

**MOLOKAI PLANNING COMMISSION
REGULAR MEETING
NOVEMBER 9, 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 Vice-Chair John Sprinzel at 12:30 p.m., Wednesday, November 9, 2011, at the Mitchell Pauole Center Conference Room, Kaunakakai, Molokai.

Mr. John Sprinzel: You don't get a Hawaiian greeting today because Mikiala's not here. Welcome. And calling to order for the meeting of the Planning Commission. I'd like to welcome our Maui contingent, Clayton Yoshida, our Planning Program Administrator; Suzette Esmeralda, Secretary to the Boards and Commissions; and our Planner from Molokai, Nancy McPherson. We have Lori Buchanan, Debra Kelly, Janice Kalanihuia, Nat Bacon, and myself, John Sprinzel, Chairman of Vice.

B. PUBLIC TESTIMONY ON ANY PLANNING OR LAND USE ISSUE

Mr. Sprinzel: So first item: public testimony on any planning or land use issue for anybody who can't make their comments during the time that we have the actual case presented. Mr. Canady?

Mr. Darryl Canady: Good morning, Commissioners. My name is Darryl Canady, as most of you know. I'm here representing myself as an owner at Ke Nani Kai on the west end of Molokai. And it is concerning an issue that has been brought before you on the solar panels for the SMA minor permit, which to our understanding is that it has been put on hold since the applicant has not come back for the final hearing on it. But a letter has been issued to the applicant saying that they have approved some of it, but not approved the placement of the panels on the east side of the office building. And I'm here to make a report to you in which we'd be requesting the Planning Department to issue a letter to please require the removal of those panels on the east side of the office building since they have never been approved in any way to be there.

Secondly, at a board meeting and meetings with the board of directors at Ke Nani Kai, the president, Mr. Mike Adamo, and other board members, they have indicated to us owners that they are not going to continue with the application that is before you for their approval to move the panels from the east side of the building over to Building I, and put them on the west side of that building, and also, two arrays on the east side of that building, i.e., the panels that are now 27 or 28, whatever they are, on the east side of the office building.

They're not gonna remove those to the I Building that the application that they now currently have in front of you. They're going to go another plan. They're going to expand the patio cover behind the office building and on the west side of the office building, and take those 27 or 28 panels that are now on the east side of the office building roof, and put them there. The association has – and I have seen the correspondence, been told by Corporate Counsel that in order to expand the patio roof, and add any roof structure to the office building that is not already there will require two things: one, an approval of 67% of the owners to expand that; and number two, they obviously are going to have to get complete permits all over again from you people, from West Molokai Association, which is the parent grandfathered association, State government, lawed community association. This, we have been told could take as long as a year to transpire. And we are still having glare on the panels on the east side of the structure, and we would encourage you, the Commission, along with the Planning Department that these panels be removed as soon as possible or at least within 30 days. And we, as some applicants – pardon me, some owners, are also prepared to inform our attorney on this matter if it is not done. Thank you very much. Are there any questions?

Mr. Sprinzel: It's not on the agenda, so we can't ask questions, I'm afraid.

Mr. Canady: Thank you very much.

Mr. Sprinzel: Thank you for your input. This is something between you and the Planning Department unless it's on – in front of us, we can't actually discuss it.

Mr. Michael Mangana: Good afternoon, Mr. Vice-Chairman, Honorable Counsel, and Commissioners. My name is Michael Mangana and I live at 3382 Kaluakoi Road, Maunaloa. I have a request for service into the County, RFS 110000575, regarding my neighbor who's building a building that they've been building since 2003 where the entire thing is encroaching into the side yard setback. I had it surveyed by Dudley of Akamai Land Surveying. Tammy Osurman came out. She issued three notice of warnings. And I'm afraid that Corp. Counsel is gonna let them go ahead with this. And I think that they should have to do a variance. They've got this big generator that's right along the side of me. It sounds like a 747 when it goes off. And then they're putting all the air-conditioning compressors stacked up along this area that they've built this 184-foot long, ten-foot high wall that's part of the building that they've been building for – since 2003. And all of a sudden, you know, they put black silt on the fence so I could not see. And then the big beams, steel beams went up for the second story. And I'm freakin.

And so I've got an attorney on Maui, Clay Sutherland. He's talked to different people. We've written letters. We did a survey. They went and did a survey. And the survey they performed was when the dune was flooded behind the dune, and they could not – the surveyor could not get to the points and find them. So he just said, well, I think the line's

right here. Well, my surveyor went in the mud. I made him go in the water. I went in there with him. And we found the pins, which I have letters from the neighbors saying that those are the pins. They have put a fence that's been there since like '92, and they told me it was put in with lasers. It was right on the – parallel with the property line. They kept it two-foot in to comply with the CC&Rs and whatnot. And now they make a survey that says it's not parallel. And like Tammy says, "What do they think we are? Stupid?" You know. And so she refused to remove the notice of warnings, but they have a big, powerful Honolulu attorney who's rattling his saber, and nobody from the County has come over and done a field trip. Nobody's come to look. You can just sight down the thing and see the pin that was out in the sump area where they used to mine the sand, and see that this is not right. I mean, my property's recorded in land court. If you were to take . . . (inaudible) . . . with the surveyor says is the property line, I would lose ten feet of my frontage on the conservation line.

So it's begun something that I'm really afraid of because I think they should have to get a variance. I would like to see a conditional variance where the two-story section is removed, and they tie the thing in single story so that I don't have an observation tower that's, you know, encroaching and looking down into me when they've done everything they could to block me out of looking at their place. And it's just really crazy. And I would love it if somebody could come and look at it.

Anthony came out with Tammy, and they both determined and concluded that there's an encroachment. They told the people to get a survey. And they had a surveyor come out and he wasn't able to find all the pins because it was flooded out at the water, out at the ocean, the conservation line. And so anyway, I just hope that this is dealt with. I just think they're trying to – they think we're all a bunch of dummies, and they can just, you know, slide this thing through. Walter Ritte called me this morning and he said, "No, you need to go to the Planning Commission, and tell 'em." So that's what I'm doing. I'm here telling you and I hope that something can be done. But I know you can't comment on it, but I appreciate your time, and thank you very much for the opportunity to address you.

Ms. Lori Buchanan: Chair, for the record, can the testifier state his address?

Mr. Sprinzel: He did.

Ms. Buchanan: Okay, well, I didn't get that for my records. Can the testifier please restate his name and address for the record? And please state if the property that he is questioning, giving testimony on is to the north, or south, or east, or west of his property.

Mr. Mangana: The property that I'm concerned with is to the south of me. My TMK is 2-5-1-7-65. And I believe theirs is Parcel 64. My name is Michael Mangana, M-A-N-G-A-N-A.

My address is 3382 Kaluakoi Road, Maunaloa, Hawaii, 96770-0141, because it's P. O. Box, so she says you have to have the 141 on the end of it. So anyway, that's my information.

Ms. Buchanan: Chair, also, the testifier did mention the request for service number. Can he please repeat the request for service number?

Mr. Mangana: 110000575. And I'm really seeking your protection of – from the – you know, with the codes and stuff so that the fairness and equality here is all about fairness. And I don't think it serves the County's best interest to let somebody continue an encroaching building when it didn't stop now since last February. Why put the County treasury at risk? And why not just tell the surveyors to – you know, tell their surveyor to come back out, and just say we're not doing anything until you guys can come up with where the property line is? But both surveyors, even Jay Arakawa said, both surveys show an encroachment of the entire 184-foot long building. And our surveys are in the record. So thank you.

Mr. Sprinzel: Thank you. As you pointed out, we can't actually discuss or rule on anything. That sounds to me like Zoning and Enforcement matters, which unless they're presented to us in a form of an application, we can't actually rule on.

Mr. Mangana: Right. Well, it's just that nobody has contacted or come over from the higher up.

Mr. Sprinzel: You'll have to talk to our Planner, so she can get the enforcement guys to–

Mr. Mangana: Tammy Osurman came over here, and did an inspection, and issued three notice of warnings. And the surveys have been presented. But I have a feeling they're just – they got a big, powerful law firm, and he's just rattling his saber, and trying to get – you know, thinking he can just fool you guys with a survey that's not accurate, at least the preponderance of points have not been found. And so–

Mr. Sprinzel: You say "you guys," but it's not us.

Mr. Mangana: Well, I know, but not the Planning – the County, the people that – you know. The County, not necessarily the Commissioners here. I understand that, so I'm talking with you. But it's the County guys over on Maui that never come over here.

Mr. Sprinzel: Thank you.

Mr. Mangana: Thank you.

Mr. Sprinzel: Is there any more public testimony? There being none, public testimony is closed.

C. APPROVAL OF MINUTES OF THE SEPTEMBER 28, 2011 MEETING

Mr. Sprinzel: Can I have approval of the minutes—September the 28th, please? Janice proposes. A seconder please? Nat Bacon.

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

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

VOTED: To approve the minutes of the September 28, 2011 meeting.

Mr. Sprinzel: Unanimous passed. Thank you.

D. COMMUNICATIONS

- 1. MR. WILLIAM SPENCE, Planning Director, requesting concurrence from the Molokai Planning Commission pursuant to their Special Management Area Rules, as amended, that a Special Management Area (SMA) exemption can be issued to MS. NAOMI BLEAU, owner on her Special Management Area Assessment application for repair and replacement of fire damaged roof section, boards, and stairs with like materials of the same color and composition, and relocation of electrical meters for an existing two story 3,000 square foot commercial building constructed in 1949 in the Business-Country Town District at 145 Ala Malama Street, TMK: 5-3-002: 160, Kaunakakai, Island of Molokai. (SMX 2011/0314) (Valuation: \$95,000) (N. McPherson)**

Mr. Sprinzel read the agenda item into the record.

Ms. McPherson: That was a mouthful. Vice-Chair, thank you very much for reading that for me. Nancy McPherson, Staff Planner, Molokai. And Ms. Bleau is here today along with Luigi Manera who is helping her with this application. And this – as most of us know, the building – there was a fire in the building over a year ago. And that has affected the people who were tenants in the building. And so Ms. Bleau has gone through the process. The SMA assessment application was submitted. Subsequently, a country town business application was submitted. I reviewed that, and I evaluated it based on the rules, and the country town business and the design guidelines – the country town business zoning district and the design guidelines for Kaunakakai.

And because this is repair and replacement with like materials and like colors, and because it is less than 50% of any one elevation, I was able to issue a country town business approval in a letter dated October 31st 2011. I don't think I provided that letter as an exhibit, but if you'd like a copy, I'd be happy to give it to you. Basically, if the area of any one elevation to be changed does not exceed 50% of the total area for each respective elevation, in this case, it's less than 20%, the CTB design review approval can be issued administratively by the Department without transmitting to the Urban Design Review Board for comment.

In addition, the Cultural Resources Planner was consulted, Stanley Solamillo on Maui due to the historic nature of the building built in approximately, 1949, as well as the ongoing – he's been working on an ongoing historic preservation inventory of buildings in the country town business district for Kaunakakai. So he reviewed the plans, and made comments, and was working with Mr. Manera to have those plans meet his requirements as well.

So I'd just like you to know that there were some conditions. Approval was granted subject to the following conditions. That the color of the new roofing material shall match the existing roof color as closely as possible. Two, that all replacements of building material shall be matched in color and composition to the existing color and materials of the building as closely as possible. Three, that any additional changes shall be submitted under a new special management area and CTB application for review by this Department prior to initiation of any construction activities – well, it should say for review by this Department and concurrence by the Molokai Planning Commission. I'll put that on the record. Initiation of any construction activity not covered under the submittal for this application which consists of repair and replacement of like materials and colors only. And that, four, that full compliance with all governmental requirements shall be rendered.

So the Department feels that there will be no impacts to cultural resources or historic properties by this project. There were photographs submitted. A site visit was made. And I know that the owner and the tenants would really like to get these repairs made so that the building can kinda get back to normal. So that concludes my report. And if you have any questions for myself, or the owner, or Mr. Manera, you're free to ask those. We welcome those. Thank you.

Mr. Sprinzel: Thank you, Nancy. Any questions, Commissioners, before we go to public? Now open for public discussion, if there are any comments. There being none, public discussion is closed. Commissioners? If there's no discussion at this stage, would somebody like to entertain – I would entertain a motion.

Ms. McPherson: Yeah, we're requesting that you concur with our recommendation for exemption from the Molokai SMA rules.

Mr. Sprinzel: Thank you, Nancy. Commissioners?

Mr. Nat Bacon: I think we should concur with the proposal as it is.

Ms. Buchanan: Second.

Mr. Sprinzel: Thank you, Nat. A seconder. Okay, any discussion?

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

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

VOTED: To concur with the proposal as it is.

Mr. Sprinzel: Unanimous. Thank you very much.

Ms. McPherson: Thank you, Commissioners.

Mr. Sprinzel: Alright, the next item on the menu.

E. UNFINISHED BUSINESS (matters previously discussed at the October 12, 2011 and October 26, 2011 meetings. *Commissioners: Please bring your documents.*)

- 1. KAMEHAMEHA SCHOOLS requesting a Special Management Area (SMA) Minor Permit for after-the-fact (ATF) improvements for an aquaculture operation of a former lessee D&J OCEAN FARMS consisting of construction of a 1,680 square foot storage building and hatchery, 160 square foot pump house structure, 2,200 linear feet of road improvements, and grading for shrimp ponds, ditches, and drainage improvements at TMK: 5-6-006: 008, 024, and 034, Keawanui, Island of Molokai. (SMX 2011/0002) (Valuation: \$26,400) (N. McPherson)**

Mr. Sprinzel read the agenda item into the record.

Ms. Buchanan: Chair, Chair, Chair, I request an executive session so that I might consult with my Corp. Counsel as to my responsibilities as a Commissioner for this project.

Mr. Sprinzel: Okay. Is everybody in favor of a--? Yes? Okay, we're all in favor.

Mr. Michael Hopper: Is the purpose to deal with the Commission's duties and responsibilities and legal rights on this, or yours as a Commissioner, specifically?

Ms. Buchanan: Both.

Mr. Hopper: Okay, if it's you as a Commissioner, specifically, we could maybe an off-the-record discussion, one-on-one, if it has to do with any specific issues as to you as a Commissioner. But if it's with – an executive session would be appropriate to give legal advice to the Commission as a whole on basically, the Hawaii Revised Statutes, 205A, and the voting on the application.

Ms. Buchanan: It would be for the Commission's rights.

Mr. Hopper: Okay.

Mr. Sprinzel: We will depart for a few minutes. The session on hold until we come back. Thank you for your patience.

(An executive session was then taken at 12:54 p.m., and ended at 1:15 p.m., at which time the Molokai Planning Commission resumed its regular meeting.)

Mr. Sprinzel: We resumed. I have to just express my amusement that the last house was a historical building built in the Post-War period. The last house I lived in, in England, was built in 1375. We are now back in session. Thank you. Commissioners, your comments, please.

Ms. McPherson: Chair? Nancy McPherson, Staff Planner.

Mr. Sprinzel: Yes, ma'am.

Ms. McPherson: I'd like to just briefly reintroduce the project and introduce the consultant who has some additional information. And first of all, primarily – two things, actually, the agenda has an incorrect valuation, as you – I'm sure you can see when you looked at your materials. And that was accidental. That was because we were kind – switching dates and that sort of thing, and that kinda got dropped off. So the correct valuation is on page 3 of your memo, your addendum that's dated November 9th 2011. And that valuation is \$350,000. We added \$323,600 for grading for shrimp ponds, ditches, and drainage improvements. So we apologize for that error.

This addendum is based on additional information and request for information by the Commission at its October 26th meeting. There was also a site visit prior to that meeting. And at that meeting, it was determined – it was found by the Commission that the grading

for shrimp ponds, ditches, and drainage improvements was not – was considered development, and needed to be included under the scope of the SMA minor permit. So that change is made. The assessment, the SMA assessment, was amended. So you have also received an Attachment A, special management area assessment amended. And exhibits, did you get exhibits? No, I don't think there were any exhibits. That's right. But the consultant has given you some exhibits today. So I hope you've had a chance to look through those. And there's also going to be a presentation. And so all of this material will be gone through during the presentation.

Yeah, so the only change is what is considered development or not development in the valuation, as well as the additional information that has been submitted and is being submitted to you today. And we added some recommended conditions of approval. I do have a correction to make to that, too. On page 4 of your addendum where it says Condition 7, "That the applicant shall obtain necessary permits for the removal of the two small wooden camping-related structures on the island of TMK: (2) 5-6-006:008," that was then supposed to – what the language that follows was supposed to become Condition No. 8. So Condition No. 8 will now be, "That the applicant shall complete all work as identified in the AECOS Wetland Mitigation Plan, dated August 17, 2006, to the satisfaction of the U.S. Environmental Protection Agency." And then Condition 8 becomes Condition 9, Condition 9 becomes Condition 10, and Condition 10 becomes Condition 11. So thank you for making those corrections. I apologize for the error.

And that's all I have to report right now. If you don't have any questions–

Mr. Sprinzel: Thank you, Nancy.

Ms. McPherson: For me, I'd like to–

Mr. Sprinzel: Shall we have Mark now?

Ms. McPherson: Yes.

Mr. Sprinzel: Thank you.

Mr. Mark Roy: Sorry for the delay. Good afternoon, Vice-Chairperson Sprinzel and Members of the Commission. My name is Mark Roy. I'm here today representing the owner of the property, Kamehameha Schools. We'd like to first thank the Commission for their review of the project at both the October 12th and October 26th meetings, as well as conducting the site inspection of the property a couple of weeks ago. We're here before you again today to request your review.

Mr. Sprinzel: Just hang on a second. We can't continue till we have a quorum.

Mr. Roy: Sure.

Mr. Sprinzel: Okay.

Mr. Roy: Okay, we're here before you today to request your review and approval of an SMA minor permit for those after-the-fact approvals for improvements on the D&J property that would determine to qualify as development actions at the October 26th Commission meeting.

This next slide is an aerial photo showing the D&J property which I believe most of the Commission are familiar with at this point given the previous meetings held on this project and also the site inspection that was completed two weeks ago. The facility was originally established by Ohia Shrimp Farm Corporation in 1986. Ohia operated the facility to the use of six shrimp ponds for a period of 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 aquacultural operation by creating ten additional ponds, as well as some related drainage improvements that were intended and designed to mitigate localized flooding problems. A new tenant, John Austin, of Keawanui Farms took over the lease in 2010 fairly recently, and has been refurbishing the facility into a productive operation over the last couple of years.

As Commission Members may recall, a number of improvements were put in place by previous tenants on the property during the establishment and early phases of operation of the aquacultural facility. These included grading alterations to create the 16 shrimp ponds, ditches, and also drainage improvements; a storage building and hatchery; a pump house structure and ancillary well; a farm dwelling with accessory storage structure; two shade cloth structures; and some repairs to an access road that runs along the shoreline.

This next slide summarizes the main comments that were received from the Commission following initial review of the SMA application and staff recommendations at the October 12th meeting. Just to briefly summarize, the six comments were in relation– Oh, I'm sorry. I should first summarize this slide, which I just mentioned, which are the six main categories of the after-the-fact improvements. These are the grading alterations, pond ditches and drainage improvements, storage building and hatchery, pump house structure and ancillary well, farm dwelling and accessory storage structure, the shade cloth structures which there were two of, and the repairs to the access road.

As I mentioned on the October 12th Planning Commission meeting, there were six comments that we received from the Commission. These related to the status of after-the-fact fines and payments of fines; the status of the ongoing wetland mitigation work on the property; some additional information on the access road repairs; the status of the seawater wells on the property; State DOT culvert improvement plans, the project over at

the State to improve the culvert up on the highway; and also, some research into what construction plans were available for some of the after-the-fact structures.

A detailed presentation and handout providing supplemental information on each of these topics were delivered to the Commission at the October 26th meeting. Following additional followup questions and answers on the material presented, the Commission took action, as Nancy McPherson mentioned today, at the end of the last meeting to approve and issue an SMA exemption determination for three of the after-the-fact improvements. These are the farm dwelling and accessory storage building, as noted on this slide; the construction and removal of the shade cloth structures; and the third being the well that supplies seawater for the site's aquacultural operations. These are the three improvements for which the Commission granted SMA exemptions for. The Department issued the SMA exemption letter as directed by the Commission to Kamehameha Schools on October 31st.

These next slides just are intended to re-summarize the location of the SMA exempt components. We have the farm dwelling and storage building there, the shade cloth structures on the left side of this slide highlighted in yellow, and also the well that fits within the pump house structure down near the shoreline.

At the October 26th meeting, there were a number of questions relating to the drainage report that had been completed for the SMA application process. A number of these questions focused on the drainage channel along the top of the property that was realigned by D&J Ocean Farms in order to prevent flooding impacts occurring within some of the topmost shrimp ponds. We have reviewed these questions from the last meeting with Kamehameha Schools' civil engineer, Mark Matsuda, of Otomo Engineering Incorporated, who is also here with us today in attendance, who was unfortunately not with us at the last meeting. So we've asked him to join us today so we can more fully address any drainage-related questions that you have. Mark Matsuda prepared the drainage report that was included in the SMA application. A letter providing responses to each question is provided in the first section of the Commission's handout that was distributed at the beginning of today's meeting. As you review the responses from the civil engineer in relation to these questions, please feel free to let us know if you have any additional followup questions with regards to this material.

Given the drainage-related questions raised at the previous meeting, the Commission also voted, as Nancy mentioned at the last meeting, to add the grading alteration work for the creation of the shrimp ponds, the ditches, and the drainage improvements to the other items recommended by the Planning Department to be covered under an SMA minor permit. These are our items essentially considered to be development actions under the SMA rules. Action on the SMA minor permit was deferred by the Commission on October 26th to essentially allow Kamehameha Schools' time to document the valuation for the grading alteration improvements.

I'd like to now briefly summarize these four improvements for the Commission as these will be the work items that will be reviewed at today's meeting. We have first, the storage building and hatchery; the pump house structure, which is a very small structure, about 160 square feet; the access road repairs that I mentioned earlier; and the larger components of work, which is the grading for the 16 shrimp ponds, ditches, and drainage improvements. A matrix summarizing these items is provided Section 2 of the Commissioners' handout for today's meeting. We've also provided a site plan and ground level photographs of each improvement in Section 3 of the handout just to re-familiarize the Commission with each one of these improvements.

These next slides that I have are intended to just identify the location of the improvements from an aerial perspective. And these are the again, the improvements that are being reviewed today to fall under the SMA minor permit for the application. These are the 16 ponds and the two sections of raceways that received the used seawater from the shrimp ponds highlighted in yellow here. This is the realigned drainage ditch. The dashed line here is actually the Keawanui Gulch coming down mauka hitting the highway at the culvert. And then the solid yellow line is where the drainage ditch follows parallel to the highway, and then turns back and directs flow during rainfall conditions into the wetland area on the property.

This highlighted yellow circle is the location of the hatchery and storage building. And again, the pump house structure is located down near the shoreline, 160 square feet in size.

Mr. Sprinzel: Mark, could you just go back and show the actual delineation of the wetlands?

Mr. Roy: Oh, sure. I'll go back to this slide. I think it's probably the best slide. It's a fairly recent aerial photo that was taken from a helicopter, I believe. I don't have an accurate delineation, but I can point a rough delineation based on my knowledge of the site. You have the aquaculture facility, 16 ponds, located where I'm pointing with my laser pointer here. The access road comes down from the highway. Pretty much the area down in this area, I believe, and I'll look to Kalani for some verification here, is the area that received the flow and is considered to be a wetland area.

Mr. Sprinzel: Thank you.

Mr. Roy: This final slide just shows from an aerial standpoint, I had to take it out further, because the access road repairs that were done by Desmond Manaba actually extended from the pump house structure to our understanding down along the shoreline. And as the Commission observed during the site inspection two weeks ago, there were some improvements also placed along the shoreline of this access part down towards the island, which we can give some more information on later on in the presentation.

This next slide presents the construction cost for each of the four items covered under today's SMA minor permit request. The storage building and hatchery cost \$13,500. The pump house structure cost \$4,000 when it was first constructed. The access road repair work cost to our understanding, D&J Ocean Farms, \$8,900 to complete. And then the grading for the 16 shrimp farms, raceway ditches, and drainage improvements cost \$323,600. Adding them together, these improvements cost approximately, \$350,000, which is the number mentioned earlier by Nancy McPherson, and therefore, falls within the five hundred thousand-dollar threshold for the issuance of an SMA minor permit. Given that the grading alterations were recently added to the list of the SMA minor permit actions a couple of week ago, we've provided, and we've been working with Kamehameha Schools to provide letters verifying the valuation which was asked of us at the previous meeting two weeks ago documenting the grading alteration work. And these letters, one of which is stamped by a licensed civil engineer is presented in Section 4 of the Commission's handout.

We've been working with the Planning Department over the last couple of weeks to propose some additional conditions that are intended to respond to the concerns raised by the Commission at both the October 12th and October 26th meeting. These relate to the realigned drainage channel, the State's highway culvert replacement project, ongoing wetland mitigation work on the property, and also remediation of a section of the shoreline access, which was subject to the previous repair work.

I'm sorry. I'm having problems with my power point here. Could I ask for the Chair's indulgence just for a short one minute break to see if I can figure this out? Thank you.

(A recess was then called at 1:37 p.m. and the meeting reconvened at 1:38 p.m.)

Mr. Roy: I'm sorry for that problem. I'm still trying to figure it out myself, but it looks like it's trying to work, the laptop, so I'll persevere forward. Thanks for your patience.

Mr. Sprinzel: Maybe we should go to the school and get some of the young kids down to help.

Mr. Roy: Yeah, they'd be able to figure it out. Definitely. So moving forward, what I'd like to do is read through the 11 conditions that are attached to the SMA minor permit, with the Vice-Chair's indulgence. And I'd also like to provide a bit of background as to why we've proposed six additional conditions. As I've said, we've been working with the Planning Department over the last couple of weeks. They were five original conditions attached to the staff report that was presented at the previous two meetings. And we've come up with six additional conditions that we really hope are addressing the Commission's concerns that were raised at the previous meeting. So Condition No. 1, I'll just read:

1. That all existing after-the-fact uses, activities, and operations shall be in accordance with the descriptions, graphics, and site plans submitted on December 28, 2010, and representations made to the Department and the Commission.

The December 28, 2010-date represents the filing date for the SMA application.

2. That best management practices (BMPs) as recommended in the 2001 UH Sea Grant Extension report titled, "Best Management Practices for Hawaiian Aquaculture," where practicable, be used in the continued operation of the after-the-fact aquaculture concern. Appropriate measures to minimize dirt and water runoff, and prevent any impacts to the shoreline and wetland areas must be used.
3. That the applicant shall obtain all after-the-fact building, electrical, plumbing, and grading permits, and Special Flood Hazard Development permits, as applicable.
4. That all work shall immediately cease, and the Department of Land and Natural Resources, State Historic Preservation Division (DLNR-SHPD) Office on Maui be contacted at (808)243-5169 should any historical or archaeological artifacts be discovered during aquaculture or agricultural activities.

So this condition relates to moving forward our current operations if anything else is— If anything is located within the property, then the tenants and the landowner would be required to contact SHPD immediately.

5. That full compliance with all other applicable governmental requirements shall be rendered.

This is a catchall provision and obviously requires Kamehameha Schools to insure that the tenant is in full compliance with all government regulations.

The applicant today, as I mentioned, is proposing six additional conditions. Although these appear, as Nancy mentioned, as five conditions in the staff report, this was due to two conditions being unintentionally included under a single number. So that's why I have Condition 6 through 11 on the screen here. As I read through the conditions, I'd like to just offer briefly some background as to why each of these conditions are being proposed by Kamehameha Schools.

6. That the applicant shall work with the State of Hawaii, DLNR, Department of Land and Natural Resources, and the County of Maui to obtain necessary permits for the removal of gravel, concrete, and any other asphalt material that were placed along the section of the shoreline of Tax Map Key (TMK) No.:(2) 5-6-006:008.

This condition really is intended to respond to an issue identified during the October 26th site inspection where it was identified that repairs undertaken to the access along the shoreline by D&J Ocean Farms were not limited to just re-graveling actions, but may also have included placement of concrete and some asphalt material. This is where we had stopped down near the shoreline before we finished the site visit. This condition is being proposed today to truly demonstrate that Kamehameha Schools is fully committed to addressing this issue, and will remove the materials in question once all necessary permits have been obtained from the State and County. There was a question at the previous meeting as to whether or not a condition like this would imply that the State or County would be taking on the burden of paying for this work. That's absolutely not the case. It's just saying that they'll obtain the necessary permits before doing the removal work. And so Kamehameha Schools as the landowner would be paying for this remediation.

7. That applicant shall obtain necessary permits for the removal of the two small wooden camping-related structures on the island of TMK: (2) 5-6-006:008.

At the end of the site inspection, on October 26th, the Commission also indicated its desire for two small wooden structures to be removed from the island. These very basic structures appear to have been put together some years ago by some people using the island for camping purposes. I have a couple of photos documenting the condition of these structures today for the Commission. I went down after the site inspection and just took a couple of snaps. This is the first one, very small basic building consisting of plyboard, plywood. And then this second one which is in a currently deteriorated state. Both very small structures. Kamehameha Schools is proposing the condition as part of the approval today to show that it is again, fully committed to removing these structures as part of the – addressing the after-the-fact violations that have occurred on the property.

Maybe I can just continue without technology. I'll just – if the Commissioners wouldn't mind just following along in the staff report, then I think that's probably the best way of doing this. Just let me grab my version.

8. Applicant shall complete all work identified in the AECOS Wetland Mitigation Plan, dated August 17, 2006, to the satisfaction of the U.S. Environmental Protection Agency.

Now, this condition is proposed to address the ongoing wetland mitigation work that is currently occurring on the property. A mitigation plan was prepared following the issuance of an administrative order by the Environmental Protection Agency in 2006. The plan was required in order to remediate some wetland impacts that have occurred during some grading alterations on the property that were completed again, by D&J Ocean Farms. Following approval by EPA in 2006, an issuance of an SMA exemption by the Molokai Planning Commission in 2008, work was initiated on implementing the wetland mitigation program set forth by the mitigation plan, which included removal of fill material and replanting of impacted areas. While all removal actions have since been completed in accordance with the plan, the replanting effort is still underway and being closely monitored by the Schools. Once complete, EPA clearance on the mitigation work will be requested by Kamehameha Schools. Copies of this mitigation plan and the EPA letter granting approval of the plan, as well as the SMA exemption information was provided in the handout at the previous meeting for the Commissioner's review. I would also like to note in relation to this issue that Kalani informed me this morning that he has a meeting next week, I believe, with the Environmental Protection Agency as the next step in this process.

9. That applicant shall work with the State Department of Transportation (SDOT) to grant the easements, as may be necessary, for the Kamehameha V Highway culvert improvement project.

This condition is proposed to address coordination work that will be necessary when the State moves forward with the Kamehameha V culvert improvement project. The existing State-owned culvert system was installed many years ago as we discussed at the previous meetings, 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 substantial undersized to handle the volume of runoff that flows down from the mauka lands during storm conditions. This has generated localized flooding conditions on the highway in recent years during intense periods of rainfall. The culvert is essentially creating a pinch point in the system due to it being insufficiently sized. This issue, I believe, is reflected in the drainage response information that was provided in Section 1 of the Commission's handout for today's meeting. The culvert improvement project that's being planned by State DOT will increase the capacity of the existing culvert system by replacing the existing drain pipes with a 12-foot wide, 70-foot long, concrete, box culvert. Grouted rubble paving structures on either side of the culvert are also being reflected on the State's plans for the project to reduce the speed of runoff being conveyed under the highway through the new system. The plans for this improvement were presented at the last meeting. Kamehameha Schools recognizes the importance of this project, the State's project, and as the owner of land both on the makai and the mauka side of the highway, fully supports implementation of the culvert improvement project by DOT to essentially resolve the pinch point issue. As reflected in the condition that I read through just now, the applicant is fully committed to working alongside the State as the project

progresses through permitting to insure that all easements necessary for the new culvert system are granted to DOT.

10. That the applicant shall work with a licensed civil engineer to prepare an engineering report assessing the adequacy of the realigned drainage channel to convey existing off-site drainage flows across the property. Said report shall be completed within 12 months of the approval of this SMA minor permit. Should deficiencies be identified in the report, the applicant will submit an SMA application to the Department to request authorization to complete any recommended upgrades within 12 months of completion of the engineering report.

This condition is really intended to address several concerns raised during previous meetings regarding the adequacy of the drainage channel. This drainage channel, as I mentioned earlier, was realigned by D&J Ocean Farms to adequately convey off-site storm water flows across the D&J property. The applicant is committed with the assistance of a licensed engineer to completing the engineering and evaluation of the drainage channel to insure that it is functioning as it was originally intended to convey flows from the highway culvert to the wetland on the property. In the event upgrades are identified to be necessary to insure the adequacy of the channel moving forward into the future, an SMA application including plans will be submitted to the Department for review and approval by this Commission prior to any work being initiated. As we heard from previous tenants – sorry, previous tenant, Desmond Manaba, and also, John Austin, at the previous couple of meetings, they have given their input as to the adequacy of that channel, and based on the observations and their living on the property, they have stated that it had no issues in conveying the flows from beneath the highway down into the wetlands, but this condition is really intended to address some of the concerns that were raised at previous meetings about the adequacy from an engineering standpoint for the existing channel.

11. That the applicant shall submit an annual report to the Department for review addressing the status of compliance with each of the conditions set forth in this SMA minor permit. Said report shall be submitted each year prior to the anniversary date of this SMA minor permit for a period of five years.

The applicant, Kamehameha Schools, is proposing this annual report and requirement as it feels it's the right thing to do to insure transparency to the community in the communication of its progress in complying with the conditions of approval of the SMA minor permit.

And with that, that's the final condition that we have to present to you today. As I mentioned, the first five are the same five as were in the previous staff report. The last six are proposed conditions that the applicant has come up with the wording for and is

intended to address the conditions shared at the previous meetings. We really hope that the conditions presented today adequately address the concerns raised by the Commission during review of this matter over the past three meetings. We therefore stand before you today on behalf of Kamehameha Schools to respectfully request the Commission move to approve the SMA minor permit at today's meeting. Approval of the permit by the Commission as discussed previously would allow the schools to move forward with the next and final phase of the after-the-fact permitting process, which is the processing of building and other construction-related permits that are necessary for the improvements to remain in place on the property. This would allow the facility to continue to be a productive agricultural operation for Molokai in years to come. Thank you for allowing us the opportunity to be here before you again today. Both Kalani Fronda and I – Kalani Fronda of Kamehameha Schools and myself, Mark Roy, are available for the remainder of today's meeting to address any questions you may have in regards to the supplemental material presented today. Thank you very much.

Mr. Sprinzel: Thank you, Mark. And before we have what's obviously gonna be a long question period, can we just have public testimony if there's anybody in the public? There being none, public testimony is now closed. Commissioners? Nat?

Mr. Nathaniel Bacon: I have a question about the – I think we were calling it the raceways, which is the overflow from the ponds or the wastewater from the ponds, that lower area there. Is there a capacity for that? And if so, so that can disperse the water, because there's a concentration there of higher probably salt content and, you know, waste products from the pond. And I want to just be sure that that doesn't overflow into the ocean. And I imagine that those have been hopefully designed so that they can take all of the flow that comes out of all of the ponds plus more as a buffer zone. But I just would like to know that, in fact, that is true. And is it monitored so that if in the even that those – that the effluent isn't exiting those raceways at a sufficient rate because of blockages or over buildage of waste or something like that, that the ponds would also be reduced in the amount of flow that they receive? I mean, that it's a balance system and that it's monitored to stay that way.

Mr. Roy: Sure. Sure. I can offer some information to respond to the Commission's question on the raceways. The raceways as I think the Commission observed at the site inspection, are not directly connected to the ocean. The intent of the raceways as the Commissioner mentioned to receive the used seawater that circulates through the shrimp ponds, and issues – the raceways receive those waters, and gradually are intended to allow for the dissipation and percolation of those waters into the underlying soil. I believe it's the case that those raceways are designed with some – I'm not sure what the word is, some free board that would essentially allow rise and fluctuations of the level of effluent within those raceways during wet conditions, for example. But what I can say as well is the new tenant, John Austin, is living on the property. He does maintain all of the features, all

of the facilities that are necessary for the productive operation to continue. The raceways is an example of one of those features. And he maintains those on an as-needed basis and monitors them regularly.

Mr. Bacon: Okay, because one of the questions and I think that one of the other Commissioners are going to bring this up also is that because they realigned the storm drain drainage up above by road, and that now goes down to a different area in the wetlands, I assume that that also prevents any of this what we used to call the sheet runoff that used to go across the upper ponds, and overflow, and come down, which was probably something that could've overflowed those raceways in the end if that – all that water came down there. So that's probably good that it was diverted that way. But I'm not sure where this mitigation, the wetland mitigation program, is actually working or where it's located, and is that now no longer receiving any of that sheet runoff because it's been diverted some place else, if you get my drift.

Mr. Roy: Sure. No, I do. My understanding with the pinch point that I mentioned earlier that's created by the State DOT culvert at this point, we had our engineer go out and take a look at the capacity of the channel below the culvert to essentially, look at the sizing or volume that's provided for below the culvert, and to compare it to the sizing of the culvert and the flow that's anticipated to come through that culvert based on the State DOT's plans. There's adequate capacity within the channel to receive the existing flows coming down under the highway. My understanding during rainfall conditions, from what I've heard based on input from the local community, and from Kamehameha Schools, and John Austin is that during heavy rainfall conditions, because that pinch point is created on the highway, there is still some element of sheet flow coming across the highway, which is, I think, representative of the localized flooding conditions along the highway during high rainfall. So I think under current conditions, when it rains, and there is water coming down to the property, some of that sheet flow still occurs. But what I would like to do is Kalani, if you wouldn't mind, to come up and just give an overall status of the wetland mitigation work, and ultimately, how the monitoring program is proceeding for that work.

Mr. Sprinzel: As part of that, could I just add one thing? Your channeling seems to exit well south of the wetlands. It doesn't seem to add any water to the northern part of the wetlands. Is there a reason why the channel went so far south instead of coming at the top of the wetlands?

Mr. Kalani Fronda: There are other agricultural uses in that particular area, so if you take a look at where that channel had gone, it had avoided the expanded earthen ponds on the mauka side of the hatchery, as well as the dwelling. And then also to the south of that particular area, there are other agricultural uses with paddocks of farm animals. And so that is the reason why it had avoided and directed to the south of that property.

My name is Kalani Fronda, Senior Asset Manager, with Kamehameha Schools. I'm also gonna answer what Commissioner Bacon had requested or I think was discussing, and that is the status of the wetlands mitigation. We have been – we did go through, as we've provided a couple of meetings ago, the report from AECOS, and that was submitted to the EPA. And we had also received a response back from EPA. We are in the mode of monitoring and also – with EPA, and that's the reason why we're having our meeting next week. And so there were some mitigation efforts that were done in the two specific areas that were noted on the map. And there's been work, replanting, grading it down to – down where the slope would actually end at the level of the wetland area. And so that was done. And on the site visit, we had pointed that out. There was also some planting that had gone there in that particular area, and then also another area where it had ended and flowed where – not flowed, but you can kinda see where it connected with the wetlands. And so those two particular areas, there needed to be some re-vegetation. So we had worked with D&J Ocean Farms, which was the lessee at that time to go ahead and exercise those mitigation efforts. And so once again, after that was done, we had met with EPA to do a site visit and monitoring of that. There was additional work that needed to be done. Came back the following year, monitored that, and then we're kinda meeting up again doing some reconnecting with EPA to see where we're at with the AECOS report, and then also where we're at with the actual progress that's being done on the property itself. Thank you.

Mr. Sprinzel: So the EPA are fairly happy? Have they said that what you've done is what they wanted?

Mr. Fronda: I think they'll be happy when everything's completed. However, the – I think the forward progress is positive. And they appreciate that. If there's additional work that needs to be done, and that's the reason why we also have been working with our former lessee, and then also making aware and keeping abreast of our existing lessee of these different items. And so there's a lot of communication that's going on, but once again, because EPA is the governing Body over these mitigation efforts, it's important that we continue to keep in communication with specifically, Wendy Wilson.

Mr. Sprinzel: Thank you.

Mr. Bacon: I guess I don't have my printout from two meetings ago, but looking at the one that we have here today with your handout, there's one aerial photograph that shows the ponds. I think I don't even have a page number for it, but it's just before the ones of the storage building and hatchery. Just an aerial photograph, which is that one.

Mr. Fonda: So the first area, if you take a look at where the road actually comes down from where we had entered the property, and if you were to go straight down this road here, you're gonna hit the top portion of that raceway. That's right to the south of that, so you'll see an open plateau area. If you take a look at the raceway itself, you can see the grade

level change dropping down to where the wetland area is, and so that's the work that was done and requested by EPA. So that's the area no. 1. And that also needed to be re-vegetated. The other area is at the end of this ditch system.

Mr. Bacon: Okay, so the first area we're talking about, which is right along the raceway, which is basically, the area where the shade houses used to be right in there, okay, to my knowledge, and the way I used to see it was when the water used to come out of the culvert up above, it would sheet flow, what we're calling sheet flow, it would come down across what would be like the top three ponds that are there because the slope all goes down towards the area where those shade houses are or were. Right now – and that's the area that they're trying to re-vegetate, right?

Mr. Fronda: Correct.

Mr. Bacon: Okay. So right now, they've diverted the water over to what would be the west of that, and that goes into an area, which in this photograph that we have here is a rather treed area. And that water, it doesn't seem to me that that water would be going back at all, which is the runoff water that we're using for the wetlands and is the filtration area that the wetlands are supposed to provide doesn't seem like that water is going back into that area, or is it?

Mr. Fronda: If you're familiar with the wetlands, the wetlands and the characteristics of that, the reason why they designated it as wetlands is because of a lot of the springs. It's not necessarily relying upon what's comes from the surface water. So as you take a look at the area that was established wetlands, an area that we needed some mitigating is based upon the plant characteristics that were there, what was adjacent to there, and then also some historic – history of what was percolating underneath with the spring resources that were in that general area.

Mr. Bacon: Right, but the vegetation together with the sheet flow water that's coming down, any of that water that's runoff, maintains the soil to a certain degree, and the root systems, and everything else. So if the combination of the runoff and the ground water is enough to support the wetland vegetation, then if it's now drying up, that means that one of the other of those has stopped working.

Mr. Fronda: I think it would be a different situation if the waters that were coming from the surface waters were continual. These are very intermittent. So you're not relying upon that type of resource to vegetate your wetlands. The wetlands, once again, comes from the resources that come from spring resources, and not necessarily from the top area. So if you're saying that because of the flow that's coming down, I mean, that's not the case . . . (inaudible) . . .

Mr. Bacon: Well, I'm saying it's a combination of those because right now when we look at that, that's a very dry area, right? That's dried up.

Mr. Fronda: And you also gotta understand – I mean, you know as well, in the past year to two years, they've been experiencing a drought. And so that's the reason why you had seen some of the conditions that you had at that period.

Mr. Bacon: I guess my question is, is EPA aware, and the people that have set this condition, this mitigation program, are they aware that no water does come –no runoff water does come down there anymore, and it only goes to the end of the other ditch? I guess that's my question. Because if they've asked you to rebuild in an area which now to my way of thinking, okay, it doesn't have any extra water other than ground water, are they aware that that's a waste of . . . (inaudible) . . . ?

Mr. Fronda: We had done a walkthrough with several agencies. And the Commissioner to my left is aware of that. We had gone through with not only EPA. We went through the Corps of Engineers, Fish and Wildlife, and then other agencies at different levels. So whether it be County and State, as well as Federal, we did a walkthrough. Also did a review of the waters that were on the top where it had facilitated in the State level and then what had flowed down. One of the reasons why we needed to provide the wetland report was because the EPA needed to see some of these conditions, needed to see some of the history of that. So – and the AECOS report, there is a – it's quite detailed on what was being requested of them, and then also, what was required of us as far as mitigation was concerned. And so that's the reason why we needed to bring – remove the shade cloth structures, do the mitigation work, and grading it down to the wetland area to that level, and then also re-vegetating those sites.

Mr. Bacon: I guess just to be a little clearer, my only question is just to make sure that the EPA, or whoever is requesting this mitigation program, or who started this, they know that the water no longer comes down from above. It only goes down that ditch. And that's my question is to make sure that everybody–

Mr. Fronda: I go back to the report. The report states the information that they're looking for, and also what was requested of us.

Mr. Roy: Just to add some additional information to respond to that question, the wetland mitigation plan, I'm not that familiar with the plan itself, but I was just scanning through it listening to the questions that have been raised, and there is a very specific discussion about the construction of the drainage ditch, and basically, the rerouting of runoff originating up slope. It was discussed in some detail in the wetland mitigation plan. So I think in conjunction with the agency meetings and site inspections that have occurred with the EPA and other Federal agencies, the EPA reviewed this wetland mitigation plan. So

I think maybe addressing your question, it has been explored and evaluated by the EPA by virtue of them reviewing the wetland mitigation plan, which was put together by AECOS who – you know, very well versed consultants in the area of wetland hydrology, I believe. So I'm just adding some supplemental input to that question.

Mr. Fronda: Thank you, Mark, for that information.

Ms. Debra Kelly: Okay, my question– I have several, but actually to help answer Commissioner Bacon's question, the EPA was there to address the violation only. They – although they took a look at the drainage, they weren't there to correct anything like that, just the wetland violation. So it would have been further down. So to say that they looked at how waters were coming off from off-site to the property, and that they took a look at the drainage for its drainage purposes, that was not what they were there for. Does that answer your question? Anyway, my question then, I guess, would be for the engineer.

Mr. Fronda: Oh, it would be okay if I add on to what you had just mentioned as well? You know, on October 26th, we had passed out a book. This here. On page 3 of that, it talks about background. It did discuss the location and site description. So it not only talked about the area which was wetlands, it also addressed and understood that there was construction that was done not only in the area where it was called for violations, but also an area above that. So you can take a look at– And that's also on page 5 as well. So, thank you.

Ms. Kelly: Okay, my question then is in today's handout, there was in the updated after-the-fact improvements related – today's handout, and there is a report from Otomo Engineering. That's you, right?

Mr. Mark Matsuda: Yes.

Ms. Kelly: Okay. So you answered questions that we had last meeting. On Question 2, it had how was the realigned drainage channel assessed in the PER. And in the last sentence, second to the last sentence it states, "The construction of the drainage channel did not contribute to the onsite storm water runoff calculations presented in the PER." Why not? But a question for you folks also – assessed the drainage ditch to make sure that the off-site runoff – that the drainage ditch could handle the off-site runoff. Yeah, that was Question 4, the realigned drainage channel possess adequate capacity. Okay. So although the onsite drainage channel can handle what was assessed 120 feet away from the culvert, yeah? That's what it says, anyway.

Mr. Matsuda: Yes.

Ms. Kelly: Did you folks take into consideration that there's a curve in that drainage channel, and the effect it has when all that runoff hits that curve, and the velocity it comes down, and that's why it erodes the highway?

Mr. Matsuda: Okay, where should I start? The second question regarding the channel not being included in the drainage calculation of the preliminary engineering report, the drainage calculations in the report is to address the County drainage ordinance in relation to increases in runoff due to development on the property, which basically, generally is impervious or hard surfaces like buildings and roads. When we looked at that pre-development versus post-development conditions, the increase in the runoff is mainly due to the structures, the houses, the buildings, and some of the driveways. So there was basically, minimal increase to the drainage onsite, on the property due to the improvements.

Ms. Kelly: Okay, I mean, the – one of the improvements that was made was the drainage channel. So why didn't–?

Mr. Matsuda: In – to address the ordinance, the existing conditions is basically, natural and ground. The post-development conditions, although it's a drainage channel, it's still a natural vegetated ground condition so by the County drainage standards, it doesn't necessarily increase any of the runoff on the site. The other part of that is that the direction of the runoff is generally in the same location of the existing conditions or previously existing conditions, and is conveying off-site runoff, and that hasn't changed as well.

Ms. Kelly: Okay, I understand what you're saying, but what I'm asking is although the off-site runoff would remain the same, because there was a so-called improvement to that drainage that is channelizing that, yes, it was pre-improvements, that runoff would have been able to sheet flow, and so infiltrate a lot more than being channelized into another area with more velocity, more volume targeted to a specific area whereas pre-improvements, it had a lot larger acreage to infiltrate and reduce all that velocity of water. So I understand what you're saying about, you know, hard surfaces and stuff, but that particular improvement increased the velocity. And the way there's – there's corners that water has to change. I mean, you know, it has to be directed. Changes how that surface runoff now impacts onsite. And so, my question is, was that considered when a drainage report was done?

Mr. Matsuda: That specific type of change is not necessarily considered in that – well, in this specific case, there was limited information on the post-development as well as the pre-development conditions. What we did find on the pre-development conditions was the historic FEMA flood map, which is in one of the latest packets, which does show a drainageway headed down toward the wetlands. When reviewing the drainage situation of the site, it's still conveying the same water runoff to the same general location, and the

drainage standards also talks about not adversely affecting downstream properties. Everything is still contained within the property.

Ms. Kelly: Okay, but – and again, kind of considering Commissioner Bacon’s question, and I know that the wetlands determinations are based on possibly, spring, but it’s still impacted by runoff. We might be in a drought, and it might not be contributing to the property in recent years, but that runoff is – the wetlands still depend on surface runoff. There is – you know, that is a wetland determination. So although it’s an underground spring, surface runoff plays a big portion of that, which is being denied currently by the drainage improvements. I understand why it was diverted the way it was because there was agricultural practices to make use of the property for animals. Okay? But animals can survive when it floods a little bit versus like, you know, even if we have a little rain, and that rain can flow over the pasture area, that would help vegetate it. Although, again, we’re in a drought, that area of two paddocks, there’s no vegetation, no ground vegetation. It’s bare ground. So that contributes more so to the adverse effects because now we’ll have light rains and all that soil will be in our fish ponds or downstream in our ocean. So the whole thing about not considering how that pre-improvements impacted the property is a major concern for me. So again, question–

Mr. Matsuda: Yeah, can I make a quick comment? I mean, the best I can say is that the drainage assessment in the engineering report is to address the County drainage standards. Unfortunately, that doesn’t involve the effects of the wetlands. So that wasn’t part of our analysis.

Ms. Kelly: So, I mean, that answers my question about why it wasn’t considered because it does have – or I think it there’s an impact to it. Okay. Question 4, if the State does not do the improvements, you know, the Department of Transportation, what happens onsite?

Mr. Matsuda: That would go back to the condition being proposed about doing a full assessment of the existing – of the drainage channel to assess the capacity, I’m not sure of the exact verbiage in there, of the ditch as it exists today.

Ms. Kelly: Okay. As an engineer, would you have designed that drainage the way it is today?

Mr. Matsuda: That’s a loaded question. I have not been able to fully assess what – everything that’s happening on the site. What is presented to you is based on the information we had and what we can give you as far as answers to your questions. If you had something more specific, I can try and answer that, but–

Ms. Kelly: Yeah, I mean, you know, that's kind of like— Okay, I'm looking at it as if there was no drainage improvements. And if it was coming in today, would this design, current design, be something that you would support?

Mr. Matsuda: I don't have any background on the existing conditions as far as exactly what is happening to the runoff, but I can say that drainage diversion is done on projects.

Ms. Kelly: No, I understand that. Because this is about the after-the-fact, we have to address what it was before this. That's my — that's how we have to look at it. We cannot look at it as if — I mean, you know, how it is today, because if they're coming in today and asking to do this drainage improvement, would we approve it the way it's designed now? That would be my question to you. Would you approve that particular design the way it is today?

Mr. Matsuda: Yeah, well, we have not done a full analysis of the existing — of the channel as it is, which kinda goes back to that condition being proposed about doing that analysis.

Mr. Bacon: Can I just throw in one little thing? Okay. One of the reasons that the built that ditch and they diverted it that way was because the top ponds were being flooded. The top ponds didn't use to be there. Those were also coming in for an after-the-fact. So it might help you in determining, okay, so if those weren't there, that ditch wouldn't have been built because the flow would've just naturally gone down, and it wouldn't bother anybody. And I think that's sort of the issue is, is like — you know, if they — if the ditch wasn't put there, if those ponds weren't there, the natural flow would go down into this wetland area that I was concerned about that is being hopefully, renovated or replenished. And that flow of water doesn't go there anymore. And it doesn't go there because the ponds were put in without permits, without anybody having a chance to look at it and analyze it. So that's why she's asking the question like, okay, before all this happened, it was the natural site. It was the natural situation there. And that's why I think that's our issue and it can be addressed properly to say, okay, the water diversion, the ditch itself isn't gonna hurt anything, and where the water goes, we wanna be sure that that water is doing the same thing that the original water used to do for the wetlands. That's what I'm concerned about.

Mr. Matsuda: I think that goes back to the wetland assessment.

Mr. Bacon: Because we see too often up and down this coastline, the wetlands are just being eaten up and filled in. And those wetlands serve a purpose. You know, they filter the water. This runoff water that came down would go through what was the wetland vegetation there, and that would catch some of the silt and slow it down because the velocity was much slower. And it would catch the silt before it goes out on our reefs. And that's what our issue is, is protecting the reefs and protecting our ocean.

Mr. Matsuda: I believe you can take a look at the infrastructure that's there right now. It's doing its job. It's not affecting the reef. It's not affecting the fish pond itself. So you don't see the siltation that's coming from that particular area that you're talking about flowing into Keawanui Fish Pond from that side. The – if you take a look at how it used to come before, if you're saying that that enhances the wetlands, that means everything where all of these areas were, should've been wetlands, and so the vegetation as it shows the hydrological as well as the vegetated state should've been wetlands. Because you said it's wetland vegetation that was slowing it down filtering it so it doesn't go into– Correct? Is that what you're saying? So I just kinda wanted to make clear because right now, it wasn't never designated wetlands in the areas where the ponds were. The area where it has been designated wetlands, it still continues to remain wetlands. And so a lot of what does come down does get–

Mr. Bacon: Okay, but I guess the point is it's been denuded, and that's why it has to be replenished and replanted, right?

Mr. Matsuda: Correct, the small area that's over there.

Mr. Bacon: Okay, that small area over there used to have several sources of water which were underground water, and runoff water, and a number of other things. And granted, we are in a drought situation. But those waters used to – as Debbie was saying, those waters were available to it or should've been available to it, and they're no longer available to it. And does that influence that area? I know wetlands help to accrete land, but they also help to, you know, reduce the amount of siltation that goes out on the reefs, and that's our concern. And unfortunately, we're not given the situation where we have a pristine piece of land, which we can all go down and look at, and say, oh, I see how this operates, and that doesn't operate. Right now we're doing an after-the-fact thing where somebody's already dug things up and things. And granted, I mean, I think what's happening there, the aquaculture and stuff like that, I'm all for that. But I'm not for the process that was done. And I just worry about – you know, it's our job to help protect our environment down there.

Mr. Matsuda: Correct.

Mr. Bacon: And we wanna be sure that this water that is now being directed some place else is not harmfully influencing the wetlands. And when we drove through there, I just saw a big, dry area, and I understand that's where we're trying to replenish that vegetation, but it does need a certain amount of water to maintain that kind of vegetation. So if the only source is now the ground water, which it doesn't seem to survive on, and it no longer gets any of this runoff water, then I just wanna be sure that EPA or whoever is saying we have to do this for mitigation knows that there is no other source of water. There's no ground runoff water for that area anymore, and is it worth trying to replenish. I mean, I know several places on the Mainland that I used to work at, and people would fill in the wetlands

as they've done here with ponds and stuff. And you can't restore wetlands. Once you've filled it in, once you've killed that spring, you've slowed the spring down enough, the spring, whatever the natural flow of the water is for the spring, it chokes up after a while, and even if you dig it back out, that spring won't go again because it's been dammed up by itself because of the low flow.

Mr. Roy: I think it's important to keep in mind the importance of the various steps and milestones that have occurred through this what has turned into at this point in time a six-year process. The first site visits that were done I believe were back in 2005, 2004 with the Federal agencies. And that was an early component of the after-the-fact permitting process from the landowner's standpoint to really take responsibility and address the violations that had occurred on the property. There was extensive coordination and discussions with Environmental Protection Agency, and RCS, I believe, and the U. S. Army Corps of Engineers. These agencies are well versed and extremely experienced in identifying wetland impacts and assessing past actions that have occurred. So I'd hate for that to get lost through this process because there is a process that's in place to deal specifically with impacts on wetland resources, which are under the jurisdictional mandate of the Federal agencies. The Schools, by virtue of going through this process, there's been a number of milestones that they've had to achieve in that process, but they have met with the agencies. They've gone through this full dialogue and assessment with the Federal agencies to identify any impacts that have occurred in the wetlands. Yes, the Commissioner is right that the focus was of some grading alterations that had occurred within the wetlands, and also some side-casting of material. But my understanding, Kalani, during the site inspections, they did a full site inspection of the property and were made well aware of all the improvements that had been completed including, the drainage ditch, which were evaluated and disclosed in the wetland remediation plan by AECOS. So I just wanna kind of not lose sight of that important agency consultation process, which was specifically completed to address from the Federal agencies who have the responsibility of managing the wetlands. And they completed the wetland delineation as well as part of that process of adequately remediating the impacts that had occurred by virtue of D&J making these improvements within that area.

Mr. Sprinzel: Are these the experts who did the new lines stuff as well?

Mr. Roy: That's one of those agencies, yes, U.S. Army Corps of Engineers, but different geographical jurisdiction.

Mr. Sprinzel: See, you mustn't forget one thing: we are – have to, by law, to approach as if it's a brand-new application. And so we can't sort of say, well, this was done, and this was done, this was – we've gotta assume this is a new application to do all these things that were done illegally. So we do have to think about this. That's why you're getting all these questions. We're not kind of being funny or anything.

Mr. Roy: No, I certainly appreciate the questions. They're very well intended questions. I'm just trying to present the real information from the applicant's standpoint because it's been a six-year process for them with dealing with Federal agencies.

Mr. Sprinzel: One of the big things that puzzles me is when this diversion stream thing is built, I can see why it went under the road, you know, the first – I don't know, hundred yards, 70 yards. But why this half mile of extra ditch which took all the water, as everybody's said, totally away from where it used to be, and dumped in the wetlands? I can't understand why that was done. And I can't understand why your engineer says nothing, because I don't think he would've done it that way. I honestly don't. Not that I'm an engineer, but it seems a very strange way of getting rid of some flood water across the road.

Mr. Roy: Right. And we certainly appreciate those comments. As I went through in the presentation, what we've tried to do over the course of the last two sessions before the Commission and the site inspection that had occurred was really to take the concerns on board. We're certainly not discounting any of the concerns that the Commission has. And we've really been working with staff to put together conditions that we really feel can allow this application to move forward. The condition that deals with the engineering assessment of the current drainage channel is intended to provide some level of comfort that it's ultimately adequate in conveying flows down into the wetland area. And I think it's fair to say that although it's going along a different course, it was going there anyway under pre-aquaculture conditions. And I think another point is important to recognize is that it wasn't – based on my understanding of research of the property and from Kalani's words is that there was cattle ranching operations in the area as well prior to aquaculture taking place. So it certainly wasn't a natural site. But I just offer those up that really, the conditions that we've proposed are really intended to provide the comfort to the Commission with regards to these concerns because there has been a lot of research that have been put into these applications. And, you know, with the new development, you know, you draw up plans, you do the impact assessments. It's certainly a lot easier than looking backwards, and really getting the information from the key individuals that completed those improvements. We feel that the information that we've documented and we've presented to the Commission really is the best level of information that's available at this point in time. And the assessment of impacts that were provided to the SMA application we feel really is the best assessment that could be provided given the information that's available. Thank you.

Mr. Sprinzel: Lori?

Ms. Buchanan: Chair, since this whole subject is coming up, I just wanted to get a comment on the record. The comment is for Exhibit 30a, a letter dated June 27, 2011 from the Department of Transportation to Director Spence. And in that letter – and I quote, the DOT says:

We are concerned that changes to the drainageway downstream of Kamehameha V Highway have impacted our drainage facility and will cause additional problems in the future if not corrected.

That is from Exhibit 30a. In Exhibit 30b is a letter dated September 16, 2011 from Glenn Okimoto, or from Kamehameha Schools to Mr. Glenn Okimoto, Department of Transportation. In response, Mr. Fronda on page 2 says that – Kamehameha Schools, yeah:

We note the after-the-fact improvements presented in the subject applications are located makai and downstream of Kamehameha V Highway and the existing Department of Transportation drainage culvert. In regards to the work carried out on the property, Kamehameha Schools and D&J Ocean Farm have resolved the unpermitted drainage improvement actions with the U.S. Army Corps of Engineers, and U.S. Department of Agricultural, Natural Resources Conservation Service.

So that's what Mark was alluding to in having to try and mitigate this. It goes on and in that it also says, "A mitigation and restoration plan has been approved and the work will be undertaken shortly. The Department of Planning—" and this is where I want it on the record that this not misconstrued that this Commission by way of an exemption for that EPA mitigation project supercedes or includes any basis for a fact of no impact. It goes to say that, "The Department of Planning had issued an SMA exemption for the actions related to the wetland restoration work." And so that is us issuing in the 2008, an SMA exemption for the EPA mitigation plan. My question to the Commission is, if this Commission does not think that that is adequate, mitigation for the problem that you guys are having now with the ditch, then what are you proposing as further mitigation besides what they are doing with the EPA violations? It goes on to say:

Kamehameha Schools believes that the completed improvements by D&J Ocean Farm as noted in the subject applications do not present a significant adverse impact to the existing DOT culvert facility. We also note that Kamehameha Schools is committed to working with the Department of Transportation following the completion of the culvert improvements to ensure that runoff continues properly downstream.

The whole point is, is what actions – what piecemeal actions this Commission took in 2008 to exempt the mitigation of that wetland restoration should not be any basis to the DOT to answer their concern on Exhibit 30a that they are writing and saying they have a concern with. So this Commission needs to think if that's not sufficient, if we not happy with that, then we gotta come up with a condition to this SMA permit today as to what we wanna do.

That's one thing. So that's just something for think about whether you guys wanna take a recess and think about it or what, whatever. I just wanna put that on the record.

And since I have the floor, I might as well bring up for the record – these are just comments for the record. Exhibit 15 to 16 was the basis for the shoreline setback delineation or comments by staff. I personally don't agree with the assessment given for that. Also, the basis for exemption of Chapter 343, Exhibits 19a through 22 was also the basis for exemption of Chapter 343. This project should have never been exempted from Chapter 343. And that was where the problem began. The oversight of this community was lost because the exemption of Chapter 343 did not provide to this community the basis for them to provide input on a large project in their community. That was the first mistake.

And also for the record, Exhibit 29c, Division of Aquatic Resources from my friend, Skippy Hau, to D&J Ocean Farm in their questions, and you can tell he's a practitioner because this is the questions he asked, he noticed that shoreline pen structures were identified. And he asked if it was still part of the aquaculture operation. So nobody even discussed that there was shoreline pens at one point in time that are no longer there. He asked what species such as amaama and awa are being caught to add to the growout ponds or raceways. He goes on to ask if tilapia, or shrimp, ogo is being raised. He wants to know what species are being cultured and where they are located in the facility. Is brood stock such as shrimp being shipped in, I'm assuming from a foreign country, for stocking? Good questions, Skippy. What assurances have been made to prevent accidental or catastrophic tsunami or heaving flooding release of species into the wild? Great question, Skippy. So of course, I looked for the response, yeah? But he also said:

The application is for an approval of existing aquaculture structures. Will these future structures for expansion including roads and drainage lines need to be approved? Will they need to abide by shoreline setback regulations?

Even Skippy knows that. This is from the Department of Aquatics. In response to his concern, Exhibit 29d– I don't know who the . . . (inaudible) . . . was from. And just so you guys know, it was – yeah, an extension. Exhibit 29d, Russell Tsuji, Land Division, response to comment regarding flooding and tsunami hazards. Exhibit A, he refers to the Exhibit A in our packets:

The risk of unintended release of species from the ponds and hatchery facilities at the property is, therefore, considered to be low given the underlying flood zone designation and the horizontal distance separating these improvements from the ocean.

And it goes on. I think just the whole point that the Skippy had the foresight to even think about flooding and alien species being maybe let go into our Pacific Ocean is a good

concern. And that should've been brought up. There's a retention pond. We know how much the retention pond holds. You know, that's probably all the reasons why D&J Ocean Farm at that time thought it might be good to divert whatever water they could away from this facility because maybe they knew they had foreign species that they didn't wanna take – getting released into the water. I just thought was really good feedback and I wanted to bring that on the record.

So that's my little two shakes. And at the point where we try to sum this up and move on, because I don't think anybody wants to see this application back before this Commission again– In consideration of your conditions, Kamehameha Schools, I have a question, and it's for Condition No. 10. And this refers to the November 9, 2011, this addendum that we're looking at today in which Planning Staff and Kamehameha Schools got together and said, okay, how we going do this? Or what's the proper thing? How we going make this pono? And so in Item No. 10, which used to be No. 9, my question is, did what Mr. Otomo provide to us today, does that suffice Question No. – or Condition No. 10? Did he already prepare an engineering report assessing adequacy of the realigned drainage, Mark?

Mr. Roy: To best address that question, I don't want to belabor the point, but I also don't want to not address the question. The drainage report that was included in the SMA application was assessing the after-the-fact improvements that had occurred on the property in relation to the County's drainage requirements. As I think Mark has presented to the Commission today his thoughts and assessments with regards to the drainage ditch and how it relates to the existing drainage flows that currently are characterized by the property. We proposed this condition because the drainage ditch seemed to be a concern for the Commission. We had testimony from both John Austin and Desmond Manaba both attesting to the fact that the drainage channel works. It adequately conveys flows beneath the highway. It doesn't impact the highway in any way.

Ms. Buchanan: Wait, Mark. Does – is the first portion of Item 10 moot? That's what I'm asking you.

Mr. Roy: We don't believe so.

Ms. Buchanan: Okay. So you still going move on. And the second part of that No. 10:

Should deficiencies be identified in the report, the applicant will submit an SMA application to the Department to request authorization to complete any recommended upgrades within 12 months.

That is still – that is your condition?

Mr. Roy: Correct.

Ms. Buchanan: Okay.

Mr. Michael Hopper: Just to verify, I just wanted to get the condition clear because if that is a condition, it should be noted. So the engineering report assessing the adequacy of the realigned drainage channel to convey existing off-site drainage flows across the property, that is complete?

Mr. Roy: It has not been completed.

Mr. Hopper: So it's not. Okay. So somewhat have that clarified.

Mr. Roy: It's something that were the SMA permit to be approved at today's meeting, within 12 months, I think we've given a 12-month timeframe, that report would be prepared from a qualified licensed engineer, civil engineer, that would go in, assess the topographic conditions of the drainage ditch, and would make a determination from an engineering standpoint as to the adequacy of it conveying the off-site flows down into the wetland area on the property. So it's a new report that would be undertaken.

Mr. Sprinzel: We are going to have a short break. So a five-minute recess so we can all think about these things.

(A recess was then taken at 2:50 p.m., and the meeting reconvened at 2:57 p.m.)

Mr. Sprinzel: We have reconvened. Commissioners, are there any more brilliant suggestions? Who's next? Yes?

Ms. Kelly: I just have a comment. It's not like, you know – I don't want to hold this thing up. I want it to move forward. So my problem is still that drainage and it's right where the angle is right at the highway. That's my concern because that's where it's impacting the highway. So I know, you know, in Condition 10 that it addresses – you know, you'll do an onsite. And I know that the ditch is feasible or it seems that it's feasible once the water is onsite. But my concern is just that one area because it keeps eating away at the highway because of that angle. If we can fix that, address that in this concern, in No. 10, I'm all good. I mean, that's where my concern is, okay?

Mr. Bacon: I think one of the—

Mr. Sprinzel: Yes, Mr. Nat?

Mr. Bacon: Okay. I mean, we all seem to be very concerned about this ditch. And one of the things is, is that before this ditch was put in, we didn't have that issue up at the highway. And the areas that we look at which now he's using for this horses and things

used to be a little bit cleaner probably, because there was some runoff. Granted, we have a drought condition now so there isn't a lot of water, but that's – you know, that's probably one of the areas if this was used for cattle a long time ago, it's probably good grazing, and there was moisture there coming down the stream. So if we just went and just eliminated that, that ditch all together, and went back to the way it was originally, we wouldn't have some of our concerns that we have now like mine with the wetlands, and the natural flow down to the wetlands. And the only issue would be they would maybe have some flooding at the upper ponds, which could also be, as Lori pointed out, some way for invasive species, or brought-in species, or whatever to be washed out or something. But they could do something to prevent that in those pond areas. Build a direct wall around those or something like that to prevent that rather than doing this ditch that is causing issues for everybody. Anyway, that's just my take on it.

Ms. Buchanan: Chair, for the record, I forgot to mention that the site has two water use permits: Water Use Permit No. 622, Water Permit No. 443. Both are in noncompliance. So that would be part of a condition that I will add when I make a motion that they come into compliance with monthly reports. I received the 20-year review by e-mail from the Commission on Water Working Resources today that states that for the record. So I just wanted that on the record.

The other thing is discussion– And we can go back to this page that was so nicely provided by Mark on the SMA minor permit. Because there's four, one, two, three four, and they're all bunched together, if you wanted to, you can approve some and deny. I think that's an option that we have open. If we really have a problem, you can deny 'em. They going have to come back in again for that. That's what happens when you bundle stuff together. It's not like MobiPC and you're bundling things together. You have a problem, then don't approve it. If you can see one way of approving that with conditions, then approve it with conditions.

Mr. Sprinzel: I guess I would like to see Item 10 in some way, which is the one we're all concerned about that the report is brought to us as well as whatever you say you will act on it. Is there a way that we can act on it?

Ms. Buchanan: I'm also gonna ask the Commission to consider an additional condition, which would be a Condition Item No. 12. And I can do that at the time we make a motion, or we can discuss it.

But on this Item No. 10, getting back to that report, I think I need even more clarification. Once that report is done, it says "Should deficiencies be identified in the report," I don't know what constitutes a deficiency or a definition of deficiencies that would cause the applicant to submit another SMA application to the Department. If Mr. Otomo or Mark

wants to expound on that definition, I'm here to hear it. What kind of deficiency would you foresee that would cause you to come in for an SMA application as a result of that report?

Mr. Roy: My understanding in speaking with the civil engineer is whoever is contracted to do this work, it would be a licensed civil engineer. They would conduct a full assessment of the drainage ditch from the highway culvert, you know, where it connects up to the highway culvert, because that's Kamehameha Schools' property up from the right-of-way. So from the right-of-way down as it elbows out along the highway, parallels the highway, and then goes down, turns again, and goes down towards the wetlands, it would be a full assessment of that complete alignment. So from an engineering standpoint, you know, they have standards and criteria to address adequacy of a drainage facility. And that's ultimately what I believe they would use to set forth recommendations in their report.

Ms. Buchanan: Okay, thank you, Mark. Not to be mean, or rude, or anything. I just trying to move this along.

Mr. Roy: Sure.

Ms. Buchanan: So it says, "The applicant will submit an SMA application to the Department." I'm still on No. 10, people. "To the Department to request authorization to complete recommended upgrades," and I'm assuming upgrades to the drainage channel, "within 12 months of the completion of the engineering report." So it's, I think, for this Commission to say I going trust them to figure out what I already know that the drainage system is not to our liking because the water is not going back into the upper part of the wetland as we thought it should, that's the question for this Commission. Are you satisfied that we going make them spend money, take another year out, have that assessment done for them to come back and go, hmm, you know what, you guys was right, or you know what, you not right, because we monitored the flow of flooding, existing, the upgrade of the 50-year flood, one-hour, or whatever? So I think this Commission needs to decide now if you just want that portion of this to be denied, and they going have to go back and do their homework anyway to see how they going realign that drainage, or just to leave it to them to wait another year. So you buying time, is what you doing. That's up to you guys.

Mr. Sprinzel: Well, it wouldn't bother me to delay that last item. It's not gonna make any difference to the operation of the farm. It means they've got to do a real assessment of it in every respect: EPA, the lot.

Mr. Roy: We understand the Commission's comments. And I think it's important for the record that from the applicant, Kamehameha Schools' standpoint, they believe based on the available research and in consultation with the tenants on the property that that drainageway does function. I think the reason why this condition has been set forth is we're certainly taking on board the concerns of the Commission that we're willing – Kamehameha

Schools is willing to do an additional level of research on the drainage channel, and if for whatever reason based on engineering standards it is not functioning adequately, then at that point, they would set forth recommendations to essentially, remediate and do some work to improve the condition of that drainage system. And then we would submit the necessary SMA application for what would be determined to be a new improvement. But the Schools at this point believe based on their input from the tenants that it currently functions as it was intended.

Mr. Sprinzel: We know that. We know, Mark, that it functions as a drainage ditch. The point we're making is in a new application, would we allow you to divert the water away from the top of the property. I mean, that's the point we're making. It's not whether it's engineeringly satisfactory, and whether it drains properly. Our point is should it be allowed to drain. I mean, we can understand you wanting to have a diversion from the ponds, the illegal ponds. Okay, fine. But what happens to it after that? We're taking the water totally away. That's, I think, three of four of us seem to feel. So it's not whether it's engineeringly viable, whether it drains or not, it's whether it should.

Ms. Buchanan: Then I think the call for the question is inadequate for No. 10. The call for the question should not be with the licensed civil engineer to prepare an engineering report assessing the adequacy of the realigned drainage channel because we know the answer to that is yes. So let's not waste time. To convey existing, you know, of off-site drainage flows. The question would more properly be addressed by asking someone—I don't know who the proper person—to investigate the question, does the change of flow in the diversion of that ditch impact wetland resources because I think that's what we getting at. You understand? So that's not even the call of the question that we asking for in No. 10. It's the impact to the wetland is the question, not whether the big ditch you went – going handle the flow. We know the question is yes. We just wanna know that water that is not there anymore, how is that affecting our total overall wetlands in the area. Is that kinda correct, Commissioners?

Ms. Kelly: Yes, but along those lines, and I know that the ditch serves its purpose, but that I wanted to make sure that in this – whatever assessment with the wetlands are, you know, that it's not also impacting the highway because it currently is. And so, it – I'd like that reassurance in this particular recommendation.

Mr. Sprinzel: I would entertain a motion at this stage of the game.

Ms. McPherson: Can I make one statement, Chair, please, before you move on?

Mr. Sprinzel: If you insist, my dear.

Ms. McPherson: Not to incur the ire of the Molokai Planning Commission, but I would like to just point out humbly and respectfully that Chapter 205A does direct us to balance environmental, cultural, and natural resources with economic activity in the SMA. I have been told by both the previous lessee and the current lessee that this situation is impacting them economically. And it is causing them problems as far as eligibility for various kinds of financing and all that kind of stuff. So they have shared that with me. I just thought because of a comment that was just made by Chair Sprinzel that he didn't think that was gonna be causing any problems to the aquacultural operation. You know, I don't think we have that many medium to large scale, successful, non-corporate, agricultural or aquacultural operations on island. And so I'd just like to say that, you know, I, as a Planner, and the Department support this activity as long as we can see that those impacts are being mitigated. Thank you.

Mr. Sprinzel: It's not actually something we can do to reward all the sins of the past. I mean, we can't just say, oh, well, yeah, it's fine, we can pass it all. That's not our kuleana.

Mr. Roy: Would the Chair permit me to suggest some modified language to Condition 10? We're listening and we're trying to ascertain how we can, essentially, rewrite this condition to really adequately respond to the concerns. So from what I heard today, it's not so much the concern about the engineering of the channel based on what we've talked about. It's has the drainage channel had any level of impact on the wetlands.

Mr. Sprinzel: And on that top part of the – where the animals are now, which is totally dry and barren whereas before – it was obvious before all this was done, the cattle used to run on it because it was nice, green land.

Mr. Roy: So I had some revised wording that I wanted to propose to the Commission. I may need a couple of minutes, if it's something that the Commission feels that it addresses their concerns. I just wanna work on nailing down some more language so it really adequately responds to your concerns. But the Condition 10, we'd essentially start the condition from new. And we would say, that the applicant shall work with a licensed – or a consultant, a qualified consultant to prepare a report assessing the impact of the realigned drainage channel on the functions of the onsite wetland. And if that's something that you would wanna entertain, then I would just – I'd request two or three minutes just to work some language that in the event that there are impacts identified, what would be pursued by Kamehameha Schools. Is that something that the Commission would want me to work on at this point?

Mr. Sprinzel: Debra?

Ms. Kelly: Yeah, and if you can also include like the velocity at the end of the – you know, the outlet? I'd still prefer not having it there, but, you know.

Mr. Roy: We can work on some language.

Mr. Sprinzel: The wetlands and the agricultural lands, shall we call it?

Ms. Buchanan: I don't know if it was clearly conveyed to Kamehameha Schools that the problem that Commissioner is expressing is the new culverts that are proposed coming out and generating so much force during a flood event that it causes the roadside to erode directly off of Kamehameha V Highway on the makai side of the road. This has been a past event that has happened before. And her concern is – the reason why is because it's being stopped short by the channel right there. So it doesn't have time to flow. There's no mitigation prior to the outflow of the culvert. And now with the new proposed culvert, I'm thinking maybe the concrete barriers on the side is gonna help to mitigate that. She doesn't want all the side of the road to – because people got into accidents over there, and everybody's flooding, and people getting hurt and–

Mr. Fronda: I need to take a look at the conditions, but I believe one of the conditions talked about working with DOT when they go through and address not only the culvert, enlarging the facility there, addressing the aprons on mauka and makai of that, but I believe there's also another condition that he's working on right now. And I think this came up in a concern from a number of Commissioners was in the event that this doesn't happen, meaning DOT is not able to go through, and exercise what they need to do, and get this facility completed, Kamehameha, what are you gonna do to address what's coming down. And I think that's the language that he's going to try to put together.

Mr. Sprinzel: Some legal comment.

Mr. Hopper: Just to assess the condition or a condition like it, if – I'm not sure what additional action would be taken after you would receive the report. If you approve the SMA permit, I would advise that you have the – in fact, I think they're required to have the appropriate mitigation measures in that approval to mitigate those impacts. I'm not sure how a – I mean, the conditions wouldn't be amended after you would see the report. So I'm not sure exactly what the purpose of seeing the report down the line would be. Typically, you would see reports before deciding on the permit, and then have appropriate conditions based on that report. Or put appropriate conditions on now if you have a – some mitigation. Now, this is a different circumstance because mitigation's a little different because the ditch is already there. So I'm not sure if that's a consideration because it's already there and it's already diverting the water. So it could be a bit different. But just as a comment, typically, you wouldn't re-amend SMA conditions after you give approval with conditions. It could be hard, legally, for you to do that particularly, if maybe an applicant would disagree with such amendments or something like that.

Mr. Roy: I think the intent of what I was suggesting that we work on a condition that better responds to the Commission's concerns at this point is that we would – the applicant would work with a qualified consultant to prepare a report assessing the potential of impacts from the drainage channel on the onsite wetland. And then the language that I would wanna come up, if the Commission would indulge me is that should any impacts be identified through that process, what the resolution would be from Kamehameha Schools' standpoint. And we can work with that if you would allow us two or three minutes to work on a condition so that we wouldn't come in to amend the condition. It would essentially, set forth a path of compliance that we do the report. If there were impacts identified then we would go towards a resolution.

Mr. Sprinzel: Okay, just don't do it on your computer.

Mr. Roy: Yeah. It's blown up, I think.

Mr. Sprinzel: Yes, sir?

Mr. Bacon: Okay, Nancy brought up a point about the economic values and that sort of thing. And said that there was stress on the previous tenant as well as this tenant, and that's something that we would have to balance. I mean, if it's a pain in their neck as opposed to a financial burden, that's something that would be helpful for us to know so that we can make an evaluation of that. If you could address that?

The other thing, I just had another thought, too, about the SMA area. Is this whole property in the SMA all the way up to the highway and beyond, or where does the SMA line go in this property?

Mr. Sprinzel: There's a request for a five-minute recess.

(A recess was then taken at 3:22 p.m., and the meeting reconvened at 3:30 p.m.)

Mr. Sprinzel: Recess over.

Mr. Roy: Could I present—?

Mr. Sprinzel: Please do.

Mr. Roy: The modified condition. So we spent the last few minutes conversing with Kalani Fronda of Kamehameha Schools, and I think if it's okay with the Commission, what we'd like to suggest is that Condition 10, what used to be called Condition 9, we retain in place for now. And there's a good reason for that, and I'll talk about that reason, and come back to

how we would modify this condition. The new condition that we have come up with would be a new Condition 12. And it would read:

The applicant shall work with a qualified consultant to prepare a report assessing the potential impact of the drainage channel on the functions of the onsite wetland. Should significant impacts be identified in the report, the applicant will work with applicable Federal agencies to modify the drainage channel to mitigate said impacts.

And then we would go on to modify the existing Condition 10 which talks about the engineering report. And I'll just read to you the condition:

That the applicant shall work with a licensed civil engineer to prepare an engineering report assessing the adequacy of the realigned drainage channel to convey existing off-site drainage flows across the property including, the culvert outlet area below the highway within the subject property.

Our response directly to Commissioner Kelly's concern. "Said report shall be completed within 12 months—," and it would read exactly the same below that. So those are the two conditions that we've come up with. And then we've got another condition, No. 13, we'd like to propose:

That the applicant shall work with the Commission on Water Working Resources Management to obtain all necessary approvals related to the two seawater wells on the property.

That was intended to address Commissioner Buchanan's concern.

Mr. Sprinzel: Thank you, Mark. And I do think it's time we entertain a motion. Oh, you want to ask questions?

Mr. Bacon: No, we still – we have questions that were unanswered. We have questions about whether that property is all in the SMA. And the other one was what are the burdens of the former and the current lessee are having with—

Ms. McPherson: Nancy McPherson, Staff Planner. I have the SMA map. I can pass that around for you, and the entire property is in the SMA. It goes all the way up to the highway.

Mr. Sprinzel: Thank you. No need to pass it around.

Ms. McPherson: And I think probably Kamehameha Schools might wanna respond to your other question.

Mr. Fronda: Commissioner Bacon, may I ask if you could repeat that particular question again? Thank you.

Mr. Bacon: Nancy brought up that there are considerations, financial considerations, economic considerations as well as environmental, and whatever considerations we're talking about. And that she mentioned that the former lessee as well as the current one are impacted by that financially—the concern of this ditch. So we're wondering what those – I was wondering what those burdens are so that we can weigh their financial burdens against what we think the environmental problems might be.

Mr. Fronda: I'm gonna answer it based upon the overall property and not necessarily directed to the impact that the ditch had upon the economics of the current – I mean, the past as well as current lessee. The – and the reason why I'm gonna answer it that way is because I'm not for sure what the impact of the ditch has on the–

Mr. Sprinzel: Excuse me. I think the question was whether the – what Nancy said to my understanding is if we turn the ditch down as one of the four things. So it's not–

Mr. Fronda: I got it. Okay. So I think I know what she's talking about. So the reason for the channel was so that the upper earthen ponds can be utilized and not be impacted by any type of overflow that came across the road. So that was an impact on the economics of it. In the event where there is some adjustment to the area, there could be potential economics, but I think there's a condition already on the table that Mark Roy had provided. The other economics I know – some of the impacts on this is without the necessary SMA approval, there are certain things that they need to actually expend on, and there's also current financing that is available subject to some of these things that are here for improvements, corrections, etc., to be made. Can I ask Commissioner Bacon if I had answered your question?

Mr. Bacon: Sort of, yeah. It's a matter of like, okay, what economic forces that are playing against the environmental forces, and you've sort of answered that. It's a matter of legalizing this thing as opposed to the structure itself. I mean, the financial burden or the economic problem is that we have to have this approved as opposed to the fact that the ditch is there and what our problems are with the ditch.

Mr. Fronda: Because I think it goes back again that there are financing in place on both sides: one for the correction of it; and two, for the "sales transactions" between the two for that to be implemented. And I think what Nancy was alluding to was any further delay could impact these financing vehicles that are there right now.

Mr. Bacon: Okay, because just so you know, what I'm sort of aiming at is I would like to propose that we pass pretty much everything we've talked about other than the ditch. And

in which case, then that would be mean the ditch would have to go back to its natural state, which would put us back to it could overflow, it could go under those ponds, it could – but it also would have its natural flow again back down into those wetland areas that are sort of our concerns. It would take away the corner so that we aren't impacting the road anymore, and it would just go back to the beginning stages of this thing. If the overflow is a real financial burden or something like that, which is why I asked about the SMA area if it extends all the way up there is that maybe rather than diverting all that water, we could let the water go where it naturally does other than putting just simply, a dam, or a berm, or a wall around those immediate ponds that might be impacted by that, which the water wouldn't flow through those things, and take the shrimp out, and wash them into our ocean or something like that. So we could keep it safe as far as this product goes, but let that water return to its natural flow other than just in the immediate pond area.

Mr. Fronda: I'm hoping that the conditions that were shared by Mark Roy had actually addressed some of those, because I know when we take a look at that, there are certain studies that need to be done, certain regulatory bodies that we need to run some things by in order for some of these conditions to be implemented. And I believe that's 10, 12, 13 that he – or 10 and 12 that he had addressed.

Mr. Bacon: Yeah, and I guess ordinarily, these would be presented to us before the project was ever undertaken, and that's why we're now behind the eight ball, and it's – it makes it more difficult for us to see that. But basically, you know, these studies and things like that should be brought to us and say, okay, these are the financial burden. These are – you know, what the alternatives are should be brought to us so we can make our evaluation rather than after we've made our evaluation, and trying to guess what conditions to put on this thing. They should be – And you guys have done a great job trying to promote this thing, and trying to answers our questions and stuff, but there's – you know, right now, we're at this ditch question. And it's like if we did have all this information in front of us to make a decision, it would be a lot easier than trying to guess what these things might be.

Mr. Roy: Sure. Sure. Well, we certainly appreciate the Commissioner's comments in that regard. The Schools, as I think I've talked about before is really committed to moving forward with this process with the violations. And at this point, the next step that would occur beyond the SMA approval is going into the construction permitting phase of work, which may take some time as well. We certainly take on board the concerns with regards to the drainage ditch. And I'm hoping that the condition that I read to the Commission just now with regards to working with a qualified consultant to assess any potential impact of the drainage ditch, because I think this is what it all goes down to is, if there is an impact on the wetlands specifically, they would be required to work with the applicable agencies, probably, the Federal agencies as well to essentially, come up with an alternative that was suggested just now that would allow for increased maybe sheet flow across the property. So we're hoping that that's caught within the context of this condition. And that really was

the intent of my kind of working on the wording of this was to address that specific concern, but at the same time to allow the Schools to be able to move forward with their – addressing the violations, which will still take a lot of time before – I mean, beyond this Commission’s review of today’s permit.

Mr. Bacon: I know the stamp is the important thing that we’re going for here, you know. And that’s really obvious, but there’s – you put us in an awkward position to have to – you know, we’re up against the wall when you present it the way it’s being presented. And that makes it just difficult for us. And I, myself, are more inclined to say, well, why don’t we just return that, at least that top portion of the ditch back to the way it used to be and let it flood over and put a dam around your ponds so that the ponds are protected? But then, you know, go back, and then come in with these reports. And then we can see at least what happens in its natural flow, you know, in its original state. And then go from there rather than trying to guess what happens.

Mr. Roy: Again, we certainly – we understand the intent of the Commissioner’s concerns. The – I think the important thing is – well, to focus on is that the Schools are required to address the violations that have already occurred as well. And one of those violations was the grading improvements specifically, the realignment of the ditch. So however this decision moves forward following the evaluation of the impacts on the wetlands, for example, they’re still required by the notice of violation which is accumulating daily fines on a daily basis, and is no small sum of fines at this point, but they still have to address the fact that that drainage ditch was graded back in the day. So we’re hoping that on that basis, the Commission feels comfortable and essentially, approving the permit for the after-the-fact improvement, but under the caveat that they’ll work to assess any impacts that we’ve defined at today’s meeting that could’ve occurred on the wetland, and we don’t know, because we have to do the report. And if they’re required to come back to modify those conditions, then that will be a new scope of work, but wouldn’t be attached to the notice of violation.

Mr. Fronda: My fear on this is if we go ahead and say, let’s shut it down, let’s create these borders, etc., I don’t wanna create another issue that’s gonna actually trigger concerns by the Federal government, and they say, oh, you know, you did this, now, look what you did. So I think what this allows is it allows for the proper protocols, and studies, and reports to be done with the review and work with the necessary bodies in order for this to be addressed, and then also mitigations to occur. Hope that helps with that. Thanks.

Ms. Kelly: Hypothetical question–if the report came back that you needed to close the top pond, you folks would be all for that?

Mr. Roy: Just to clarify the question, I’m not sure I got everything was if the report came back and said they were required to close one of those top ponds, they would do that.

Ms. Kelly: I mean, would you feel – I mean, you know, you would comply.

Mr. Roy: They would have to comply with the recommendations of the report. I can't speak as to what those recommendations would be at this point, but it would go into different alternatives, I would imagine.

Mr. Sprinzel: I'm calling for a motion.

Ms. Buchanan: Can I take a stab at it? Okay. So, Chair, I move to recommend an SMA minor permit with the following conditions and amendments. Oh, wait a minute. Does our staff need to go through–? Nancy, you have to say something first? She's like, I don't know. Staff recommendations? I'm gonna read it anyway.

Ms. McPherson: Well, yeah, we've – I went through the list. I don't have to read them all. We did the renumbering earlier. The applicant has revised and added. So he's willing to read through them if you'd like for all of the ones that we've changed. I would recommend that 11 be changed to say that the applicant shall submit an annual report to the Department and the Molokai Planning Commission for review addressing the status of compliance. And then he's got pretty much the rest so–

Ms. Buchanan: With that, Chair, I will move to recommend SMA minor permit for D&J Ocean Farms ATF– Oh, wait a minute. Let me get to my front page. Special management area minor permit for after-the-fact improvements related to D&J Ocean Farms at Keawanui with the following conditions and amendments.

Item No. 1, "That all existing ATF uses, activities, and operations—"no worry, I not going read them all—"shall be in accordance with the descriptions, graphics—" and so on and so forth—"representations made to the Department and the Commission." And here's a new one, "Including compliance of Commission on Water Working Resources' 20-year water use permit review of Water Use Permits No. 622 and 443." Moving on, item–

Mr. Hopper: Commissioner Buchanan?

Ms. Buchanan: Yes?

Mr. Hopper: Just as a comment, maybe – I'm not sure if you'd want that under–

Ms. Buchanan: You want it separate like they wanted?

Mr. Hopper: Well, Condition No. 5 says, "That full compliance with all other applicable governmental requirements shall be rendered."

Ms. Buchanan: Okay, that was the other one.

Mr. Hopper: You could maybe add that on to the end of that rather than the first one, just as a suggestion.

Ms. Buchanan: Okay. That's a good suggestion. I'll take that and amend my motion with conditions and amendments as follows, Item No. 1 as reads. Item No. 2 as reads. Item No. 3 as reads. Item No. 4 as reads. Item No. 5:

That full compliance with all applicable requirements shall be rendered including, compliance with Commission on Water Working Resources' 20-year water use permit review of Water Use Permits Nos. 443 and 622.

Moving on to Item No. 6 as reads. No. 7, Condition 7 as reads. Condition No. 9 as reads. And Condition No. 10 as amended by Mark. Item – Condition No. 11 with the amendment, “The applicant shall submit an annual report to the Department and the Molokai Planning Commission.” And then Item No. – Condition 12 as read into the record by Mark.

Item No. 13 is now moot, but I will add a condition of No. 13. That condition to read, “That Kamehameha Schools, being a Hawaiian Trust Organization, perform–” Hang on. Hang on. Start again:

That Kamehameha Schools, being a Hawaiian Trust Organization perform the cultural protocol of huikala for the Keawanui Project as soon as possible or before March 30, 2012.

That would be all the conditions. And I am looking for a second to have discussion. Commissioner, did I bypass No. 8? Nancy?

Mr. Sprinzel: As read, yeah?

Ms. McPherson: No, you said “as read.”

Ms. Buchanan: Okay. If I didn't, please include Item 8. Okay, now we have a second. Can we have discussion?

Mr. Sprinzel: We have a second, yes? Ms. Kelly, thank you so much. Now we have some discussion.

Ms. Buchanan: I will briefly say why I added Condition No. 12. Because we did not – because Chapter 343 was exempted from this process, I felt – 13, oh, 13, Item No. 13, sorry.

Ms. McPherson: You have a 12 and a 13?

Ms. Buchanan: Item No. 5 now includes No. 13. So this is Condition No. 12 and the last condition – oh, 13, sorry. Too much numbers. The reason why I asked for a protocol is because we didn't have – the community did not have a chance to hear this project because of the exemption of Chapter 343, which I felt was not good. And when I sat at home and my husband asked me, "Well, what are you gonna do to make this project pono?" and it became very clear and apparent at that time that protocol was needed for this project specifically, what is referred to as huikala. In huikala, the person, this being Kamehameha Schools, would acknowledge what they call, hewa. And all the parties included in this process would be able to participate in a simple protocol of asking for forgiveness for starting a project without proper protocol in the beginning. And then it's to insure that going forward, everything will be pono. And I hope Kamehameha Schools would adhere to a – accept this condition on behalf of that, because I think it's important.

Mr. Fronda: Thank you, Commissioner Buchanan, for your manao. May I ask–? I understand the need for it and I agree. Thank you. May I ask who the parties–? I'm wondering if it's the entire Island of Molokai, or is it–? You know, I think what you're getting to is there's some intimate parties that are involved with what had occurred. And as Mark had stated, we are committed to making things pono and going forward on that basis. So I agree with you that that is a necessary thing to do. I'm just curious more out of a– Just to ask, if that's okay.

Ms. Buchanan: Okay. I would hope and envision that our Chair would lead us in the proper way to – for the protocol. I would hope that Chair Mikiala, who is familiar with the protocol would lead us in that protocol that would involve D&J Ocean Farms, the new lessee, Kamehameha Schools, the Planning Commission, and other – your neighbor, who is at every single hearing sitting over there always listening to what's going on because he's been affected the most by all of this. And just your adjacent landowner should be invited. It's up to you if you think DOT should be invited, but just mainly those people who was involved in all of this.

Mr. Fronda: I was concerned that it might be a public hearing, but I think there's some intimacies because of the, as you mentioned, hewa, that needs to be corrected, problems and so on that need to be brought up and just, you know, brought forth, and saying – understand, ask for forgiveness, mahalo for your aloha, and then together, we move on. Is that kind of–? Okay. I understand.

And a second question, and it's not that I really wanna bring it up, but on Item 13, so this was talking about the – I mean, I don't mind taking it off, but I know there was some things that we had–

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

Mr. Fronda: Okay. Okay, thank you.

Mr. Sprinzel: After two hours, is there any more discussion?

Mr. Fronda: Excuse me. One more thing.

Mr. Sprinzel: Yes, sir.

Mr. Fronda: So in the condition it says that "Kamehameha needs to perform." Is it participate or coordinate? It sounded like you said the Chair would kinda help facilitate—

Ms. Buchanan: You need to coordinate because that's your hewa.

Mr. Fronda: Okay, yeah, yeah, okay. I just wanted to—

Ms. Buchanan: What I am suggesting is offering up as a sacrificial lamb, the Chair who's not here, because she can do that.

Mr. Fronda: So we don't mind coordinating.

Ms. Buchanan: Wait, wait. Go ahead, Corp. Counsel.

Mr. Hopper: The only concern is – I mean, the Commission is going to be overseeing compliance with all of these conditions. It can do that as a Commission. Having individual Members participate in compliance themselves, though, without maybe the whole Commission, that's my only concern. Well, aside from also volunteering someone who isn't here to – you know, to have that.

Ms. Buchanan: I retract that, then.

Mr. Hopper: Because the Commission's gonna have to oversee enforcement. So if it – if there was evidence that something wasn't done adequately, the Commission would have to sit objectively and judge it. So I'm not suggesting that that's a bad decision on who it would be. It's just that I have that legal concern.

Mr. Fronda: So may I ask a point of clarification? The March 31st 2012 is the completion date or initiate?

Ms. Buchanan: I'm just saying I want protocols to happen sooner than later.

Mr. Fronda: Okay, but that's the ultimate deadline?

Ms. Buchanan: Well, I just put a timeline on it because I wanted you to sense the urgency that this protocol is needed right away.

Mr. Fronda: Okay, thank you. So for the purpose of clarification, and – is completed by March 31st. Thank you.

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

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

VOTED: To recommend a special management area minor permit for after-the-fact improvements related to D&J Ocean Farms at Keawanui with the conditions and amendments as discussed.

Mr. Sprinzel: Wow. Unanimous. Thank you.

Ms. McPherson: Thank you for all your hard work, Commissioners, really. No, honestly. You made us work very hard, too, so we've all been working together.

Mr. Roy: From the applicant's standpoint and my standpoint as a consultant, I really do appreciate the Commission's work on this project. So thank you very much.

Mr. Clayton Yoshida: Thank you, Mr. Chair. Under the Director's report, we have no change in status to report.

Mr. Fronda: Excuse me, Chair? Sorry, really quick. I apologize. I just wanna say as well, thank you very much for working with us to move forward in what our hope was to correct things, make things right, and I appreciate that. Thank you.

Mr. Sprinzel: You're very welcome. It shows that if we all get together, we can solve stuff. Right. The Director's– Well, there's no Chairperson's report because we don't have a Chairperson. So, Clayton, Director's report, please.

G. DIRECTOR'S REPORT

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

Mr. Yoshida: Sorry. Mr. Chair, thank you. We've circulated the list of pending and closed Molokai applications, if there are any questions on those?

Ms. Buchanan: Clayton, can you tell me what the Molokai hot mix asphalt request for comments is about? Is that for a new asphalt mixing plant on Molokai? Thank you, Nancy.

Ms. McPherson: I can talk about that, Commissioner Buchanan. That is the Goodfellows – no, no, no, the one next to it was Tri-Isle, those guys. They have had hot mix asphalt mixing area on the site before. They have had it– It's based on market conditions, whether they're making it or not. And so it's been sort of off and on, off and on. And so they want to start it back up, and they want to move it to a slightly different location on the site. What we're doing right now is evaluating whether that needs – what kind of permitting that might need. So we haven't responded yet. So we'd like to have the ability to analyze it thoroughly before we tell you any more about it, if that's possible.

Mr. Sprinzel: I see that's another job for Mark.

Ms. McPherson: It's one of his colleagues, actually, who's working on it, Mich Hirano.

Ms. Buchanan: Can I ask Nancy one more—the Kawela four-lot subdivision, Elizabeth Jackson?

Ms. McPherson: Yeah, I'm still working on that. That's undergoing some environmental review right now, not formal Chapter 343 but, I mean, within the Department. So we've been reviewing that, and discussing it, and we're still doing the analysis. That's for the big lot that's actually one TMK, but they split it into four condos. And now they wanna subdivide and they need a change in zoning also, because it's interim.

Ms. Buchanan: And would the Kamiloloa Homesteads also be a subdivision?

Ms. McPherson: That one's a consolidation and resubdivision. And all they're doing is they're – that's some of those highway remnants. You know those little pieces of highway? Every once in a while we have those. And they're actually just wanting to include those, and then carve out like one of them, one highway. I'm not sure. I'm still looking at it. But it's a consolidation and resubdivision, but they're not creating a bunch of lots or anything.

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

Mr. Yoshida: We have no change in status on the Maui Electric Company liability for power pole installations on private property report.

4. Status of the Molokai Planning Commission vacancy

Mr. Yoshida: We have no change in status on the Molokai Planning Commission vacancy. It wasn't on the last Policy Committee agenda.

5. Agenda items for the December 14, 2011 meeting

a. Public hearing on the following:

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)

Mr. Yoshida: And our next meeting is scheduled for December 14th. We do have a public hearing on Council Resolution No. 11-97 regarding home-based businesses. This is our only meeting for month of November, so we'd like to wish you all a Happy Thanksgiving holiday, and we'll see you in December.

Mr. Sprinzel: Thank you, Clayton. We shall miss you. There being nothing else, I call the meeting closed.

H. NEXT MEETING DATE: DECEMBER 14, 2011

I. ADJOURNMENT

There being no further business to come before the Commission, the meeting adjourned at 4:04 p.m.

Respectfully submitted by,

SUZETTE L. ESMERALDA
Secretary to Boards and Commissions

RECORD OF ATTENDANCE

Present

John Sprinzel, Vice-Chairperson
Debra Kelly
Nathaniel Bacon
Lori Buchanan
Janice Kalanihuia

Excused

Mikiala Pescaia, Chairperson
Zhantell Dudoit
Ron Davis

Others

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