that runoff could be accommodated. So in regards to mauka flows, I'm not really sure what was generating an increase off-site flows down makai.

Mr. Bacon: I think what she's trying to say is that that's considered an improvement, right, that ditch, that drainage ditch up above? And if that's an improvement, then that should be accounted for by the engineer somehow.

Mr. Roy: Right.

Mr. Bacon: I think that's what she's getting at is that there's nothing in here that say, okay, there is an improvement, and that improvement has caused some change in flow of water, or drainage, or anything, and so how is that accounted for?

Ms. McPherson: Okay, we have a study. And I'm actually reading from the SMA assessment application itself, which is this document you did receive. And in Section 3.2, it states that along the mauka – so it talks about the net increase of 3.1 cfs over the pre-development conditions. "Along the mauka portion of the project, a drainage ditch has

been constructed to direct off-site runoff from sheet flowing across the portion of the parcel where some of the improvements have been constructed such as the ponds. Off-site runoff is directed towards the western portion of the project site, which is mainly the unimproved portion of Parcel 8, and does not adversely affect the project site as runoff generally follows the existing drainage pattern and ultimately, outlets into the ocean in the same manner as the existing drainage pattern.” So that is discussed. It was discussed in the SMA application. And if the Commissioner feels that the preliminary engineering report and the analysis is inadequate, then that’s one thing.

Ms. Kelly: Okay, in that description that you just read, it just states “After the development of the improvements to the project site, it is estimated.” So it has that part, but that drainage ditch is still one of the improvements. So what was the increase? I mean– You know? That ditch was not an existing ditch, so what’s the flow?

Ms. McPherson: So you’re saying that the–? I’m not quite understanding what you’re saying. You’re saying the construction of the ditch itself added to the water generated?

Ms. Kelly: Not generated, but it affected how it flowed over the property and created additional velocity for erosion, because you’re channeling this flow of water that traditionally, was able to just–

Chair Pescaia: Fan out.

Ms. Kelly: Yeah, fan over the property. So you increased the volume at certain points.

Ms. McPherson: But you don’t increase the overall volume. You’re redirecting the sheet flow and concentrating it.

Chair Pescaia: I no think so. I think if you spread water out, it percolates to the – it has more surface in which to soak through into the ground. When you pile it all up, and stack on top of each other, and it’s flowing in a ditch, it then changes the rate of percolation going into the ground, thus– You know, so, I guess, in this calculation of 3.1, the net increase, is it taking into account, the drainage ditch?

Ms. McPherson: Again, that’s a good question, and if we had the engineer here, he could probably answer that.

Chair Pescaia: And even the wording is kinda sketchy, because it says along the mauka portion of the project, a drainage ditch has been constructed to direct the runoff flowing from the ponds, but that’s mauka of the ponds. So you know the runoff from the ponds is not going towards the mauka portion. But then it says, okay, well, it’s flowing to the west – it’s directed to the western portion.

Ms. McPherson: Well, it does talk about off-site runoff, though. And I think that's what they're referring to is the water coming down from the mauka side.

Chair Pescaia: This is of the unimproved portion of— Also, it's directed to the western portion of the project site, which is mainly unimproved portion.

Ms. McPherson: Right.

Chair Pescaia: So, the wording – it sounds like what it's saying, we put in this ditch on the mauka portion to – it's been constructed to direct the off-site runoff from sheet flowing across the portions of the parcel such as the ponds. How does that work?

Ms. McPherson: This is – obviously, this is an engineer doing this analysis, and they're looking at the engineering of the solution. And in terms of the water, the sheet flow being redirected around the ponds, which are the improvements, into an area where there's no ponds in the general direction of the original flow emptying into basically, the same area. Although, you do make a good point that it probably would be less when it was sheet flowing because some of it would've infiltrated on the way down there.

Chair Pescaia: And it just slows down. Like it slows down and moves like— But now you've got this gushing flow of water that's gonna get farther down.

Ms. McPherson: With possibly more sediments in it.

Chair Pescaia: Yeah.

Ms. McPherson: Is that what you're getting at?

Chair Pescaia: Yes. The velocity is carrying and moving more affecting the land differently than a slow-moving wide flow of water. And I think you can tell, because if you look at the aerial, all around the ponds is super dry. And, you know, you can see the change, the overall change in the landscape.

Mr. Fronda: Chair, if I may add to what Nancy had shared with you earlier? And that is in the book that we had submitted a couple of weeks ago, it did state – it did provide several alternatives of how this water comes down. So it catches the channel first. If it does go beyond the channel, it'll hit some of these areas before it hits ocean. And then the last that it would hit would be that retention basin, that area that Mark Roy had identified.

Now, in the most recent handout that we had sent to you, and it's on Exhibit K, which is the culvert improvement plans submitted, created by DOT in 2008, specifically, page 3, I believe it is. It says "Water, Pollution, and Erosion Control Notes." At the very bottom of

it, there's a couple of items that they note there that talk about how they would take care or address the sedimentation. And so these are different ways that would address some of the concerns that you guys are bringing up as far as sedimentation catch. And the book that we had submitted to you guys that talked about the engineering and so on, we talk about what happens when that water then hits the ditch system, and then beyond that to the parcel itself. So it talks about it in the C3, 4, all the way to 11. And that's "Erosion and Sediment Control, Inspection, and Maintenance Practices." So from the – sorry, so from Exhibit K, you would flip it back one, two, three, and it says, "Water, Pollution, and Erosion Control Notes" at the very top. If you come down to Subsection C, it says, "A, General," "B, Waste Disposal," "C, Erosion and Sediment Control, Inspection, and Maintenance Practices." That's where they detail how they would address sedimentation as well as the maintenance of it.

Chair Pescaia: Okay, this is– Sorry. I'm just catching up with you now. This is specific to the DOT when they do the culvert. This is what they doing.

Mr. Fronda: So the first notes that I had shared with you was addressing the water flow as it comes down, and the second was addressing the sedimentation. And so that's kind of part of our work as we move forward after the SMA, and so on, exemptions, in working with – as they move along as part of our trying to be pono with mitigating, and correcting, and taking a look at a lot of these different areas that do need curing.

Ms. Dudoit-Morris: So just for clarification, Chair, how you cite – how does the DOT or anybody cite an improvement if it's not an improvement? Improvement on an improvement that is not an improvement? Okay, never mind.

Chair Pescaia: Good question.

Ms. Dudoit-Morris: She gotta go to the bathroom and we not going have quorum.

Chair Pescaia: Yeah, can we take a five-minute recess right about now? Thank you.

(A recess was then taken at 2:55 p.m. and the meeting reconvened at 3:03 p.m.)

Chair Pescaia: Reconvening the meeting. Where were we? Have all our drainage questions been addressed, or we need further–? Okay, I got the no head shakes. Okay, so our next item, construction of a two-story, one-bedroom, two-bathroom, 3,344 square foot farm dwelling with carport. And I going throw in the 1,000 square foot accessory storage structure because that's the structure that's right adjacent to the house, right? Okay. So, 4,300 square feet of living space. Take it away.

Ms. Dudoit-Morris: No, well, the only question was like when you mentioned on the blueprints, that door, it's not on there. It's actually windows, huh, when you look at the—?

Chair Pescaia: They're floor length windows that happen to open that way. Is that compliant with Building Code?

Mr. Bacon: I think that's one of the questions I was gonna do. I was sort of leaning towards like saying, let's put this on the permit, the SMA permit, because the condition would be that they have a deck there to protect the inhabitants, and that sort of thing, you know, the residents that's there. So – but that stuff does taken care of as they do the building permit. That has to be, you know, a conforming thing.

Ms. McPherson: Yeah, if they choose to apply for a deck, they're going to have to come in for another SMA assessment with new building plans for the deck. That would be nice if the after-the-fact drawings actually completely described the structure as built. And they don't. My guess is that the Building – the Department may require them to take those doors out and replace them with windows, if they're not gonna build the deck because it's dangerous. I don't think it meets the code. So I think Commissioner Bacon's correct that that will be corrected during the building permit process.

Chair Pescaia: Is the individual wastewater system sufficient for the square footage of the house?

Ms. McPherson: I checked on the building permits that have been submitted. And I believe on the plans that were submitted to you, there is a drawing of the septic system and its location.

Chair Pescaia: Yes, there is, a thousand-gallon septic tank.

Ms. McPherson: And from past experience, a thousand gallons would be adequate for this size of house, but I have not seen an approval from the Department of Health for the septic system.

Mr. Bacon: Yeah, because they would need at least a 1,200 because there's enough – they have – there's at least three bedrooms here.

Ms. McPherson: I thought it might be close to a thousand, but you're saying it's more like 1,200?

Mr. Bacon: It's like 1,200, yeah. I think a thousand goes up to two bedrooms, but there's at least room for three bedrooms here, because they've got like a study room, which is a separate room; and then they have a recreation room, which is separate; and a bedroom;

and they have a second living room downstairs with a bathroom, which could also be considered as a bedroom, if the Building Department so chose.

Chair Pescaia: And another office on the outside of the first floor. You know, that second living room? There's another portion. So looking at these plans, has there been any change in the use or any other interior alterations? Anything else that is different from – besides the doors, the giant door/windows? What we looking at on paper and what is in existence, is there anything else we should be aware of?

Mr. Roy: Based on my understanding and looking at the square footage reflected, that's the most current set of plans for that structure.

Chair Pescaia: So the kitchen counters haven't changed, the bathroom? I mean, walls are still the same?

Mr. Roy: I couldn't speak to minor interior improvements, but I think if we're dealing with substantial exterior structural elements–

Chair Pescaia: Oh, no, in the SMA, even interior alterations come before us. So that's why I'm very detailed. We make condo owners come. Even though they just replacing one sink, they have to come see us. So is what's on paper what is–? John, come. You seen these plans that we're looking at? If you can come up to the mike, so I can get you on record saying does your house look exactly as it's depicted in these drawings? And I have to ask because already from the outside, we see something that doesn't conform, doesn't match, so without being niele and going inside your house–

Mr. John Austin: You're talking about the windows?

Chair Pescaia: We're talking about any – the walls, the windows, or any of the fixtures that are represented in the drawing, toilets, shower, if you don't have walls, if you took out that little wall in the office that separates–

Mr. Austin: Everything's the same except we added tile to the bottom floor.

Chair Pescaia: Okay.

Mr. Austin: Because it used to get water and flooding. And then the windows that we added upstairs was dry rot right there, and we just had that. So we didn't wanna change anything, so we're waiting for a building permit. So we happen to have those doors. The wall was very unsafe for my daughter, so we put the door there.

Chair Pescaia: Okay. So you get one different set of plans that you going apply for your building – you know, including, your renovations that you hope . . . (inaudible) . . .

Mr. Austin: Yeah, we're hoping to get a – after we get a – I mean, get these plans, then we can add–

Chair Pescaia: Right, for this one. You have–

Mr. Austin: Right . . . (inaudible) . . .

Chair Pescaia: Okay, okay, good. So when you went build – Oh, sorry, not you. Maybe you guys. When you built this structure, the footings and such for the buildings, is it cement underneath?

Mr. Roy: That's something that we're kinda trying to research the answer right now between Kalani and myself.

Chair Pescaia: And kind of something else that kinda related to the ditches and all the – was an archaeological monitoring plan, or like State Historic Preservation, or any other consulted in any of the installments of digging beyond 24 inches, including, the drainageways, ponds? Do you know?

Mr. Roy: You mean at the time of the improvements?

Chair Pescaia: Yeah.

Mr. Roy: I couldn't say. I have not seen any documentation that speaks to that. But as part of this SMA application, we utilized Cultural Surveys Hawaii to do a full archaeological assessment of the site.

Chair Pescaia: As it stands, right?

Mr. Roy: As it stands today. And then the archaeologist, Tanya Greig, set forth recommendations. And that report was submitted to SHPD.

Chair Pescaia: Okay.

Mr. Roy: So we're constantly trying to do the right thing, send the documents to the right agencies to kinda clean up the actions that occurred by the previous tenant in the past.

Chair Pescaia: Are there any other installments connected to this house? I kinda was trying to look, but – like utility poles or anything else that directly services the house? And where does the water, the domestic water, where are those lines in relation to the house?

Mr. Roy: I believe the house is served off of a County water meter, and a line coming off of the highway. And then obviously, you've got connections that provide electrical service to the house itself as well. I'm sorry. I'm not very versed in everything that has to do the structure. I'm trying to remember my visual observations at this point.

Chair Pescaia: Me, too. And things are popping up after-the-fact so I'm – thinking about, because again, if you put in one power pole, you gotta get one permit. So I just checking how were the utilities brought to the residence because it is a far run from the road.

Mr. Roy: Maybe I could just clarify as well. The notice of violations that I mentioned earlier, there's seven different notices of violations that were issued, I think, back in 2004, 2005. Two of them deal with the farm dwelling. And obviously, the farm dwelling requires a building permit. And that, to my understanding, is in process at Development Services Administration. But there's also an Electrical Code – electrical permit that's required as an after-the-fact element of that process as well. So there's two NOVs, two notice of violations: one pertaining to the Building Code violation of actually constructing the structure itself; and then the second one was an Electrical Code violation as well.

Chair Pescaia: Connected to the dwelling?

Mr. Roy: Related to the electrical improvements that were made on the dwelling itself.

Chair Pescaia: On the dwelling itself, because it has that other pedestal tower – the electrical for the farm I'm guessing is on this other pedestal thing out by the hatchery, right? There's like a– I don't know what it is. There's this big box.

Mr. Roy: It's the blue box.

Chair Pescaia: Yeah. Does that service–? I mean, that's connected to the house or that's just a separate, the farm–?

Mr. Austin: . . . (inaudible) . . .

Chair Pescaia: From there, it's connected to the house? So all the power goes off of that one meter?

Mr. Austin: . . . (inaudible) . . .



Chair Pescaia: One meter? Okay. Good to know. Okay, Commissioners, anybody have any questions for the house? Okay. Moving on, we have two 3,300 square foot shade structures that were built. I assume that grading was involved to build up the – I mean, fill, sorry, yeah, fill was involved to build up the foundation for the shade structures?

Ms. McPherson: I wasn't given that information.

Chair Pescaia: It just looked obvious when we was out there that had one pad, right?

Ms. McPherson: Okay, we're researching that right now.

Chair Pescaia: Okay.

Ms. Kelly: And if you know what the fill contains? Hopefully, no asphalt.

Mr. Fronda: To construct, no, but we did have to remove it to comply with the mitigation process. And that was reported in a report that went back to EPA.

Ms. Kelly: Yeah, I understand that you had to remove part of that foundation, but the foundation wasn't originally there.

Mr. Fronda: So it was a flat land that they built on.

Ms. Kelly: Okay, so they just took material from surrounding areas and just built it up?

Mr. Fronda: That's hard for me to answer. I'm not – for sure. My understanding is that it was kind of a flatter area. And I think the reason why EPA had required kind of that downslope was to allow any type of "drainage" that went down to make sure that it would be at that level where the wetlands were. But when they had it built it, it was actually at a higher level. That was prior to the–

Ms. Kelly: Prior to the shade house going up, that foundation existed?

Mr. Fronda: I wouldn't say the slope of it. That grade level was at what it was, but we had to mitigate it based on EPA's request to us.

Ms. Kelly: Because of the wetland–?

Mr. Fronda: Correct.

Ms. Kelly: Mitigation.

Mr. Fronda: The construction of the shade house, and that was the ones that were removed along with the structure that's currently there was a green house manufacturer, manufacturing structure made by Conleys. And I have a construction manual. That's a prefab that was provided.

Chair Pescaia: What is the floor, the foundation floor, of the – was it earthen or was it–?

Mr. Fronda: Of the shade cloth? Oh, you mean of the one that we removed?

Chair Pescaia: Yeah, that structure.

Mr. Fronda: Yes, it was.

Chair Pescaia: It was earthen?

Mr. Fronda: Yes.

Chair Pescaia: What was the value of that building at the time of purchase?

Mr. Fronda: I would – I need some time to research that, a quick one, and I can let you know. I do have some answers on some other stuff that you may have asked, but I'll wait until that item comes up again.

Chair Pescaia: Okay, we go do the recap. Okay. Awesome. How long were those structures in operation again? And what exactly took place in that building? That was the old hatchery? No?

Mr. Fronda: No, they had sun fish that was in there. It wasn't in there for a long time because after it was constructed, shortly after that, they needed to come down. I wanna say probably not more than a year and a half. And I'm thinking it's probably less than that.

Chair Pescaia: So beyond the structure there would've been tanks installed in the structure like a holding tank?

Mr. Fronda: It's kind of the like the tanks that you had seen–

Chair Pescaia: With the shrimp?

Mr. Fronda: Yes. Not the earthen type, but above.

Chair Pescaia: Yeah, the hatchery, yeah. Yeah, the big tub. And–

Mr. Fronda: And actually, it was kind of a lining versus an actual tank. So it was a lining that ran longways. And they put water inside and it kept it.

Chair Pescaia: Okay, I get it, I think. And then when that was in operation, that water to – came from the well and fed back into the raceway?

Mr. Fronda: Yes, correct.

Chair Pescaia: Okay. And they – do you know if they used any sort of—I don't know—different kind fish? What did they feed the fish?

Mr. Fronda: What did they feed the sun fish? I'm not sure.

Chair Pescaia: Only because like a former Chairperson owned a shrimp farm. And I know that they gotta watch like the effluent, yeah, what they putting out, and what they feeding 'em. And sometimes like, we see in the – in his, the limu died back based on kinda what the shrimp were outputting and their life cycles. So I just wondering whatever the fish went output, if they had studied how that was going to affect the rest of this ecosystem that they feeding into.

Mr. Fronda: Probably my answer to that would be the condition of the habitat in the raceway itself, it didn't decrease. It was actually quite successful throughout the period of when it was—

Chair Pescaia: What made them stop doing the fish?

Mr. Fronda: The permit.

Chair Pescaia: The permit?

Mr. Fronda: Yeah.

Chair Pescaia: Okay. Which permit?

Mr. Fronda: The required permit that was needed for the shade cloth.

Chair Pescaia: Sorry. Building permit, or SMA permit, or—?

Mr. Fronda: Building permit.

Chair Pescaia: Building permit.

Mr. Fronda: So that's why they needed to take it down.

Chair Pescaia: Oh, they went put in for 'em. They actually didn't get it.

Mr. Fronda: They did not put in for it, so they were noted that it was not put up with a building permit, and they needed to take that down. And so that's the reason why it was removed fairly quickly.

Chair Pescaia: Okay. So that's the 2004 violation over here?

Mr. Fronda: Yes.

Chair Pescaia: For the two separate structures?

Mr. Fronda: Hm-mm.

Chair Pescaia: Okay. How come the permit wasn't after-the-fact granted? I just wondering what was the problem with their—

Mr. Fronda: There is some wetland issues that needed to be addressed. So part of the mitigation was to first, remove the structure; and then two, to adjust the slope to make sure it was at the very end of that on the makai side would be in line or in level with the wetland that was around that area.

Chair Pescaia: Okay. So they couldn't mitigate that to keep the structure in place?

Mr. Fronda: Correct.

Chair Pescaia: So you get 16 ponds, 4,000 square feet of building, and you couldn't keep two shade structures? That's interesting. Okay, next. Anybody else? No? Okay. We have come to the end of the list of Item B-2. So recap, we have groundwater well, the grading, the dwelling with attached storage, and the two shade structures, four separate things that are going for exemption. Your comments is tied to these four things? Yeah?

Mr. Fronda: Sorry, could you repeat that?

Chair Pescaia: The additional information that you gathered is specific to those four?

Mr. Fronda: Chair, would you remind repeating those four again?

Chair Pescaia: Okay, sorry. It's the ground water well, the well; the grading for the ponds, ditches and drainage; the house; and the shade structures.

Mr. Fronda: Okay, so if I could first address the well? And I think you were asking about the volume that's being used for that particular area. And so as I asked the office to provide a usage report that was submitted to CWRM or Water Commission, at full capacity, there would be running at about .075 million gallons per day. Right now, they're actually only using a partial. It's not in full operation, partial operation. The assumption based upon our visual site visit would be in alliance with what's out there, roughly about .2 – .025 million gallons per day. But in full operation, that means every single earthen pond that's out there along with the aboveground tanks, we're running at .075 million gallons per day.

Chair Pescaia: 0.75 or .0?

Mr. Fronda: Oh, I'm sorry, .075.

Chair Pescaia: .075?

Mr. Fronda: Million gallons per day. Based upon our full operation, it's – the average– I'm sorry. I'm looking at my–

Chair Pescaia: So you're talking one-third of the permitted use?

Mr. Fronda: So at full operation, they would actually be at 2.3 million gallons per month. And that's based on what we – their submission to the Water Commission. So when you kinda do the calculation, divide by 30, and divide by million, we come out to about .075 at full capacity. Now, with the amount of stuff– And they're running kinda minimal right now. If you took a look at kind of what's there, it would kinda fall within that .025 million gallons per day.

Another item that I wanted to also bring up was the–sorry–was the ditch improvements. Sorry. I'm gonna consult really quick with Mark. The SMA minor permit improvements under \$500,000, I was gonna kinda recap again how we got some of that value. And then also, provide a value of what is estimated for the current value of the ditch itself. And the ditch being the ditch that carries the – well, it's not the raceway, the ditch system itself.

So the storage building and hatchery, it was based on a building permit application. And on there, the current construction cost is \$13,500. You already have that. The pump house structure, that was estimated based upon the square footage and how much it was – how much was spent to actually create that. It was about \$25 per square foot. And that was based on our capital improvement project numbers that we had actually expended and worked with the lessee on. And then we also worked with trying to assess the value or how much it had cost the D&J to repair the existing dirt, gravel road. And the current value as of today is \$8,900. We also took a look at the ditch system itself. And that came out to about \$170,000 based upon how much it cost to construct it back in – when they did. And

it comes out to at today's value, depreciated, etc., it comes out to about \$178,000. So we're looking roughly at about \$204,000 added. I'm sorry. So it's \$178,000 added to that \$26,400. It would come out to about \$204,400.

And then the last item was your question, Chair, regarding the footing of the structure. And you are correct. We concur what you had mentioned on concrete footing. Thank you.

Chair Pescaia: And you never find out if they – at the time that they did it that – if they had cultural monitoring or any–

Mr. Fronda: I believe you had answered that, right? Your cultural monitoring?

Chair Pescaia: No, he just said that there was a current – you retained – what they name? Not Cultural Inventory. Cultural Services Hawaii to do a current status of archaeological inventory. But at the time of building the house, and installing the ponds, and all that digging and earth movement, there was no cultural monitoring?

Mr. Fronda: For that particular building, I wanna say no, because of where we're at today. I do wanna say that there was in some of the findings there through oral history and so on, as well as some discussion prior to that, I'm trying to think of a report that we had completed. I know we were in discussion with SHPD on the overall landscape of Keawanui, but – and much of the people from Mana'e understand that a lot of the fill that was used for Wavecrest actually came from that particular area. However, the question that you're asking, if there was cultural monitoring, I'd like to say–

Chair Pescaia: If there was anybody watching, if there was going be iwi uncovered in the process of digging those giant holes in the ground.

Mr. Fronda: I would say no, because I didn't see any documentation for that.

Chair Pescaia: That was the question. Thank you. Alright, Commissioners, I'll entertain a motion of any sort. I'll take any motion.

Mr. Bacon: The only thing I'd like to see taken out of the exemption is the drainage improvements, you know, that drainage ditch up on the top, because we've had a number of questions about now the new velocity of the water and more erosion that's on the property rather than when it used to just do a sheet wash-over. It probably slowed it down enough so that they weren't getting any erosion. And now, we've got a steady stream of water, channel of water, that's probably creating more erosion. And somehow they gotta mitigate that as well as the fact that it didn't seem to ever be engineered. And maybe there ought to be some liability clause or something like that that would make sure they were responsible for any damages created by that. And make sure that down at the far end,

down at the wetland end of that, any build up of siltation and stuff like that would be cleared out somehow or maintained in some way that's appropriate. But the rest of it, all the other things that were in that exempted clause, I have no great problem with.

Ms. Dudoit-Morris: So, Chair, do we have to make a motion specifically on the recommendations or can we separate it? Can my motion be to only specific – recommend only specific areas of the exemption?

Mr. Hopper: I would advise it would be good idea for the exemption item on the agenda to perhaps, say move to concur with, and then list the items you concur with are exempted. And then maybe within the same motion so you're disposing of the whole agenda item say, and we do not concur with the following items and state the basis. You do not need to state the basis for your concurrence because you already have a staff report that's supposed to back that up. However, since the staff report recommended exemption, for the nonexempt items, you would have to state some reasons on the record as to why it's not exempt. That it might have an adverse environmental ecological effect or that it's not in the category. So I would try it all in one motion, if you could, just so that when that's motion voted on, you've disposed of that agenda item.

Ms. Dudoit-Morris: Okay, I ready to try, because it's almost four o'clock and I hungry. Okay, I would like to recommend–

Ms. McPherson: You'd like to make a motion?

Ms. Dudoit-Morris: Yeah, I would like to move that we concur with the exemption for the farm dwelling, for the structures that were dismantled, the two shade structures that were dismantled, and for the ancillary groundwater well. And that we not concur with the grading for the shrimp ponds, ditches, and drainage improvements because – I have to state my reason, right? Because everything ties into the same thing. If the drainage – I believe that the drainage has the potential and we do not have enough information to prove that it does not cause an adverse effect to the surrounding property, or to adjacent properties, or to the vegetation or natural landscape of that area. In addition, if we were to concur with the ponds and the raceways, I just think that the drainage was put there in that direction to support the ponds and the raceways. And because of that, everything is tied one into the other. And the obvious effects to the natural surrounding is what once was a portion of wetland is no longer wetlands. And that's just an obvious view of things. So that would be my recommendation.

Chair Pescaia: Can I have a second to that motion? Second by Commissioner Kelly. Discussion? So the motion on the floor is concurring with everything except for the grading. The motion maker has described her concerns. Anyone else?

Mr. Bacon: I think that the grading of the shrimp ponds and the ditches, which would be the raceways, those are really only about the aquaculture and stuff, whereas the other – the drainage ditch up above doesn't have anything to do with the aquaculture. It just has to do with protecting those interests. And the ditches and the shrimp ponds, as far as I've heard in the discussion, it hasn't been detrimental to anything so far. And they've been in operation now for – some of them for 20 years or something like that. So maybe we ought to consider that those are operable, and they seem to be not harming the environment as far as we know, whereas the real question is, what's happening with the drainage water in the ditch up above. That's just my thought on that.

Ms. Dudoit-Morris: Okay, so I agree, and I will listen to everybody, and maybe amend my motion, but so then my question would be to the Commissioners is, how do – if the ponds and the raceways were put into – in the middle of the natural flow of water, how does that not adversely affect the property? Because you've now changed the ecological and the natural flow of things. I'm trying to think. So if you can explain to me how – just because it's a part of the bigger project, if it were solely on that basis, I would say, yes, you're exactly right. But now we're looking at adverse effects of things that have been done. So because the drainage ditch was done in such a way that reroutes the natural flow of water, and changes the natural flow and the natural ecological conditions of the area because of ponds that were put where they were not naturally done, how does the pond and the raceways not affect, or change the environment, or improve it?

Mr. Sprinzel: I agree that digging the ponds didn't pay any attention to Hawaiian relics or anything like that. It was obviously not under any – but it's done. It was done a long time ago. And I don't see how that – we can possibly affect that now. Whereas the drainage improvements, I think that's – we all agree that that's a fairly serious thing that should be considered. That's my view anyway. I wouldn't bother with the ponds and the ditches because they seem to be working very well. It doesn't seem to be affecting anything. Whereas the – I think the drainage probably when it flood rains, does.

Chair Pescaia: I have a differing opinion. Simply put, if this pristine land came before me and this was a proposed action, I'm looking at would the installation of these items affect this area. The answer is yes. It has affected this area. And the maintenance of the installations are going to continue to affect the area. And there should be allowed the – room for conditions to be placed to – yes, we cannot undo – I mean, we cannot undo 16 ponds, but there has to be room for us to negotiate from here on out. If this came before us, I doubt this would've passed. We would've had all kinds of concerns as far as the digging, and the moving, and the – you know, and we would've asked for all these surveys to have been done up front. So, yes, it's done. Yes, they're – to a certain extent, they've mitigated a lot of things that we not seeing today. We go out there and it looks in good condition, but I don't know what it looked like eight years, 10 years ago when it was in the middle of the mess. So they have done good on it, but we also are considering this



application for actions in the last 26 years. So taking that cumulative effect into consideration, I would put the same conditions that I would've put had this been a new proposed project, for the record, this Commission, these are our concerns just like we hold other applicants out there, other developers and landowners to these same stipulations when they like do something similar. The record will reflect that this landowner installing one shrimp farm, got exempt for these things. And the next person that comes along, and wants to do a similar project will expect the same exemption when they come for a new project. So that's what I'm concerned about—the precedent.

Mr. Sprinzel: I'll go along with you, Madam Chairman, but where the hell was the Planning Commission when all this was going on?

Chair Pescaia: It wasn't in existence.

Mr. Sprinzel: Did we just go like that? I mean, that's terrible. I've said enough times about the supervision on this island which is non-extinct.

Chair Pescaia: Well, they've never come for permits. We've never heard this case. And I think the assumption was that—

Mr. Sprinzel: Yeah, but when the house was built, there's an architect drawing with the architect's name on it.

Chair Pescaia: That was after-the-fact.

Mr. Bacon: No, that was the—

Chair Pescaia: Oh, that was the original drawing?

Mr. Sprinzel: Yeah.

Mr. Bacon: That was to build the house. That's how they built the house.

Mr. Sprinzel: You know, there's just no— nobody watching out.

Mr. Bacon: Okay, and what I was going to say was that, you know, I think we're all in agreement that building the ponds, those top two ponds, I guess, are the ones that are — the ones that were being affected, you know, if they came before us, we would've gotten some more information, and said, well, why don't you build those two ponds some place else, and let the groundwater flow the way it wants to flow? But it's — I mean, the thing that really stands out to me is what you were saying is that where was the enforcement? I

mean, everybody could see the stuff going on. Everybody knew that it was not supposed to be done.

Chair Pescaia: Well, people were complaining. . . . (inaudible) . . .

Mr. Bacon: The County didn't come forward and do anything. And they still aren't doing anything most of the time . . . (inaudible) . . .

Chair Pescaia: Right, and so that brings another point is the community was gypped out of the opportunity to weigh in, and this is something that's huge for them. So we have been able to listen to the concerns of the community in many different ways. And so granting the exemption, again, cuts off the ability to provide that input and put their concerns on the record as well. If you move it to a minor permit, the conditions can reflect and try and hooponopono some of that eha that's out there because there's definite environmental violations, but there's also community violations that I think we can try. We one special Commission. We wanna try and facilitate for our community.

Mr. Bacon: And it's really hard to do that at a late date like this because—

Chair Pescaia: But we gotta try.

Mr. Bacon: No, no, I agree with you, you know, but I just think it's really unfortunate because then we get the people who didn't actually do the harm are the ones who are paying for it, and it's really too bad. And that puts us in a bad – I mean, it makes me feel bad. And it's only because somebody else didn't do their job.

Mr. Sprinzel: And 20 years ago, I was standing in front of this Committee asking permission to build a house myself. So imagine how annoyed I am at all this stuff's been going on.

Chair Pescaia: Yes?

Ms. McPherson: Oh, well, Commissioner Dudoit, you go first.

Ms. Dudoit-Morris: That's alright. I wanna hear what you got to say.

Ms. McPherson: Well, I'm just – I'm reminded by the applicant to bring to the Commission's attention that we have land use and zoning in agricultural for this property. I think a long, long time ago, there were very little impact activities occurring on that site. And then it sounds like there was cattle which is allowed in ag zoned land. But perhaps, you know, there was no best management practices for that cattle. And there may have been cow manure washing into the ocean. It wouldn't surprise me. I don't think it's good to graze cattle right along the ocean. But – and so now we have an aquacultural operation, which

is allowed in that zoning. So I guess what you folks have to try to decide is for a permitted use, what are the best practices, or best management practices, or mitigation measures that should've been instituted when this – you know, as it should've come before you before it was built. And so what are the impacts, potential impacts, or possible impacts that have happened in the past? Are they being adequately mitigated at this point? And if not, then you can decide that that portion of it be subject to permit, but keeping in mind that the aquaculture operation itself is allowed within that agricultural land use and zoning by law.

Chair Pescaia: You can build one house, but how you build the house is under our – I mean–

Ms. McPherson: Correct.

Chair Pescaia: Yeah, we know that we can – they can have the shrimp farm, but it's how it was put in place, how we're gonna maintain it, and how we're gonna malama the whole piece of aina around it that we discussing. We not debating whether a shrimp farm is even allowable or not, but the practices that were used, there might've been better things they could've done. What we're trying to do is reflect that on the record so that the next person who comes along not going make this mistake and we gotta go through this again. They can look back at this application, and go, man, this is what I gotta – I'm gonna do all of these things ahead of time so I don't have to wind up in the situation that these guys wound up in. And Kamehameha Schools, very legal minded. I mean, very– And I'm sure they're gonna agree. They rather have everything laid out very clearly defined at this point, not just have assumptions, and not just kinda have broad generalizations, but they seem very detailed oriented. And I think they can appreciate us just trying to work out those details and having it covered, so that down the road, we don't have to come back and have this discussion. As much as we aloha each other, we no like see each other like this again. Okay, so, the motion is– Yes?

Mr. Roy: Can I just–? Before the Commission considers taking action just offer some kind of comments from the applicant's standpoint with regards to the motion that's being considered? This is our second meeting now in front of the Commission, and we think it's a very thorough and a very good review that the Commission is undertaking. And there's a lot of good questions coming out. And it's making us think as a team to find the correct answers.

The one big concern that I've heard from the Commission today is the concern about the drainage ditch that parallels the highway. I think at this point, I've conferred with Kalani, and we're – Kamehameha Schools is understanding of those concerns at this point, and agrees with the motion that's being considered for that to maybe be removed from the exemption request so that you wouldn't concur with the exemption for that improvement.

What we feel – you know, we have a responsibility to just share our final thoughts with the Commission, and ask for final consideration with regards to the shrimp ponds and the raceways. These were put in place, as a couple of Commissioners have noted, a long, long time ago. And the Schools has really been undertaking a diligent process to really try and clean up the violations on the property. The shrimp ponds and the raceways really go to the heart of the whole operation at this point. And I'd like to think that the Commission agrees that the new tenant on the property is really acting in a responsible way, and is raising shrimp in accordance with best practice standards within the industry. When we went through the process of doing the SMA assessment, you know, our task as Planners is to evaluate the actions in the context of the written legislation. And there are written – as we've talked about today, there are clear, written exemption categories, and clear, written development related categories that are written in the legislation.

Our kind of closing comment with regards to the motion that's on the table is really to ask for your consideration that the exemption be granted for the shrimp ponds and the raceways, because really, as Nancy mentioned, it's agricultural use. It's a permitted agricultural use. We believe the tenant is doing a really good job with following best practice standards in the industry. And also, the SMA really supports the use of agricultural lands for aquaculture purposes. So we really feel like out of all the exemption requests, this really fits within the context of the SMA exemption very well. So I'll just close on that note, and just ask your final–

Chair Pescaia: Let me just ask you real quick. What do you think is the difference between exemption and a minor permit? Like what is your concern why you have a problem with taking it from one to the other? Does that complicate or do any – like does that adversely affect you? For us, it's because we wanna be able to cite if this – some of the requirements or conditions we would have asked for it, and for here on out, things that we wanna see put in the record. But you seem really concerned about that – you wanting to keep those portions in the exemption.

Mr. Sprinzel: It's certainly not gonna affect the operation of the farm. We might just put some conditions about cleaning or stuff like that. I mean, we just want to watch out for what happens in the future.

Mr. Roy: I understand.

Mr. Sprinzel: That should've happened in the past.

Chair Pescaia: . . . (inaudible) . . . if the farm ceases to exist, what happens. I mean, you know, there's some things that you cannot put in the exemption so–

Mr. Roy: My– If I could answer that question? We do have a concern. And the concern is one of valuation at this point. The Schools have been through a multi process at this point. They've spent a lot of money on the permitting aspects of the program, and we had a series of meetings with the County administration to define how we would put the application together, what studies we would do, and ultimately, how we would file the application. This is a complicated matter because you've got different moving parts. And so what I'm trying to do in listening to the Commission today is if the Commission decides to adopt the motion to concur with the exemption determination, the items that may – that are not concurred with would I think based on our previous discussion, would go to the next agenda meeting, and we would need to document valuation, because it would fall under an SMA minor permit.

Chair Pescaia: Minor or it might kick it up to a major depending on–

Mr. Roy: Right. Right. My concern at this point is if – the valuation alone, because of the actions taken by the Commission kicks above the threshold of pricing for going into an SMA major, I really don't feel that we would achieve anything by requiring the Kamehameha Schools to go through what would be another two-year process to do an SMA use permit application. Certainly, if the Commission agrees to concur with the shrimp ponds and the raceway exemption, it looks like, you know, based on valuation, we could come back. We could have the discussion about conditions, and really flesh out a full list of conditions that would go to the heart of addressing the Commission's concerns today. But I just – I feel at this point, I should be as up front as I can with the Commission because they've been in this SMA process for a long time, and getting kicked to an SMA major would be another two-year process for that.

Chair Pescaia: I really, really, really, really appreciate your honesty because, man, there's a shortage around here.

Mr. Hopper: Just for the question about the SMA major permit, because there'd be a valuation and then a newspaper notice, but if you've already prepared an SMA minor application would be the reason for a two-year– I understand this meeting, if it appears the valuation would be above the required amount then, you know, you would have to go to at least another meeting. But what would be the reason for two years for an SMA major considering that the Molokai Planning Commission, as it reviews minor permits, unlike Maui is there's a lot of extra information you'd need to put in an application that the Commission would need for a major permit other than the newspaper notification? You have a public hearing-type item, which would be, I believe, 45 days noticing, just for the record, so we know what it's like to prepare one of those.

Mr. Roy: Obviously, I'm thinking on my feet, and I'm using my best judgement at this point based on similar projects involving complicated issues, but I may not – I'm not speaking

just about the processing aspects. I'm also looking at beyond any decision that's made by the Commission, what work needs to be done in conjunction with the Department to really flesh out what needs to be put into the SMA use permit application. And then us as consultants and Kamehameha Schools would need to go through process of doing the work, doing the ground work necessary to put the applications together. And so, you know, typically, that takes a while. And then we would get to a point where we would file an application with the County Planning Department. Typically, I would say I think it's fair to say it's a ten to 12-month process for SMA use permit applications by working with the Planning Department, but I understand that, you know, with reviews by the Molokai Planning Commission, we may need to allow a bit more time for a comprehensive review for the Commission as well. So it may come under the two-year mark, but that was just my kinda best guesstimate at this point. And I didn't mean to focus too much on the two-year, but more to convey my concerns regarding the valuation.

Ms. Dudoit-Morris: Actually, Chair, since it's my motion, and I would have to be the one to amend the motion, that actually is not relevant.

Chair Pescaia: Anybody can amend the motion at this point, but we have to take a vote on it, on the amendment.

Ms. Dudoit-Morris: Okay.

Chair Pescaia: What is the valuation of the drainage again? The drainage system—what you told me?

Mr. Roy: I think it was \$178,000.

Chair Pescaia: Okay, that's what I wrote down. I just was—

Mr. Roy: That's the drainage ditch.

Chair Pescaia: The drainage ditch along the road around.

Ms. Dudoit-Morris: Okay, so for the sake of time, and so we can vote on the motion, I just wanna say that I totally appreciate you, Mark and Kalani. I mean, you guys so respectful and you guys so full of information. But I really have no sympathy for Kamehameha Schools either. I mean, the fact of the matter is you guys the landowners. You allowed your tenants to do all this stuff and I mean, come on. The guy went build one whole house, one whole shrimp farm. He went put in all this illegal stuff. And you didn't see it. And you didn't do your due diligence to be by the book like you wanna be right now. And I don't know what happened in the process for that to happen, but whatever. That's done. So you're standing here, Mark, and pleading because it's gonna cost you more money, and

going cost you more time really doesn't matter to me. What matters to me is that we are in charge of making sure that our responsibility to the people of this island, to the land that we care for and we reside on is being taken care of in the best way possible. So all this wrong stuff that was done gotta at some point be made pono just like Auntie said. So I don't know about the rest of the Commission, but whether or not this is voted on or against, I ready to vote.

Chair Pescaia: Okay, so the motion is gonna stand?

Ms. Dudoit-Morris: Yes.

Chair Pescaia: Okay. And we have a second, and we finished our discussion, so I call for the vote. And this is again to grant or concur with the exemption for the well, the dwelling, the farm dwelling, and the two shade structures; and not concur for the shrimp pond, ditches, and drainage improvements.

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

*It was moved by Ms. Dudoit-Morris, seconded by Ms. Kelly, then unanimously*

**VOTED: To grant or concur with the exemption for the well, the dwelling, the farm dwelling, and the two shade structures; and not concur for the shrimp pond, ditches, and drainage improvements.**

Chair Pescaia: So three-four. Three in the affirmative, zero for opposition, two – what do you call that? Abstain, but that counts as a positive vote, so motion carried.

Ms. Dudoit-Morris: Counsel, do we now – do I have to make a formal motion to include these things into a minor permit, or is that automatically done depending on the valuation?

Mr. Hopper: You're in a unique situation. I've never exactly had this situation before. Normally, if it's kicked over to a type of permit, that's gonna be a separate valuation and under the next meeting. Now, whether this – at this meeting, you do have a minor permit agendized, and I don't think I've ever had that exact situation before. But because when looking at this project as a whole, it appears that it may require an SMA major permit, I think you would need to have that issue determined, because that becoming an SMA use permit would require public notification. I wouldn't advise acting on the remainder of permit request at this meeting because that's something that you would need to have. You would need a valuation. If I'm correct, the applicant has not submitted a valuation for – have you submitted a valuation for the exempted items? Because now the exempt – some of the exempted items are going to have to have permitted items. They're going to be permitted items. And they're asking to be part of an SMA permitting process. So – has there been

a valuation determined by the Planning Department for the exempted items? And I believe the answer was no, as Nancy said earlier. She's shaking her head.

Mr. Roy: I don't think we've got to the point yet where we've analyzed how the two improvements that have not been concurred with from a cumulative standpoint affect the valuation under the SMA minor permit. So that's something that we need to look at beyond this meeting.

Mr. Hopper: And there is a possibility that when combined, they would be over the threshold for an SMA use permit?

Mr. Roy: There's a possibility, yeah.

Mr. Hopper: Okay, given that, and given that there is no use permit on the agenda today, and that there's – well, there's a minor permit, but a use permit requires newspaper notification, which was not done as a public hearing item, which was not done prior to this meeting, I would advise that you defer at this point the remainder items pending a – basically, the Planning Department would need to get together with the applicant and determine what needs to be submitted now that some of the items are not concurred with. Some of the items require permits.

Chair Pescaia: Wait. How come we cannot go back to D-1 and–? If we went in order, we would've discussed and voted on the minor permit, and then we would've got to the exemptions at which point then, we would've not concurred with the exemption recommendation for a portion, which then gets kicked on to its own merry way. Can we not deal with this item independent now because it's part of a greater–?

Mr. Hopper: My only concern is that if it's the overall project, if that's your project, the SMA law says that your project is considered – the valuation of the project is considered. And, I mean, there would seem to be a caution in segmenting it for the purpose of – because of the valuation threshold that's in the law. In addition, there's a requirement of written notice of the denial of the exemption. If that's waived, and the only concern is putting these together, I think you're going very close or perhaps over the valuation. The applicant even stated it. I think if you act separately on these two, it appears that you would be breaking them apart in order to avoid the threshold for the SMA use permit valuation, and I don't think that that's something that the SMA law would–

Chair Pescaia: But what would've happened if – what would've happened if we did that first?

Mr. Hopper: I would've advised to do the exemptions first as you did because that determines what of the project requires a permit. It's all one project. And what if it's–



Ms. Dudoit-Morris: I have one question that might alleviate some of that. So earlier we asked how much the increments to the drainage system would be, and we came up with a number of \$178,000, but the drainage is not actually a direct – it's not connected to the shrimp farm, right? We said that. We said that it's not a part of the development, right?

Chair Pescaia: Right.

Ms. Dudoit-Morris: Of the actual agriculture. It cannot fall under the exemption because it's not part of the agricultural business.

Chair Pescaia: Right, the rest of the minor permit items are all clumped together.

Ms. Dudoit-Morris: Right, in \$190,000. But if you subtracted the \$178,000 estimate from the \$190,000, you would be well below the SMA major valuation.

Chair Pescaia: I lost that one.

Ms. Dudoit-Morris: Oh, so there is no estimation of the ponds? Because right here, the \$190,000 is for everything: ponds, house, building, everything.

Chair Pescaia: Magically, yes.

Ms. Dudoit-Morris: Yes.

Chair Pescaia: That's what I was asking before. I was like \$190,000 cannot be the valuation of all of those . . . (inaudible) . . .

Ms. Dudoit-Morris: Okay, so the point being they don't have accurate numbers and that's why we cannot–

Chair Pescaia: But if you take that \$178,000, and you put it into the figure for the minor permit, it'll actually kick them up to a major permit, which then sets it off in a– What I was trying to do is deal with this minor permit application separate–

Ms. Dudoit-Morris: No, but, see, you wouldn't put the \$178,000 – it's actually separated from – isn't it?

Chair Pescaia: From this – that's what I was trying to get him to say that we already have a minor permit before us. Can we deal with that minor permit by itself because the ditch going kick up to a major by himself anyway, but – and just deal with this? But he's saying it's all part of one–

Ms. McPherson: May I provide a point of clarification?

Chair Pescaia: Yes, please.

Ms. McPherson: The threshold for an SMA major based on valuation is now \$500,000.

Chair Pescaia: Oh, lovely.

Ms. McPherson: Now, that doesn't mean that it might not still kick it up because if you add \$178,000 to \$190,000, you've already got \$368,000, and that's not including—

Chair Pescaia: Wait. Why are counting the \$190,000? The \$190,000 is part of the exempt.

Ms. McPherson: Okay. Under the SMA rules, you have a proposed action. In this case it's an after-the-fact action, but the proposed action, and the language of Chapter 205A needs to include the entire project. You can decide that portions of that project come under an SMA minor, and portions can be exempted, but I don't believe that you can do — I mean, maybe Mike can correct me, but—

Mr. Hopper: Well, then why would — these exemptions then should've been considered part of this whole project, and there should've been a major permit to begin with anyway, then, right? I think if you're exempt, it's not considered — is it not considered the project? Otherwise, with this, you have an exemption and a minor permit. The valuation of everything within the exemption should've been of the overall project anyway, so you would've had a major permit anyway. So I think if it's exempt, you typically — it's not part of the project, I think, but we're still looking at the valuation issue, and the SMA rules still say \$125,000 even though the State law is different. So I don't know if the Department has been treating major permits under the State law, or if they've been looking at the SMA rules only.

Mr. Roy: Can I just clarify for the Commission? I think outside of the staff report, the slide that we showed earlier, and I think this is easier to kind of first, to all kind of get our minds over is that these were the SMA minor improvements that are on your agenda today. We've got the storage building hatchery, pump house structure, repair of the road. Those together have been proven to be valued at \$26,400. Kalani came up with \$178,000 for the drainage ditch improvements. So that brings us close to sort of \$200,000. The State has recently amended their SMA cost threshold, so we actually have \$500,000 to work with based on my understanding of the SMA rules.

Chair Pescaia: And then the number for the ponds and the ditches, the ponds and the raceway?

Mr. Roy: Okay, so Kalani's working on that at this point. He indicated to me that it looks like it would be under that threshold that we have, which is \$250,000, \$200,000, but he needs to verify that at this point.

Mr. Sprinzel: Well, you can bring that up at the next meeting when you recalculate it.

Mr. Hopper: I mean, my concern is an on-the-fly valuation right now. I don't— You gotta be accurate. He may, after looking at this, and if the Department is going with the \$500,000 rather than the rules saying that the State law preempts that then, he may be able to still do a minor permit. You may have to do a major. Just a point of my understanding of the rules, I don't see much different that needs to be submitted other than the public hearing between a minor and a major permit because the assessment application for the Planning Commission, since you had to actually go to them for the — even the exemptions and the minor permit, you may not have a whole lot. You may need to talk to Nancy. And that's something to be determined, but — versus at the Maui Planning Commission versus an exemption would be a bigger difference because you're only going to the Director for that.

Mr. Roy: Oh, okay.

Mr. Hopper: I could be wrong because I've never prepared them myself, but when you read the actual rules, that's what it says.

Mr. Roy: Okay. Like I said earlier, I'm learning a bit through today's meeting as well, but my — the intent behind my comments just now is just to provide a bit of clarity behind the numbers. We still need to verify the valuation. I'm not saying that we just give you an on-the-fly valuation. That's not our intent at all. We wanna do this right. I think we've kind of shown that today.

Chair Pescaia: Okay, so given this new information, I would recommend that we defer that item. The applicant is going to, I guess, provide the Department with the valuation of the portion that was not exempt. And if it is below the \$500,000 threshold, it'll be — the minor permit will be amended to include that portion into the existing permit. And we can hear it the next — at the next meeting. If for some reason, it's not, if it's over, then I guess you going take steps to notice the public hearing.

Ms. McPherson: Yeah, you'll either get an amend — an addendum to the SMA minor permit memo, or we will probably just verbally tell you that this has triggered a major SMA permit.

Ms. Dudoit-Morris: Do you need a motion to defer? No?

Chair Pescaia: Yeah.

Ms. McPherson: We do need a motion.

Chair Pescaia: We need a motion to defer.

Mr. Sprinzel: Make the motion to defer.

Chair Pescaia: Okay.

Mr. Bacon: Second.

Chair Pescaia: Commissioner–

Mr. Hopper: The SMA rules for exemptions require that a written notification be made to the applicant notifying them that they're not exempt. I don't know if that's – I don't know how much that would take. I suppose they could just work on the– They know what the situation is. They could work on the SMA minor. My only concern is that waiting for that letter would hold things up. I presume they could work on that without that. The letter would be on its way. And I just don't want the concern to be the final decision hasn't been put in writing yet or something like that.

Ms. McPherson; Well, I can draft it the first thing tomorrow morning.

Mr. Hopper: Okay, based on what the Commissioners' points are made, but the applicant I think already knows, and could probably work on the minor permit, or whatever permit it is.

Chair Pescaia: Okay, a motion by Commissioner Sprinzel, second by Commissioner Bacon to defer that Item D-1, as described in the conversation. Discussion?

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

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

**VOTED: To defer Item D-1 as discussed.**

Chair Pescaia: Motion carried, unanimous. Alright, so, applicant?

Mr. Roy: Thank you very much. Thank you for your time today.

Chair Pescaia: Okay, you understand what he said, yeah? We're supposed to send – we are in the process of sending you one letter to explain why your exemption wasn't granted,

but in – for the sake of time, you can just start rolling and not need to wait for that letter, because we really wanna get this done with. Alright. Okay.

## **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: Continuing on with our agenda, my Chairperson's report, I have none. Director's Report. Pending.

## **F. DIRECTOR'S REPORT**

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

Mr. Yoshida: Thank you, Madam Chair. We've circulated our list of pending and closed Molokai applications. Are there any questions from the Members?

Chair Pescaia: Seeing none.

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

Mr. Yoshida: Okay, we have no new status to report on discussions with Maui Electric Company on liability for power installations on private property.

Chair Pescaia: Okay, next?

- 4. Status of the Molokai Planning Commission vacancy**

Mr. Yoshida: We have no change in status on the Molokai Planning Commission vacancy. I guess the Policy Committee agenda will probably come out tomorrow. So hopefully, there'll be a name.

Chair Pescaia: Do you know if they have names in the pool of – like they have a pool of applicants? Or do we need to be hustling and drum up some fish?

Mr. Yoshida: I thought they had names when the last–

Chair Pescaia: Okay. Please plead our case and, you know, encourage them to move on that for us. Okay?

Mr. Sprinzel: Have they discussed us having the Members stay on till the new one comes in? Is that anywhere in the works?

Chair Pescaia: That's with the Charter.

Mr. Yoshida: I think that was forwarded to the County Charter Commission.

Mr. Sprinzel: So three or four years time. Yeah, okay.

Mr. Yoshida: Yeah, it's for their consideration.

Chair Pescaia: Yeah, that has to come up in the election, actually.

#### **5. Agenda items for the November 9, 2011 meeting**

Mr. Yoshida: Our next meeting, we're moving to one meeting a month for the next two months, so our next meeting is on November 9<sup>th</sup>. We may have the remainder of this item if we can get everything together.

Chair Pescaia: I will not be here.

Ms. Dudoit-Morris: I know. Me neither.

Chair Pescaia: So we will take a poll as to–

Ms. Dudoit-Morris: But that will cancel the whole month meeting or you just going reschedule the day? Reschedule the day?

Chair Pescaia: Reschedule the week. Could we go to the 16<sup>th</sup>? Like the following Wednesday?

Mr. Yoshida: Again, we have Lanai Planning Commission scheduled for the 16<sup>th</sup>. So – and we also probably would have a Council Land Use Committee scheduled for the 16<sup>th</sup>. So Corp. Counsel would have to decide which meeting they're gonna go to if there's a Molokai

Planning Commission, a Lanai Planning Commission, and a Council Land Use Committee meeting happening on the same day.

Chair Pescaia: We call dibs. Okay. Okay, well, we just need to communicate with the rest of the Commissioners to see if they can make it – yeah, and reschedule. I'm out that whole week, unless you guys like come Kahoolawe. You guys can come with me to Kahoolawe. It's still in the County. Okay, we going poll the other two Commissioners who aren't here today to make sure they can come. Anybody else who think they cannot make it? One, two, three. You might have something?

Ms. Dudoit-Morris: Me?

Chair Pescaia: Yeah.

Ms. Dudoit-Morris: I not going make it.

Chair Pescaia: You not going make it. So we got these other three Commissioners, and we gotta check with the other two. If the other two for some reason cannot make it, then we go to the contingency plan. Okay? Anything else?

Mr. Yoshida: That's all except for the – well, the December 14<sup>th</sup> meeting, we're gonna consider that home-based business, Council home-based business bill.

Chair Pescaia: Okay. But as far as agenda items, we have anything else besides this?

Mr. Yoshida: That's all we know about at this juncture.

Chair Pescaia: Okay. That's it.

**G. NEXT MEETING DATE: NOVEMBER 9, 2011**

Chair Pescaia: The next meeting tentatively set for the 9<sup>th</sup> subject to change. And with that, I call this meeting adjourned. Mahalo. Malama pono.

**H. ADJOURNMENT**

There being no further business to come before the Commission, the meeting adjourned at 4:17 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  
Zhantell Dudoit  
Nathaniel Bacon

**Excused**

Ron Davis  
Lori Buchanan  
Janice Kalanihuia

**Others**

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