

**MOLOKAI PLANNING COMMISSION
REGULAR MEETING
OCTOBER 12, 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 Chairperson, Mikiala Pescaia, at 12:03 p.m., Wednesday, October 12, 2011, at the Mitchell Pauole Center Conference Room, Kaunakakai, Molokai.

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

Chair Mikiala Pescaia gave an introduction in the Hawaiian language.

Chair Pescaia: I am the Chair of the Molokai Planning Commission. And we welcome you. Joining me today I have my fellow Commissioners: Commissioner Buchanan, Commissioner Kelly, Commissioner Kalanihuia, Commissioner Dudoit, and Vice-Chair Sprinzel. On my right, I have our Planning Program Administrator, Clayton Yoshida. Oh, Nat Bacon, you joining us today, too? Awesome. Commissioner Bacon, who is arriving. To my left we have our Corp. Counsel, James Giroux. We have Suzie Esmeralda who is the Secretary to Boards and Commissions who will be recording our meeting today. And we have Molokai Staff Planner, Nancy McPherson. We ask when you do come up to the mike that you state your name for the record as it is being recorded. Looking over our agenda today, is there anyone – anyone need to make any changes to our agenda?

Ms. Lori Buchanan: Chair, I wanna suggest that we look at trying to finish the unfinished business before taking on new business.

Ms. Pescaia: Okay. How does the rest of the Commission feel about putting I'm guessing, 1a, 1b? That's what you're asking is—

Ms. Buchanan: The Comstock and Ke Nani Kai under Unfinished Business before new business.

Ms. McPherson: Chair, Commissioners, Nancy McPherson, Staff Planner. The architect and the owner are not here yet. So if we're going to rearrange the agenda, we have to give them a little time to arrive. They told me they were gonna be here around 12:00. And I don't have my cell phone with me. So I'll have to go run and call, let them know, if you approve this reordering of the agenda.

Ms. Pescaia: So right now, Item E-1, the applicants are not present. And E-2?

Mr. Clayton Yoshida: Yes, thank you, Madam Chair, Members of the Commission, we have distributed an e-mail from the resident manager of the Ke Nani Kai AOA stating that they are looking at possibly – well, different alternatives and possibly, revising their plans. So if the Commission wants to bring Item E-2 up for purposes of accepting any public testimony from people who are here to testify on that matter, and basically, deferring the matter.

Ms. Pescaia: Okay, Commissioners, so we have E-1, the applicant was expecting to be on later. So I guess they're not here yet. And E-2, we have a request from the resident manager. They're possibly revamping their thing. We need to hold – because it's agended, we need to take – accept public testimony on that item. Do you wanna do that now or you wanna hold off and just do it after? You guys are here to testify. Well, actually, because we're gonna open up–

Unidentified Speaker: Madam Chair . . . (inaudible) . . .

Ms. Pescaia: First. Yeah, well, we open up public testimony on any item anyway in the beginning.

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

Ms. Pescaia: Okay. Anyone else? Thoughts? Proceed as is, then? Okay. So we shall proceed as is.

B. PUBLIC TESTIMONY ON ANY PLANNING OR LAND USE ISSUE

Ms. Pescaia: If there is anyone out there who would like to provide public testimony on any planning or land use issue, or any agended item, and you're not able to stay till that item comes up, we offer you the opportunity to provide testimony at this time.

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

Ms. Pescaia: Yes, sure.

Mr. Darryl Canady: Thank you very much, Commissioners. My name is Darryl Canady. I testified on this matter before. With me is my wife, Jody. And as many of you know, we have been residents here at Ke Nani Kai and on Molokai since 1982. Briefly, my – I'd like to ask if the testimony from a Mr. Bob Aldridge has been sent in to you at this point. If not, I would like to make it part of my testimony, and hand it in. If not, I will submit it to you as it was given to me.

Secondly, I'd like to do a very quick history on the solar panel history at Ke Nani Kai. The whole thing started in March 27th, 2010, with a presentation by Sunetrics to the Ke Nani Kai homeowners' annual meeting. Shortly thereafter, three to five days after that, at that time, an owner stood up and asked in the public meeting if there were gonna be panels put on the office roof, on the east side of the office roof. There was a resounding no to that question. "We would never put them over there. They're too close to condominiums that would have the view."

Secondly, a contract was signed five days after the annual meeting by the president of Ke Nani Kai at that time approving the contract with Sunetrics and Ke Nani Kai to install the panels on the office roof as shown to the owners at that time. In October, they started the project with, as you know, no permits other than an electrical permit. Shortly thereafter, there was a red tag placed on the project at the front office at Ke Nani Kai. Shortly thereafter, that red tag was torn off, disappeared, no longer posted. And the construction job continued and was completed in the month of December. Shortly thereafter, glare from the panels on the east side of the roof started. I have a picture with me, if you haven't seen it already, of what that glare looked like from our patio. I will leave it here with you as part of my testimony.

Today, you have before you which apparently has been postponed, a hearing, an SMA hearing on the change that has been submitted by Ke Nani Kai to take the panels off of the east side of the office building, and put them on Building I, which is the building in which the glare was received on their roof, the roof side facing west, and also two rows of panels on the east side of that Building I, which now will face completely, the condominium and residences of the buildings behind Building I.

Secondly, if they're gonna put them up, they're going to have to change the roof on Building I from the tile roof to what they did on the office roof by putting in asphalt shingles because they made the determination that with the panels that they had on the office, they would crack and leak. In fact, they were actually noted to be leaking at that time. The same thing would be true on Building I. Those are the ceramic tiles or whatever they are called, but the tiles that crack and should not be walked on, or anything placed on them. As was recorded then and now, Ke Nani Kai is required to get a clearance from the West Molokai Association Design Committee, which has the community plan project to be sure that Ke Nani Kai, whatever they do there or any other condominium complexes in Kaluakoi keep the – the restrictions are not violated by Ke Nani Kai or any other condominium complex. Therefore, after-the-fact, West Molokai Association did, in fact, write Ke Nani Kai and state that the – one of their objections was that they felt that the installation of solar panels on the Ke Nani Kai's common elements is a violation of the commercial zone. We are not commercially-zoned according to the plan. We are condo/hotel-zoned. And therefore, as West Molokai Association had done in the past, refused to have – because it's a commercial venture, have any solar panels on the property of Kaluakoi. It violates their

covenants of the West Molokai Association. Of course, glare was one of the things that they objected to and you object to. And we feel there still will glare off from the panels on the east side of the Building I that could and probably will affect the condominium units that face that east side of Building I.

Basically, we have been told as of last week – suddenly, the president of Ke Nani Kai has decided to hold a Building Committee meeting. We were just notified. I happen to be on the Building Committee for Ke Nani Kai. We were just notified that he wants to call a meeting of the Building Committee, and have the Sunetrics' people at that meeting. We don't know why. It just came up. He's due on property here on the 19th. And I and the other members of the Building Committee are waiting to find out what is going to go on. We have heard via, if you want to call it the jungle drums, whatever that is, word of mouth, that they are looking into extending the patio roof of the – on the building, on the office building, behind the office building by the pool. And that's where they originally was going to put all the panels that are on now—the east side of the office roof. Now, whether that's true or not, none of us at Ke Nani Kai know, because there has been no decision discussed with us owners or anything having to do with the subject of what I just told you about. But basically, it's what I had come here to say. I think you people need to know the facts as they were then and as they are now so that you can make, down the road, a good decision whether this is a viable project where it is now proposed or where it futurely will be put in. Thank you. Thank you very much. Are there any questions?

Ms. Pescaia: We actually cannot ask questions right now, but we thank you, Mr. Canady, for your input. And hope you can make it to the following meeting when this item does come up again with your added input from this Building Committee meeting that you're gonna have. You can leave it with Nancy or to Suzie, and then she can pass it out us. Mahalo nui.

Is there anyone else out there who would like to offer public testimony on any planning or land use issue? Seeing none, testimony is now closed. We'd like to move on to Agenda Item C, which is the approval of minutes of the July 13th and 27th meetings. I will entertain a motion.

C. APPROVAL OF MINUTES OF THE JULY 13, 2011 AND JULY 27, 2011 MEETINGS

Mr. John Sprinzel: The motion to accept the minutes of those two meetings.

Ms. Pescaia: I have a motion by Commissioner Sprinzel and a second by Commissioner Bacon. Any 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 minutes of the July 13, 2011 and the July 27, 2011 meetings.

Ms. Pescaia: Motion carried. Thank you. Okay, D, Communications 1-a: Kamehameha Schools requesting an SMA minor permit for after-the-fact 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 various TMKs at Keawanui, Island of Molokai. Planner McPherson?

D. COMMUNICATIONS

1. a. **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).**

Ms. McPherson: Aloha kakou, Commissioners. Nancy McPherson, Staff Planner. The staff report does go through the history of the situation at D&J Ocean Farms. A portion of the after-the-fact and some mitigation work has come before you previously, and an SMA exemption was granted for wetland restoration and some other minor plumbing and electrical work. And this submittal is a request for an SMA minor permit, and exemption is for the remainder of the – for the majority, actually, of the after-the-fact improvements at D&J Ocean Farms. These improvements were done over a 20-year period. They included a ground water well; grading for shrimp pond, ditches, and drainage improvements; construction of a farm dwelling and accessory structure; shade structures, which have now been removed from the property; as well as storage building and hatchery; a pump house; and road improvements at TMK: 2-5-6-006:008, 024, and 034 at Keawanui, and actually, Kaamola Ahupuaa.

We have representatives of the consultants, Munekiyo & Hiraga. Mark Roy is here. He's been retained by Kamehameha Schools Bishop Estate. And Kalani Fronda is the senior assets manager for Kamehameha Schools Bishop Estate. And then Brian Matsuda of Otomo Engineering, yes. I apologize, Brian. So they are all here. There's going to be a presentation made by Mark Roy and comments by Kalani Fronda. These three gentlemen

are here to answer all your questions and help you go through these slightly complex applications. But we have tried to make it as understandable as possible.

We have gone through all the procedural for this project. We have done a Chapter 343 exemption and a shoreline setback approval for the road improvements, because that's the work that actually constituted something that would trigger environmental review and – under Chapter 343.

So what I'd like to do is just a brief introduction. And what I'd like to do now is if you don't have questions at this time, I would like to defer to the applicant and the consultants to make their presentation to you, if they may. Is that okay? Okay.

Mr. Mark Roy: Thank you, Nancy. Good afternoon, Chair, Members of the Molokai Planning Commission. My name is Mark Roy representing the owner of the property, Kamehameha Schools, today.

We're here this afternoon as the final element of a multi year program to address after-the-fact permitting requirements to some improvements that were put in place by previous tenants during the establishments and early phases of operation of the aquaculture facility on these lands.

This next slide just gives a brief overview of some of the information I'd like to offer to the Commission today. First, I'll go over very briefly the location of the property. I'll then touch upon the description of the aquaculture facility. And then also, some information on the various tenants that have utilized the property. I'll then summarize in detail each after-the-fact improvement for the Commission. And then also, progress to date on the after-the-fact permitting – just some progress to date information on where the applicant has come from, and where they are today with regards to the after-the-fact permitting.

Most of the presentation, we'd like to delve into the 2010 SMA assessment application that was filed with the Planning Department. And the next three bullets that you see here are really tied to the SMA application process. The State DOT highway culvert improvements project, which sits just mauka of this parcel of land with the key comment that we received during the SMA review process with the agencies. And then as Nancy mentioned, there has been some – two Planning Department determinations issued during the SMA assessment process. And then I'd like to tie the presentation up with an overview of what the Planning Department is recommending following their review of the SMA application, and also, really, what the next steps are for Kamehameha Schools—the third phase of after-the-fact permitting that they still need to go through.

Ms. Buchanan: Excuse me. Can we ask questions or would you rather wait until your presentation is over and then we ask questions?

Mr. Roy: If it's okay with the Commission, we'd like to go through the presentation, and certainly would be available to answer any questions at that point once we got through all of the information. Is that okay? Okay.

Okay, the D&J Ocean Farms' property is located along the south shore of Molokai in Keawanui about 12 miles east of Kaunakakai. The facility is situated just makai of the Kamehameha V Highway at Mile Marker 12. A small driveway provides access into the property from the highway. The . . . (inaudible) . . . is 150 acres in size and consists of three parcels of land. It's Parcel 8, Parcel 24, and Parcel 34 as shown on this map. Sorry, it's kinda small on the screen, but the shaded area is . . . (inaudible) . . . the 150 acres. There are three fish ponds also in the vicinity of the facility: Keawanui, Onahikoko, and also an unnamed fish pond. We'd like to note that none of these important coastal resources are affected or utilized as part of the aquaculture facility on the property. The property is owned by Kamehameha Schools. The facility is currently under lease to a new tenant, John Austin, who has been revamping the aquaculture operations since 2010 under a new name—Keawanui Farms. John currently raises marine shrimp and brood stock, and produces products for sale both locally on Molokai, as well as to both domestic and international markets.

This is an aerial photo that gives a pretty good perspective of the layout of the property as the birds would see it, and shows all of the after-the-fact improvements that will be discussed at today's meeting in place. The 16 ponds and drainage raceways that you see in this photo in the middle are used to raise the shrimp. The brood stock is raised in a hatchery building that sits in white here in the middle of the site. Water for the aquaculture operations provided by a brackish ground water well that's situated in a small pump house structure situated in close proximity to the shoreline. The water is then circulated into the ponds where it then flows from the ponds after it's used into a series of raceways that I'm outlining here with my laser pointer. It flows into this . . . (inaudible) . . . system that are commonly referred to raceways, as I mentioned where it gradually disperses through evaporation or percolation into the underlying soils.

Access around the facility is provided by an existing dirt gravel road that connects the highway entrance, which is here, down to the various elements within the facility and also along the shoreline.

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. After a couple of years of inactivity, D&J Ocean Farms, Inc. took over the lease from 1995 to 2007, and further expanded the aquaculture operation by creating ten additional ponds, as well as some related drainage improvements that were designed to mitigate localized flooding concerns. As I mentioned just now, John Austin of Keawanui

Farms, the new tenant, took over the lease in 2010, and who has been refurbishing the facility into a productive operation over the last couple of years.

This slide lists the various improvements that were completed on the property over there in the course of about 20 years by both Ohia Shrimp Corporation and D&J Ocean Farms. This work consisted of various grading alterations including the completion of a total of 16 ponds; as well as ditches, and drainage improvements, and the raceways that I mentioned earlier; also, a storage building and hatchery; a pump house structure with ancillary brackish ground water well that produces the well for the operation; a farm dwelling with an accessory storage structure, which is the residence for the operator; and the erection and removal of two shade cloth structures; as well as some minor repairs to an existing dirt gravel road, the access road that I mentioned earlier that runs mauka/makai through the property.

I'd like to now offer the Commission an identification of each improvement on the aerial photo that I showed earlier, and also show a couple of site photos taken from the ground just so it's very clear as to which improvements are being discussed at today's meeting.

Here highlighted in yellow, you can see the 16 ponds, as well as the raceways that accept the waters from the ponds, and also the drainage improvements that were put to protect some of the mauka ponds from localized flooding as it occurred in the past. These drainage improvements go down on the property as I'm identifying here with my laser pointer.

This is a photo looking across makai at one of the shrimp ponds. It's about four feet deep, each of the shrimp ponds. This is one of the raceways that I mentioned earlier that accepts the brackish water from – that's being utilized in the ponds as part of the shrimp-raising operation. This water dissipates and evaporates into the soil.

This is the next improvement, the storage building and hatchery, which sits in the middle of the site highlighted here in yellow. And next we have a photo from the access road looking at the storage building and hatchery.

The next is a farm dwelling and accessory storage structure. This is where John Austin currently resides. And it sits next to the six largest shrimp ponds. This is a ground level shot looking at that accessory farm, sort of a farm dwelling structure. And the next shot is the same structure, but in the foreground you can see the accessory storage building.

This next slide shows the pump house and ancillary well. The pump house, as I mentioned earlier sits very close to the shoreline and provides the brackish water necessary for the aquaculture operation. This is a shot looking at the pump house structure.

The final set of structures were the shade cloth structures that have actually been removed from the property since the taking of this photo, but we wanted to show the Commission what they originally looked like back in the days that they were up. They're the two, black, shade cloth structures here highlighted in yellow.

And finally, the repairs that were undertaken to the existing access road or dirt gravel road that runs along the shoreline. We've highlighted the portion of the road that was actually re-graveled as part of the after-the-fact improvements as you can see kinda running down the shoreline and going out to the island here. This is a shot just looking at the access road, the dirt gravel road.

Kamehameha Schools has been working over the last five years with the various governmental agencies to resolve these after-the-fact violations on the property so that the aquaculture facility can continue to operate and support Molokai's economy. I'd like to briefly summarize some key milestones that have been achieved to date by the applicant.

The process was first initiated with extensive coordination and consultation with Federal agencies to assess the impacts of some of the grading alterations on the nearby wetlands, which are actually within the property boundaries. Site visits with the Natural Resources Conservation Service, Environmental Protection Agency, and U. S. Army Corps of Engineers were completed in 2004 and 2005 to review the completed work in relation to the boundaries of the wetland that exists within the property. It was determined through this process that a roughly, .58 acre, just under an acre of wetland had been compromised by the grading work completed by D&J Ocean Farms. A mitigation plan was prepared to mitigate this impact and restore the area of affected wetland. This wetland mitigation plan was approved by the Molokai Planning Commission back in 2008. And an SMA exemption determination for that work was actually issued by the Commission. The landowner is currently in the process coordinating the completion of this mitigation program in line with the scope of work that was approved a couple of years ago by the Commission.

The next phase in permitting process has been the work necessary to request after-the-fact permitting approvals for each of the physical improvements and structures that were put in place over the years by the previous tenants. These are the structures that I outlined in the previous site photos and aerial photo slides. To this end, an SMA assessment application was filed with the Planning Department at the end of 2010 following a number of pre-consultation meetings and site visits with departmental staff. An application was the culmination of extensive research and interviews with former tenants to document existing conditions within the property, and identified environmental – any environmental impacts that are of likely to have occurred during the completion of the after-the-fact improvements. This analysis drawn upon a number of key technical studies including, an engineering and drainage study, an archaeological literature review, and field inspection by an archaeologist, and also a biological resources study which looked at both flora and fauna

resources within the property. In addition to reviewing the application, the Planning Department also distributed it out to a range of Federal, State, and County agencies. So we went through a fairly extensive agency review and consultation process of the SMA application itself. Now, in addition to review by these agencies, an evaluation of the State's SMA criteria, special management area criteria was completed to determine the significance of the completed actions. The Planning Department then reviewed the application and comments from the various agencies that I mentioned just now. They reviewed those comments and the applicant's responses to those comments as part of the overall SMA package, and formulated a recommendation on the SMA approvals that are necessary for the project.

I'd like to spend a couple of minutes now to first briefly summarize one of the key comments that we received as part of the SMA assessment application process, and also, then move into a couple of key milestone determinations that have been issued by the Planning Department.

The first is the comment that was issued by the State Department of Transportation as part of the SMA application process, which essentially asked about the potential impact to some of the grading work that I mentioned earlier on the property, and how it related to the functionality of the State-owned culvert system that is located above the site on the Kamehameha V Highway. This 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 to handle the volume of runoff that flows down the mauka lands during storm conditions. This has been acknowledged recently I think by the DOT proposing to improve the culvert to essentially, enlarge its capacity. The existing conditions at the culvert have unfortunately, as I'm sure you know, generated some localized flooding conditions along the highway in recent years during intense periods of rainfall.

The next slide is just intended to show the location— The circle at the bottom of the slide here is the general vicinity of the aquaculture facility that we're talking today. This is the highway. This is the location of the culvert system. And this is Keawanui Gulch and its associated watershed. Essentially, these lands drain down into the gulch and under the highway. So you can see it's a lot of volume of runoff that's flowing down through two very small pipes at the end of the day. I'm sorry for the resolution of this slide. Kalani went up in a helicopter a couple of weeks ago, and I was able to take this shot looking mauka/makai down Keawanui Gulch just to give a real perspective to the slide I just showed the Commission.

This is a photo looking along the highway at the location where the existing culvert is. As you can see here, there have been some barriers erected by State DOT to protect . . .

(inaudible) . . . against some of the deterioration on both sides that's occurring within the existing culvert system.

This is a – it may be a slightly old photo, but we took this from the State Department of Transportation's application for the improvement project that they were looking at doing. And you can see here, it's a good shot in that it shows the two 24-inch pipes that serves the culvert system. Unfortunately, you've got a lot of erosion occurring along the roadway surface due to the under sizing of this drainage system. As you can see, one of the pipes here in this photo has actually degraded to a point that – a portion of it has broken off and fallen into the gulch.

Kamehameha Schools has met with the State Department of Transportation as part of the SMA process to really discuss the various after-the-fact improvements that were completed over the years at the aquaculture facility, and to learn more about the existing culvert conditions, and also, the improvement project that is currently being proposed by State DOT to improve the existing culvert. It's our understanding that State DOT is currently in the process of developing plans and permitting applications that would be necessary to implement this project. We're not sure as to the timing, unfortunately, of the project, but this is our understanding at this point. And the goal of the project from State DOT's perspective is essentially, to increase the capacity of the existing culvert system, and mitigate some of the flooding problems that have occurred in the past due to the under sizing of the existing culvert pipes. Kamehameha Schools recognizes the importance of this community improvement project along a very important section of the highway, and as a makai-mauka landowner, fully supports implementation of the proposed drainage improvement project by DOT. The Schools remains fully committed to working alongside the State as the project progresses to implementation to insure that easements that may be necessary for the new culvert system to be put in place are granted to the State from private lands.

I'd like to move now into the two determinations that Nancy mentioned at the beginning of our presentations today. These determinations have been issued as part of the SMA assessment application process. The first has been the granting of a shoreline setback approval by the Planning Department. This approval essentially, granted approval for one of the after-the-fact improvements, the resurfacing of the existing dirt/gravel road that was completed within the County's shoreline setback area prior to 1991. This approval was issued earlier this year back in May 2011.

A review of Chapter 343 environmental assessment requirements, a very important piece of legislation in relation to the after-the-fact improvements has also been completed as part of the SMA assessment application process. The only item out of all the work that I outlined earlier for the Commission to have triggered the State's EA regulations was the repair of a portion of the existing dirt, gravel road that runs along the shoreline. This work

was pretty much confined to a repair and maintenance of an existing facility. It did not involve any significant adverse impacts, and as such, the Planning Department reviewed the SMA application and the analysis provided, and issued a determination earlier this year that confirmed that the action, the road repair work, was exempt from the need to prepare an environmental assessment.

This next slide summarizes the Planning Department's recommendations that had been generated from review of the SMA assessment application. These items are being presented to the Commission for review at today's meeting. Nancy, to my understanding, will be further detailing each of these staff recommendations when she gives her report after this presentation. The Department is essentially, recommending an SMA minor permit be issued for those improvements that qualify as development activities under the SMA rules. These include the storage building and hatchery, the pump house structure, and the repair of the existing dirt, gravel road that I mentioned earlier. An SMA exemption determination is being recommended to the Commission for concurrence for those improvements that qualify as non development actions under the SMA rules. Improvements covered by the exemption would include the grading alterations, the farm dwelling, and the accessory storage structure, as well as the ancillary brackish well, and also the erection and subsequent removal of the two shade cloth structures.

We're here before the Commission today on behalf of Kamehameha Schools to respectfully request the Commission's concurrence with the Planning Department's recommendations on the after-the-fact SMA approval requirements for the property. Resolution for the after-the-fact SMA violations will allow the landowner to move forward to the final phase of the after-the-fact permitting, which is the processing of building, grading, and flood development-related permits for the improvements. We'd also like to emphasize at this point that there are no future improvements currently being proposed at this facility at this time, but that should there be work contemplated in the future, the existing tenant is fully aware of the need to submit the necessary permitting applications before any work is initiated on the property.

We'd like to now conclude our presentation for you today with some brief closing comments from Kalani Fronda, a representative of Kamehameha Schools. And of course, we're available to answer any questions that the Commission Members may have following our presentation. Thank you.

Mr. Kalani Fronda: Aloha, Madam Chair, and Commissioners. My name is Kalani Fronda, senior land asset manager, once again with Kamehameha Schools. I used to manage the KS lands in Molokai and – however, since then, I've been assigned to specifically manage the lands located on the North Shore of Oahu. Because of my history with this matter, it was important that I continued my work on with this project to oversee the process so that this property can be brought into compliance with the County regulations. Kamehameha

Schools regrets the violations that have occurred on this property. However, I wish to reassure the Molokai Planning Commission that Kamehameha Schools, as the landowner, will see that all outstanding issues related to their permitting violations will be cured.

In closing, I'd like to share with you a few things that Kamehameha Schools has implemented internally to insure that issues like these are not repeated on any of the lands that we lease out to tenants for agricultural or aquacultural purposes.

In 2005, an operations manager position was created for the purpose of inspecting and administering compliance with the terms and conditions of our leases. Today, we have five operation managers conducting these types of responsibilities on five islands. In 2008, KS implemented an internal property inspection management system that documents the inspection process, and creates systems that would monitor any outstanding issues. When a concern is identified, the system notifies the appropriate staff to address the specific issue.

I'd like to thank all of you for your time this afternoon, and emphasize that Kamehameha Schools is committed to completing this after-the-fact permitting process so that the facility can continue as a productive aquaculture venture, one that contributes to the community in a meaningful way. Mahalo again for the opportunity to share with you. We'd be happy to answer any questions that you may have during your review of the Planning Department's recommendations this afternoon. At this time, I'm gonna turn it over Nancy until the close of this. Thanks.

Ms. McPherson: Nancy McPherson, Staff Planner. That concludes the project presentation, and so if the Commissioners have some questions they wanna ask right now to get answered, or perhaps the Chair would like to see if there's any public testimony on this item.

Ms. Pescaia: Commissioners, questions? Okay, I'll open up public testimony. Anyone wishing to comment or provide testimony on this particular item, you're welcome to do so now. Seeing none, I guess testimony is now closed. Commissioners? Sprinzel?

Mr. Sprinzel: Is anyone here representing the operator?

Ms. McPherson: Yes, the operator's here today and he can answer any of your questions.

Mr. Sprinzel: I just have two small questions.

Ms. McPherson: Okay, can you come up, and Kalani, and/or, yeah?

Mr. Sprinzel: Can you confirm that there's absolutely no waste – goes into the ocean?

Mr. Fronda: So I'm gonna answer. My name is Kalani Fronda once again with Kamehameha Schools. And in discussion earlier today along with our walkthrough of the site, there is a – the raceways stops at a certain point, and it doesn't disperse out into the Pacific Ocean.

Mr. Sprinzel: Thank you. And the second question, do you use any antibiotics in the . . . (inaudible) . . . ?

Mr. Fronda: I'm gonna at this time turn this over to Mr. John Austin with Keawanui Farms.

Mr. John Austin: Yeah, hi. We run a disease-free facility. And we test it every six months by the State. So all of our stuff is disease-free. We do not use antibiotics, fertilizers, or use steroids.

Mr. Sprinzel: Thank you. That answers my questions. Thank you very much.

Mr. Fronda: Thank you.

Mr. Nathaniel Bacon: The storm diversion, which was retrenched sort of parallel to the highway and then running down the west side of the property, that used to wash over the existing property at one point, which would sort of help to clear up the water and the mud that was coming down the hill before it got into the ocean. And I don't see any evidence that anything is being done to prevent runoff, the dirt runoff from going into the ocean whereas before, it was sort of naturally filtered by the lands there. Is there anything being done to prevent more dirt from going out into the ocean through that system? And is the culvert under the new road that you have there? Is that engineered properly so that that won't cause an issue of backing up or caving in?

Mr. Fronda: If I may ask Mark Roy from Munekiyo and Hiraga to come and join me. I will answer part of that question. Once again, Kalani Fronda with Kamehameha Schools.

As I had mentioned earlier in our inspection and our walkthrough today, we did take a look at the State culvert. And as the system moves the water along and facilitates it through the upper portion of that property, it actually ends at a certain area where it doesn't disperse into the ocean. And this is, I wanna say about a half a mile away from where the ocean would connect up with that. As we had walked through that drainage area where it facilitates potential water that may come from the mauka side, it was dry. And it does – in our discussion with the tenant, it does come down only during heavy periods, and it dissipates very quickly. And I'm gonna see if Mark Roy has any additional comments other than that. I know he has a couple of slides with that as well.

Mr. Roy: Thank you, Commissioner, for your questions. This improvement, the regrading along that channel that comes under the highway through the culvert structure that I mentioned earlier, we went back to historic records. And if I could just find my laser pointer real quick. Again, I apologize for the resolution of this slide, but if I could just maybe offer guidance through the slide. This is a FEMA flood zone map from the 1970s that really shows the existing – or the pre-aquaculture conditions before any improvements were made. So we think this is a good baseline document to look at to understand conditions that were in existence before any improvements were made related to the aquaculture operation.

Keawanui Gulch is where it's being cut off here. It flows down the mountainside. It comes across the highway at the culvert. The photos that I showed the Commission earlier during the presentation, this culvert system, as I mentioned, is pretty badly deteriorated and is a State-owned facility. It doesn't sit on Kamehameha Schools' land. It's part of the highway and the drainage facilities that go in conjunction with the highway. The State, to our understanding, is looking at improving that culvert so essentially, it can perform as it was intended to do, and receive all the volume of runoff, and convey it safely onto the highway, which is currently not doing today. But the reason I wanted to show this slide to the Commission was back in the 1970s when the Federal Emergency Management Agency went through the process of updating or preparing flood zone maps, they delineated the hydraulic conditions across all of Molokai, and the State of Hawaii, and this is the Keawanui area. You can't really see it on the slide due to the resolution problems, and I apologize for that, but it shows that the original alignment of the runoff that was coming under the culvert at the time actually flowed down. And if you were looking mauka/makai, flowed down to the right, and actually dissipated around the Keawanui Fish Pond area, so it kind of veers off to the right. The improvements that were completed by D&J – actually, they installed a berm along part of the D&J property that was essentially intended to avoid some of the runoff that was coming under the culvert system from entering the more mauka fish pond areas. But essentially, the current alignment– And maybe it's best if I go back to another slide. I can certainly do that if you'd like me to. It currently goes along the top of the property adjacent to the highway that you mentioned, and comes down to the wetland area on the property, which I think is fairly close to maybe where it originally came down. And essentially, we went out to the site today just to have another look at the drainage conditions. It essentially, runs down into the wetland area and dissipates. It's dry most of the year round. When it does rain, you know, obviously, the flashy conditions of the mountains coming down to the ocean, it does create wet conditions, and conveys the flows along the newly graded drainage area that goes down into the wetlands. And from our understanding from speaking to the operator, it runs dry soon after that due to the soil conditions. And when the rain stops, it essentially, dries up the system fairly quickly. But that's just an overview based on our research that we've completed as part of the SMA application process.

Mr. Bacon: So the wetland that you're referring to is what the Army Corps of Engineers has designated as wetlands proper?

Mr. Roy: Yes. The wetlands area down here, I don't have the precise delineation, unfortunately, that I can show you, but the wetlands is generally in the vicinity of where I'm identifying with my laser pointer here.

Mr. Bacon: My concern is from the road, you look down, and all you see is the ditch going down there, and you don't see where it's going. And I sort of assumed it was going right out into the ocean. So if it's going through wetlands where it can be filtered before it gets down there, that's appropriate. And I guess the other thing, my other concern would be in that – that wetlands does not – when it does come down, it doesn't overflow into what you're calling your other – the runoff from the ponds where those would overflow into the ocean, too, if we were having heavy rains then.

Mr. Roy: Yeah, my understanding is that the raceways come down fairly close to the ocean, I'm pointing them out here with my laser pointer, but they don't connect to the ocean. Again, they kind of flow down into that wetland area. And the function of the raceways is to receive the brackish water from the ponds, and allow it to dissipate into the environment. It does not connect to the ocean.

Ms. Buchanan: Okay, thank you, Mark. There's some questions off of your power point, and then, I guess, the other questions is for staff. So for the after-the-fact permits, where you issued any after-the-fact fee/fines on the after-the-fact permits? Was Kamehameha Schools or whoever issued ATF fees? Not fines, fees, after-the-fact fees.

Mr. Roy: They have been issued fines, after-the-fact building permit, notices of violation fines by the County that are– They– Yes, I guess, in answer to your question, they have been assigned after-the-fact fines. And I believe they paid a portion of those fines at this point.

Ms. Buchanan: Okay, I going take that question up with staff afterwards, but I'm assuming the after-the-fact fees were based on the breakdown you had of \$26,400. Is that correct?

Mr. Roy: Maybe if I can defer that question to staff. I'm not fully clued up on how they calculate those fees.

Ms. Buchanan: Okay. No, but, on your power point, you had a valuation attached to the structures that were – that you're asking for, ATF, after-the-fact. Okay.

Mr. Roy: Yes, that was the valuation of each one of those.

Ms. Buchanan: Okay, so Nancy can answer that after. So let's go back to other stuff. And the staff also going be asked about the EA exemption of Chapter 343 for the shoreline determination. Was that gravel road a natural road, or was that road constructed previously, or do you know the answer?

Mr. Roy: We don't know the answer as to exactly when it was improved to be an access way down to the shoreline, but what we do know, and we put a lot of time and effort into researching and interviewing previous tenants from D&J Ocean Farms, we actually had an affidavit that was included as part of the SMA assessment application because really, you know, it was a fact-finding mission based on things that have been completed. So it was very important to us that we found the facts and we were able to disclose the facts as to really what happened. That affidavit that was included in the application was from Desmond Manaba, the operator of D&J Ocean Farms. And our understanding is that that gravel, dirt road was in existence way before even an aquaculture facility was implemented at that location based on what we heard from Desmond Manaba. And as I said, that's identified in the affidavit in the—

Ms. Buchanan: Okay, I was just trying to determine if that was a natural occurring formation or that was a manmade from dredging peninsula that was now needing to be maintained in perpetuity for access to the point that we now see on the screen. That's the reason I asking because they gonna have to have to maintain that road indefinitely for access. And then if that's the case then, there must've been a permit issued from that I don't know when. So when you talk about the historical component of fact-finding, you included a June 25, 2004-cultural report for Kamehameha Schools, Molokai master plan. Is that the current or the only Molokai master plan that Kamehameha Schools has for Molokai?

Mr. Roy: If it's okay, I'd like to ask Kalani to address that question. I did wanna just offer up some real quick information just to make sure that my comments were understood in relation to the after-the-fact fines that have been assessed. My understanding is that there are SMA penalties and also building code related penalties. My comments were intended to be related to the building code related penalties that Development Services Administration, Department of Public Works, has assessed of the applicant. I'll defer to Nancy on the SMA question. Thank you.

Ms. Buchanan: Okay. No go too far, Mark.

Mr. Fronda: So in regards to master plans for the area, there will be a process that they will go through in the next couple of years. These different reports that were conducted for the purpose of the SMA permit are some of the reports that will be used for master-planning of places like Keawanui as well as Kamalo. But as far as this fiscal year is concerned, we don't have anything in the works, but it will be projected within the next several years, actually.

Ms. Buchanan: Okay, so that 2004 plan is the current standing plan with the – at the end of the report was also recommendations for the future. So that's current?

Mr. Fronda: Correct. And that was only – I believe that was a portion of the reports that were required for our plan, but a more exclusive – I mean, a more extensive one will be conducted for the Keawanui/Kamalo area.

Ms. Buchanan: Okay, so since you here, Kalani, you talked about operation managers that they were placed. Kamehameha Schools recognized the need for operation managers. So in 2005, you guys hired five, I guess, operation managers for the five main islands. And they also do a type of inspection management in a system. Can you elaborate more on the system that KS is using?

Mr. Fronda: So it's called – it's a property inspection management system. The acronym is PIMS. And what this does is we actually have it – it's on a computer data base. And what the inspector or the operations manager does is he'll go out with a tablet. He'll actually go through– And in the tablet, we'll have a number of different lease requirements that are required by the lessee. And as he's going through and inspecting the property itself, he'll review these items, and also take a look at the property for its purpose, its use, and any type of activities that occurred on the property. If there's anything that requires some flagging and some concern, he'll note it on there. It'll get inputted into the system. And he, as well as the land asset manager, and also other staff need to follow up with the lessee and do further review. Those come in several forms, and documentation forms through letters that are sent out to the lessee, and then also followup inspections.

Ms. Buchanan: Okay. Thank you, Kalani. I was just wondering. I really happy to hear that because I noticed that ongoing issues has been about 25 years. So it's good that Kamehameha Schools is running into a data base type of management system. So who is the operations manager for Molokai?

Mr. Fronda: And I'll answer that in a quick minute. What also happens is over a period of years, an internal audit will actually come through and do an audit of the system itself to see if there's any discrepancies. And if there's any discrepancies, then the manager and the operations manager need to follow through on those to make sure that's corrected. So it is very serious for us to make sure – and very important to us to make sure that items like these or matters like these do not occur again.

As your question related to the staffing of the operations managers, 70 percent of our property is on the Hawaii Island. We actually have two and a half bodies that are covered there. So what happens is we have two dedicated bodies for Hawaii Island. One body – a third body covers all five islands, and they do major – the majority of it is cultural and educational types of assets. The other two– There's another one that does cultural – well,

actually there's two positions that do the cultural and educational reviews. And so these are major assets or land assets that we have out there. There's another last person that actually covers parts of Oahu, and Molokai, and a very small portion of Maui. So Maui we have about maybe 14 – under 2,000 acres, probably about 1,400 – 1,200, I think it is. And then here we have about under 5,000, about 4,500. And then Oahu is scattered on agricultural and conservation lands.

Ms. Buchanan: So internally, how is Kamehameha Schools moving forward to initiate or update the Molokai master island plan?

Mr. Fronda: So we budget for that. And our budget's based on an overall planning of all of our lands. And so in – there are some that have started a couple of years ago, and some that are starting this year. And it was projected for Molokai, as I've mentioned, was several years out, probably two to three years out on which they budget for that. And then go through an – a RFP process to handle a planner. And the planner will then go through and gather all of the studies that are required for the master plan, if there are studies that are out there, and if not, then they will conduct the sub-studies for that. And then along with that, there will be discussions with the community on future uses for these different lands.

Ms. Buchanan: So in this case where you have 150 or more acres, and you have several other developments or businesses running on the same tax map key, I think that's also a question for staff as how they treat one project to the next project on one tax map key, and possibly, waiving exemptions for one project belonging to the same parcel. You know what I mean? You guys' lands are so huge that it would make sense to have some type of comprehensive zoning of targeted TMKs where you would have development versus conservation lands. So I was just wondering, too, from staff or from legal what is the cumulative type of impacts on one TMK when you don't have any boundary amendments or cutting the piece of the pie up? Have no idea? You have any ideas?

Mr. Fronda: I think I kind of know what you're referring to. I think I'll go back to referring to the master plan of the different regions or ahupuaas within Molokai. Molokai has four, so you'll see actually four different areas within the island itself. Mapulehu being one starting from the east end, Keawanui, Kaamola, the third would be Kamalo, and the fourth would be – I should know this, by the plumeria farm by DeCoite's. And it'll come to me in a little while.

So what they do is take a look at the GP, and then also the regional plan for Molokai, and then be able to plan out accordingly. For the most part, we don't look at any repositioning of lands outside of the zoning that's there. If it does require it, then you'll see it as a suggestion within the master plan itself. But for the most part, we'd like to make sure that

everything that is programmed is in compliance with the General Plan as well as with the Molokai regional or island plan.

Ms. Buchanan: So this is one take-home message to the trustees of Kamehameha Schools is if your total acreage on Molokai is 2,000 acres as compared to, you know, what you might have on the Big Island, you know, if they can maybe expedite or move up the process to wrap up smaller acreage master plans and prioritize those, and then the ones that are more difficult like the Big Island where you have maybe one ahupuaa is the total number of acreage we have on Molokai, because it would make sense to do that. And I think for Molokai, Kamehameha Schools, which are watershed and all the other conservation zoning types of land you have would make sense to do that sooner than later.

Mr. Fronda: So let me add to that just to kind of— So not that there's nothing being done. Kind of across the board where we've completed is a natural resource plan. And so some of that you'll see implemented within what's being done with Nature Conservancy and the East Molokai Watershed Partnership. We also have completed a strategic agricultural plan for pretty much every square inch that you'll see on Kamehameha lands on the five islands. And it'll state the different types of crops, uses, etc. We've also done regional plans that talk about the financial feasibility of these areas, and the expenses that we're occurring right now, and the potential opportunities that might be up there. But it hasn't been folded into kind of a regional plan. But across the board, there's been functional plans that talk about Molokai and the specific lands in Molokai. Now it's a matter of kind of honing in on Molokai and working with the community itself. So there are different processes that have been going through to move this process along, along with the reports that you see before you in the SMA permit.

Ms. Buchanan: Okay, thank you, Kalani.

Mr. Fronda: Thank you.

Ms. Buchanan: Okay, I going breathe. Anybody else? You guys can take chance. If not, I get more questions for Mark and then Nancy. . . . (inaudible) . . . one site visit and defer this till later.

Ms. Pescaia: I just wanted to— Maybe this is for our Staff Planner. Have we looked at the building plans for the structures that are there?

Ms. McPherson: I did not receive copies of building plans, but if you would like, I think Mark can discuss that a little bit.

Ms. Pescaia: I'm just wondering if the Commissioners — because again, when other applicants come before us, we receive very detailed plans of the structures that are — the

interior and— I know that, you know, there are certain things that are permitted, but 3,300 square feet is like huge. And so beyond the walls, what's in there?

Ms. McPherson: Well, I think that in order to get after-the-fact building permits, they are going to have to provide as-built drawings. I just don't know if those have been prepared yet.

Ms. Pescaia: Because usually those kinds of documents are included in the packets.

Ms. McPherson: Yes, they are, but keep in mind that for other Commissions, that's not necessarily the case. You guys get extremely thorough information. You're kind of spoiled.

Ms. Pescaia: I'm just asking for consistency with all our applicants. That is what we ask of other applicants. Then I don't want anyone coming back and thinking we gave somebody special treatment by not having that be included as it is a huge chunk of — I mean, this application is the structures.

Ms. McPherson: Yes. And I don't — I'm not sure who's handling the after-the-fact permit process, but if anyone would like to respond to talk about when those plans are gonna be prepared in order to obtain after-the-fact building permits.

Mr. Roy: We certainly note the Chair's comments in that regard. Typically, I know that's the case for new developments, new structures that's — as part of the SMA application process, we would be — or an applicant would be required to provide some level of conceptual plans. But in relation to the construction plans, Nancy is correct in that our next phase of work, we're certainly not — we're certainly not done. And I should say the applicant is certainly not done at the end of our review with the Molokai Planning Commission. The next phase of work would be addressing all of the after-the-fact building permit requirements, grading permit requirements, and also flood zone permitting requirements for all of the structures that the Chair was indicating in her comments. That would certainly take it — take place as we move forward.

Ms. Buchanan: Okay, since you there, let's get back to all the papers. The pump house is included in the after-the-fact permit. I'm assuming that pump house pumps something—brackish water into the fish pond. Is that correct?

Mr. Roy: It does. The brackish ground water is—

Ms. Buchanan: Is pumped into the shrimp—?

Mr. Roy: Is pumped into the shrimp ponds.

Ms. Buchanan: Okay, so I'm assuming that whoever installed that pump has a water use permit from the Commission on Water Working Resources.

Mr. Roy: Maybe if I could ask Kalani to – a response to that question.

Ms. Buchanan: Sorry, Kalani, made you stand up again.

Mr. Fronda: Once again, Kalani Fronda. So as our operations managers go through and review all of our permits, some of the processes that we've gone through is working with the Water Commission to verify not only those that have been permitted, but also, other types of requirements that are required by the pump user. And so we're going through – I know there is a permit on one of them we're actually going through on the other end, doing some followup with the Water Commission.

Ms. Buchanan: Can you share your knowledge of what current wells there's on the property, and what other water withdrawals permitted or not permitted exist on the property and they're currently being used?

Mr. Fronda: So there are two areas where there's wells and pumps. Both pump actually, seawater for the purpose of propagation of the shrimp itself, and that's it. So nothing that hits the freshwater lens.

Ms. Buchanan: Okay. The – so this after-the-fact permit is being requested for what would've normally been one SMA permit to install a water pump to draw water, which would've been based on a report by the Commission on Water Working Resources. That report would state how much water can be drawn from that pump into the shrimp ponds. Do you guys have that water determination usage?

Mr. Fronda: I'm actually gonna – I'm gonna ask if I could ask Desmond Manaba to come up. He had been kind of part of the process in the development of the different wells. I'm trying to remember exactly the amount. I'm looking at it. Was it . . . (inaudible) . . . ?

Mr. Sprinzel: Lori, I think I saw something about all these in this Tom Clancy novel we had here. I think there's something in there I seem to remember–

Mr. Desmond Manaba: Desmond Manaba with D&J Ocean Farms. And the question once again was volume of water that's being pumped out from both wells, correct?

Ms. Buchanan: Yeah, the issue – the permit that was issued by Commission on Water Working Resources for that pump.

Mr. Manaba: Repeat the question, Lori?

Ms. Buchanan: Only because it's included in this permit today, that pump, yeah, is pumping brackish water.

Mr. Manaba: No, seawater.

Ms. Buchanan: Seawater.

Mr. Manaba: Thirty-three . . . (inaudible) . . . per thousand, saltwater.

Ms. Buchanan: So somebody had to give a permit in order for you to pump well water, brackish water, whatever kind water.

Mr. Manaba: Yeah, there was a permit. We would have to file that I think every – monthly or every six months we'd have to file something – some report to the Water Commission. And I can't remember exactly how much the usage was, but the usage was kinda unlimited for seawater. It was – there was never a stipulation because it was never actually freshwater.

Mr. Fronda: And if I may answer? In regards to the after-the-fact permit, the particular one that's noted on the application itself, that's the one that actually was submitted to the Water Commission.

Ms. Debra Kelly: The one with the circle on the map?

Mr. Fronda: Yes, correct.

Ms. Kelly: So the one at the pump house, there's no permit right now?

Mr. Manaba: That's the one had permits. The other well was supposed to be for – the second well was supposed to be for Oceanic Institute. The first well is for D&J Ocean Farms, so that's the one we have permits on.

Mr. Fronda: So my reference on that was the permits that we have is the one that we went through with the Water Commission for the pump house itself. And so the item that we're addressing on there is the County permit that we're seeking after-the-fact for.

Ms. Pescaia: So the second pump and well, at one point there was a proposal for Oceanic Institute. Is that one in use?

Mr. Fronda: That is current – I'm looking at John Austin, the current operator.

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

Mr. Fronda: It's used as a backup.

Ms. Pescaia: Okay, but that one, because the project kinda fell through, it didn't get followup and you didn't follow through with all the permits?

Mr. Fronda: The process was completed, so the only one that actually–

Ms. Pescaia: So it has its permit in place.

Mr. Fronda: Yeah. So the purpose of the after-the-fact is for the County, for the pump house. But as far as the Water Commission, we did submit the necessary paperwork for that. So if I may? I'm sorry. A follow up to that as supporting kinda what I mentioned before, and Mark just wanted to make a note that it's the first well that we were seeking the SMA exemption. Correct?

Mr. Roy: The well within the pump house structure that's circled on the slide here is the well that's in the current application for an after-the-fact permit. The second well that was being discussed just now actually came before the Commission back in 2002, and that one did receive a permit from this Commission. So I just wanted to clarify that. There were two wells. One of them did receive a permit already.

Ms. Buchanan: Mark, in all your paraphernalia over here, you have the well number? What section in your report refers to the well number and the permit number for that?

Mr. Roy: I have the – I have the file number for the second well, and that's SM6 20020004, I believe.

Ms. Buchanan: That's the ATF one in question on the permit today? That's the file number?

Mr. Roy: That was the previous SMA exemption determination that was issued, so that well got approval already.

Ms. Buchanan: Okay, so the one that's the ATF for today, is that a separate file number?

Mr. Roy: That's this file number. I'm not sure what the reference is. I forget, but it's in today's application.

Ms. Buchanan: Okay. The only reason why I bring it up is because the Commission had ordered a water use permit for another application, and that application also came in for – in the SMA, because they had to have a structure for pumping. And that was not approved because – mainly because I didn't concur with the Water – with the Commission on Water

Working Resources. So in order for me to approve one after-the-fact permit for a pump house that is pumping water, I would need one determination – I mean, I would at least have to see what the Commission on Water Working Resources said associated with that well permit. And having said that, we can move on. You need a break, Nancy?

Ms. McPherson: . . . (inaudible) . . .

Ms. Buchanan: Is there a map? Mark, do you have a map before the stream alteration took place?

Mr. Roy: The only document we have in the presentation today is that flood zone map that shows the line coming down, yeah, from 1977. So that actually predates the development of this facility, which started in 1986.

Ms. Buchanan: Okay, for the record, the archaeological study by – I forget who was, Biological Resources, or whatever, the ponds are dredged down to four feet. Usually this Commission, after two feet, we need an archaeological monitor on site. None was present, so we cannot determine whether an irrevocable type of, you know, historical significance or whatever was done. And for me, there needs to be some type of fee associated with that, perhaps. And I noticed that SHPD at some point went on the archaeological report of finding of no significant impacts based on that report by the independent contractor. And so that's up to me to – if I like take that into consideration what that State Historic basically went on their report citing that because there was already so much that happened that the likelihood of anything else in significant finds was not there. So I just wanted to put that on the record, because that was kind of not too good either.

Mr. Roy: If I could just add some background information to that comment? This is in reference to the archaeological literature review and field inspection report that was done as part of the SMA assessment application. It was done by Tanya Lee-Greig, Cultural Surveys Hawaii. It was an extensive archaeological review of the property. It's a fairly extensive report—about 40-something pages long. The report concluded that basically, they didn't recommend any further historic preservation work accounting for the after-the-fact permitting improvements that have been put in place. This report was submitted to the State Historic Preservation Division. Our understanding at this point from Planning Department staff is that State Historic Preservation Division won't review after-the-fact permitting applications at this point. But Cultural Surveys Hawaii did make one recommendation, and this is very appropriate for any future improvements that are done on the property that they said the current recommendation for existing improvements constructed, Cultural Surveys Hawaii does recommend additional historic preservation work for any future permitting ground altering activities to include, but not be limited to archaeological monitoring. Additional consultation with SHPD regarding any future work with potential for adverse effect to possible subsurface historic properties should be carried

out. So the landowner and the current tenant are fully aware at this point that any future improvements that they propose for the site, for the aquaculture facility will need to be filed as an SMA application. As part of that SMA application, there'll be a full State Historic Preservation Division review associated with the new work that would be proposed at that time. So I just wanted to offer those comments as informational.

Ms. Buchanan: Last question. You guys' chance after that. That's what I said before, yeah? Did I miss in this report—did the DOT supply the volume of water coming down the gulch for a 50-year and 100-year flood?

Mr. Roy: Would you mind if I just grab my report?

Ms. Buchanan: Yeah, yeah. I just might've missed it. I kinda zoomed through it fast. Was so thick that's why. Since one of the main issues is the alteration and mitigation of flooding, so there must be a water calculation from the Department of Transportation on volume at that point for a 50-year and a 100-year flood. I would think that would have come in the flood zone report.

Mr. Roy: We did review the SMA application documents that were filed by the State Department of Transportation for that culvert improvement project. We're not aware to date of that figure, that number that they may have programmed into that calculations, but certainly, if they moved forward, they will need to provide that as part of that culvert improvement on the State highway.

Ms. Pescaia: Okay, questions for the previous and current tenant, then. At times of flooding, given the current situation, in your opinion, have the improvements to the property helped improve conditions on that property in times of flooding? How often has it flooded? And if you've observed flooding occurring in the ponds where they've spilled beyond the day-to-day boundary of the ponds if at any time there's been water collecting, spilling over, or if the raceways have spilled over during the time you've been there, and what the current situation looks like now. Yeah, kinda because they've been around long time, so through the years, have you seen the improvements that we discussing and reviewing today? Have those improvements helped to mitigate—? I mean, I know there's a situation with the culverts, but have they improved the drainage and management of flood waters during times of heavy rain?

Mr. Fronda: Once again, Kalani Fronda. May I ask are you asking current as well as past tenants?

Ms. Pescaia: Yeah, I just asking – I going ask him first and then I'll ask John after since they're there all the time and they can see. And they know what the rest of the east end looks like when it rains, so kind of a – give us your–

Mr. Manaba: I think by the following the flow of the water, we have – you know, we've done the embankments and the ditches, and now the water flows right into the wetland area which it was supposed to. So we just kinda like follow the same concurrence of that flow. And it is working. It worked ever since so–

Ms. Pescaia: Have you ever noticed water spilling out into the ocean at any point even if it's once in five years or–?

Mr. Manaba: Most of the water gets into the wetland. It just sucks it all up and–

Ms. Pescaia: Have you noticed water flooding into the ponds themselves because they have a holding capacity? Has just rainfall on the ponds themselves ever caused it overflow into either the next pond or coming towards–?

Mr. Manaba: No. You're talking about the earthen ponds that I have constructed?

Ms. Pescaia: Yeah.

Mr. Manaba: No, it doesn't do that. The system takes care of that.

Ms. Pescaia: So the system has a way that when the water level gets too high it drains that water into the raceway?

Mr. Manaba: Yeah, it just overflows in the standpipe, and it goes into the raceway, and it dissipates in the ground.

Ms. Pescaia: And the raceway never fills up or overflows?

Mr. Manaba: No, no.

Ms. Pescaia: Very good to know. And, John, you would agree that's the existing condition?

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

Ms. Pescaia: Okay. John said yes. Thank you.

Mr. Bacon: I guess I could ask you again. The culvert that you guys put under the road that goes down – no, no, no, not the highway one, not the highway one, but the one you guys did right in the driveway going down.

Mr. Manaba: We just put a little bridge over it so the water can flow under.

Mr. Bacon: Yeah, I guess – well, my question is, is that the little hole that's under it, is that bigger than what we think that the County might – or the State might be doing upstream so that's not gonna be the—? You know, like right now upstream, they got two 24-inch pipes. Is yours a lot bigger than that?

Mr. Fronda: So the system that he had created, all he did was put a bridge over it. So if you take a look at the width of the ditch, that's the extent of it, so there is no separate hole where it actually flows under or a separate culvert. It's just a bridge that's over the ditch system itself. And that, per se, is larger than the capacity that's there currently under the State facility's culvert.

Mr. Bacon: I'm just considering if that could be the bottleneck later on if they enlarge the one up on top. But if it'll take everything that comes down, then it's okay.

Ms. Zhantell Dudoit: Okay, so that was gonna be my question, too, and maybe I just need a little bit more clarification. Have you done enough talking story or research on the State Department of Transportation's culvert improvements, and how they plan to improve so that it's consistent with the improvements that are made on the property? In the event that there is – I know that typically, there isn't a lot of water and everything seems to evaporate before it can cause flooding, but in the event— And the example I going use is the big Kamalo Bridge. When the dredging company went through and they did the pit over there, they cleared out thinking that it would help to alleviate flooding that was coming over the road. But they created such a big area that now when the water rushes through, if you get caught in there, if there's ever a time when the water is so powerful, it could kill somebody, you know, as opposed to just running over the road. So my question is, is there talk story enough that the two different plans are consistent with each other and consistent with our Molokai Community Plan so that everything works hand-in-hand and it's not at your expense or the State's expense that later on that we need to have adjustments being made and cause more expense to our taxpayers?

Mr. Fronda: So I had a couple of conversations. The first was with – at the branch level of Planning in their review of our SMA permit, and some of the comments and feedback that they had in regards to that. Their – I also had another discussion with them in reference to a proposal that had come before the Commission a couple of years ago as it related to the culvert itself. It is my understanding, based on my conversation with them was that the project is on hold. There's different things that they're trying to put together that needs to be completed to come back to the Commission in order for them to move forward. We do need to, as Mark Roy had mentioned, further discussion with the State in regards to how that would impact also our property itself. And that'll go through the process in which they are going through whether it's an environmental assessment or whatnot. And we've had previous discussions in the past couple of years. I want to say a couple years ago with another counterpart of mine that was talking with them about potential easements. That

never continued on because of a result of what occurred in their application before the Commission. And so that kinda came to a halt. I know they're still examining to see how they're going to move forward. But for sure, I know that because we're surrounding landowners, there will need to be further discussion on any impact that may have to our property as well as the community itself. And our hope would be to advocate continually, as I had mentioned with you guys, any compliance with the Maui General Plan as well as the Molokai Island regional plan itself.

Ms. Buchanan: Commissioner Dudoit, I was on the Commission when we reviewed that environmental assessment for the DOT culvert improvements. The short end of it was this Commission did not approve a special management area permit for that culvert because of concerns raised from this Commission for flooding.

Ms. McPherson: Staff Planner, Nancy McPherson. I'd like to make a correction. That was actually a request for an SMA exemption. And the Commission chose to reject that request, and insist that an environmental assessment be prepared and an SMA major permit. So that's what you folks actually requested. And I believe that's what they're working on. And we, the County, is – would insist that they work closely with the surrounding landowners not just to evaluate receiving areas makai of the highway, but also to evaluate the source areas above the highway to work together on an ahupuaa basis to do good planning and to mitigate impacts so that whatever improvement they put in there will not create more problems.

Would Commissioner Buchanan like me to respond to some of her questions at this time or–? You have more for the applicant and the consultant?

Ms. Buchanan: Nancy, what fines, if any, was issued to the after-the-fact request for permit fines, whatever?

Ms. McPherson: Are you referring to SMA after-the-fact fees?

Ms. Buchanan: To both–the building fees as well as the SMA fees.

Ms. McPherson: Yeah, my understanding is that they are going to be paying whatever after-the-fact building permit fees that DSA is levying on them. Because these improvements occurred for the most part prior to the year 2000 when the after-the-fact SMA fee was instituted, we did not levy after-the-fact SMA fees. If – you know, basically, it would take more time and more analysis to be able to evaluate which portions of which improvements might've occurred in the year 2000 or later. That hasn't happened yet. My understanding is most of it happened prior to the year 2000, so that's why that wasn't done.

Ms. Buchanan: So am I to understand currently, there are no fines – I mean, fees asked of the applicant, but there may be in the future?

Ms. McPherson: Well, my understanding is there has been a pretty involved legal process that has gone on, and there has been negotiation between the County and the landowner. And I have not seen the result of that, but I know that there was – that things were settled through legal means. That's my understanding.

Ms. Buchanan: Okay. I don't have a – it may or may not have something to do with this current application. And I didn't bring up or see the wetland delineation of the .85 acres and the mitigation that occurred. And I'm just assuming that the EPA was the agency that did that, or the NRCS in partnership with EPA did that wetland delineation?

Ms. McPherson: Yeah, well, I'll let Kalani respond to that. What you approved previously was – there was a delineation, and there was a mitigation plan, and that is being implemented.

Mr. Fronda: So if I may answer that? There has been discussions and work with EPA as well as with D&J Ocean Farms on our re-vegetation of certain areas that have been disturbed that were within what was called wetlands. And so these particular areas have been re-vegetated. We're in the process of – collectively, in monitoring, the taking of those to make sure that the vegetation is growing properly. As you understand, the island, especially, that area has been going through a drought, so there's been variations of kind of where it's at right now. There has been couple of inspections by EPA after the D&J had gone ahead and planted the seeds, and replanted that particular area. It wasn't favorable at that time when they come under a second – or under a second inspection. However, since then, there has been some opportunities there and vegetation has come back again. So it's a matter of our touching base again with EPA to review the matter to see where we're at, and if it's sufficient with what was discussed in our initial phase.

Ms. Dudoit: I can just have a clarification because I heard you say something? So this – so I'm clear, D&J Farms are helping to re-vegetate the areas? Is that what you were talking about?

Mr. Fronda: They had done it originally, initially, when we had gone through the process of putting a lot of these paperwork together. And so the discussion that was – that took place at that particular time, I wanna say a couple of years ago, was with D&J, as well as with EPA and Kamehameha Schools.

Ms. Dudoit: So right now what we're looking for – you're representing Kamehameha Schools in association with your new lessee?

Mr. Fronda: Correct. Right now the application is just from Kamehameha Schools itself.

Ms. Dudoit: And D&J Farms are just the representation to help with supporting evidence and history of the project?

Mr. Fronda: Correct.

Ms. Dudoit: Okay.

Ms. Pescaia: The shade cloth structures, did they have any foundation or were they just earthen? Was there cement poured in place or anything?

Mr. Fronda: I don't believe there was any foundations. It was—

Ms. Pescaia: So just in the ground?

Mr. Fronda: Yeah.

Ms. Pescaia: Okay.

Ms. Buchanan: Nancy, who made the determination of exemption from Chapter 343?

Ms. McPherson: I did. I made that recommendation and it was approved by the Department, yes.

Ms. Buchanan: So then they exempt for the development. So the ATF developments within the shoreline certification, where is the shoreline certification line? Is there a shoreline certification line?

Ms. McPherson: The shoreline has been certified. It should've been provided to you as an exhibit. I believe it's Exhibit – there's a number of them here—Exhibit 20. It's difficult because it's in black and white. What I can do is look through my giant file. Here we go. There is a map here. I'm gonna pass this to you.

Ms. Buchanan: And you said that was current, yeah?

Ms. McPherson: I'm sorry. Could you repeat that question? It was—?

Ms. Buchanan: That certification is current? When was that certification made?

Ms. McPherson: It was current at the time that we made the determination. The letter took a little bit longer to issue.

I've been meeting extensively with the applicant and the consultants since I came back to this position in January. And I also wanted to mention that the applicant gave you the full copies of the preliminary engineering report, the biological resources survey. That's Exhibit 9, 10, 12, the archaeological review, and 14, the best management practices for Hawaiian aquaculture on my request. So they printed all those out for you folks. And if you need a recess or something to take a little more time to go through those materials, I think we'd be happy to let you do that.

I know it's a lot of material, but because with past experience with the thoroughness of our Commissioners, and wanting to have a solid base of information to base their decisions on, I did realize at a certain point that those building plans weren't available. And so I do apologize for that because I know that that would be preferred. But I do feel that on balance, there's been an enormous amount of supporting data, enormous amount of work done by the consultants on behalf of Kamehameha Schools.

I also – I have talked over the years to folks who have been affected by past practices. And I do realize there's a difference of opinion about the state of the shoreline prior to the – you know, after-the-fact improvements along the shoreline. I think that's really, really difficult to assess. I'm not casting . . . (inaudible) . . . on any manao that have been given by long time residents of the area. I'm not doing that at all. I think it's just difficult. I know that area is abutting an old fish pond and that it's filled in over the years. I did do a site inspection. I took a lot of photographs. I'm sorry they didn't all – they weren't really bright enough for you to see clearly, but it does look like the gravel that was placed is gradually dispersing.

I think there are some complexities regarding coastal geology along that shoreline, and I would encourage Kamehameha Schools at some point in the future to look into possibly having the University of Hawaii come and do some studies of any place on Molokai actually, but of course, it would be for their properties that adjoin the shoreline, but to get a good idea of the dynamics and what's actually happening. I know that that area – I think it's called Kamiloloa. Is that correct? No, not Kamiloloa. The island, it's Kalaeloa, was an island at one time. And so we've seen a lot of changes along Molokai's coastline over the years. And it hasn't been well tracked. So I think that makes it really difficult.

But one thing I do know is that Kamehameha Schools is doing – has made some big changes. And they are doing due diligence and they are insisting on best practices for their lessees. And that's why I included the report. I also included that excerpt. I can't even remember where I got it from. You know, people just give me things all the time. But the townscape report . . . (inaudible) . . . Molokai No Ka Heke Cultural Report, I did include that because that included some oral histories and different things.

So I did try to provide you complete information as much as I had available, and it's not perfect. But I think it's the best we can do at this phase. I think a lot of people wanna move on with their lives regarding this situation. And I know that moving forward, things are going to be pono, and they're going to be done properly. And Kamehameha Schools, as well as the County is gonna be keeping a much closer makaala watch over things.

Ms. Pescaia: So speaking of moving forward, Commissioners, are there any more questions? If not, I will entertain a motion.

Ms. McPherson: Well, I need to read the—

Ms. Pescaia: Oh, you going read your—

Ms. McPherson: The recommendations, yes. And we do have—

Ms. Pescaia: You're gonna treat them separate, right?

Ms. McPherson: Yes, they've been put on the agenda as two separate items. So what I'd like to do right now is—

Ms. Pescaia: Do you need her to read the whole – all the recommendations?

Ms. McPherson: I don't have to, if everyone's read them already, and doesn't have any questions about any of them. What we did was we had – as part of the SMA assessment, we had to evaluate whether this – different facets of the application were development or not development. And so on page 4 of your memo, it discusses that. It kind of itemizes and goes through all of that. That resulted in two actions. The first one is an SMA minor permit. We recommend – we find that – well, they're after-the-fact actions, but we do find that they're not likely to have a cumulative impact, or a significant, environmental, or ecological effect on the SMA based on implementation of best practices and all mitigations that have been and are being proposed.

So there are standard conditions that all of these shall be in accordance with the descriptions, graphics, and site plans submitted and representations made to the Commission. The BMPs is recommended in the U. H. Grant Extension Report, which is your Exhibit 14, where practicable, be used in the continued operation of the aquaculture operation, which it would include appropriate measures to minimize dirt and water runoff, and prevent any impacts to the shoreline and wetland areas. That all after-the-fact building, electrical, and plumbing permits, and special flood hazard development permits be obtained as applicable. Our standard language, which is much more expanded in the archaeological monitoring plan. And I know Commissioner Buchanan has brought this up before that she would like the full language to be incorporated. So I apologize for no. 4 of

not having the full language. But if she would like me to refer to the archaeological monitoring plan, I can amend that. And then full compliance with all other applicable government requirements including Federal, State, and County. That would include the Commission on Water Resources Management, etc., be rendered. And you may move to approve, approve with no conditions, approve with conditions, amend the conditions, defer, or deny.

Ms. Pescaia: Sorry, before we – sorry, I had another question pop up in my brain. The bathrooms, does this property have individual wastewater systems for–?

Ms. McPherson: Yes, for the house.

Ms. Pescaia: For the house. And there are no other bathrooms?

Ms. McPherson: No, there are no other bathrooms.

Ms. Pescaia: Okay. Thank you.

Ms. Dudoit: I have a question, Nancy, just for my information. Under – on page 4, under Section C, it talks about conflicts with the County or State long term environmental policies or goals. And just because this topic came up a little bit earlier in the discussion about the Clean Water Act and things like that, there is a documented language over here that says that the property was in– Let's see. Let me just read it you. "A past violation of the Clean Water Act regulation regarding fill in wetlands has been rectified," but you don't have any exhibits that show us that that has been rectified, or any kind of documentation showing that that was–

Ms. McPherson: I believe that was submitted with the previous after-the-fact application that was done for D&J for the other actions. But I can have – the Kamehameha Schools' representative can testify that that's occurred.

Ms. Dudoit: Well, I'm just wondering because I'm wondering why this language was specifically put in and there's no documentation to show. I mean, if it was something that was settled and maybe–

Ms. McPherson: It was an omission and I apologize. It should've been included, but it was brought before the Commission previously, but that was – you know, not everybody was on the Commission at that time. So, Kalani, did you wanna affirm that or–? He affirms that that's all been taken care of now. I think that was referred to in the presentation, too, but, yes, there is documentation. I don't have a copy of it handy, though. If you would like, I could provide that after the meeting, or if you wanna take a recess. It might take me a while to dig it up, though.

Ms. Pescaia: Any other questions? Seeing none, I will entertain a motion.

Ms. Buchanan: Chair, I move for under Item D, Communications, 1-a, Kamehameha Schools requesting an SMA minor permit for after-the-fact improvements, I propose that we defer this pending a site inspection.

Ms. Pescaia: Motion by Commissioner Buchanan. Is there a second?

Ms. Dudoit: Second.

Ms. Pescaia: Second by Commissioner Dudoit. Discussion?

Ms. Dudoit: I just wanted to state for the record, I think we do this every meeting, though, there are certain aspects of an SMA application or when you come to ask the Commission, and I think this is for staff, and I totally not picking on you, Nancy, but when you ask us to approve a project, and specifically, for SMA permits or things of that nature, we're bound to be responsible tenants of this land. And we need to know certain information. It's not acceptable to ask us to pass an SMA application without knowing what the building going look like, or how big it is, or what the improvements entail. I think it's also we need to know more – I was confused on the conversation that we were having about the pumps and whether or not it actually does have a permit or whether that permit is pending. That raises a red flag for me too. Documentation of the wetland . . . (inaudible) . . . is also a concern to me. And I just think that it makes me a little bit heartfelt for the applicants because somewhere along the process line, before they get to this point, and gotta be deferred, and gotta go somewhere else, there has to be some kind of a checking system so that we not in this situation anymore, because it seems to me like we always don't have enough information. So I just wanted to say that for the record.

Ms. McPherson: Well, I'd just like to respond that if the Commission would like to work with staff to develop a checklist of information that you'd like to see on every project, I'd be happy to work with you to develop that. I can draft something and then you can take a look at it, and you can add things to it, or maybe even delete some things. And then we will have a more consistent review. Basically, one does the best one can, and tries to be as thorough as possible given the workload demands. So that's kind of where we're at. And if you need additional information that you feel is critical to make a decision, I believe the square footage of the house was given, and perhaps, not the square footage of all the other structures. But a lot of photographs were provided. So, you know, it's a balance. And so I'd be happy to work on a checklist, and so at least from now on we'll make sure you get all the information that you need to base your decision.

Mr. Sprinzel: How long did you say ago these buildings were built?

Ms. McPherson: I think the house was built in the '80s.

Mr. Sprinzel: The ones where right around this – the house isn't on this, is it?

Ms. McPherson: Yes. No, the house is for the exemption, yes. Well, there were constructed over a 20-year period. And I believe there's the affidavit – Desmond Manaba's affidavit is included as an exhibit, and that kinda outlines the sequence.

Mr. Sprinzel: So our inspectors have been doing their usual job.

Ms. McPherson: Unfortunately, we're a complaint-driven system.

Mr. Sprinzel: Well, nobody's complaining, but I mean nobody's noticed that these buildings have gone up in 20 years. Nobody's come along and said these ought to have permission. These ought to have a planning permit. No?
It seems a little odd.

Ms. McPherson: I started in 2006, and found out about a lot of things on the east end pretty quickly that have not been supervised, shall we say?

Ms. Buchanan: Chair, you still in discussion for–? Okay. So for discussion for the Item 1-a, deferring until a site inspection, it may help at that time, if approved, for the information that I would like to see specifically, for this first ATF is a current letter from the Planning Department that either they're gonna go incur fees or they not, because it's very difficult for us on other pending projects– Taking Ke Nani Kai Condominium, I mean, we just, boom, off the bat. They had \$8,000 in after-the-fact fees, which I commented at the time was substantial. And I thought that that was a deterrent for them not to come in again and make the same mistakes, which they may have learned their lesson 'cause they pulled their application for today. So to say that no after-the-fact fees are gonna be incurred for substantial violations is kinda hard to swallow.

Also, for this Commissioner, the 2,200 linear feet of road improvements is questionable for me. I not comfortable approving an after-the-fact permit for a road that could possibly not be a natural road, and might need improvements in perpetuity. And so that's a concern myself that I just going say, yeah, it's all good.

And then also the pump house structure, which obviously is pumping water, which I don't have a report from the Commission on Water Working Resources for, I could see on myself that it is part of a larger development, what I would say development, which is pumping water. And so that's questionable if it even qualifies as an after-the-fact improvement permit.

Ms. McPherson: Our DSA Inspector on-island would like to give you some additional information from the building permit side, if that's okay? He's sorry he's just come in late.

Mr. Anthony Fukuoka: Anthony Fukuoka, Molokai Building Inspector. Regarding the building permit applications, there's two applications that are pending. B T2007/3221 for an after-the-fact farm dwelling. That's the two-story house. And MOL T2004/0088, that's for the after-the-fact greenhouse or what I think it's called on here a storage or hatchery. As of this date, the violations have been— Well, it was assessed— Let me start again. The after-the-fact penalties for the building permit will be assessed after the permits are issued. That's \$500 for an after-the-fact building permit. The violations started in 2004 for the house and hatchery. As of this date, the fines have been accruing. Letters have been sent to Bishop Estate. For the house, the fines were actually sent to Corp. Counsel in 2005. So it's actually with them to assess the fines. For some reason, the hatchery stayed with our Department, so we've been assessing the fines since 2004. And I think it's in seven figures right now. Whether or not that's what they agree upon as the final fines, that's where it's at right now. Regarding the SMA, I can't comment on their fines. But after-the-fact building permit penalties will be assessed after the permits are issued. And of course, the SMA assessment is part of the building permit. So if the assessment isn't approved or it's — you know, the building permit's not gonna be issued. And if you have any questions, I can answer it. If not—

Ms. Pescaia: That was extremely helpful. Thank you. Continue discussion?

Ms. McPherson: I'd just like to ask, if I may, the maker of the motion, if she could state her reasons for wanting to make a site visit?

Ms. Buchanan: Sure. I think common sense— What we— I support aquaculture, and I support what — the direction that Kamehameha Schools is doing in trying to promote aquaculture and agriculture on their lands, and also, for conservation. So it's a great thing. I think they making big strides in improvement internally for all their lands. And so we applaud that. I was hoping to see a Google Earth map type of map with an overlay of the structures like you had in your power point, Mark. That would've helped me. Your power point was very helpful, but current Google Earth maps is really helpful with delineations from — in your GIS. So that would've been nice. You have one? On page what? Okay, so you get the lines. Okay. This one. Okay, that's different from theirs one. Okay. That one nice. I like this one. It is the same one. Okay. We just cannot see— Okay, great. So if we can have one copy. One page one like this is good. It's nice to zoom out, too, because then you can see the ahupuaa where the six or seven rivers stay coming down into one channel, because it's always been a problem for me that it doesn't seem to be a natural channel. And I think that is where we got into car accidents with the flooding, with residents, and that's the reason we gave DOT for not concurring with the SMA exemption. And unless that get rectified— If — I don't know if going make one difference if we standing

right there, and we go, yeah. All that water coming down the road, we can see that that sharp turn at Kamehameha V Highway is not gonna wash out and destroy all the development, or it's flowing the right way where this yellow line says. So we telling the water where you going now, but the water has a mind of its own. And it might help to be onsite to see that, yeah, that's where the water going, or whatever.

Ms. McPherson: And hope that it's really hard.

Ms. Buchanan: Not really.

Ms. McPherson: Thank you, Commissioner.

Ms. Pescaia: So I'm gonna refer to one of the points brought up by fellow Commissioners about the road, the improvements to the preexisting gravel road that runs along the shoreline. How imperative is that road to the farming operations because it seems to extend beyond where the primary farming activity is being conducted?

Mr. Roy: May I respond to that question on behalf of the applicant? It is an integral road, access facility for the operator to service the various elements of the ponds, and the raceways, and so forth. But I think it's important to note that as was confirmed through Desmond Manaba's affidavit, even prior to Ohia Shrimp Farms, Shrimp Corporation coming onto the property in 1986, that road was already in existence. We don't have any knowledge with regards to—

Ms. Pescaia: Do you know if that was maybe possibly a foot path that was then kind of used more frequently, and then it turned into a vehicular path, and now it has gravel? I mean, there's been — I'm just assuming there's been improvements made through the years to widen or increase the usage of that road. And I think this is—correct me if I'm wrong—this is a portion that extends all the way out to Kalaeloa. So you're saying the portion— Because like this map has all this yellow lines that show primary farming aquaculture functions. And then this road that goes all the way out here, this road out here is imperative to the— I can see the roads that are within the boundaries of the farm, but I'm talking about that other portion that goes all the way out. You're saying that that is— I would like to understand how that's imperative to the farming.

Mr. Roy: Sure. The portion that I think you're referring to, the yellow highlighted portion, which is the subject of this application, I'm not sure exactly how important it is to service the existing facilities over at the farm, because like you said, the ponds and the raceways are all within the central portion of the property. But again, you know, because this is an after-the-fact permitting application, we had to assess all of the actions that have been completed previously. So it's not something that the current tenant is proposing at this point. Quite obviously, it's something that—

Ms. Pescaia: What I'm asking is, because if there is no commercial need for that road to be a road, because it doesn't directly tie to the farming operations, we could have the applicant remove the material, restore the road. So I'm wondering how— I mean, I'm not sure. Is this application covering the entire length of the road all the way out to the point?

Mr. Roy: The re-graveling of that existing dirt path, or road, or whatever it was back before the aquaculture facility came into existence, the application is only covering that portion, that yellow portion that goes along — along to the island that was re-graveled by D&J Ocean Farms. The question as to how important it is for the current—

Ms. Pescaia: Yeah, how was the road that extends — that shoreline road, how is that shoreline road used?

Mr. Roy: Right. I see your point. And maybe, could we get John Austin to maybe respond to that question, because I'm not the operator over at the facility, but—

Ms. Pescaia: Okay, because we're not into the habit of granting roads on shorelines like right on the beach. And I see the picture. It is like right on the beach so—

Ms. Buchanan: But it's not part of the road that goes into the water. Try look this map.

Ms. Pescaia: You looking at Exhibit A — 8? Sorry. Exhibit 8, page 6 of 6, it says, "Section of road along shoreline -gravel." And then it's like on the shoreline.

Ms. Buchanan: Which was exempted under Chapter 343 by Planning.

Mr. Austin: Hi. I'm John Austin. The road—

Ms. Pescaia: Oh, that's what that means.

Mr. Austin: It does not go out to the island. So it ends at the end of the raceway system. And then after that, it turns to beach. So if someone drives out or walks out, it actually goes to high tide or a flood zone. So there is no road all the way out.

Ms. Pescaia: Okay, so you can see this Exhibit 8? Like the one, two, third picture, it says, "Section of road along shoreline," but now that it was pointed out that that's the part that was exempted.

Mr. Austin: Yeah, well, you see this on Exhibit 8, that goes about another 150 yards, and it ends at the end of the raceway system. So if you follow the yellow line, just where you think it goes onto the beach, it doesn't. It stops right about there.

Ms. Pescaia: Okay, so – but this picture is showing something that – I mean, this is the road we talking about that was covered with gravel.

Mr. Austin: Yeah.

Ms. Pescaia: How does that tie into the operation of the farm?

Mr. Austin: Well, it services the raceways because every so often, the raceways have to go through a cleaning process, which is . . . (inaudible) . . . and clean the dirt up, all the soil inside the bottom of it. Oh, I'm sorry. We're on the wrong picture.

Ms. McPherson: They're talking about this part down here.

Mr. Austin: Yeah. So if you look at this picture here, you'll see a yellow line that comes to this point. That is the end of the road. What you see here is beach on the section along – they call it the shoreline - gravel. I'm not sure. It's not used as a road. It has nothing to do with the farms' operations out there.

Ms. Pescaia: Yeah, 'cause then now I need clarification from these guys. He's saying he no use 'em.

Ms. McPherson: Nancy McPherson, Staff Planner. When we did the site visit, we were taken on an ATV all the way down to the island. And that section that you're referring to with the pictures along the shoreline is along the shoreline. It's in the shoreline. And that was improved. And the after-the-fact improvements are coming under this request, but they are basically, washing away, and they're gonna be left to do that. There is not gonna be continued improvements to maintain a road. And John also has horses. And he can take a horse down there, too. So you can walk. You can take a horse. I mean, it's not part of – it's not a support. But what's needed is the portion that goes along the raceway down to end of that system. And that's the yellow line. And that's the part that needs to be maintained. But the portion along the shoreline, DLNR would not let them continue to do that either. So it's actually out of our jurisdiction because it's in the shoreline at high tide. So we are not allowing for a road to be legitimized in the shoreline. We are not asking that you set a precedent here that something in the shoreline area will be continuously maintained. I didn't label the photo properly, but we're doing after-the-fact right now. So we're just trying to deal with what was done before.

Ms. Pescaia: I know, but whether before the fact or after-the-fact, we wouldn't grant such a thing anyway so–

Mr. Sprinzel: Well, which bit was actually graveled? Was it the purple bit or the yellow bit?

Ms. McPherson: Well, my understanding is – you know, and Mr. Manaba's here so he can respond to that, too, but it was graveled along the shoreline. Maybe it was graveled before that, too. And that was really what the violation was, was the grading and graveled along the shoreline.

Mr. Sprinzel: So if that's a violation, we're not gonna pass it anyway, are we?

Ms. McPherson: Well, that part's been dealt with already, though. That part's been dealt with to the satisfaction of the State. It's an after-the-fact action. Nature is re-mediating that action.

Mr. Sprinzel: But John says he doesn't use that. He uses the yellow bit, the bit along the drainage.

Ms. McPherson: Right, but because that happened– Well, you know, technically, if it's not in the SMA, if it's not under the County's jurisdiction, then maybe that portion isn't something that you can even do an SMA minor permit for.

Mr. Sprinzel: I don't think we can. I think you should take it out.

Ms. McPherson: Yeah, okay, well, I think we can do that too. If it's not under our jurisdiction, you can't approve it anyway, so–

Ms. Buchanan: That's the request for one site inspection?

Ms. McPherson: Well, the shoreline map would show that also. So you could see in the shoreline map which sections are, you know, makai of the shoreline.

Mr. Sprinzel: I'm beginning to come around to Lori's idea that we need to see it because, you know, it got so confusing. And how the heck can we make decisions on something we don't have a drawing of the building? We don't have a photograph of the building. Not from this side. I mean, it's–

Ms. Pescaia: Well, we have some photographs of the buildings, but again, the building plans– The question of the roads, just exactly what point to a hundred feet of road are we approving? It's kind of hard to discern what was existing, what has been improved, what's not going to be used anymore, what– Because we're talking about a span of time that was 15 years or so – no, more than that–20, 20 years, 25 years. And structures are put up, structures are taken down, roads are put in, roads are moved, waterways are moved. So it's kind of hard to track because the information that's being provided is from different periods of time. So if we want – I mean, just for – do you want to say anything? Other than that, I'm gonna call for the vote.

Mr. Roy: Sure. If I could just add some comments? We certainly are listening to all of the comments that the Commission is raising at today's meeting. And in fact, you know, as we've gone through the process of researching, it's been an extensive process because this was stuff done a long time ago—20, 25 years ago. And it's taken a lot of interviews with the former tenants. It's taken a lot of researching of all of the documents that are available to us at this point in time. And it's not a precise time, unfortunately. But we certainly feel that the information that's provided in the SMA assessment application that was submitted to the Planning Department is pretty much as good as information as we can put our hands on to really define the individual work that was done by the previous tenants. But like I said, we're certainly listening to the Commission's questions, and comments, and concerns at today's meeting. I would like to offer— Certainly, we're here today. We feel that we have a lot of information to provide to answer your questions, if you did wanna continue to ask these questions.

The other thing is some of the concerns I'm hearing about working with the Commission on Water Resources Management, for example, to ascertain the status of permitting for the ground water well within the pump house, that seems to be a big issue with the Commission today. We have no objection to having that as a condition on the SMA minor permit so that ultimately, the applicant would contact the Commission on Water Resources Management and obtain a permit for the ground water well, as may be necessary, for example, that kind of wording.

The other thing was the completion of the wetland mitigation plan. Certainly, the applicant is working diligently to try and insure that that plan is fully implemented. At this point, it's kind of in the midst of being implemented. They've done some work, and they're still on the road of completing that plan. But another suggestion that I could offer to the Commission is certainly that can be another condition of an SMA minor permit approval that they be required to complete the wetland mitigation plan to the satisfaction of the EPA, the U.S. Army Corps of Engineers, whichever agency is responsible for approving compliance with that work.

So we certainly agree that some questions are unanswered at this point because like the wetland mitigation work is currently ongoing, but in order for us to move forward with the next stage of the after-the-fact permitting process, we need to move beyond the after-the-fact SMA permitting process. And certainly, if the Commission wanted to – if I could come back and maybe propose – if we could take a short break and propose some of the conditions, some additional conditions that we feel that could address some of the key concerns that were raised at today's meeting, if that would be something that the Commission would want to entertain at this point concurrently with the question of if you do feel that you wanna do a site visit. That's kind of a separate question, but if me proposing conditions in accordance with discussions with Kalani to really address some of the concerns, if that would allow the Commission to move forward and complete its review

of the application, then I'm certainly happy to take a break and work with Kalani to kind of flesh out some language for conditions. Thank you.

Ms. Pescaia: Thank you. Commissioners, thoughts? We could take the vote so we could go on a site visit, and defer this till the next meeting. We could move on our – we could table this, move on with our agenda, give them time to come up with some proposed conditions while we take the next agenda item, and then come back to it, or you can approve it. Again, we have an active motion on the floor. Any further discussion?

Ms. Buchanan: We get more than the number of Commissioners that can vote in the affirmative even if I vote in the negative, because I don't think for the Item Action 1-a, there would be any conditions that the applicant could put in that would make me comfortable with the pump house structure unless I was actually reading the permit from – the water permit. So short of the water permit for the pump house, I don't think a condition would make me vote in the affirmative on Item 1-a, and that's it. I just voicing my opinion.

Ms. Dudoit: And I concur with Commissioner Buchanan. I just feel like – I feel sorry for the applicant. I just feel like we gotta do a little bit more work. And the positive point is that we not denying it. We just asking for a little bit more time to be responsible tenants.

Ms. Pescaia: And again, we – though this be an after-the-fact application, we must treat it as if this is a proposed project to be implemented. And if this had come before us in a timely manner, would we have approved it given its merits and the supplementing information? So – and treat it – even though it has already been done, and consequences to the aina and to the kai have already occurred, still– And even though they're in the middle of mitigating those impacts, still, we need to consider would this have qualified for an SMA permit. And so if there are no other further comments, I will call for the vote. And again, this is for deferring until a site visit can be conducted in reference to the points that were given in the motion and the subsequent discussion.

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

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

VOTED: ***To defer until a site visit can be conducted in reference to the points that were given in the motion and the subsequent discussion.***

(Assenting: L. Buchanan, Z. Dudoit, N. Bacon, D. Kelly, J. Kalanihuia.)

(Dissenting: J. Sprinzel.)

(Excused: R. Davis.)

Ms. Pescaia: All those in favor, raise your right hand, say aye. One, two, three. Those opposed? One. And that means two abstaining, which is a positive vote, which then equals – two plus three equals five, which then means motion carried. Is that a good summarization of that? Okay. The Commissioners like be tricky. Okay. So–

Ms. McPherson: Can I ask does this make the request for exemption moot? And are you gonna wanna defer that also? Or should we go ahead and try to see if we can get somewhere with the SM5 request also before the site visit?

Ms. Buchanan: It may be moot at this point unless you wanna piecemeal, and take apart, and ask the applicant to change his application status.

Ms. Pescaia: I think because of the way the applications are packaged, there are portions of it on both sides that are connected to the concerns. So I think it would be wise to come back and revisit the entire – both applications at the same time.

Ms. McPherson: Clayton and James, do they need to take action on this item similar to what they just did, then?

Ms. Pescaia: Well, it's agended separately. Do we actually have to go–? We have to make the motion and–?

Ms. Buchanan: Chair, I can make the motion on the second, if that'll be easier.

Ms. Pescaia: My question to them is because it's a separately agended item, would we have to hear it, open public testimony on the second item, and go through the process?

Ms. McPherson: Because I did make the presentation for both items so – and we did open up public testimony already.

Mr. James Giroux: I guess on the legal side, what needs to be confirmed is how was it called up on the agenda as far as when we started the meeting. Normally, the Chair reads the item that's gonna be reviewed into the record or staff does. Was Item 1-a just read into the record?

Ms. McPherson: Yes.

Mr. Giroux: Okay, so if we didn't start with 1-b, technically, that's not part of the review right now so–

Ms. McPherson: So should we read 1-b into the record?

Mr. Giroux: Well, I think the problem is, is that because it's an exemption, there is some timelines that are triggered once the Commission starts reviewing it, and I think the Commission needs to be aware of that.

Ms. Dudoit: So do we now vote to remove that from our agenda item until—

Ms. Pescaia: So I'll entertain a motion to defer Item 1-b and not hear it at all. Once we hear it, then it'll trigger, so—

Ms. Dudoit: Once we hear it, or once we take any kind of action on it, which would include a deferral?

Mr. Giroux: Under your Rule 12-302-13.1, the language reads that – it says the Commission shall make a determination, notify the applicant in writing within 30 calendar days after the application is reviewed by the Commission that the proposed action is either one, an exemption or not an exemption.

Ms. Pescaia: And we have deferred other applications in the past either because the applicant wasn't ready, or something was missing, and they knew it up-front, right? And we've deferred it so that we wouldn't trigger that 30-day.

Ms. McPherson: And what the applicant has just requested is that we schedule a site visit to a date and time certain, and we follow it with a meeting where a decision could be made.

Ms. Pescaia: Right, normally, our site visits are done directly previous—

Ms. McPherson: Right, like at 9:00 a.m. or something.

Ms. Pescaia: Right, on the day of our planned Molokai Planning Commission meeting.

Ms. McPherson: So we may need to poll the Commissioners to find out if everyone could do that, or if we could get quorum for the next meeting.

Ms. Pescaia: October 26th is the date of the next meeting. So—

Ms. Buchanan: Or, Chair, you could open Item b with public testimony, close public testimony, and ask for a review by us, and seeing none, you could close that, and it would've been heard.

Ms. Pescaia: Right, if we do that, the item would've been heard, and then it would trigger the 30-day countdown.

Ms. Buchanan: But we still defer pending a site inspection on the second item.

Ms. Pescaia: Right, we would still defer it, but it would start – trigger the 30-day time line, which would mean on the 26th, you would have to, have to come to a decision on that exemption or it would be automatically granted. So if we can guarantee that all– I mean, you think through the site visit and the supplemental information we’re asking from the applicant would satisfy any questions? If you know for sure, then go ahead because that’s two weeks from now. If you would like to have that extra two – you know, as a buffer, I would suggest not hearing it at all. So I would entertain a motion to defer.

Ms. Buchanan: So, Chair, I move that Item 1-b be deferred to the next Commission meeting.

Ms. Dudoit: Second.

Ms. Pescaia: Okay. Motion by Commissioner Buchanan, second by Commissioner Dudoit. Discussion?

Ms. Buchanan: Corp. Counsel, would any discussions made during 1-a if we on the record state for the record that can be used for Item 1-b? Would that be allowed during the site visit?

Mr. Giroux: I’m not sure if I understand your question, but I would caution that in order to avoid the triggering of the timetable, because we are using the fact that it wasn’t called up as part of your agenda, I would assume that’s it not. You’re basically, splitting those two items. In the future, you can call up both items at the same time, and use the information at the same – the same information.

Ms. Buchanan: So information gathered by the Commission during the site visit cannot be used for Item 1-b?

Mr. Giroux: I find it hard to see how that could be avoided. That’s very theoretical.

Mr. Sprinzel: Only if we talk about it.

Ms. Pescaia: Okay, seeing as the site visit is an official meeting of the Planning Commission, you can open the meeting with calling up that agenda item, going on the site visit, and then continuing the conversation here where we would open public testimony, right? Okay. That’s my plan, anyway. Okay. Motion. Any further discussion?

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

It was moved by Ms. Buchanan, seconded by Ms. Dudoit, then unanimously

VOTED: To defer this item until the next meeting.

Ms. Pescaia: Motion carried. Alright. Moving on.

Mr. Clayton Yoshida: Madam Chair, I guess since the Commission has decided to take a site inspection, can we – and we got seven of the eight Members here, and we have the landowner here, can we decide on a time?

Ms. Pescaia: Sure can. I already have one Commissioner who's expressed she will not be able to attend the site visit.

Ms. McPherson: We have someone from the–

Unidentified Speaker: Can we have a site inspection during the low tide?

Ms. McPherson: Low tide. I don't know when low tide is, but I think it's early in the morning right now, isn't it? Does anybody know? Have a tide calendar?

Ms. Buchanan: Excuse me, Chair, what would be the purpose of doing the site inspection at the low tide when it would be more beneficial to see it at the high tide for impacts, shoreline impacts?

Ms. Pescaia: Is the road–? Yeah, that's a good question.

Ms. McPherson: Well, then you could better see where the County's jurisdiction actually is because that's gonna be where the water is at high tide.

Ms. Pescaia: Okay, so according to this tide calendar, the tide will be dropping. At 6:00 a.m., it'll be at two feet. It is the night of the new moon, which is about . . . (inaudible) . . . minus tide. By noon it'll be – well, it'll bottom out at just about ten o'clock. But that would– If you guys like call one meeting at 3:00 in the morning– The things we do for our community. So someone in the public just commented so that you can see the fill material that is not washing away. Well, it is what it is. We have no control over the date kinda. Our staff from Maui comes over on the 26th. We need to have it be on record so the date stays. The time is what you folks need to decide.

Ms. Dudoit: Ten o'clock is minus?

Ms. Pescaia: Ten o'clock is minus.

Ms. McPherson: It's a very large property, too. Keep that in mind.

Ms. Pescaia: It going take you some time to get around. So let's meet at nine o'clock. Can I have a show of hands of Commissioners who know for sure they can be there? One, two, three, four. Sprinzel gotta check, but maybe five. Commissioner Kalanihuia is not gonna be able to make it. And, Buchanan, you going check? Okay.

Mr. Sprinzel: Is there any way we can get around it with a car, because my walking over that distance wouldn't be too good.

Ms. McPherson: Well, they do have a couple of ATVs, I know. It's really fun, actually.

Unidentified Speaker: Unless you can hold for the next meeting.

Ms. McPherson: And horses, yeah. I'd also like to request on behalf of the applicant that they – that we be allowed to ask you to articulate all of the additional information requests, because this has been a long ranging discussion, and we wanna make sure that we get the answers to all of your questions before the next meeting. I have notes. They're working furiously over there. And before–

Ms. Pescaia: You said you was paying attention.

Ms. McPherson: Well, I cannot walk and chew bubble gum at the same time.

Ms. Pescaia: Yeah, we can. We are multi taskers on this island. Okay, so you want a recap right now, or you want that–?

Ms. McPherson: I think we'd like to recap right now, if Mark's ready.

Ms. Pescaia: I think from you folks, the permits related – or the permits and the history of the permits related to the pump, to the well.

Ms. McPherson: To both wells or just the one in question?

Unidentified Speaker: The one that doesn't have the permit.

Ms. Pescaia: Both. Let's be fair and do both, because even though the other one is not in operation, I know it was permitted. And it would be nice to see the actions that was taken to one. And it is an existing structure.

Ms. McPherson: And this is – whatever the Commission on Water Resources Management or whoever is responsible for–?

Ms. Pescaia: Right. And specifically, we're looking for a yield or usage report, right? Yeah, the yield and usage report.

Ms. McPherson: Okay, that's number one.

Ms. Buchanan: I think I still confused between the construction of an ancillary ground water well and the 160 square foot pump house structure. That's two separate entities, two separate things.

Ms. McPherson: Well, my understanding is that the pump house structure is over the well, and so it's kinda all one thing, but the well's underneath, and the pump house is above.

Ms. Buchanan: So they both – they should have a permit for that, and we should see 'em. She wants to know what is the circle at the pump house.

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

Ms. McPherson: Well, you would – I mean, you're reviewing both of those actions under SMA as well. I'm not sure. I think the well is what's regulated by the State. The pumpage is regulated by the State. I don't know that the pump itself and the pump house are regulated by the State. I think that's what's coming out of this SMA permit: for the structure, the aboveground structure. What the pump yields is regulated by the State.

Ms. Buchanan: If I have to go back and resort to the Bacon residential application–

Ms. McPherson: But that's for stream water diversion.

Ms. Buchanan: It is, but Molokai is also a ground water management area, which would have permits for any type of water use for Molokai, not necessarily surface. So there's a well, so there is ground water that should have a permit for from CWRM.

Ms. McPherson: Well, I heard it stated earlier that there was not use of the freshwater lens, but we can find that answer out, and we can get that very clearly stated for you.

Unidentified: If you get brackish water, you gotta have use of the fresh water lens.

Mr. Roy: Can I just summarize the items that I have noted down?

Ms. Pescaia: Okay, awesome. Go ahead.

Mr. Roy: Okay, so we will look into the permits that may or may not be necessary for the two wells that are on the property including, if there is a yield or usage report. Second, we'll

provide a status of the wetland mitigation work, I think that's one of the things I heard, as well as a copy of the approval of the wetland mitigation plan that was approved by the Commission a couple of years ago. The third I had, which was a Planning Department-related item was the question of how the Department will be handling after-the-fact SMA fees, penalties. The fourth question was verifying the location of the road in relation to State or County jurisdiction along the shoreline. I think that was one of the comments I heard. Sorry. I'm kind of scrambling between my notes which I've been furiously noting down, but I think that's most of what I had.

Ms. Pescaia: I think the last one was the building plans for the structures.

Mr. Roy: Okay. We can see what's available.

Mr. Sprinzel: That's the second item, Zhantell. The building structures weren't the first item, were they?

Mr. Roy: We can do our best to see what's available. Because this is an after-the-fact permitting action, maybe we can see what was submitted as part of the building permit application for the single family – oh, sorry, the farm dwelling that John Austin currently resides in, and see if that's something that we can provide to the Commission.

Ms. Pescaia: Usually when people are gonna come and build a structure, we go through the building – I mean, even somebody doing one interior renovation, we looking at where their counters, and pipes, and everything is going. So we have a 3,300 square foot building, and even though we have a photograph, we have no idea what's within a 3,300 square foot structure.

Mr. Roy: So recognizing we have two weeks, we'll do our due diligence to see what's available at this point, and we'll bring it back to the Commission.

Ms. Pescaia: And I think even – I mean, I not saying get an architect out there and survey the whole building. I mean, if that's available, it's already done, awesome. I think given the timeframe, it would be acceptable to have – I mean, even if it's just a rough sketch – not rough sketch, but to scale just kind of here's the walls, here's the rooms, here is – you know, whatever important structures are in it. And that'll be helpful.

Mr. Roy: Okay. Should we focus at this point on the farm dwelling given it's a residential structure?

Ms. Pescaia: Both. The two, both major structures.

Mr. Roy: Okay.

Ms. Pescaia: And I understand that building permits will be issued, and they're reviewed, but we also have other things that we have to make sure that the way the house is built and the way the hatchery is built that they're not causing any adverse effects on the SMA side.

Ms. Dudoit: And then I think the last thing was, for me, was some kinda – I know you talked about having a plan in action, and that it's difficult to get actual documentation and language, but since it was stated that mitigation and rectifying was part of trying to rectify the wetlands' wrongdoings or whatever, the findings that you guys were cited, if we could get something from somebody that says that – you know, I mean, 20 years of doing something, and then we'd just like to see something.

Mr. Roy: Sure. So a status of the wetland mitigation work. Okay, we'll do that. So that's five items I had.

Ms. Kelly: Okay. A little bit more information about the culverts with the DOT only because that's like a stream diversion, or it's turning into one.

Mr. Roy: Yeah, we went through quite an exhaustive process with the State DOT to really ascertain the existing conditions of that culvert, and ultimately what they're looking at doing to improve the culvert. I think we had it as a slide in the presentation, the actual plan that was put together by the State DOT that shows what levels of improvements were proposed for the culvert itself. But beyond that, that's really all that's available from that particular project.

Ms. Kelly: Do we have that in our packets?

Mr. Roy: I don't think you do, but I had it as a slide. It's a plan. We can bring that back before you at the next meeting. It's a plan of showing the improvements of what would be done under that DOT culvert improvement.

Ms. Kelly: Okay, yes, I'd like to see that.

Mr. Roy: Okay.

Ms. Pescaia: Okay, thank you very much. I think that went well. Any further discussion or anything else? No? Okay, moving on. E-1, Unfinished Business, the Planning Director is requesting concurrence from this Commission on the SMA exemption.

E. UNFINISHED BUSINESS

- 1. MR. WILLIAM SPENCE, Planning Director, requesting concurrence from the Molokai Planning Commission pursuant to their Special**

Management Area Rules, as amended, that a Special Management Area (SMA) exemption can be issued for the following:

MR. RICHARD S. YOUNG, architect, on behalf of the MR. JOHN COMSTOCK submitting a Special Management Area Assessment for a 480 sq. ft. bedroom addition, carport, and 116 linear feet of property line retaining wall, site improvements to include 85 cubic yards of fill and grubbing area of approximately 4,040 square feet, excavation to a maximum depth of twelve (12) inches for ten (10) footings and retaining wall on 7,356 square feet of land in the Interim District at 406 Ala Malama Street, TMK: 5-3-011: 098, Kaunakakai, Island of Molokai. (SMX 2011/0315) (Valuation: \$110,000) (N. McPherson) (Deferred at the September 28, 2011 meeting.)

Ms. Pescaia: We – this is – we have Mr. John Comstock. This is an agenda item that we looked at the last meeting. It was deferred pending a request for additional information. Commissioners, everyone received this in your packets, yeah? So I don't think we need to review the whole thing again, because it was very specific—the information we was looking for.

Ms. McPherson: Chair, do the Commissioners need a bathroom break real fast, or do we wanna go ahead and zoom ahead with this one?

Ms. Pescaia: Okay, we're gonna take a two-minute recess. Okay, two-minute recess.

(A recess was then taken at 2:53 p.m. and the meeting reconvened at 2:58 p.m.)

Ms. Pescaia: . . . back to order. Picking up where we left off on Unfinished Business E, item no. 2 – oh, item no. 1, sorry.

Ms. McPherson: Thank you, Chair. We – as requested, a site visit was made on the morning of October 4th, 2011, with the project's architect, Richard Young, and additional photos were taken. At that time, it was ascertained that the retaining wall was after-the-fact. And so a request for after-the-fact fees was submitted to the owner, and my understanding is that those fees have been handled. Is that correct? Yes, those fees have been paid. So e kala mai iau. And we have submitted to you enhanced plans showing the no net fill. So the excavation for a retention basin is what will become the fill. That's Exhibit 5, 4 and 5, and 3, 4, 5. Oh, they're all backwards. Okay. Sorry. Something happened there. But we have another aerial photograph. We have an e-mail and benchmark photographs. And then Richard Young also produced some additional exhibits that were handed to you today showing the subject parcel in relation to the Cook land remnant and

the – where the fire station is going in, as well as some nice – nicely colored, 8 ½ by 11 of the site plan, and a black and white 11 by 17 of the site plan showing the retention basin, the slopes, direction of water, the goal being that storm water will be retained onsite. And so that's the additional information that we have presented to you as requested. And if there's any questions for myself, or the architect, or the owner, we're all here to answer your questions.

Ms. Janice Kalanihulia: Repeat what you said about the after-the-fact for the retaining wall.

Ms. McPherson: Well, when the– While conducting the site visit– The retaining wall was shown as new on the plans. I misinterpreted that. And so during the site visit, it was ascertained that the retaining wall has already been built. And we have photographs of that. And so the after-the-fact fees were assessed for that retaining wall. And there was a letter. And those fees have been paid as of today's meeting.

Ms. Kalanihulia: Okay, so I guess what I would say to the applicant is that he stood up before us last – two weeks ago, and we were clearly talking about digging the footings for that wall. You know, we talked about excavating for that wall, and how deep it would go. And so I'm just – you know, I left here that day, and I took a ride by their house, and I was stunned to see that the wall was up. And I felt that it was not pono of him not to say, oh, by the way, while you're talking about digging the footing for this wall, the wall is already up. It just seemed wrong, just really wrong.

Ms. McPherson: Yes, well, I've learned my lesson and I am always going to make a site visit. And I don't think the intention was to, you know, misrepresent, but we're trying to take care of it now, and fix it now, and I think everybody's learned a lesson on this one. I can only speak for myself.

Ms. Pescaia: It's actions like this that makes us question every single little thing because when people come in front of us, we like to take them on their word and the integrity of their word. More so, Mr. Comstock, I think you should stand up and say something right about now because you did come up and make certain representations and those were false. Clarify, please.

Mr. Richard Comstock: No, they weren't. The footings that were talking about was for the house–the footings.

Ms. Pescaia: Okay, wait. When you came the last time, we were talking about – and there was an application before us for a proposed wall. Is this the same wall that is existence in your yard right now?

Mr. Comstock: Correct.

Ms. Pescaia: So we were talking about a proposed wall that was actually already completed at the time of our last meeting.

Mr. Comstock: No, not completed, but, yes, it was—

Ms. Pescaia: Initiated?

Mr. Comstock: Initiated, correct.

Ms. Pescaia: So you already started the project.

Mr. Comstock: No. I had gone to Nancy, and when we first applied for this— I had bought the house on a foreclosure. I got the house as-is. There was an illegal structure on it, the wall, the approach, which didn't have a permit. I'm just trying to correct it. Now, when we first did this, I talked to Rich about it and he says, well, the best thing to do is go talk to Nancy and ask her. So I approached her just like that. I said the wall has been built. How do you want to deal with it?

Ms. McPherson: And she goes, well, it's quite common with what she has seen, and so she's gonna try to deal with it as new construction. That way it's through and it's taken care of. I talked to the Building Inspector about it, and he said, don't fill it, don't do anything, don't backfill, leave it as it is, so when it's inspectible until you do pull the permit for it. So at that time when — understanding that Nancy — I had presented this to Nancy, I did not — I was inspecting her to bring it up, if anything. I just sat back and listened. I answered what I was asked.

Mr. Sprinzel: May I just ask, did you just say Nancy knew the wall was built?

Mr. Comstock: Correct.

Mr. Sprinzel: Oh, this is getting to be a joke, isn't it?

Mr. Comstock: Now, I'm not pointing fingers. I had asked her what to do. I — Rich had — he said because it's built, go ask Nancy and find out what the best thing to do is. I presented this to her and she thought that would be the — this is just—

Mr. Sprinzel: Nancy, why didn't you tell us?

Ms. McPherson: I honestly don't remember saying that. It's possible I could've told him that, but I usually give a caveat, and I say, well, you know, we really have to treat these things as after-the-fact actions. And I think that was a while ago. So I can only throw myself on the mercy of the Commission and say that I'm overworked and I made a mistake.

Ms. Pescaia: No, that's not one excuse. I sorry. That's not one excuse. Plain and simple. There are rules and there's liability. And this person is acting as advised by County officials. And he's trying – he's very familiar with this process. We're very familiar with this process. And you should be too. Telling someone that whether to do it after-the-fact or as a new proposed project, there has to be the same standard line. We just had somebody who had an after-the-fact for 26 years of actions. We didn't tell them, oh, you can treat it as a new proposal, if you want, because it was already there. No, no, no, we gotta be consistent.

Ms. McPherson: Yes, I agree.

Ms. Pescaia: If the applicant made that known to you, then – I mean, part of it – I mean, he would've, I'm pretty sure, would've treated it as advised, as advised. If he needed to separate it out and do after-the-fact, he would've done after-the-fact. We just had another application not too long ago, someone else purchasing a house that had an illegal carport, and then they had to go back and do the after-the-fact. We just went through these motions. It's – this is inexcusable and this makes us highly liable to this community. I'm sorry. We hear often I know that you are overworked and over tasked, but maybe we have to – like where are we focusing our attention? I sitting here looking at this guy going, oh, my gosh, he should know better. I cannot believe he just came and lied to us, and I start thinking all these bad things about him, and questioning every other project that he's come up before us, and what he may or may not have disclosed to us. That's not good. And now, to have that actually – that action taken by our Planner, what does that do for all the rest of our projects? I don't know what to say.

Ms. McPherson: It was a mistake and I apologize. I don't remember saying that. I honestly don't. And it wasn't brought up again when this application was submitted to me. I probably would've told them something different, if it had – I just – I lost track of things. And I realize that we are moving in the direction, and I want us to be consistent, and I am being consistent. I am trying to do a better job all the time. This was a mistake. Again, I don't remember saying that, but it's possible I could've. It was an error, if I did, and I apologize.

Ms. Pescaia: Okay, given the error, I also don't see here, a separate after-the-fact application, then. It should've been separated out. He paid an after-the-fact fee. Has the wall been separated out and there's an after-the-fact application for the existing improvements?

Ms. McPherson: We don't do it that way. We include it. The assessment is for the after-the-fact and the proposed. It's not separated. It's not two different SMA assessments. What we can do is we can do an SMA assessment, and then state that this was after-the-fact, which this supplemental information provided should have – you know, be stating.

Ms. Pescaia: Well, it doesn't say on this agenda that this is an after-the-fact retaining wall. And that would mean that you would have to redo the packet because that verbiage needs to be added in, right?

Mr. McPherson: Well, what I can do is amend the assessment, and we can amend it on the floor, and I can amend the assessment to say this includes an after-the-fact action for the wall. I just didn't have time to redo everything. It's just not humanly possible for one person to meet the needs of this Commission or this community.

Ms. Pescaia: I'm stumped.

Ms. Dudoit: Okay, I wanna say something. I totally think that the integrity of this Commission was compromised by the actions of our Planner, but on the same token, I would like to put on the record that, Mr. Comstock, you are a seasoned contractor. To lay all blame on Ms. McPherson for not knowing that you should be truthful in saying that the wall was already built is a total cop-out, and I think that's just inexcusable. So, yes, we do depend on our County officials to direct us in the right way, but when you know something is wrong, it's wrong. And so I think that this whole packet needs to go back. We should defer this item until somebody does things the right way. I don't know what to do about this whole issue, and what we do about people who blatantly lie to this Commission because we act on behalf of our community, and it makes us look like liars now. So I'm stumped too.

Mr. Sprinzel: I do think people are now beginning to realize that this Commission doesn't take this sort of nonsense anymore. I mean, we may have done in the past or it may have happened in the past, but nowadays, we're gonna reject anything that isn't written the right way and done the right way, because – I mean, I know our inspector is here, but each one of us can go around the table and pick out ten things that are going on this island that weren't passed. There's just a lack of – I don't know what you call it, supervision, whatever. And those of us who built and tried to do stuff absolutely right and followed all the rules doesn't give any reason why people should try and dodge it. I mean, I've mentioned one of my neighbors before putting up all sorts of roofs, as I left for this meeting, putting all sorts of concrete in. And this guy's never been anywhere near the Planning Commission. I mean, how this sort of stuff goes on in Molokai, it – well, it's got to stop.

Ms. Kalanihulia: I'd just like to say this was my second meeting back on the Planning Commission when we were here last, and so I was really paying attention, and trying to be diligent, and understand what was happening with everything on the agenda. And so I was very clear that we were talking about footings for that wall at one point. And I would agree with Commissioner Dudoit that Mr. Comstock is not – also had some culpability in this because he should've said, hey, wait a minute, the wall is up, because all it took was a detour from here to my workplace, which was, you know, a minute to drive by and say, my

gosh, there's a wall there. It's the very wall we were talking about him constructing. So it did feel very – I felt deceived, you know, and it's not good. And I don't think– You weren't here. You didn't represent anything. So I don't have any feeling about what you–

Ms. Pescaia: Well, and add to that, testimony was given about why the wall needed to be built that way, and what–

Ms. Kalanihulia: . . . (inaudible) . . .

Ms. Pescaia: Yeah, I mean, we had a lengthy discussion about the design of the wall and – I mean, legally, that is so wrong on all parts.

Ms. Dudoit: So, Madam Chair, what do we do from here?

Ms. Pescaia: I not sure. We have a – so, Corp. Counsel, we have proceedings. We had an application where the testimony that was given the first time we heard it is inaccurate and it needs to be completely revisited, I think, because it's a matter of record, and what was – the information provided was a misrepresentation. Do we not take action, re-agenda it from the beginning, and review the entire project again?

Mr. Giroux: I think the issue of accurate information or misinformation, because you've agended it, it can be addressed at this meeting. You know, as far as how far back do you wanna go, I think you should be able to – you deferred it for a specific purpose, right? This was deferred once. So as far as the information that you deemed to be inaccurate, you might wanna get that information on the record today as far as how – you know, I mean, if – you're not limited into your scope of inquiry. Just because you heard information in the past doesn't mean that you have to stop. If you wanna review the permit as a whole, this is an opportunity to do it at this time because it has been agended. So you haven't – I mean, you're not–

Ms. Pescaia: This is an exemption, yeah?

Ms. Buchanan: Chair, I think at the last meeting I asked for one site inspection, and everybody thought that was kinda silly.

Ms. Pescaia: Yeah, because we was believing on what we heard. And now I'm thankful that you held your ground.

Ms. Buchanan: Well, the reason was there was no application for a retention pond, which was part of the application, which I had the problem with because I know there's another TMK kitty corner to that property. So I also drove by the property, and in my opinion, just common sense tells me if that retention pond is flooded, it will overflow into the neighbor's

back yard. And I guess that's why I asked for one site inspection because I kinda thought was on one hill next to Lourdes' old house. And I haven't seen a retention pond in the entire Ranch Camp. This is the first time, but it was not part of the application, which is an action, which should've been assessed.

Ms. Pescaia: Okay, so before we get into further discussion about the details of the application, this is what we have to decide—either we're going to start from the beginning, presentation, hear the relevant information, and hear the whole presentation again looking for accurate up-to-date information; or on your own, you can somehow separate out that which is true and that which is not true, and make your determination from that, and just ask specific to a certain point what you need clarification on. If the additional – the supplemental information is not satisfactory, we could continue to entertain the idea of a site visit. Keep in mind that this is an exemption, and we have a 30-day window that was initiated on the 28th of September, and our next meeting is October 26th. So the next meeting would still be within the 30 days, I think. It might be on the 30th day. What would be the pleasure of this Commission? It is on our agenda. We can definitely take it up as a – treat it as a new item, and hear it from the top.

Mr. Bacon: You know, if we're given misinformation, then it seems like to me like that original application should just be rejected and start over again. As far as the 30 days go, if we have to, we can just, okay, we deny this, and say we deny it because we've been given misinformation, based on that. And then they come back to us with a new application. Can we work it that way?

Ms. Pescaia: Yes, we could.

Ms. Dudoit: And then can I just ask a question? So in order to – if we send this back to the beginning, does that cost our County anything to revisit this application process, because in my mind, there needs to be some kind of a penalty for lying? And I don't know what we can do or what we can impose, if any, but that cannot happen to us.

Ms. Pescaia: We wasted our time. They wasted the County's resources.

Ms. Dudoit: Yeah, so–

Ms. McPherson: Well, what they've done is they've amended their SMA assessment application. They've provided revised plans. The retention pond was on the previous plans. It just wasn't very clear. The main issue is that the wall was not set out as an after-the-fact. Since then, it has been. The fees have been assessed, so there has been a penalty, and that those fees have been paid. That's how our process works.

Ms. Pescaia: Yeah, but you are verbally providing the amendments. It wasn't sent out in our packets. It's not included in the remarks--the additional information. You didn't tell us all of this information. You waited till we got here and then we're having this discussion. There's nothing in here that I received at the previous meeting that said, consider this, there was a misinformation in the first meeting, here's the correct information. You sent us pictures that -- I was like, okay, what is this? And you waited till we got here.

Ms. McPherson: Well, there wasn't time. I'm not sure. I wasn't sure if we could bring it back. I mean, we turned it around as quickly as we could. We have meetings every two weeks. There's just not enough time to redo the assessment when I've got three more assessments that I have in the pipeline for the next meeting.

Ms. Pescaia: Okay, I can understand that because the agenda item -- you know, you got pretty much one week to get it together before the agenda comes out, and packets gotta be mailed out to us, so I understand that.

Ms. McPherson: If I had more time, I would've amended the assessment and resubmitted it to you.

Ms. Pescaia: Okay.

Mr. Yoshida: Again, Madam Chair, Members of the Commission, between the time that Nancy did her site inspection to take pictures to send to you, a letter was sent to the applicant assessing after-the-fact fees, which was paid prior to today's meeting.

Ms. Pescaia: So you guys had time to generate one letter, collect fees, but you couldn't draft one -- I mean, we got -- we even got this today. We got-- We don't have anything today that says, oh, by the way, we changing the application. So right now, I don't even have an accurate application paper in front of me. You understand what I saying?

Mr. Yoshida: I think -- I thought Nancy had stated that upon her site inspection to take pictures, she did discover that certain actions were already constructed, and therefore, after-the-fact fees were assessed.

Ms. McPherson: Yeah, so I didn't put that in writing. I think that's what the Chair is saying is that wasn't submitted in writing to the Commission saying that the scope of work had been amended, the wall now has become existing rather than proposed.

Ms. Pescaia: Or even one note in this on the bottom that says, you know, upon inspection, the wall was discovered, and so actions -- actions will be taken to assess after-the-fact -- or the application will need to be amended -- whatever the status was on October 5th. You took the pictures already. Took the time to type up this whole thing.

Ms. McPherson: Yeah, and that should've been stated clearly. And it could've been stated right there under "Remarks."

Ms. Pescaia: Okay. So I looking for one motion.

Ms. Buchanan: Well, Chair, the representations were made and are on the record stating that it is an after-the-fact action. It says that fees were assessed but we don't know what those fees were. I'm kinda am curious as to what the fee was. Does anybody know what the fee amount was that was incurred?

Ms. McPherson: Well, it was a flat fee of a thousand dollars, minus the SMA assessment fee that had been previously paid. So it was about \$895, something like that.

Ms. Pescaia: Isn't the valuation of the project taken into consideration?

Ms. McPherson: We have a new direction or old direction, however you wanna look at it. We have a new Planning Director. And at this stage, Clayton can speak more to this, but at this stage, we have the flexibility of assessing between zero and 50 percent of the valuation of the project on top of the thousand dollars. So this was assessed zero percentage evaluation.

Ms. Pescaia: Who makes that determination?

Ms. McPherson: The Planner does the assessment.

Ms. Pescaia: The Planner.

Ms. McPherson: Yeah.

Ms. Pescaia: Okay. So you determined zero?

Ms. McPherson: Yep.

Ms. Pescaia: Okay.

Ms. Buchanan: Chair, in the last review of this project, I think I was the most vocal in asking questions. And I still couldn't understand why a retention pond was warranted except for the explanation that the slope – and because of the action of the carport with the fill and the wall made it so that there was a need for a retention pond. And my concern at that time was if you took the natural grade without improvements, there was not a need for a retention pond. So the actual development of the retention pond now poses a threat to the neighbors of potential flooding if that retention pond overflows. So you see how my

progressive thinking was—an action that may cause a potential adverse effect? And I don't think I still have an answer that will satisfy me that that not going happen.

Ms. McPherson: I'd like to let the architects come up and respond to that because during the site visit, it was explained to me that the water— See, the whole point is — and Commissioner Kelly has spoken to this previously on other projects that the County now requires that all storm water be retained on the property. Now, before the wall was put in, I would assume that the water would be running onto the neighboring unimproved property on the corner there. And in some of the photos, you can see how the mud was going onto the street, and then down into the storm drain because there's dirt over there. So it's just running straight up.

Ms. Pescaia: Okay, if I can kind of — just kind of stop this conversation right now. We haven't even decided if we — if we're discussing this application or not. If it's a valid— So she was making a point as to why it got to where — anyways.

Ms. McPherson: But I'm trying to provide additional information.

Ms. Pescaia: I know, but we going hear that information. We wondering if— We gotta start new at some point and take what you're saying now on the record as being relevant to this application or to a new amended application. Right now, it's not even relevant to my discussion. I need the Commission to decide if we are going to ask — we going take actions to have a new application drafted up with more accurate information, which we don't have in front of us right now. We don't have an accurate application reflecting what the — what he's requesting. We have amendments or supplemental information to a previous application that is now not even relevant. So — or they can just take that old application, amend everything on the floor, which will take quite a lot, and you guys can figure out at what— You understand what I saying? You understand? Okay. Go ahead. I no need explain. I no like talk. So just share with me your thoughts, Commissioners, how you wanna handle this. I'll entertain a motion, either one—discussion or motion.

Ms. Dudoit: Just a question maybe from Corp. Counsel. Do we need to deny this application and then make it — and then they would automatically have to revisit it? Or is our wording for the motion to have them to reapply?

Mr. Giroux: I'm looking at your rules. The same rule I quoted earlier, the 12-302-13.1, within the face of the rules, there's not an indication that there's an actual denial process. There's two options—you can notify the applicant that he's exempt, or you can notify him that he's not exempt. The problem is, is that in an issue where we're dealing with misinformation, it really does put the Commission in a tough position. Theoretically, when we were looking at these rules, when we were drafting it back when, we did look at the issue. And mostly what we saw was that the rectification would be in the enforcement

process where if somebody actually received – and this is what we were looking at, if they had received the exemption, and then you found out that there was another structure, or that there was view being blocked that were represented it wouldn't be blocked, then the Department could go in on an enforcement action, and give a notice of violation for the activity, and then have a cease and desist order. In this situation, it's – we're kind of put into a position where, okay, there is an indication that there's something that's not – has been represented and it's not really – it's misleading. In your discussions and your deliberation, I guess that has to be vetted out. Does that misrepresentation lead to an understanding that the policies and objectives of 205A cannot be met? And that's where you have to continue to look at this project is this activity a development or not. If vetting out the facts from the truth and from what's not, you come to a decision that the project does not meet the criteria of 205A as being not an exemption, meaning that it is a development, meaning that you found, after this vetting, you have found that there is a – may be a cumulative impact, or that the project in and of itself might not affect ecological surroundings, but as a whole, meaning that if there's something else about this project that is causing an environmental impact, then you would find it to be a development. Then the developer would be instructed to get an SMA major. That would be the – and then you would hear it again. You would then again have to hear the project. Looking at the SMA process, you normally don't – because within the 205A, if you look at the definition of development, there – they split it up with these things are development, these things are not development. And single family houses that are not part of a larger is actually an exception to development. However, if you find that there's a cumulative impact, or that there's an ecological effect to the greater surrounding area, then it is a development. So that's what this inquiry is supposed to be about. Does the wall make it a development? Does the house make it a development? Does the drainage pond make it a development? What kicks this project into the next level of scrutiny, which would be the SMA major? So if it comes to you don't like the color of the wall, if it comes to you don't like the design of the wall, and it's not about the structural integrity, you just don't like the way the blocks look, those things do not amount to an ecological effect. Where you're looking at the impact to the nearshore waters, you're looking at the impact to the coastal zone as far as the processes, then those are the things that would push a project into the level of a development. Putting a single family house right on the shoreline, building a retaining wall that jets out into the ocean stopping process of movement of sands, deterioration of the reef, now you have a home that has stopped being an exemption and is now being a development because it is affecting the ecology of the land. Is it stopping beach processes? And that's what the inquiry needs to be that you have to find that is what is being built, does it have an impact on the environment, and is that impact unable to be mitigated.

Ms. Dudoit: Okay, and then just in addition to that, does our ethics clause give us an opt out for this, because in my opinion, there is an ethical issue on behalf of the Department? And in addition to that, what I would like to get on record is it just seems to be so funny to

me how the applicant states that our Planner was told exactly that the wall is there, upon which they come to this meeting and a Commissioner insists that we do a site visit, in which case they're busted, and now a 0 percent evaluation of that property to assess a fine is given. To me, that's a conflict of interest. And I don't know if we can exempt this or say it's an exemption or not, but I do know that there's gotta be some kind of an ethical balance here where we can say, get your application outta here, start all over again, and tell us the truth the next time.

Mr. Giroux: I hear you.

Mr. Sprinzel: I think if the water from heavy rain goes along that wall, it's gonna fall straight into the house in the corner. So it's definitely having an effect on the environment without any question or doubt. And there's no indication on any of these drawings what the slope is on – if you're looking at the big plan on the lefthand side that's gonna stop the water running into that kitty corner house. Because if you look at the Photograph 1, and you follow down that wall which is where the water's gonna run, it's gonna go straight into that red-roofed house, which is . . . (inaudible) . . . So I think there's an environment problem so it's probably a development.

Ms. Buchanan: Chair? Oh, go ahead. Go ahead. No, I was just trying to move the time along.

Ms. Kalanihuia: I just have a question for Nancy. Who took the pictures on the original application? There were just a couple pictures.

Ms. McPherson: I think Rich or John.

Ms. Kalanihuia: Okay.

Ms. Buchanan: Chair, in the interest of time I can make a motion.

Ms. Pescaia: Okay, go ahead.

Ms. Buchanan: I move— Oh, did we have public testimony?

Ms. Pescaia: No, we were trying to decide whether we're actually keeping this as an agenda – I mean, if we're reviewing it or not.

Ms. Buchanan: Sure, we've been reviewing it.

Ms. Pescaia: Well, the points of the application—first, we're discussing the validity of the application itself beyond the merit of the application. Okay, so we still have to open public

testimony on it. I trying to get these two guys to kind of tell us legally, and ethically, and procedurally, what is the correct thing to do.

Ms. Buchanan: We still in discussion. I would say we've already been on the record discussing this. We should open it up for public testimony. Then, staff, for the record has already asked to amend to include the after-the-fact fine. It wouldn't matter if the motion comes to deny, to not concur with the exemption, and following that would be provided findings of facts, and then we can move on. And the applicant can take the next step from there. That's just one suggestion.

Ms. Pescaia: Okay.

Ms. Buchanan: Since your staff not providing the—

Ms. Pescaia: I know. They both looking at me like— Okay. So I have one suggestion from a Commissioner to continue to hear this given the new information. I have another Commissioner express a question—the ethics of us even handling this, or even reviewing this application, and how much of this are we liable for. So at this point because this is an agended item, if anybody out there would like to say something, I'll give you this opportunity.

Mr. Rich Young: Commissioners, Rich Young. I'm the architect for the project. Obviously, this is way more convoluted than I ever expected today. With respect especially to the discussion about denial based on environmental cumulative actions, I really wanna bring at least forward and clarify what I tried to do with my drawings today. And it does take a little extra scrutiny because they are at a small scale. But the driveway against the property line wall is intended to be draining and slope directly to the retention basin. And in every measure of trying to be as proactive as I possibly could be for this subject parcel, to create a – not only a silt barrier but a retention barrier whether – and these can be done under the ground or above the ground, and I felt in this case, there was enough land area to do a proper retention basin, which is just basically a low depression that can percolate water before it takes its natural travel, would be towards the makai lands. But, two, I was trying to be very sensitive to the parcel of Lourdes as – if I believe was the original name, to direct that water into that retention basin so that we would not have any hard surface water traveling in that direction without being able to be recovered. Based on my experience, and my other dozens of projects that I have, this 325-square feet basin, one and a half to two feet deep is 480 to 500 cubic feet of retention is, in my opinion, way more adequate to take on the post development improvements that this property will have based on its new roof area and the driveway.

And in perspective, since we all are part of this community, and have experiences with friends, family and ourselves, this particular wall really wasn't done in this near term. The

wall's been there. It was done as a fence. And as we all know in most areas, you can build a fence. You can build a retaining wall three feet or less. I think no more than three feet high. You can build a fence up to six feet. And this would qualify for that. I think in just to try – again, I'm just trying to give some perspective because again, I guess we're all human, and we all have things that we wanna do. You wanna accomplish – I'm not sure I'm speaking for John, but essentially, this wall was a fence just to keep the neighborhood at peace with the cocks that were being raised next door, etc. It just gave a legitimate barrier between the two parcels. Unfortunately, when we're in the SMA area, and I believe this is one of the many things that gives our community at odds at each other is, because we're constantly, well, you can't do that. Well, you can't do that there, and you can't do that here. Well, the SMA area heightens that, and it does put us in that predicament of, oh, my gosh, I've done that. You can't do that in the SMA. When I come to the project, I go, holy cow. What are you gonna do with this thing? It's a white elephant in the room. And this process isn't inexpensive, by any means. And at the end of the day, I think the right thing happened with the site visit and the notification of, hey, you know, this is after-the-fact. Paid almost a thousand dollars fine for it. If you deem it necessary to fine him more, well, then so be it. But further qualifying for this particular project the need to retain the lower land with – we're just trying to flatten the lower area out a little bit, I felt it was prudent to add the driveway as an amendment to try and retain the wall which is really only ever built as a fence. It really wasn't designed as a retaining wall. But part of the mediative action was to make this wall stronger.

So at the end of the day, I think this is the project. It is a small addition – two additions to the home, a very modest home. And in a proactive way, to engineer the potential runoff from the parcel as the parcel is now, and as are all the adjoining parcels. And the reason why I gave you that tax map key showing the lower lands, all of those parcels give water down to that Cook land remnant parcel. And they will always do that. And the Cook land parcel has to take whatever the upland parcels give it. So just being in a way of trying to be a mitigating responsible designer to this project, I felt it was the best thing in the interest of the parcels below is to divert it away, give it to the subject parcel, and make him retain it. So it was on that level. And I really feel that just on the merits of it being a "development," and being a cumulative effect, I think we've mitigated that aspect. The wall is the elephant in the room, and I think everything that's been said is accurate.

Ms. Pescaia: So, Mr. Young–

Mr. Young: If that gives you some perspective, I hope I helped.

Ms. Pescaia: I just checking because the application was actually filed by you on behalf of Mr. Comstock. So were you aware that the wall was in existence?

Mr. Young: So I'm explaining right now. When I went to the parcel obviously, the wall was there. Okay? And in an effort to make a bad situation good—

Ms. Pescaia: So I understand how you got to the Planning Department.

Mr. Young: So I said – I said to John, I said, “Look, it’s an after-the-fact situation. The only thing you can do is talk to the Planner.”

Ms. Pescaia: Okay, so my next question is, did you have—? I’m just trying to figure out the history. Did you have any direct conversations with the Planner?

Mr. Young: No.

Ms. Pescaia: Okay, so it was discussions between them, and then you just acted on behalf of what he told you.

Mr. Young: Right.

Ms. Pescaia: And is that – what he said today, was that how it was related to you?

Mr. Young: Correct.

Ms. Pescaia: That the Planner said to do it like this?

Mr. Young: Correct. Correct. But again— And just to— I mean, I realize to hear this as the Commission, I don't think I feel any different. Okay? It's – you know, it's a letter bomb. The facts of life are what it is, it is. And I think what Nancy described in her initial statement is she deemed it – as quickly as possible, dealt with the fine, the corrective measure of that, and in an effort to make the situation be whole, not to hide, necessarily, and yet it comes off that way because you don't have a written paper that said, by the way, we ask you to do X, Y, and Z. It's not gonna – I mean, everything that was said is true.

Mr. Sprinzel: Rich, I think you're going on too long. You know I love you, and I love your work, but you've written “and retaining wall,” in your application.

Mr. Young: No, because that's what we are designing to now. By adding the fill, I had to make it retaining. So the initial work on the wall had nothing to do with this project. It was just a wall. So to make macaroni out of what was there, well, if we did the driveway, it was gonna help support it. And the owner wants to be able to have access to the lower level. So it is, yes, it is a retaining wall. There's no question, but it wasn't originally.

Ms. Kalanihulia: Can you tell us when the wall was built?

Mr. Young: Pardon?

Ms. Kalanihuia: When was the wall built?

Mr. Young: I don't know. I don't know.

Mr. Comstock: I don't know. I bought the house in . . . (inaudible) . . .

Ms. Kalanihuia: With the wall?

Mr. Comstock: . . . (inaudible) . . .

Ms. Kalanihuia: So, you know, everything you're saying now would have been terrific to hear at the last meeting. So there was a wall, and we decided to now make it a retaining wall, and – you know, everybody makes mistakes, and you bought it like this. But when we got our packet the last time around– You know, like I said, the second meeting back on the Commission, but one of the Commissioners said, “Well, it's so weird that there's only a couple of pictures,” and we usually get pictures of every angle except looking up to the sky. And so there was – the pictures, when I went home after I took the drive-by and looked at it, I thought, well, these pictures very conveniently don't show the wall. And so it begins to feel very deliberate. And I can't shake that feeling. I mean, I don't know you. I don't know him. I don't have any feelings about . . . (inaudible) . . . , but it feels really wrong and deliberate. And it seems like what you said just now should've happened two weeks ago, and it's a little bit too late.

Mr. Sprinzel: And, John, you told us last time you were here – in fact, you specifically said, “Oh, I'm not going further than 12 inches between footings in the retaining wall.” I remember you saying that. So you people have tried to pull the wool over our eyes, is what I'm saying.

Ms. Pescaia: Is there anyone else in the community that would like to offer testimony? Oh, sorry, was there any more questions for the testifier? Okay, seeing none. Seeing no other testifiers, public testimony on this item now closed. Commissioners, is there any further discussion, or is someone prepared to make a motion?

Ms. Kelly: I just had a question. So if we deny this particular – we don't concur, it's only because I don't know what I'm not gonna concur with. I don't know we're–

Ms. Dudoit: That's why I was the question about the ethics. Does it supercede? I mean, it's obvious that there was an ethical issue. Does that supercede our having to deal with this specific–? Because our policies or our rules that we gotta abide by does not allow for

us to make an accurate decision to allow the exemption or not, does the ethics clause for the Department supercede that?

Ms. Kelly: Okay, actually, I just like take care of the application at this point.

Ms. Pescaia: Okay, so coming back to you then, you gotta determine whether there's enough information to grant an exemption. If there's none, if you cannot make that determination, then they would have to come back for an SMA major permit.

Ms. Kelly: A minor?

Ms. McPherson: Yeah, it's a minor. It's not a major.

Ms. Pescaia: I just quoting him.

Ms. Kelly: Okay.

Ms. Pescaia: SMA minor. I thought minor but—

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

Ms. Kelly: Okay.

Ms. Pescaia: I know. Staff, get it together.

Ms. McPherson: Well, and you have to base it on something. It's not that there's not enough information, because then you should just defer it. If you can determine that it's a development based on the information that you've been given . . . (inaudible) . . . development.

Ms. Kelly: Anyway, based on the information that I heard today, I consider this development especially, the retaining – the retention basin. Okay? One of the issues is that I want to see the drainage. What's the current—?

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

Ms. Kelly: Yeah, what is it now, and what is it going to be after the improvements. So that's information that's lacking. But just with all that, and to have the retention basin, I consider that a development. I do. And that is why I would not concur.

Ms. McPherson: Based on?

Ms. Kelly: That it's a development. So I would rather see it come in— I don't have any problems with the improvements to the home, the carport, all that. My whole thing is about the drainage, the adverse effect.

Ms. McPherson: The retention basin is going to cause an ecological effect?

Ms. Kelly: No, it has that potential, until we see more information, but at this point, I'd rather see it come in for that particular portion, not as an exemption. And you're lumping it all together.

Mr. Sprinzel: As I said, the water is concentrated by this wall. It's definitely flowing downhill. And instead of flowing all the way along the lot onto the next lot, it's now going the whole way down along the wall. So although they're planning a retention basin, all that water is now gonna go down to the bottom corner, and is therefore, a hazard to the house below.

Ms. Kelly: Yeah, well, until I see the actual drainage of the property, because they're gonna be doing improvements, they're gonna do some fill, and I'm assuming that you're going to divert, okay, so I understand all that. I have no problems with it. I just wanna see it. I know you have it here, but it's really not complete. I don't have how you can determine that it's enough.

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

Ms. Kelly: Yes, I do.

Mr. Young: Should I say something?

Ms. Kelly: Just by having — you're saying that you need a retention basin, and I understand — and it's actually a good thing. I really do.

Mr. Young: . . . (inaudible) . . .

Ms. McPherson: Rich, you gotta use the mike, Rich.

Ms. Kelly: And I understand that. I've seen — I have seen where on residential lots, the home gets flooded without proper planning. I don't want to see anything happen to any of the neighbors that you're gonna have an impact on. We just want to — I want to make sure that that doesn't happen. That's my concern and that's why I would not concur.

Ms. Pescaia: Commissioner Bacon?

Mr. Bacon: Okay, we're in this predicament. And you guys could really help us out by withdrawing and coming back in again with a new one, you know, because somehow or another, this is gonna get held up quite a bit. It's gonna be a big headache, and people are gonna get madder and madder. If you guys would just withdraw this, come back in with a new fresh one with an explanation of how this drainage is gonna work, and keep everybody happy. But just start anew. Withdraw it yourselves. And then we aren't in this predicament where we're just up against a wall. And we're talking about ethics and all this sort of stuff, which we shouldn't have to be dealing with. Would you guys consider doing that? It's just another – you know, it's a delay, but it's something that could probably help you guys out more than – and it could help us out a lot, but it would help you out, too, probably.

Ms. McPherson: I don't quite understand the difference between withdrawing the application, and having a new application submitted, and then assessed all over again.

Mr. Sprinzel: Nancy, he's withdrawn his application. It's over. Done. Finished.

Ms. McPherson: And just amending the application. I don't understand.

Mr. Bacon: Because right now, everybody's a little hot under the collar. If we start fresh, I think we'll be a lot, lot better off.

Ms. McPherson: Okay.

Mr. Sprinzel: He's withdrawn it anyway. It's over.

Ms. McPherson: I didn't hear that.

Mr. Comstock: Yeah, I'm John Comstock. I own the property in question. I am withdrawing my application to – as suggested.

Mr. Sprinzel: Thank you.

Mr. Dudoit: Thank you, Mr. Comstock.

Mr. Sprinzel: On the question on ethics, an apology would've been rather good, wouldn't it?

Ms. Pescaia: Moving on, Unfinished Business, E-2, Ke Nani Kai.

- 2. KE NANI KAI AOA requesting a Special Management Area (SMA) Minor Permit for relocation of thirty-two (32) solar photovoltaic panels from the north-facing roof of the AOA office building to the roof of**

Building "I" above units 245 and 246, excavation of a trench ninety-five feet (95') in length and twelve inches (12") in width running in a direct line from the utility meter to the adjacent residential building, and installation of approximately one hundred thirty (130) feet of two inch (2") wide electrical conduit connecting to the relocated solar panels. The proposed action is designated to mitigate glare affecting Building "I" at 50 Kepuhi Place, TMK: 5-1-003: 013, Kaluakoi, Island of Molokai. (SMX 2010/0445) (Valuation: \$10,000) (N. McPherson) *(Previously discussed on July 27, 2011 in the context of an application with a larger scope and also on August 10, 2011.*

Ms. Buchanan: They withdrew, yeah?

Ms. Pescaia: I think he gotta say–

Mr. Yoshida: They would be coming in – well, trying to look at alternatives and maybe coming in with alternate plans.

Ms. Pescaia: Okay, thank you.

F. 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**

Ms. Pescaia: Item F, 1-a, or F-1, status of the commission's subcommittee on rule changes report.

Mr. Yoshida: We don't have any change in status.

Ms. Pescaia: Okay, thank you.

G. DIRECTOR'S REPORT

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

Ms. Pescaia: Director's report?

Mr. Yoshida: Yes, we've submitted a list of the pending and closed Molokai applications. Are there any questions on that? Seeing none for the moment.

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

Mr. Yoshida: Moving to Item 3, discussions with Maui Electric Company on liability for power pole installations on private property, I don't think we've received anything in writing yet from Maui Electric.

4. Status of the Molokai Planning Commission vacancy

Mr. Yoshida: Item 4, the status of the Molokai Planning Commission vacancy, the listing of the resignation of Don Williams was on the October 7th Council agenda, and so we'll be looking whether the Mayor has submitted a replacement that will go before – the name that will go before the Policy Committee whose agenda probably will be filed tomorrow for the meeting next week Wednesday.

5. Scheduling of the public hearing on the following Council Resolution:

MR. WILLIAM SPENCE, Planning Director, transmitting Council Resolution No. 11-97 referring to the Lanai, Maui, and Molokai Planning Commissions A Draft Bill Amending Title 19, Maui County Code, and Section 3.48.305 of the Maui County Code Relating to Home-Based Businesses. (J. Alueta) (9/20/11)

Mr. Yoshida: The Council has – on Item 5, the Council has circulated a Resolution No. 11-97 referring to the Planning Commissions, a draft bill related to home-based businesses. We need to schedule that. We have 120 days. Copies of the resolution was circulated in this packet. We're looking at the December 14th meeting. We only have one meeting in December at 12 o'clock. Is that okay with the Commission? Okay.

6. Agenda items for the October 26, 2011 meeting

Mr. Yoshida: Our next meeting is on October 26th. Thus far we have scheduled – we have a site inspection of the D&J Ocean Farms' site at Keawanui at nine o'clock. We have the SMA assessment for D&J Ocean Farms on the regular meeting agenda. We were thinking of also putting on the Wavecrest PV panels, which on page 2 of the open report is the third item from the bottom, "Install solar PV and HET pumps at the Wavecrest." And also a

single family dwelling for Nancy Williams at – on the east side, an SMA assessment. And that's all we have to report, Madam Chair.

Ms. Buchanan: Chair, I wanted to comment on the current applications. And then this is mostly for Clayton and internal for Planning Staff. I don't know what happened. And I don't know what it is. And it's not coming to Nancy's defense or anything, but I noticed in the time when we did not have a Planner, when the Planners were coming from off-island, we went through a whole year of cancelling mostly all our meetings. We lucky if we held half of the meetings that were scheduled that year because we didn't have any applications to look over. And whatever applications we did came from Planners from Maui, and that was when we didn't have a Planner. And then I understand Current applications versus Long Range, but I thought was funny. During the time when we had no applications to look over, there was things going on in Kaunakakai Town like renovations to the buildings next to Misaki Store and several that I can mention, which we never saw. And I was wondering like, okay, what happened to all these applications that should've been in the SMA. Till this day, I still don't know the answer. So I don't know what happened to the applications, if there were applications, if they were being exempted on Maui, and they never came to this Commission during the time we did not have a Planner. Current Division is just spit 'em out, spit 'em out, spit 'em out, and spit 'em out. There's no oversight, really. And this is from Maui. I noticed from Maui, they also have a huge staff. I know from the time that Nancy got here, she didn't have the equipment she needed. She never have access to GIS. She never have computer. She never have several things that would normally make your life easier. And there was a big complaint about backlog of 50 applications for review or more. So till this day, that whole space of time for me was one blank. I never found out what happened. And now that we have our Planner back– We had Mikal for a very short time. And he seemed that he had brought his experience from the Mainland, and it was good. He was doing power point, and he's trying to be efficient, but he was still falling short. Planner Staff from Maui was falling short. Wasn't meeting our expectations. I think because we have high expectations from Molokai from our Planners. But now that we have a Planner back, it's obvious she's trying to meet the oversight that we demand from our applications more so than Maui. But if, Clayton, if you guys can continue to – or look into really trying to provide Nancy with the tools she needs to do a better job for us, then I would ask you to please try and work with her to help that along.

Mr. Yoshida: Yes, we'll look into that. Part of it was getting a list of what she needed, which we recently got, and we're trying to supply those pieces of equipment and so forth.

Ms. Dudoit: Is there a way or a need for this Commission to draft a letter in support of help, or to speed up the process, or that we can help in anyway, because we gas her all the time, every meeting, and we hard on her, but it is an ongoing plea from her that she's overworked, understaffed, and all that? So I wanna know how as a team we can be

supportive of getting her the help she needs to be as efficient as we need the Department to be.

Mr. Yoshida: Well, we do look at her workload relative to the workload that the Division faces. And we are trying to get her the equipment that she requests.

Ms. Pescaia: So, Clayton, you're saying that in comparison to other Planners in the County that her workload is consistent with the size of workload by other Planners, and that she has roughly the same tools available to her as other Planners do in the County?

Mr. Yoshida: Well, of course, being one Staff Planner on Molokai is a different situation than being on Maui. However, we try to get her, to the degree possible, the equipment that we can, and resources that we can, and GIS accessibility that we can.

Ms. Pescaia: So what is comparable to one COLA, you know, like the adjustment for being on this island, anything that we can do— Like we should be every year writing – you know, as we change over the Commission, every year advocating for her to have the resources made to her. We just wanna make sure that this Planning Director knows that it hasn't changed, and that we do advocate for those resources to be made. So if it be the Commission's pleasure, can I draft a letter?

Ms. Dudoit: Yeah, and I also feel like – I mean, would it have been beneficial for us to stand up at the budget hearing and say we need a part-time helper or, you know, I mean, a contracted worker, or something? I mean— No?

Mr. Yoshida: The Commission can make whatever – or as individuals, whatever request they want as far as budget.

Ms. Pescaia: Okay. So it shall be done. Anything else, Commissioners? Okay, seeing none.

H. NEXT MEETING DATE: OCTOBER 12, 2011

Ms. Pescaia: This meeting is now adjourned, and our next meeting will be October 12th. A hui hou. Sorry, not the 12th, the 26th. See, I reading the agenda. It says, "Next meeting date: October 12th." October 26th. So nine o'clock at the front gate of the farm, and 12 o'clock on the 26th here. Sorry, sorry, yeah.

I. ADJOURNMENT

There being no further business to come before the Commission, the meeting adjourned at 4:10 p.m.

Respectfully submitted by,

SUZETTE L. ESMERALDA
Secretary to Boards and Commissions

RECORD OF ATTENDANCE

Present

Mikiala Pescaia, Chairperson
John Sprinzel, Vice-Chairperson
Debra Kelly
Lori Buchanan
Janice Kalanihuia
Zhantell Dudoit
Nathaniel Bacon

Excused

Ron Davis

Others

Clayton Yoshida, Planning Program Administrator
Nancy McPherson, Staff Planner
James Giroux, Deputy Corporation Counsel