

## MOLOKAI PLANNING COMMISSION

### REGULAR MEETING

JUNE 25, 2003

The regular meeting of the Molokai Planning Commission was called to order by Chairperson Malia Akutagawa on Wednesday, June 25, 2003 at 10:20 a.m. at the Mitchell Pauole Center, Kaunakakai, Molokai, Hawaii.

A quorum of the commission members was in attendance. (See record of attendance)

#### A. CALL TO ORDER

Ms. Akutagawa: I would like to shift the agenda. Everything under C I'd like to move up before B which is unfinished business since we have lots of people here and time constraints.

#### B. COMMUNICATIONS

1. Discussion on Mahealani Davis April 9, 2003 letter concerning Halawa Valley (F. Cerizo)

Ms. Akutagawa: I have been notified by staff that another presentation by the families will be done on Halawa. So I'll have Wayne say a few words and then have Mahea come up and then the other presentation and open it up for question and testimony.

Mr. Boteilho: Thank you Madam Chair and members of the commission. First item as noted is in a letter from K. Mahealani Davis dated April 9, 2003. Just quickly, bring you to notice commercial activity in Halawa Valley and also an alleged restriction of public access on a road that's in that area. Our department has done some preliminary research. We have a response letter, June 18, 2003 to Mahealani Davis and it basically says that Halawa Valley is entirely within a State Land Use Conservation District as such as under the jurisdiction of State Department of Land and Natural Resources. A copy of this letter, we'll forward your letter to them for action. As far as the access, there's this issue of the road, who has jurisdiction of the road there. In our letter says that the records show that the road in Halawa Valley is not within our jurisdiction. A copy of the then County Department of Public Works determination dated November 13, 1984 was enclosed for your information. Finally most of Halawa Valley is within the county's special management area district. Any development in this area requires an SMA permit or exemption determination. We have today as resource people Julie Higa to speak about the SMA and conservation district in general, Brian Miskae to talk about Halawa Valley as it relates to the general and community plan and finally Ralph Nagamine from Public Works and Waste Management to talk about the road. Thank you. Let's start with Julie.

Ms. Higa: My name is Julie Higa staff planner. Procedurally I can inform you that in order for them to, the project is within, the activity is within the special management area and a

special management area permit, assessment and permit would be required prior to them getting a permit from the state. That's all as far as procedural I can give you. Are there any other questions?

Ms. Akutagawa: Has the department investigated what activities are taking place at Halawa, commercial or otherwise? If so, does those activities require an SMA permit?

Ms. Higa: Any activity within the SMA requires a permit from the planning commission. Other than it's in the conservation district, that's a state matter. There's no zoning enforcement from the county side. From the Planning Department side that we have any kind of enforcement or issues would be under the special management area regulations.

Ms. Akutagawa: My question is has the department followed up basically on this April 9 letter by Mahea Davis which sites commercial tour vendors operating in Halawa. The tours going over private lands, taking, tour directors claiming exclusive rights to take customers to Moaula Falls, has any of these activities which arguably would constitute an intensification of use and possibly trigger the SMA review process, has any of this been done by the Planning Department? Any follow up or investigation of alleged commercial activities in the area?

Ms. Higa: I think the materials that you see is basically some of the follow up work that has been done so far. In addition, they also need to find out from the person who complains on where the activity is taking place in order to follow up on whether its on private or public lands and where to, what kind of activities are taking place. So that's where it's at.

Ms. Akutagawa: This is not a reflection on you or any person in particular but I notice this letter dated April 9 when we had Clayton Yoshida them here before they said that these things are complaint, enforcement is largely complaint driven. I would constitute this as an incurring, potentially a complaint letter so I want, it seems like the hoops have been jumped through so to me just a letter from Foley saying most of Halawa Valley is within the county's SMA, any development requires an SMA permit or exemption determination, this doesn't constitute to me, given the time frame we looking what four months or three months, any kind of good faith follow up so it's better to say no, we haven't followed up much, we haven't investigated rather than go around the bush, you know what I mean?

Mr. Boteilho: No we have not investigated. What we've done, yeah what we tried to do is find out exactly what our jurisdiction and what laws we have to enforce, that's been kind of the run around. All the time when you have a mix up between state and county it's a little harder. Also I know that our inspectors have been following up with some of the

complainants trying to find out exactly where and what type of commercial activity is going on. So that's what we've done so far but we haven't physically gone up there.

Ms. Akutagawa: And you will be doing that though?

Mr. Boteilho: Yes based on the SMA.

Ms. Akutagawa: Any questions of Julie?

Mr. Vanderbilt: This letter from Mahealani Davis mentions not only an activity but a gate also. Some where in here in Planning Director Foley's letter it says most of Halawa Valley is in the SMA. Would the structure of a gate require some kind of SMA major or minor permit if it's in the SMA?

Ms. Higa: Yes it would and of course it would depends on when it was constructed. When it was constructed because if it was constructed or the use existed prior to the SMA law then it would be a non conforming use.

Mr. Vanderbilt: The gate would be considered a use of the...

Ms. Higa: Any structure or activity within the SMA would have to be evaluated to determine if it's a development. So anything that goes on in the SMA comes through our department and we do an assessment to determine whether it's a development or not.

Mr. Vanderbilt: Based on Ms. Davis' letter did anybody initiate any effort to determine the status of that gate to your knowledge?

Ms. Higa: We need to confirm that the gate is there and when the gate was constructed.

Mr. Vanderbilt: But that would just take...

Ms. Higa: But it's more than just the gate it's the whole activity. It's an activity that's occurring on the property is also another issue that we need to investigate further.

Mr. Vanderbilt: Well it's kind of hard on this community that anybody has to trigger enforcement by making a complaint. So when they do make a complaint, I think it just moves the county or whoever to look into it and just follow up as quickly as possible because these are two different issues, really. Depending on who will eventually claim jurisdiction over the road may have an impact on the gate or something.

Ms. Higa: There are different issues. The ownership of the road is one issue but the SMA is another issue. So the SMA issue is separated from that in that regardless of whether the road is county owned or private owned, it's still within the SMA. So any activity or structure or development in that area, within the SMA requires an SMA permit.

Mr. Vanderbilt: The only reason for my question was that Planning Director Foley's response to Ms. Davis doesn't mention the road, it just mentions the, I mean it doesn't mention the gate, it just mentions the jurisdiction of the road, however it does mention that any development in this area requires an SMA permit or an exemption determination. So I would think that somebody would be moving on determining whether there's a need for an SMA permit on that gate and hopefully somebody will follow up on that.

Mr. Boteilho: The gate was, in our thinking up to this point, it was part of the road and we have Ralph here to answer any questions about that.

Ms. Akutagawa: Well rather than make that assumption, I'd like you guys to investigate on when that gate was erected to determine whether it constitutes a development. I'd rather not you guys make the assumption that it's part of the road. As far as I remember, when I was walking up that trail, never had one gate. It was erected around the 80's I believe or the 90's. Anyway, I wanted to ask if a conditional use permit is also required? I know with Neighborhood Store and the Dunbar's Vacation Rental which was both on the east side, they required conditional use permits. So I'm wondering if contingent on rural designation or whatever the zoning is. So can you clarify that for me?

Ms. Higa: The County has jurisdiction on urban, rural and agriculture land and can zone those three districts. The conservation district is not within the jurisdiction of the county at all as far as zoning on land use scope, it's within the state Board of Land and Natural Resources. They are the only permit then is applicable would be CDUA or a conservation district use permit from the Board of Land and Natural Resources. From the zoning land use side. So the county has nothing to do with the use as far as land use and zoning. The only jurisdiction we have is in the special management area and that's all. They have to have a special management area permit first before they can get a use permit from the Board of Land and Natural Resources. Procedurally that's how it works.

Ms. Akutagawa: Any more questions?

Mr. Vanderbilt: I don't know where I got a copy of the letter, I think it was out of the county files, a letter to Ms. Davis, responding to her and it was a from James Koga, District Land Agent from DLNR. Basically he says as far as the conservation district, Halawa Valley is

considered “unencumbered public lands” and he said that the rules appear clear however that we have been advised by the Department of the Attorney General that we may not enforce such restrictions until we have a permit available for application. So basically they don’t have any process for getting a permit until they can get that process into law. They can’t enforce something. I did call this Mr. Koga and he said that the state currently is drafting the rules for conservation district for unencumbered public lands. But he wasn’t sure when that draft would come out. But, he mentioned the road too and he said apparently for the discussion coordination is needed between the county and state before any course of action can be taken. I think that people here today, obviously there’s not going to be any resolution to this but people want to know that we’re moving through some process to get some answers because, a lot of people have taken off work today to come here and it’s just not fair to the community or this commission unless we can get moving on some of these issues. Thank you.

Ms. Buchanan: Since Degray bought that up about the letter from James Koga, pertaining to the same thing that he just said about the gate, he says that you are aware that the determination from DAGS is that it’s a county road and you just said that it’s not a county road. So right there it’s back to the state and the county. Going on what Commissioner Vanderbilt said about them not enforcing anything on the illegal activities because they don’t have a permitting process, then the monkey is back on your back because they never do anything unless you do something first because it’s in the SMA district. You just said procedurally you have to do the enforcement or the leg work before DLNR gets involved, that’s correct?

Mr. Boteilho: Well actually let me add first, the letter, they actually saying that they should enforce because they don’t have this permit process in place that they cannot enforce based on the attorney general opinion. We could enforce, it is not depended on them if it’s in the SMA.

Ms. Higa: I think the investigation is still continuing if you notice the letter from DLNR is dated June 6 and we got it June 10. We still need information on the location. We need to find people who are doing this, or know who they are in order to even give any kind of notice or citation. The investigation is still continuing and the more information we get from the community or from anybody else would help us in finding or providing the notice of violation to the people who are doing the illegal activity. So we need the names and addresses would help and phone numbers etc. would help as far as our enforcement would go.

Mr. Vanderbilt: Just one quick thing. On the package of information that we were given,

it was sent to us on the 19 of June, the letter to Mr. Foley, could you explain what's in that package? There's a letter from Mr. Foley and then attached to that is the November 15 letter from Ralph Hayashi, Director of Public Works. Then there's a circuit court document and three pages of maps. Are all those maps in the court, are all these attachments to Ralph Hayashi's memo? I mean there's no explanation so it's kind of confusing.

Mr. Boteilho: Maybe we should call Ralph at this point because we seem to be focusing more on the road.

Mr. Nagamine: My name is Ralph Nagamine representing the Department of Public Works and Environmental Management. The memo you referred to is a memo that I had written many years ago and it was addressed to Ralph Hayashi and you are correct, the court document as well as the copies of the TMK maps are part of the memo. Any other questions?

Mr. Vanderbilt: Has your department made a determination?

Mr. Nagamine: At the present time we were at the opinion that we don't think it's a county road however because of some of the issues that are involved we are going to seeking some legal advice on this matter.

Ms. Buchanan: In your letter you state that it would only be a claim and that the easement must be established by court action. If a permanent resolution is needed, I recommend that Corp. Counsel study this roadway since legal issues are involved. So this goes all the way back to 1984. At that time you recommended that Corporation Counsel study this situation. That's why we here today.

Mr. Nagamine: Well I think back in 1984, I think this memo was generated because we had gotten a complaint and apparently there was a property owner in Halawa Valley, who owned property out there and I assumed that this person was not a resident of Molokai. An absentee owner. Less for discussion purposes assumed that this guy was from the mainland, had come to Molokai, wanted to visit his property and there was this gate. He complained why the gate was there, he couldn't get to his property. So we were asked to investigate that and based on the memo apparently the gate was there but it was open. From what my staff on Molokai had told me was that the gate was always open. Everybody was free to go through that gate. Our conclusion was that the guy could have gone through the gate to visit his property if he wanted to, but, he's thinking that the gate represented private property didn't want to trespass through the gate so that's basically what it was. So our conclusion was that this matter needed to be pursued that it be

referred to Corp. Counsel. Apparently it didn't need to be pursued at that time.

Ms. Buchanan: So kind of like it was already established that in 1984 there was a gate there.

Mr. Nagamine: Maybe somebody that's more familiar with that area could indicate whether we're talking about the same gate or a different gate.

Mr. Vanderbilt: Ralph so there was vehicular access back in '84 going through there?

Mr. Nagamine: Apparently to this area that we're talking about. Which would be a piece of property that was owned by Short and Kaopuiki. Some place in that neighborhood. Again what I'm saying is that I'm not certain if the gate that we're talking about today is in the same location, or if we're talking about the same gate.

Ms. Buchanan: So this question is for either Wayne or Ralph. Are you aware that the county uses that road today to go in and check water systems that's on that road, past that gate?

Mr. Nagamine: If there's county vehicles going up there it probably belongs to the Department of Water Supply. I'm not aware.

Ms. Buchanan: So the county would have a key to that locked gate is what I'm asking.

Mr. Nagamine: I wouldn't know about that.

Mr. Vanderbilt: Ralph how does native Hawaiian access rights impact this based on, there was something I read some where where back in the early 1900's or 1800's there was a position that all trails shown on maps would be perpetual government easements and some ended up becoming roads once vehicular traffic got on them, they became dedicated to the government. How does all that play into these trails that we're talking about or roads?

Mr. Nagamine: I think that's probably one of the reasons why we're going to be sending this to Corporation Counsel.

Mr. Vanderbilt: That would be an issue that you would look at?

Mr. Nagamine: Yes.

Ms. Buchanan: Well going off on that, the correspondence you have from the second circuit court of Hawaii with the Kaoupuiki as the plaintiff verses Na oni'a la'a, it says on there, item two, the property is subject to the rights of native tenants and I wrote in what does that mean? Item three, the state reserves an easement to use the road and the trail through the subject property towards the falls which the trail is from 10 to 12 feet in width. 10 to 12 feet in width, now you just went from one trail to one road. When you add 10 to 12 feet already it's a road not a trail. You can drive a vehicle up a 12 foot wide trail. But in this it's already been determined that the state already reserves that right and the easement. This is a legal document. Its already been decided. So I was just wondering and it goes on to say in this document that they reserve the right to the surface of the ground, for any purpose and blah, blah, blah. But that's the most important part of the whole document. That they reserve the right to that easement.

Ms. Akutagawa: What Lori is asking is is it binding? Is this resolved once and for all that the state has jurisdiction over this road, so Corporation Counsel can you answer that?

Ms. Young: Thank you Madam Chair. Good morning Madam Chair and members of the commission. We will be taking a look at, at this issue. We anticipate receiving a formal request for legal advice from Department of Public Works on the issue of ownership of the road. I don't think that these provisions are dispositive on the issue, I don't think that the language in this document necessarily resolves the issue of ownership of the road. But we would have to look more into, initially we would like to see how the attorney general's office got to the determination that the state does not own this road, that it is a county road. Then we would like to do our own legal analysis of course as to who owns the road. So that's where we're at now.

Mr. Vanderbilt: Madam Chair my I ask Corp Counsel one question? Let's assume that your opinion comes out and says the county doesn't own the road and we already have an opinion from the state that says the state doesn't own the road. Where is this community then? What are the alternatives to resolving this situation?

Ms. Young: I think that presents a quandary because if it is for example, a privately owned road, then the county would perhaps not have the jurisdiction to prohibit the use of the gate in the sense that it wouldn't be county property. It would have to be done through a different resolution, for example, maybe an SMA process. So that does present a problem.

Mr. Boteilho: Madam Chair Corp. Counsel is just looking at our request right now and I don't think they're prepared to give firm legal advice on this.



Ms. Akutagawa: In the interest of getting this thing moving along, I want to, and I know the commission has questions but perhaps those questions will be answered and resolved through more information that will be collected at this meeting. If you guys can hold your questions until we go through testimony and have everybody do their presentation. I'd like for the commissioner's to make this very clear distinction because this can become confusing for the commissioner's and let alone the public. We have two issues here. One is is an SMA permit required? Are there commercial activities or an intensification of use that would constitute and SMA permit? That's issue one. Second issue is who has jurisdiction over that road, the county, the state, is it private, is it public? That may not be resolvable by this planning commission. That requires significant investigation. But what this commission has clear jurisdiction over is the issue of SMA. So keep those two issues separate and keep your questions along those lines. Anybody else from the county has to do a presentation? If not I'll have Mahea come up, I know she has to be some where soon so I have to have her come up. O.K. Mahea please come up.

Ms. Davis: Aloha commissioner's my name is Mahealani Davis. I'm here to speak to the letter and the responses I've gotten from the county and the state regarding commercial activities in Halawa Valley. This folder is correspondence that I've gotten in response to questions since 1992 from the county and the state. This is not something that, it's not confusing to everybody that's been looking at the issue. I want to just briefly go through the, bring you up to speed on how we got here and make it clear to this commission and the people that are here today what this questions are about. In 1992 the DLNR conducted public hearings state wide, they did their land use boundary review and at that time it became clear to DLNR because of state wide testimony from people that their rules did not include guidance on activities in conservation districts. That is still the case. In 1992 when the rules where promigated for Title 13 which is the administrative rules for conservation districts included, the rules were promigated, they were accepted with the condition that within 6 months DLNR would produce rules for activities in conservation districts. That was back in 1992 and they have still not done that. Its bee 11 years. That is probably the cause of most of the problems we're having. Now while commercial activities are not allowed in conservation districts, Title 13, 221 says no business operations without a permit, lease, license, concession agreement or something from DLNR. So although commercial activities are not allowed, DLNR has yet to produce the rules which will allow somebody to come in and get a permit and conduct them legally. So the Catch 22 situation is that DLNR cannot punish someone for not having a permit when DLNR has not set up the process for them to come and get that permit. As a concerned community person, which is why I started this, it seems to me that they ought to get busy and produce those rules. Since 1992 for reasons that I have different interest in seeing them produce those rules, this has been the result. Correspondence that has come back

from the state saying, yes it's conservation but we cannot enforce. Correspondence from the county that says it's in a conservation district so it's not our kuleana, it's state and the ball has been going back and forth between county and state for quite a while. When I brought this to the attention of this council I was told that everything is complaint driven so have you sent in a complaint. Because I know you cannot file frivolous complaints, the letter I sent in does spell out what my concerns are after many years. There are commercial vendors taking tourist in the valley. They are crossing private property. They have on numerous occasions, different ones of the commercial tours have crossed lands that I lease and have caused some problems for myself and other land owners who are involved in taro loi restoration work. When we had asked, and I've asked people to stop coming through that way, it's a drive way, it's not the state trail, it's not the county road, it's a private driveway, the activities continued. We have complained to the local police department who say they can't do anything unless we fence our parcels and we're not going to fence our parcels. So the complaint letter, and it was a complaint letter that went to the county is to initiate a discussion so that this planning commission can investigate what's going on, do the fact finding, having Corp. Counsel find out what the situation really is and clarify the rules between the different groups, who has jurisdiction, who has authority and clarify the picture so that we can get some kind of management. The problem I see is that it's not just commercial activities, it's not like I'm anti-business. But the way it's being conducted indicates that there's a bigger problem which is there's no clear authority for management. Now, that may, and then when we sit down and talk all of us have different ideas about what good management would be and we have had discussions with the taro farmers that are involved with the activities that I'm involved in and also a few of the commercial vendors who would like to be able to bring tourist into the valley and do their thing, about the possibility of putting a management plan together and presenting that to the DLNR. DLNR seems to be saying by all of their comments that even though it's conservation, they recognize that Molokai is a unique situation, they don't feel it would be appropriate for them to step into the picture and start to manage and enforce things and I agree with them. But something has to be developed. So I come to this planning commission requesting you folks to look at the, within your limited scope of authority, can the SMA process be used to re-establish or to discuss, maybe I should just say to open a discussion about how public access might be restored to Halawa Valley. Right now there's a gate that has been put up, I think it was about 1994, different gate then what Mr. Nagamine was making reference to on a road that I understand the state had reserved an easement for the public to use as a public right-of-way and since the gate went up, public traffic whether they are visitors to the island or local people have been diverted across the stream, over the bridge, through our drive way, through the loi restoration area and then people continued to the falls. So since the gate has been put up we've been, we're dealing with a lot of people traffic coming through the area. We have had to deal with thefts, we

do put up with it because it's people that have one day to spend on the island, but we don't think it's fair for all of the traffic to be diverted to the north side and the public excluded from using the road and trail on the south side. I like the last thing I really want to add that probably nobody else will bring up is that we presently have a lease on properties for Maui Open Space Trust, I am not a land owner but we do have a lease. We have also looked forward to the lands being conveyed to the 501C3 group that is going to proceed with loi restoration in the valley. I've lived on that property at the beach in Halawa for many years. Presently I reside in Kaunakakai. But for years we've lived there and I can tell you from my own knowledge that commercial activities, while the people might think it's just, it's no big deal, it's just running tours, it's not bothering anybody, it shouldn't been made such an issue of. The property where we lived belonged to a Hawaiian family. We had a neighbor who began running commercial horse rides to Halawa Valley Falls. This went on for many years and we participated in it, you know the kids would help with the horses and it didn't seem like any big deal. But one day a woman got hurt, she fell off the horse, broke her wrist and as things happen in America her lawyer got in touch with the property owner's lawyer and she lost that land. She had nothing to do with the commercial activities and the person that was running the tours was doing so without any kind of authority but everyone just thought it was fine. So I know for myself that that land was lost to a Hawaiian family because of, directly because of a commercial activity that was being conducted off of her property without her knowledge. As time went by someone came along, the land was on the market, we didn't know if we could stay there for month to month, as it turned out someone showed up who liked the work that we were trying to do in the valley and donated the money to purchase it, get it off the market and donate it to the land trust. So, well this all had happy ending. I don't forget that the family that had that land for, since as far as I know from 1890, lost it through no fault of their own. That's one of the reason I'm concerned about commercial activities that continue without any kind of regulation or monitoring or, and I think, the more local control it can be the better to control how many and when and where these kinds of things can take place. Thank you very much. I went to the Molokai Visitor's Association and asked them how many tour vendors are there who take people up to the waterfall, walking guided tours. Maria Holmes indicated to me that there's only one that she knows of which she pointed out. But, to my knowledge there are at least 7 people doing this. They may be working together as a Hui, they may be working individually, I'm not sure but there are several people taking walking tours up to the falls. There are also other activities going on that have more to do with ocean activities. I'm not sure, I don't live down there, I don't see daily who's doing what but I do know its been going on because it was going on when we were living there. When it was one or two people, it didn't have an impact. When it goes to 7 people and I just got a flyer today, Honouliwai, somebody has taro loi tours, so that's the latest one I heard of. What do we do if it's 9 or 10 people? And what do we do when somebody comes from Maui and wants to do it and

says why can't I do it, there's 9 other people here doing it who have been doing it for years? So I'm worried about the impacts. We have had invasive species in the valley that weren't there five years ago. I'm assuming they came in on human beings feet, walking up there. We do have problems of intrusion, people coming through the loi area is real irritating to people trying to grow taro and looking up and having 8 people looking at them taking pictures. It's a kind of situation that's happening in Waipio Valley that has put a stop to a lot of people's efforts to renew traditional activities for cultural and educational and spiritual reasons. It doesn't have to be a situation of conflict, but, we're talking about balance and I'm talking about if things are going to be done they should be done in the right way. I understand in Mana'e the community plan says no commercial activities without some kind of a special use permit, like Neighborhood Store, Kip Dunbar's cottages, so let's be consistent and do things that will help protect Mana'e because the Mana'e policy statement in the community plan says this is the place we want to keep traditional, we want to keep rich in subsistence resources and commercial activities all over the State of Hawaii conflict with those uses. So I'd like to see some discussion on how we can balance that and use the regulations that are in place now to encourage that discussion to take place.

Ms. Akutagawa: Any questions of Mahea? At this time we'll have the presentation conducted and then we'll open up for public testimony.

After a short recess the meeting was reconvened at 11:17 a.m.

Mr. Kawa'a: Commissioner's Aloha and the rest of Moloka'i. My name is Kaeo Kawaa and I represents landowners in Halawa. If you're looking for reference to the county records then you would look for, I represent the families and the properties under the names Kawa'a, several parcels under Kala'au, several parcels under Kawa'a-Kala'au and several parcels under Kalohealani. Basically those are all Kawa'a Ohana, one way or another, but those are the property owners I represent.

(Mr. Kawa'a did a computer slide show)

Mr. Kawa'a: Halawa Valley Association formed several years ago and they started, this is where that whole issue came up, why was the gate put up. This is directly from the minutes of their meeting. Verbatim, so number one was liability. As Ms. Davis and others may have shared, problems with that. Number two, disrespectful of kuleana. People were abusing their rights to properties by taking things that did not belong to them or picking up things from properties and making a profit off of it. Among other things there's like abuse of different properties going up to the trail, trespassing, damage to some of the historic sites over there. Basically that's why the gate first came up. It was made, the complaint

was brought up by landowners, they got together as a hui, they took a stand and they said we're putting the gate up.

The gate is, now I'm point man for the family so more directly the gate is, if you want to so call it I'll put myself out, it's my gate and it's on my property. This is the 1950 Bishop Estate Map that we're looking at right now. The section road in question is orange. Just for your info the two parcels that it runs over is Kalohealani and Peter Kawa'a who is my dad. That's what is listed on the tax map key. There are several gates in the valley. One gate which I believe was referred to, there's a road that goes off towards the bridge. There's one gate there that has always left open. I believe there was a comment from Public Works that they understood that it was always open. There's also the paved road that goes down to the beach, there's also a gate down here which is Puu Hoku's gate, I believe, right before the beach. Our gate is right here since it was put up, it was closed, it was always closed. I just wanted to make the point that it is coming from the land owners. We are at the head of the valley, so we took it upon ourselves to file the consent of the other landowners.

Couple other documents that we have of course, the big AD opinion, which is public record and just on the bottom it says "roadways that are currently used falls under the jurisdiction of the county". This was a letter from DLNR to the police department and basically they say state owns a historic trail, public hiking access to the valley is currently over and other existing trail. Now the other existing trail we understand it to be our particular road, our short, so to speak the black hole. Another existing trail that crosses private lands and public access is subject to the approval of landowners. If I could back then in the olden days, you ask, who ever kupuna was living at the time, uncle you mind if we go up to the falls? And the assumption then as all the kama'aina's and ko'aina's know, when we asked, if I asked aunty Charlotte can I go up to the falls and she says yes, it's understood, it's unwritten law that I understand that I am liable for anything that happens. She gave her permission.

This was a letter, a lot of correspondence going through with Governor Cayetano also, I believe this was in 1996 and this was talking about the abstract. The abstract indicates that the trail is a public trail owned by the government. The abstract also indicates that the subject trail is not the current route being utilized by public access to Moaula Falls, the black hole. I'm sorry black hole to maybe everybody else but we know. In 1995 the abstract under DLNR, the subject trail is not the contested trail being traversed on the ground today. The contested trail is in fact an unrecorded agreement of actions made between individuals in the early 1900's. Again public record.

I'm going to change hats really quick, I know it's going kind of fast, now change hats. The hat I going put on now is president of the Halawa Valley Cooperative Incorporated. Aside from the lands and the family lands and the kuleana's that I've mentioned we have also pulled in several other owners and stake holders and we have formed a cooperative. We have our mission statement, this is going to be fast, some of this we've presented to the community, we are working on possibly getting some more informational meetings out in regards to this. Mission statement, our goal, basically in a nut shell, our goal is an overall well being of the valley. It's not just one. Some of them including we looking at the taro, we looking at the stream, and some of those things, now one of the things, to get to the point, the guided tours and the hikes, the guided tours and the, I know there's several different tours and tour guides running through the valley. Our particular tour has always been and continues to be run through our, to the black hole. It's on what we believe is our private property, it is through our private gate and that's their access going up to the fall. So this is where we're running our tours. We realize that there are other stake holders in the valley, Puu Hoku Ranch, the other private land owners, etc., so we've limited ours to the south side, to our properties. Just a quick note on the tours, the tours we have, it is licensed by the state, we have certified state tour guides, we have insurance and we are currently working on trying to address some of these other issues that have come up.

The permits, the hike historically goes back, our particular hike with the coop and members that are in it have been going for, before the permits were even created. However, directly but we have permits, we understood as some of you did that it was conservation. So we went through the state level, we took the carrot so to speak before the horse. We were trying to go with the state level. Just recently we have to learn, like you folks have come and Degray has mentioned that there's no process in place for us to get the permit at the state level. So right now and having recently found that we are now working on researching some sort of exemption from the permit, if we can. A lot of our restoration plan involves a lot of cultural and historic things. So that's one of the things we're looking at. We do have secured parking right next to the gate. Again, on our property also to make sure that the tours that we are conducting that our tourist and visitors are also protected. In a nutshell these are some of the things that we had planned in the coop. The leg that you see, the tourism leg is just one of them. We are, we're working on our second grant towards the agricultural, ecotourism part of that.

Cooperative alone did cover a lot of ground. Just like how I see we are in the community. There was one point and time when members of the cooperative stood on three different sides of the wall. We were going at it. Through looking at the valley and the needs and common goals we've been able to put some of that aside. We're hoping that as we try to work on the permit process and clarify with the government, access and roads and stuff

like that, we're hoping we can work with everybody else.

Ms. Akutagawa: Mr. Kawa'a can you leave a copy of your presentation with staff? Because I think the commissioner's would want a copy of that.

Mr. Kawa'a: I might have to send that to you, but we can do that.

Ms. Akutagawa: Any questions for Mr. Kawa'a? Are there any more presentations?

Ms. Buchanan: Kaeo this Halawa Cooperative, who is involved or who are members of this cooperative?

Mr. Kawa'a: In the cooperative as far as landowners are concerned, I know you folks don't the specific names but in our family it would be considered, I guess you looking for more directly for names, o.k., there's myself which includes my whole family. My dad Peter. My brothers, my sister, that's on the Kawa'a side. The Kalaau land mentioned pulls in, that's my maternal grandmother's property and that side of the family has also given their consent to this. Kawa'a and the Kawa'a-Kala'au's. Just to point on a familiar face would be Alfred Kala'au, he comes every so often. I'm just trying to think of some of the faces that are familiar that come down here. The Kawa'a's as far as in the valley there's Stanley. The Kalaheolani that's my great-grandfather. That pulls in a big, that's a big umbrella. That's a big umbrella to go through. That pulls in Kawa'a's, Kala'au's, Shito's, etc., etc. Aside from that, aside from the family we have the Wickman Trust. I believe on the map it shows Wickman Family Trust, they're also members of the coop. We also have Lawrence Aki who recently acquired property and is a fellow landowner in the valley and in the cooperative. Again for the family names that I mentioned I'm so to speak the point man for that. So I represent all that families that I mentioned on my side.

Ms. Buchanan: So Kaeo for just for me, for my own records, you think on the map of Halawa, showing different parcels, you could possibly, not at this time but at a later time, highlight the different landowners involved in this coop?

Mr. Kawa'a: Yes because the Bishop Estate Map shows it but the state and the county maps don't show the roads. The old road, the new road and the black hole road.

Ms. Buchanan: So actually staff wants it for the record too. I guess we're just looking at the 5-9-03 because we actually have two but it's Halawa Valley with all the...and the parcel numbers. He has to give us the parcel numbers yeah of who's involved in this coop.

Mr. Kawa'a: If you could I need some correspondence and address and stuff like that.

Ms. Akutagawa: I think to where the tours go through because you said the tours go through the south side of the stream. We kind of want to know what subject properties are involved.

Mr. Kawa'a: It's not on this map it's the one that's right next to this. I didn't bring my copy of the map but we can get that to you. The property in question is TMK: 5-9-01: 16 which again is on the south side which is where the gate is at which is my Dad's property and which is where we're running the tours through right now. I can also give the other members of the cooperative, also their properties have also been granted for use by the cooperative.

Ms. Buchanan: Kaeo you sited several other reasons for constructing this gate on your property. The picking of things and selling, I guess which would constitute natural resources. In other words using natural ....

Mr. Kawa'a: Not only private but historic, things of historical value. Artifacts missing, damages to the heiau's and stuff like that.

Ms. Buchanan: Our chairperson was good to point out that we need to stay on track so I'm not going to go off on Native Hawaiians, what is private property, there was no such thing at that time. But, your presentation was very, there was thought put into it and that's how come I wanted to know who was involved in this restoration plan because it does seem to be different from the land trust Mahealani earlier testified to as restoration of loi in the valley. So in my mind I have two different entities just like the north and the south with two different point of views on what should be done in the valley. The bottom line point being as Malia pointed out earlier, it's going to go back all to permitting under the SMA permit in the management area which this board has the final say on all permitting for special management areas. So I noticed you said that your tours access the road way on your side so you don't know, I wanted to know who does your tours? Who's your hike guides? That's just for my information.

Mr. Kawa'a: At the top of my head we have Lawrence Aki, we have Philipo Solatorio, we have Eddie Tanaka, Josh Pastrana and the other names I'm thinking of went to the mainland. Palo Tanaka, Eddie's boy.

Ms. Buchanan: My next question is, although you access the start of the tour from the south side, at some point and time that tour crosses Halawa Stream onto the north side



of the valley to actually get to the falls, is that correct?

Mr. Kawa'a: Correct.

Ms. Buchanan: O.K. now we involving two sides of the valley on this tour. So, you gotta come to some compromise because at the point where the tour crosses from your property onto the next property, then you going on the north side of the trail.

Mr. Kawa'a: Correct. When we first started I believe we always leave from the south side, from properties that are within the cooperative. Initially it was, I believe when we crossed over it ended up on Puu Hoku Ranch lands and we've been making an effort to lease, to some kind of agreement to get permission for use of that. Recently an effort is now being made, we're going to be moving that crossing where both south and north sides will be upon coop property so to speak. So we will be moving that crossing. It will be where we won't have to, I understand where you're coming from, but now it's in the process of being moved over where we cross from the south side on private properties, specifically Lawrence's and we enter on the north side specifically on Pala'au, my grandma's property. So we're trying to work on that one also. But in the meantime we have been trying to work with the Ranch and hasn't been going smoothly but we have been trying to make some efforts in that area.

Ms. Buchanan: So at some point you traversing over private property again with your tour which you currently do not have permission to be accessing through that private land owned by Puu Hoku Ranch, is that correct?

Mr. Kawa'a: Yes, that's what we're working with them. We're also to note though as spoken primarily on the south side we also have properties on the north side that are in stake also which, again like I said where we cross over and enter onto the north side that's cooperative property and there's also several properties on the trail. On both sides of the trail basically, so we have stakes on both sides.

Ms. Buchanan: So common sense would lead me to assume that because you living in a valley and you have to traverse over everybody's private lands to get to from point A to point B that everybody gotta (inaudible) and at some point come to one frame of mind and one consensus that this is the way it's going to be and that's the only way the state is going to come and back that up, that proposal that you have which is a good proposal, I saw a lot of things in there that I really, really would like to see happen in the valley. But, at some time the two minds gotta meet and come to some kind of consensus because everybody's going to traverse over private properties at one time and I know Puu Hoku Ranch is

probably deemed largest land owner in the valley at this point only because of my own dealings with doing control work in Halawa Valley and having to obtain permission from every property owner that I have to go over their property. That's just my kuleana as a commissioner that at some point in time somebody has to facilitate some kind of consensus.

Mr. Kawa'a: That's correct and you're correct to assume that yes, that's an area we are trying to work on also.

Ms. Buchanan: Because we all know as local people that there are differences between Puu Hoku Ranch because they the main land owners at the beach side property which they not happy with the activities going on there and it's understandable because you as a landowner not happy about activities going on your property so you went construct one gate. So everybody can understand everybody's point of view about that. But all together everybody can protect all their own self by working together. That's what I hope everybody going move to this side and that side. I think can be worked out because this Molokai. We not out there. You know what I talking about. We can come to some kind consensus.

Ms. Akutagawa: Several issues, you mentioned the management plan, I think some coordinated effort, it's obvious to me that some coordinated effort has to take place and I would urge you folks to be involved in the Molokai community planning process in that way how the people want to manage Halawa will be incorporated within that community planning process. Now I want to focus on the SMA issue. First I want to get a fix on how many tourist are being runned through Halawa Valley on a daily or weekly basis through these tours? I want to get a fix on the level and the actual impact of commercial activities within Halawa. I want to know has public-kama'aina access been restricted in any way to the south side? And then three, is there any intent on your guys part to comply with the SMA process now that you're on notice, that this is the process.

Mr. Kawa'a: Yeah on all three of those points. So I guess the first one would be the tours. We currently run about two to three days of the week. I guess a good average would be about a handful of tourist per day, so say about 5, on the average, 5 per day two to three days a week. But again we're not, we're just one entity running tours there on the south side. So we cannot speak for anybody else going. That's for our particular purposes.

Ms. Akutagawa: But if you had to estimate cumulatively the other tours that are going on, what's the impact?

Mr. Kawa'a: We have anything and we estimate, we don't even know... this is Eddie

Tanaka.

Mr. Tanaka: Aloha. I've been doing tours for a while, individual for myself and my family and I met up with Uncle Philipo and also Mrs. Davis there and I took it upon myself to get into a coop so that I never have pilikia because I really don't have land down there but I have a lot of knowledge and I lived in Halawa when I first got here over 20 years ago. I seen the impact and the tour part, you can add maybe another 5 to that every day tours. Now if we going talk about how many people going up there and making an impact, if you go down there on a busy day you can count maybe 20, 30 that don't have any tour guides that are walking through without any knowledge of what they stepping on, what they picking or who's property they area crossing. So with the tours we try give them a little knowledge and culture and let them know where they should go and not go. Like I said, when I go up there maybe have three guys or four guys with me and coming back down I would run into 10 or 20 that don't have a guide. So I just wanted to mention that. There's more people going up there without a guide then there are with people having a guide.

Ms. Akutagawa: You strictly do tours to the falls or you do ocean kind stuff or what part of the valley do you utilize for the tours?

Mr. Tanaka: Well at one time I was utilizing both sides because there was no conflict, things were kind of mellow. But now because of the two different entities I'm going through the south side just to make it easier on everybody else, I don't want to disturb anyone on their culture part but eventually this coop going to have a culture deal. Eventually we all gotta learn how to get along like she was saying with the tourist and we gotta explain to them what's going on we cannot just go up there and have a good time because when they get back they going be clueless. I just feel that there should be a little management like everybody is talking about. As far as the rules, we bend the rules, I'm sure, but this is Molokai, so we broke every rule in the state and the county. We just gotta learn how to make it work for everybody. I wouldn't want the state to come and control Halawa Valley because from there they going control the whole island and we've been lucky that the state has allowed us to do all this kind of stuff. As far as the rules, again, I think it was made 20 years ago, the big thing about not having tourist or big coop's, shopping centers and hotels. To me I disagree with that but for the small business like us I think we should have some kind of a solution about it, to allow these smaller entities to come about and more or less try to keep out the bigger cooperation, the ones with the bigger money and who going look at the bigger buses like Waipio Valley, its been run not only by the locals but more less by bigger cooperation. So I just feel that we should work all together as a community and try make, utilize the best out of it. The main thing is to keep Halawa limited from how much people can go in there. That's you guys job, anyway, mahalo.

Mr. Kawa'a: In light of that really quick, I forgot to mention Eddie, Philipo and Lawrence, you have three different tour operators that are now coming in together on the cooperative with some landowners so that's just to get some ground, we stood on separate sides of the fence for maybe 10 years so this you have four different parties that have been able to lay things aside and get together as a coop and that's not the first and hopefully it's not the last that we see. Limiting public access, one thing I want to make clear is that the gate in no way was connected with the starting of the tours. That was a fence that we crossed years ago. I was on this side, Uncle Philipo was on that side so we're all at odds with each other so no way was the gate going up connected with this particular tourist group, tourism group. The gate went up again to protect the kuleana, the property owners. Since then we've been able to sit down and the property owners having looked at the proposal of the cooperative, we liked the part of it being insured, we like the part of secured parking, we like the part of it being licensed under a coop, we like the part of it being run by state guides, certified guides, tour guides. So those things are working for us with the tourism and the coop. As far as public access, we have never restricted access to kama'ainas. A lot of the complaints that you see about damaging, of course, our people we not going, we're gonna take care the land. From day one its always been at that particular time, if everybody remembers, Uncle Walter Kawa'a, he was the lead kupuna at that time. Anybody wanted to go, it was an unwritten law, as a lot of us know, uncle you mind if we go to the falls, go boy. That was an unwritten law, just consent, like it said, agreement of the property owners. They asked permissions and then we went. Now days and I just caught myself, now Uncle Walter is dead, there's my Uncle Stanley who is there and people ask him can we go up and can we collect and he says that's fine. He even helps them along the trail. But it's the acknowledgment of the property owners, o.k., we just call it respect for the kupuna. Now days it's acknowledgment by the property owners, can we go? Fine you can go. However that has also changed to where the uncles and the kupunas used to say fine boy you can go to the falls, you know what it's practically coming to a point where you have permission to cross over my property. Because as indicated there's a lot of other parties involved too. So some what it's coming like that also. As far as restricting public access, for the locals and everything, we've just tried to control it for the tourism where they don't get lost, they don't damage, they don't disrespect, get that part of it controlled. But I can speak for the south side and my family who are the gate keepers out there, we've never blocked it from public access. Especially for the locals. The gate may be closed but there's also a trail that they walk through on the side of the gate.

Ms. Akutagawa: Now that you are noted about the SMA...

Mr. Kawa'a: Now that we on notice like I said we've been in touch with Na Ala Hele, DLNR,

and we understood it and I see some other assumptions were made like the government we were going the conservation way, through the state. As we've gone along and there's little stalls here and as lately we've been directed, you know there's no procedures right now, there's nothing in place. With the complaint that has been raised, we're now looking at the permit, so yes, we'd like to work on that, we look forward to working with that. There's a lot, though we just brought up the tourism part, there's a lot more involved with the culture and the land and the landowners and again we're searching the permit and see what we can do with the exemption on the special use permits. But yes, we want to work on that and we look forward to working with you guys on that.

Ms. Akutagawa: Any further questions? Just to let you know that Mahea has to leave at 12:30 and she wanted to say a few things before she goes. So keep that in mind commissioners.

Mr. Vanderbilt: Kaeo, just one question. In the presentation it talked about looking at what's best for the over all valley. Based on your talks with the various owners and with your group have you come to any determination as to what would be a reasonable number of tourist going up to the falls so that people in the valley wouldn't feel like they were in a fish bowl like some of them over resource areas that have been over developed in Maui and Oahu? Have you guys come to any conclusion as to....

Mr. Kawa'a: I'm sure we have the numbers that we can crunch.

Mr. Vanderbilt: You mentioned there's about 15 a week now that you take up and than Eddie was talking about some times he comes down and sees about 10 to 20 without guides. So now we got 25 to 30 a day. Right now it's a commercial tour and how much is the charge to go on the tour right now?

Mr. Kawa'a: I believe through the activity desk that we schedule them through is about \$75.00 a head and the activities desk get their cut and what not. The tour guides get their cut.

Mr. Vanderbilt: You mentioned the state certification tour guides, what process, is that something you go through DLNR?

Mr. Kawa'a: One I know was through MCC and another was state sponsored workshops that have been going on, University of Hawaii and one was through Maui Community College.

Mr. Vanderbilt: It's a class, not something the government agency..? Where do people park? You have secured parking but there's been some concern about vandalism and theft in cars that aren't secured. Where do people that don't park in your secured area, where do they park?

Mr. Kawa'a: I can't answer that I can only answer for the ones, for us the parking lot is right there on the gated property, just a few feet over. I believe off the top of my head some of them park by the beach, some park by the park, some park by the public turn around.

Mr. Vanderbilt: One other question, as far as tour group, guided tours, commercial tours going to the falls, do you know of any other groups going up to the falls beside yourselves?

Mr. Kawa'a: Other than the ones we brought into our coop, I understand there's one that's connected with the Maui Princess.

Mr. Vanderbilt: Is that guided by somebody locally here?

Mr. Kawa'a: That I'm not sure. I believe there's also another private landowner on the north side who also conducts his or her own tours at times. That's all I can recall.

Mr. Vanderbilt: So hopefully you want to get everybody together and try to see what is manageable capacity for the valley.

Mr. Kawa'a: Yes and we've already talked with this one landowner that I just mentioned, we've been trying to get together and make an agreement and I believe at one point we even contracted it, he was an employee for the coop. People have differences and we have little problems so.

Mr. Vanderbilt: One last question. While Julie is sitting there next to you, you mentioned that the gate was on your private land. Does the county have any jurisdiction in the SMA if somebody puts up a gate on their land like if I owned a piece of property over here on Oki Place and I put a gate on my property even though it's the SMA do I have to come in to the county for some kind of permit or is it exempt?

Ms. Higa: We would review it to determine it's exempt or not. Any development or activity in the SMA would be reviewed and determined if it's exempt or not and determine whether it's a development or not a development.

Mr. Vanderbilt: Well to determine that what do you need? Do you need to ask Kaeo and

his group for something? Or do you send somebody out there?

Ms. Higa: They would have to submit an application for the assessment including a site plan and photos of the property, location of the property.

Mr. Vanderbilt: If I'm this group I'm going to say well I don't think I need one, I wonder if they'd do that which I would do then do you guys follow up on it or do you just let it ride?

Ms. Higa: If we have a complaint then we will investigate and then they would have to do an application and then we would make a determination on whether it is a development or not.

Mr. Vanderbilt: And you've had a complaint?

Ms. Higa: Yes.

Mr. Vanderbilt: I'm just trying to find out , I think everybody wants to get some closure on this some where down the line and the state does their thing, the county does their thing, Na Ala Hele does their thing and nobody is talking to the community, so anyway I just hope that it works out.

Mr. Kawa'a: Thank you for bringing it up. Again it is private property so we would not need the SMA permit but at the same time realizing that it is a cooperative we want to work and if it's needed, we don't know at this point but if it is we will start working on that, we want to get that going. Thank you.

Ms. Higa: I just want to clarify that regardless, even if it's private/public property, if it's in the special management area, any use or activity within the special management area is reviewed by the planning department and a determination is made whether it's a development or not. It doesn't matter whether it's on public or private property.

Mr. Vanderbilt: Kaeo is there a single-family house on your property?

Mr. Kawa'a: Yes there is.

Mr. Vanderbilt: Julie aren't single-family homes exempt from SMA?

Ms. Higa: It is exempt but we have been reviewing every development that's on public/private land.

Mr. Vanderbilt: So you'd have to review a gate for everybody that wants to put a gate across their driveway in Kaunakakai even though it's in the SMA?

Ms. Higa: If it's part of a single family dwelling and an accessory to the dwelling, we normally would not review it. But if there's a complaint we would then have to investigate to determine whether or not it's a development. So now that we have a complaint, we have to investigate to determine whether or not it's exempt or not exempt. We cannot determine that until we know what the situation is. Now if it's part of their house and for their own property and for the single family house then it would be exempt. But if it's part of a commercial operation and that's what it seems to be that's where we're getting information right now, then it's not exempt. But we need to still review it to make that determination.

Mr. Vanderbilt: Thank you.

Ms. Buchanan: Malia real fast I going answer his question about the parking because the people park in that turn around, probably not public turn around, but they park where the people with the boats come and cannot turn around their boats because the tourist are parking their cars there which probably is why they get mad and their cars are vandalized. That's an assumption. At a parks and recreation committee meeting on Molokai, the only one they had one year I testified to the county and I recommended that the county open the gate that is blocking the county, the only property that the county owns in Halawa for parking. I wanted to go on record that they should still consider opening that area for parking for the tourist that come so that that way they don't inconvenience the people on the south side and block Mahea Davis' drive way and they don't block the boat owners from turning around their boats because we all know you cannot make that turn to cross over and get over to the bridge on the other side unless you use that turn around or that area where everybody turns around their car. So that would alleviate one problem there. If the tourist were instructed by signage to be parking some place else other than that area right there. Then that would alleviate Mahea's problems, would alleviate the boat owners problem and the county does have a public park area in Halawa and they do own the land and the road.

Mr. Kawa'a: Quick note, my gate is just one of four. Out of the four one is open and the other three are locked. We are willing to work with the permits to make sure everything is covered in that area. Thank you.

Ms. Akutagawa: Mahea you have anything else to add before you need to leave. And then I'll open it up to public testimony.



Ms. Davis: Just real quickly, the issue of commercial activities is commercial activities that are being conducted in an area that is conservation, not Kaunakakai, conservation district. These areas are the most fragile, the most precious areas in the state of Hawaii. There are no rules for commercial activities. However, as a community we better be looking at the management of these areas and no disrespect intended but I don't see this and I don't really want people to look at this as the north verses the south side, that's not really helpful. Because we had not ever said we not going work with anybody, we want to have our way and everybody stay out. We have been accused of wanting to lock everybody else out of the valley. The reason why this has been brought forward is because I look at the roads and the trails in the valley as being government, meaning belonging to the people. Now whether they are open all the time or some of the time or closed, that's what needs to be discussed at a community level. But what we have always known as a county road is a private road then why don't I put a gate up by our driveway and why doesn't the Ranch shut the gate that comes across the bridge because that is a private road, that goes right through what used to be loi. I don't want to see a situation where there are three more gates and what I need to hear from this commission or understand is what can we expect as far as accommodation of public access so that we know how we need to proceed because we have to protect our interest and we have talked with the people involved, actively involved right now with kalo cultivation. This isn't a plan on paper this is what we've been doing since 1988 we started these activities. We encourage people to do that. It's not easy to encourage young people to get back to the land and do something that fulfills them culturally, that builds the community, that feeds and builds their families when they can go make \$75.00 a person walking to the water fall. I'm involved in what I am because I want to support and encourage a living culture. I prefer to help people really get back to the activities that Hawaiian's are renowned for and not a culture of tour guides. So I'm supporting what I'm supporting because of my own value system and my own feelings about it. It's not to say if you're going to run tours, but the tours have been run through our area. John bought a group up the drive way just last week when we were down there cleaning loi and everybody was fine and everybody talked story but it is happening. These are not restricted to the south side of the valley. Within our conservation district to you have CDUP's that are required, whether the gate is on private land, public land, down by the beach, or up valley. It's in a conservation district. So while we talk about whether or not it's here or there, private or public, there's some over arching regulation and management policies that apply to everyone in the valley and they should be applied to everyone equally. I wanted to leave this with you, this is a chronology of all the correspondence that has gone back and forth since, not everything, but from 1994. I wanted to leave that with you so it's part of the record. Mahalo.

Ms. Akutagawa: Any questions for Mahea? Thank you Mahea. At this time we're open for

public testimony. You're limited to three minutes. If you need to speak longer than that you can come at the end.

Mr. Aki: I just wanted to clarify something real quickly as to what was said as far as just by Mahealani. Yes Josh did go across the river to the north side which all of our guides are advised not to go in that direction by that of the bridge and that's because we were advised by Mahealani that she doesn't want our tours coming through that way. So we don't go that way. But I want to clarify why Josh went there. There was a visitor from Maui, two people that he had that day and those two people were from Maui and they knew one of the landowners on the other side who was at Uncle Kalani Kawa'a's property when they were parking their car. Back then the owner was James or Jim Yeh Hoy. He was the one that advised them or invited them to come over to that side. I just wanted to clarify that. Thank you.

Ms. Akutagawa: Anyone else wishing to testify? Just state your name for the record. You need to speak into the mike because it's being recorded.

Ms. Caparida: My name is Judy Lokelani Caparida. I'm one of the kupuna's on this island and I've been here on this island many, many years. My papa was born in the back of Wailau and he's one of the old timers on the east end. We don't believe in this, all these things that are happening today because the law has been for the lawless. This is why we have all this kind of permit stuff that comes up. For one thing Mahea, I talking to her because this is a complaint from her. In 1997-98 she used to bring a lot of people here. You know the....

Ms. Akutagawa: Aunty I want to limit the testimony to no personal attacks.

Ms. Caparida: Anyway it is concerned about you doing the same thing but now you don't want nobody else to do it. The thing is that we on Molokai now, they want to do something so that they can feed their family. There's a lot of them. I get my own nephew who's doing commercial. He has a license to do it because there is no job, rather then go ripping off people, he go ahead and take people, tourist in the back there. Some times four, sometimes 6, sometimes 7, sometimes they don't pay at all. He take them in the back to show them what life is all about in the back of Wailau. There's nothing wrong about that. What's the problem? The problem is if you unhappy you want everybody to be unhappy. I've been up to the Ranch, even the Ranch want to do that. They want to get permits and all that. I told them I was here since I was one little kid, I have the darn right to come here and catch the boat and go to Wailau because that's where I got land. Since we have to look and consider that what people have that they have to go through and yet talk it over,

just like what we saying. Talk it over with the landowners to say that it's all right to go but everybody gotta work together. Everybody cannot cut each others throat, that's the problem. Why you cannot make money? Why you think the tourist come over here for? To see the aina. That's why I'm saying everyone, you guys gotta do you guys homework. Do your homework so that you know how we operate on Molokai, we not Maui, we not Lanai, we not Honolulu, we Molokai. This is our livelihood. We were raised this way.

Ms. Akutagawa: Excuse me Aunty the three minutes is up but if you want to speak at the end....O.K.

Ms. Caparida: I'll come back at the end.

Ms. Buchanan: Malia I had a question for Aunty Judy.

Ms. Akutagawa: We can save it for the end because her testimony not pau. O.K. anyone else want to testify? Nobody else wishing to testify? Just a caution to the public. We don't want to limit your testimony in any way. Please try not to make any personal attacks on other people and I know sometimes the emotion is strong but really this is like a fact finding meeting. We want to get to the bottom of what activities are taking place there, what permit is required, then we gotta get on that. So this is not about people being pissed off with each other and we no like this, we no like that it's about getting the information. So if you guys can hold back little bit and focus on the issues at this meeting rather than the emotion.

Ms. Manu: Aloha thank you my name is Ruth Manu, I'm here just to talk about what you guys talking about. You know actually we all aina, we all family and Molokai never did have so much problems like now, never did. Never did because the disease of what ever is happening comes here on the island of Molokai. It tries to destroy the love that we have for one another as one ohana. Now before we never did in my whole life, I not talking about one gate or whatever down there, it was always free. We always had one understanding, open hearted, whether I was on the south side, whether I was on the north side, whether I was on the east, what ever you talking about it, we all had a communication. Our words was good enough. O.K. fine. Never had all this permit and all that. Get all these what ever's out there on the east end is after the fact. They build, they do everything and then they come in and ask for license, permit, so what is the whole issue about this? One small gate talk about how many bed and breakfast we have out there on the east end. How many of that been come inside and apply? They did it before they came in here and ask for one permit. So us Hawaiian's coming in truthfully, asking straight up, now you guys bring up all this hassle. Hello, our own kind, why are we fighting

against each other? What is the reason? Is it hatred against one another, or are we jealous, or we want to have our own gate? Our own thing. I don't think that's right. We kama'aina for this thing. We know all the families on this island. We not supposed to be fighting against one another, we supposed to be helping one another to prosperous Molokai. O.K. you have the law, we have our own rules. I don't know why people go through all that procedures, all gotta wait like hell to get one god damn permit, while everybody else is doing it and then they come in for ask for permit, hello? Smell the roses. Look at it. We the Hawaiian's asking for one small little thing we get the run around, we get the hold up here, hold up there, but somebody from outside get money come inside drop it, boom, fast the permit go up. Why? They no live here. We live here and we intend to die here and we raise our family. So why give us all the hassles just to get one permit for one gate? Why should anybody else be fighting against one another. Our aina, all the ohana down Halawa should agree and come together as one family. So that's all I have to say, mahalo.

Ms. Akutagawa: Thank you. Anyone else wishing to testify?

Mr. Paawe: Hello my name is Frank Paawe. Before all this (inaudible) I used to be with Glenn Davis them and I used to be the cook, be the big uncle for them and they used to run charters too, people hiking, going in the back their property. They had people from Patagonia and some other people. Anyway I don't know what this commotion is but the truth is the truth. I lived with them and since Glenn got sick, so Kathy just move in and tried to control him. But I'm sorry if I said that.

Ms. Akutagawa: Are you doing personal attacks here. Can you focus on the Halawa tours because I don't want this kind heated debate back and forth.

Mr. Paawe: That's all I going say, I used to live with them, they used to be one hiking trip behind their property. That's all I going say.

Ms. Akutagawa: Any questions? Anyone else wishing to testify? No rebottle back and forth now.

Mr. Davis: He started it. Yes we worked with some groups, it was like the boy's and girl's club with kids down there and it was in the newspaper and Frank was helping. But then he was running his own trip. Yeah we did run some stuff. We wasn't running tours and we wasn't charging the kids.

Ms. Akutagawa: Any questions? Anyone else wishing to testify? I'd like to run a clean

meeting o.k.? So I don't appreciate when people have personal attacks with each other. So don't let me get on you guys case. You guys understand? We running one clean meeting. So anyone else wishing to testify?

Ms. Coelho: Aloha my name is Keala Coelho and I am the assistant to the manager of Puu o Hoku Ranch and we did have a meeting with Katherine Aki yesterday regarding these tours. Puu O Hoku Ranch is not totally against commercial activities but what we are really concerned about is the liability issues. We had spoken to Katherine and told her that once she got all the liability policies, the current liability policies to us and spoken to all the landowners, all the landowners, not only those that whose lands they are trespassing on but I feel that this commercial activity in the long run will impact the entire valley. So, we asked her that all the landowners should be notified and made aware of these activities and we had also said that we would have a meeting up at the Ranch with these landowners and anybody involved and once we come to some kind of consensus everything would be cool. But as of now, you know I do have guest that want to go to the falls and don't want to pay that \$75, wants it unguided and I am guilty of sending people up there on their own, I supply them with a little map, show them the route to take, I do route them on the north side because simply because we have had confrontations from going on the south side. So just to prevent all the confrontations we go on the south side and I have spoken to the landowners on that side and gotten their permission. So I just wanted to tell you where the Ranch stands on this.

Ms. Akutagawa: Any questions? Hold on Keala.

Mr. Vanderbilt: Thank you for testifying Keala. You said you give out a map showing the route that you suggest they take. Could you supply a copy of that?

Ms. Coelho: Yes it's in my office. Sure.

Mr. Vanderbilt: Thank you.

Ms. Buchanan: Keala I have a question too. What is the Ranch's position on the properties fronting the beach area as far as I know that Jack had some concerns that he mentioned about the camping issue, illegal camping as well as the illegal boat and ocean activities going on fronting Puu O Hoku Ranch lands.

Ms. Coelho: Excuse me what are you asking?

Ms. Buchanan: What is the Ranch's position on that? Have you guys ever filed a

complaint because you own the property fronting the beach area.

Ms. Coelho: Well we have had a meeting with the campers. Nothing has been solidified yet. We are still trying to work with the community because we realize that this goes back traditionally and we don't want to stop people from doing what they feel is their Hawaiian Native rights. But you know it all boils down to liability issues.

Ms. Buchanan: O.K. thank you.

Ms. Coelho: Thank you.

Ms. Akutagawa: At this time we'll take a five minute recess.

The meeting was reconvened at 12:40 pm

Ms. Akutagawa: Back to the Halawa issue. Anyone else wishing to testify before we have Aunty Judy come back? O.K. come back Aunty Judy.

Ms. Caparida: It's like we have to try to do the right thing. We used to go down everyday and I used to work with all the kids. I take everybody's kid down there. Some of them they go holo-holo. If the tourist come down there and they say they like go up to the falls, me and all my grand kids take them go up to the falls. For us it's like why money? If you love to do something and you like people to learn about Molokai, hey, tell them, show them. That's the way we are in our life. That's the way we was raised. There's 16 of us. So in all these, we go holo-holo, we go in the back Wailau, everything. We are blessed people. We are very blessed. Why every time have to get pilikia like this? For one thing, like you said now, there's a lot of property owners and yes we have to sit down and let them know what is the plan so that they can agree. Because everything today is money. So for me if we can go, we go talk about it, make it right, fine. Everybody get a cut. Because all the time on the other side they always get their cut over there, when they make their plans we not involved. So however we gotta do it, with meetings, you know what God bless us with all these blessings so we should see that everybody is in agreement. We went to talk to the Ranch, we told them what was our concerns and you know what, liability was the main issue of this. If anybody talking I coming to the meeting because I care. Why we have to fight, why can't we share? So I just wanted to let you guys know. That's where I come from and no touch Mana'e side, that's our turf, our whole island is our turf but Mana'e is a unique place. The tourist come down there to see Mana'e, not this buildings. They want to enjoy sitting down talking story. Reality because out there is all fantasy. All this stuff they get is distraction. You don't have enough time to communicate to people. The

goodness of the Lord, what he made us enjoy is not money. That is the other side of you. So I needed to share that with you. Molokai has that do it first and then come back for permit. I say no, that is wrong. You don't give anybody permit if they never do it the right way, that's the way you guys gotta do it. I know about Mana'e, that's where the bread basket is at. The tower is coming up, yes there's a big huge tower coming up where I live. I don't expect to get another tower and another tower. I want you to let me know how is this thing going to be destructive to me in my life or in my children's life or grandchildren's life later on. Nobody's telling you about what's going to happen. You all say yeah they all good entertainment, honey get so much entertainment they gotta come and see the live things. That's what you call good entertainment. Clean. Today there's so much drugs. All these kinds of stuff gotta be looked into. But that's what I needed to share with you guys because God's love is for all of us.

Ms. Buchanan: O.K. wait Aunty Judy I have one question. I should have pressed to ask this question earlier while the opio was here. Because you touched on it several times. Do you think that if money wasn't involved that we would have a problem? Your personal opinion. If money wasn't behind all of this do you think you would have a problem now?

Ms. Caparida: Depends on how the other people feel. But for sure that's where everybody looking at how much they taking in. (Inaudible)

Ms. Buchanan: I hear what you say about Mana'e is your turf because we all feel like that. You know, sometimes when I see somebody coming and I say no come in my ahupua'a go stay in your own ahupua'a and hunt. But you know we sit here on this board and to be honest I know about the Halawa issues because my job takes me into Halawa. I have had to obtain permission from the landowners involved to do control work on the land and to be honest I've had discussions with Lawrence as well as Kaeo as well as Jack and as well as Mahealani Davis. So I've sat in on everybody's mana'o and I can see everybody's point of view. It's the same things that we going have problem with island wide. It's not a Mana'e issue, it's not a Ho'olehua issue, because Hui Malama O Mo'omomi has the same resource issue. Because we Hawaiian and we part of the land and we have resources that any time you going start to use the natural resource to start making money, you going have one problem. You know my sister go pick limu before and go sell \$20 a gallon or what ever. I have a problem with that and that's family. I understand everybody gotta take care their own and make money and that's the way we know how to operate. Commercial fishing and then they go back to the Hawaiian's and say the Alami'i crab pinch them again, cannot see the next Hawaiian getting ahead, you gotta pull them down. But, I guess what I trying to say is because it took me how many years to find out that I was a conservationist. It was pointed out by Penny, she said well sister you know we all

conservationist, you know Hawaiian's are conservationist. So when we start to abuse our natural resources we really need to intervene and sometimes if we cannot make all minds meet then it's the government as the outside facilitator that has to come in and say this is the way it's gonna have to be and everybody going have to follow A, B, C and D. If that needs to be done then that needs to be done. So at this point I want the county and the Corp. Counsel to work on this issue because they know what the issues are now, they know what the issues are. I know what's permitted in a conservation district, I read the whole Title 13, I know what you can do in a conservation district. I work out of Nature Conservancy Office, I am very familiar with conservation district. That's why we don't have tours in a conservation district. We don't collect money. You can have a donation but you cannot charge for a tour in a conservation district. So, just being that said, I think the county should pick up the ball and try to run with this since they have the first permitting process under the SMA. I mostly wanted the younger generation to hear that. Once you going start abusing our natural resources to make money you going have one problem. Once you go from subsistence to commercial that's a fine line to cross and to make the next person that want to do it, because what's to stop Puu O Hoku Ranch that might have a big marketing, more money, more land, to come in and say o.k. that's fine you can do that but you know what we going start our rules again. But then we going come around from the top of the falls where we own the land behind the falls and we going come in through there. Same thing like helicopter tours from Maui. Everything is involved. We here going have to stop it or use the SMA permitting process to limit what we can do until the state get their act together. Because I know for a fact, Na Ala Hele wanted to make a trail system in that valley on the south side of the old historical trail but couldn't, and I going tell you why aunty. Because they need a survey of the valley, that survey is going to run them 2 million dollars to do, the state. The state does not have 2 million dollars to survey that valley. So I have looked at the issue more than anybody. Because was a headache to me and frustrating to me and I not even one resident of Mana'e, but, I care about what happen down there and what happen down Kaupoa Beach because this is my island too. I was born here and I going die here. So my guarantee to you, as long as I sit on this board I going try do what I can do to keep things the way they are more or less, by allowing the opio to make money, have a life, take care the kids. I think I said enough so Malia could finish her lunch.

Ms. Akutagawa: Any more questions? Nobody else from the public want to testify, right? O.K. at this time we'll close public testimony. I don't think there's a staff recommendation right? Just follow up. This is what was discussed, we wanted Corp. Counsel to look at that issue regarding the road I believe, who has jurisdiction. Second I want staff to be working with the families in Halawa including that coop but not limited to them, just talk story with the tour operators and get the SMA process going. Any body else have thoughts on what



needs to be done can direct staff.

Ms. Buchanan: To assist the gate issue. They need to assist to see if it falls under the SMA.

Mr. Vanderbilt: In regard to what Commissioner Buchanan said, in the letter from DLNR to Ms. Davis it talks about the road and it says apparently further discussion, coordination is needed before any course of action can be taken regarding the gate across the road and this is DLNR saying that the state and the county had to get together. So with regard to the gate we need not only to look in on the SMA ramifications but also try to urge the county and the state to get together regarding that June 6, 2003 letter from Jason Koga, the district land agent for DLNR.

2. MR. ROY KATSUDA, Executive Director of HALE MAHAOLU, INC. requesting a Special Management Area (SMA) Minor Permit for the construction of a two-bedroom, one bath, 384 square foot addition to the Manager's two-bedroom, one-bath apartment unit at the Home Pumehana project, Hale Mahaolu's Elderly Housing project at TMK: 5-3-002: 168, Kaunakakai, Island of Molokai. (SMX 2003/0337) (J. Higa)

Ms. Akutagawa: I just wanted to let the commission know I have to absolutely leave at 3:30, we going lose quorum so we gotta rock and roll.

Mr. Boteilho: Thank you Madam Chair I'd like to ask Planner Julie Higa to give the overview on this matter.

Ms. Higa presented the staff report.

Ms. Buchanan: Without looking at everything again, after the construction is done, what is the total square footage of the dwelling? Julie the reason I'm asking that question is I want to get a concept in my mind of how large this structure is going to be at this facility and also I'm wondering if this is a usual practice at the other Hale Mahaolu facilities on Maui. If they've done this also. Construct a large structure of this type in a single-family, I mean a single type dwelling facilities such as this senior citizen housing.

Ms. Higa: We have a representative here but I know we don't have that on Maui.

Ms. Buchanan: You don't right? I didn't think so. You know why I going be real honest, real fast since we dealing with time here. I've never, never, ever seen anywhere, at

anytime, any structure of this magnitude which is at completion, if I'm correct, going to be a three bedroom, two complete bath structure, residence in a senior citizen approved facility which is funded by funds through the state or whatever and I just thought it was unusual. I don't understand that. I never understand that Julie.

Ms. Higa: The existing unit is 720 square feet, so you add 300 it'll make it about 1,000 square feet.

Ms. Buchanan: I can picture that because my original dwelling of my home under Farmer's was 1100 square feet. That included a three bedroom 1 1/2 bath home. That's quite large for that area right there. We do have a new senior citizen area right there but a dwelling of that size as a manager's unit? You know, I think it's inappropriate for the area. It would be like you have all these little one bedroom units for the senior citizens and smack dab in the middle you're gonna have a residential type single-family home for the resident manager.

Ms. Higa: What would the alternative be, I guess that means a manager wouldn't be able to have a family?

Ms. Buchanan: What does the manager on Maui do? Because their facility is larger than our facility right? So what does the manager there do? I mean if you going manage an area and once you get hired by that facility, by that cooperation or whatever to run the facility, I don't think it was in the person's contract that eventually if you have a family we're going to build you a three bedroom, two bath home on our site which is probably public funded by some of the government as well as state agencies.

Ms. Loo: Hi my name is Dorie Loo I'm representing Hale Mahaolu for Roy Katsuda who's not able to be here. I believe other sites were originally built for at least three bedrooms. The reason that I know of is that they're increasing it not to only accommodate her but for future selection of managers, having that flexibility.

Ms. Buchanan: Have they done that on Maui.

Ms. Loo: That I'm not aware of.

Ms. Buchanan: I would think on Maui where you would have a lot more clientele and stuff, in other words what are they using it for to attract as an incentive type or, I mean I just cannot see building this facility in, because we never had approved permits for any type of three bedroom structure in the complex now.

Ms. Loo: Actually I have to follow up on that. To my knowledge I just know that we want to expand it for future use.

Ms. Buchanan: O.K. I going tell you why I was concerned because I sat here through several meetings with Hale Mahaolu where they came and told us, they submitted plans that they wanted changed because of money concerns. Then all of a sudden now they want to build a two-bedroom two bath unit as a managers unit when they didn't even have the money, they couldn't even add parking at that time. So that's why I'm kind of, I'm just questioning this as being inappropriate or you know, don't come in and ask me to change your plans and the permitting process because you don't have money. In less than 8 months or 10 months come and ask me to add another, almost 400 square feet to a dwelling to make it 1,000 square feet residential home in a senior citizen complex. I just have a problem with that but that's just me, personally.

Ms. Akutagawa: Any more questions?

Ms. Seales: I have to agree with Commissioner Buchanan because she has a young family, the manager and if you do the additional that will take away a lot of yard space. I don't know how many children she has but that's true, I do remember that. That there was 9 or 10 months ago there was a concern, is this a request from the agency or from the manager herself? I mean what is the request? Do we get to know that? Is it something that the manager is requesting through the agency or the agency feels she needs a bigger space because shes....?

Ms. Loo: I believe it's the agency not exactly her request.

Ms. Seales: I can understand the future, but they made do with this for years. I guess I have to agree with Commissioner Buchanan and we're not getting more feed back like, because it's going to take away a lot of her yard space and if she has like two to three children, that just doesn't make sense too. Unless her family is expanding or she's having extended family move in with her, I don't know. But that's just my mana'o.

Ms. Akutagawa: Any more questions?

Ms. Buchanan: Question, where's the other mike?

Ms. Higa: Can we ask to defer this so that Mr. Katsuda or one of the administrator can be here?

Ms. Buchanan: Thank you, that would be nice.

Ms. Akutagawa: So we no need take action we'll just say defer.

MOTION: MADAM CHAIR AT THIS TIME I'D LIKE TO MAKE A MOTION TO DEFER ACTION ON THIS REQUEST AT THIS TIME.

MOVED: COMMISSIONER LORI BUCHANAN

SECOND: COMMISSIONER CHARLOTTE SEALES

MOTION UNANIMOUSLY APPROVED.

3. MS. FLO WIGER, Provost of the UNIVERSITY OF HAWAII, MAUI COMMUNITY COLLEGE, requesting a 10-year extension on the State Land Use Commission Special Use Permit to continue operation of the Molokai Education Center Post-Secondary Satellite Campus on approximately two acres of land at TMK: 5-3-003: portion of 001, Kaunakakai, Island of Molokai (SUP2 980010) (J. Higa)

Ms. Akutagawa: Before we hear this matter I must disclose to the commission that there's a conflict of interest with respect to me. I'm the Director of the Rural Development project which is housed under, at the Molokai Education Center. The Rural Development project is managed by the community college system. My boss is Clyde Sakamoto who is the principle investigator and former provost of Maui Community College. Because we have bare quorum we're not able to take action on this issue. Corporation Counsel said we could still hear the matter and ask questions but we cannot take action on it or we could just defer it. I'm in favor of deferring it but it's up to you guys.

Mr. Vanderbilt: Madam Chair do you want to recuse yourself or has Corp Counsel suggested that you recuse yourself?

Ms. Akutagawa: I disclosed it with Corp. Counsel, and Corp. Counsel did acknowledge that I was correct, there is a conflict of interest and I have to recuse myself.

Mr. Vanderbilt: And why was the conflict of interest?

Ms. Akutagawa: Because I'm technically an employee under the Maui Community College system.

Mr. Vanderbilt: I guess we'd like to have some consistency. I remember when Commissioner Shimizu voted on an issue, well actually Molokai Ranch wasn't the applicant but it had to do with the college and he's under contract with the Ranch and it was determined that there wasn't any real conflict in that situation and I'm just wondering.

Ms. Akutagawa: For my own comfort level and because I'm an attorney and held to the highest ethical standards, I prefer to err on the side of caution and recuse myself.

Ms. Buchanan: In that case Madam Chair can I make a motion at this time?

MOTION: I MAKE A MOTION TO DEFER ACTION ON THIS MATTER.

MOVED: COMMISSIONER LORI BUCHANAN

SECOND: COMMISSIONER DEGRAY VANDERBILT

MOTION UNANIMOUSLY APPROVED.

4. MOLOKAI RANCH, LTD. requesting a Special Management (SMA) Minor Permit for the construction of a 6-acre sediment basin and related improvements as part of the Papohaku Erosion and Sediment Control Project at TMK: 5-1-003: 025, Papohaku, Kaluakoi, Island of Molokai. (SMX 2003/0257) (M. Niles)

Ms. Akutagawa: Before we hear this item I just wanted to inform the commission that in the interest of time and everything the discussion on the Bill 84, I've been informed that we gotta get our comments out today. If we don't, basically it has to be posted a week before the Council hears it and I think mid July Wayne Nishiki, they will be hearing this bill and if we don't provide comments until the next meeting then they would have to be provided orally to the Council. So if we want our comments written and posted we gotta make our comments today, basically, and 3:30 I leaving so keep that in mind.

Ms. Buchanan: Madam Chair I don't know if it's appropriate at this time but I'm going to ask to defer action on this application also pending an on site investigation by the commissioner's. I am requesting an on site investigation of the area in question.

Ms. Akutagawa: Is this a motion? Maybe give us the reason first.

Ms. Buchanan: I have reasons. Upon viewing the map I am unclear as to after reading the

request and the literature exactly what would be entailed in this. I want to see it. Because I frequent the area on the map, which I don't have in front of me and I'm kind of wondering what are they talking about. I cannot visualize unless you take me out to the site, point to it and say o.k. I'm going to dig a hole 60 feet or what ever wide here and there and it's going to catch the runoff from that culvert, that culvert and that culvert. I want to see what they're talking about because it's so close to the shoreline. I am concerned about the issue of them working it out as taking on that \$200,000 fine when they took on the property and using it to, I guess, write off that portion that they would hold back as a fine. But that's my reason. I want to visually see the area in question. I want to see where their sediment basin is going to be. Why they needed, they said they needed to catch run off that goes into the ocean and I frequent the area with my children all the time and unless there's a big, big, big, big storm I don't see any runoff going into the area. I just want to see it.

Ms. Akutagawa: Corp. Counsel said you can make a motion for deferral, just state the reason for the deferral and also to state when you want the site visit. If it's for the July 9 meeting I just want to get a sense from Harold if that's possible.

Mr. Edwards: (inaudible)

Ms. Buchanan: O.K. Harold I hear what you saying and I got something to say about that too.

Mr. Edwards: We've been working towards this for a long time and with the commission's indulgence if you could let us do a 15 minutes presentation and if the commission is not entirely satisfied than we'll go forward. But I think a lot of the issues that she may have can be addressed fairly and straight forwardly. So having sat here for three hours I would like to have a quick shot at it and if I can't make the commission happy I'll walk away and we'll wait for the site inspection.

Ms. Akutagawa: You open for that Lori?

Ms. Buchanan: He said it's going to take 15 minutes, it's 10 after 1 now and that'll take us to 1:30 and than we have an hour to work on the last issue.

Ms. Akutagawa: Degray just pointed out that Nobu, there may be a potential conflict of interest. Well everything might be moot because there may be a conflict of interest. Nobuo maybe you should explain why there might be a conflict of interest and than we'll have Corporation Counsel decide.

Mr. Shimizu: My reason is I'm working for Molokai Ranch as a consultant.

Ms. Young: You're currently working for Molokai Ranch as a consultant? There is a financial interest that you're a paid consultant for the Ranch?

Mr. Shimizu: I'm a paid consultant. I'm in charge of the Sewer Treatment Plant, that's my tie with Molokai Ranch.

Ms. Young: In that case there would be a conflict of interest.

Ms. Buchanan: Otherwise poor Harold whose been sitting here for three hours is going to have to do his 15 minutes presentation again? Half the board is missing also. That's why we don't have a quorum. But you getting paid for sitting here....I just joking Harold. So can we take his information? Because I'll sit here Harold, you can give me your presentation for 15 minutes afterwards.

Ms. Young: Commissioner Buchanan yes, the Molokai Ranch could make its presentation, the board could take in testimony, only Commissioner Shimizu would only be precluded from voting. That's where the conflict would matter.

Ms. Akutagawa: What's the pleasure of the commission? Should we just get deferral or hear brief presentation and than schedule for an on site visit? What's the pleasure of the commission?

Ms. Buchanan: I wouldn't mind hearing the 15 minutes presentation and possibly going on a site inspection pending review of his presentation. That's my personal preference.

Ms. Akutagawa: Any objections, shall we proceed? Nobu don't ask any questions or participate in the discussion, not that you're a real talker or anything.

Ms. Higa: I would just suggest Harold do the presentation because he has the details. That would save time.

Mr. Edwards: Just a quick, full island map to show you where we're talking about. The project site is located right there. Back in 1984-85 the Papohaku Ranch land subdivision was built. The Papohaku Gulch which flows right down through here and flows out through the county park. When the subdivision was built a diversion channel was built right across here, you can see a real thick line of trees and it basically grew and filled up the channel. A 1300 foot long channel was built to take the Papohaku Gulch stream and basically divert

it back into this flat area here and then it flows sufficient across the golf course before it went into the ocean. That was what was built. As far as the \$200,000 and the fine, basically Kaluakoi became subject to two Department of Health consent orders. One for their water system and one for their sewer system. As part of the sewer system consent order they were basically fined \$200,000 and when acquired Kaluakoi, we had the choice to either let the \$200,000 go into the state general fund and be used for general things or we could agree to take on, accept a supplemental environmental project on Moloka'i that would do something to improve the environment. Being the foolish person that I am we took on that challenge and we'd try to do a \$200,000 project. We were supposed to be done by last December, we've been struggling with permits and approvals and I'm still trying to get done, we did get an extension from the Department of Health that gives us I think until November of this year to get this project done. The biggest oversight we made when we first started going over the project was the fact that we were in an SMA area. In the SMA boundary Kaluakoi runs along this roadway here and it comes back down and follows along the coast. It also comes up in this area on this side of the map. So about April of last year we sat down with the planning department and addressed our issue with regard to SMA and they agreed with us because a full blown SMA major, we had an estimate from our planning consultant that it would cost \$30,000 to process. We had \$30,000 in engineering already to do the project and we only had \$200,000 to work with. So we were concerned about spending most of the money on doing environmental radiation on permitting and processing so we met with the county and the county agreed that the work that would be done in the old drainage channel could be done as an SMA exemption because there is an SMA exemption for maintenance work in drainage channels. So that in fact exemption was issued and that work is in progress. Basically it's substantially completed at this point and time. The remaining about \$100,000 is a job to build the basin and I've got a map here if I can open it up. So basically we got the roadway here, the golf course over here, the old drainage channel running through here, the current path it takes through a couple of private lots and onto the county beach park so we've done a good portion of the drainage restoration with the SMA exemption and what's left to do is to dig about a 60,000 cubic yard hole here and build a small berm around here like this to build basically a great, big pond so when we have a large rain the water would come to the culvert, down to the drainage channel and fill up in this hole and back up in this area if it was sufficient enough. If the storm was big enough and it didn't contain all the water and the silt there's a 500 foot (inaudible) that the water would than flow across and basically it would flood the golf course, the water would continue to filter through the golf course grass and end up in the ocean which apparently at one time its old path way. So that's the basic nature of the project. Our civil engineer that did the job looked at the last 35 years of storm flow data for the next filter over the Kaka'ako Gulch which the USGS keeps a stream flow gauge in, looked to the size of this water shed, looked to the size of



that water shed and did the map and basically came up with, there's something like 12,000 tons of silt or sediment, mud ends up through this stream on an average year in the ocean and right now there's basically nothing to stop it. It's a very narrow channel which moves very quickly into the ocean. So this would slow that down. It would have a chance for a lot of the dirt to settle out and hopefully cleaner water or no water would end up in the ocean. The basic estimate is depended on how those storms flow, whether they're in one big storm or several medium size storms, some where between t 30 and 60 percent on a 12,000 ton of silt would be captured by the sediment basin. So we think it has a significant opportunity to reduce the amount of orange that ends up in the ocean after a big storm. It won't stop everything but it'll stop several thousands tons of silt every year from going into the ocean. With that I'm happy to answer some questions. I think I stayed within my time.

Ms. Buchanan: You know you talk about water shed. This basin seems like a kind of last ditch effort at the end of what a water shed project should be looking like. I can think of several other things you could do to protect the water shed besides trying to build a catchment and that's, I came up with 35 years too because all this stuff was instituted back when Papohaku Ranch lands did their subdivision with diverting the water from its natural pass way. What happened in the 35 years was that the Keawe all grew back. So what you in advertedly did was go ahead and weed out all that natural, mother nature put back those trees in those natural water ways to slow down the water which you said was ending up on the golf course which now you want to, and you also had the two existing water ways in the golf course which you drained, somebody drained when the acquisition was taking over. They had two ponds there and now there's no ponds there. I haven't been there recently to look at but I know it's all dried up and I don't know if it previously was catching water. You hypothetically are estimating in the event of a storm that there's not going to be runoff and if there's runoff it goes into, eventually it's going to resort back to what it's doing now. It seems like you went ahead with your project and went ahead and cleared up all the debris that grown into the water systems is what I hear and found out that you needed a permit to do this basin. So the work over has already been done as part of your set and now you need a permit to do this. Because I went down there and wondered why is all that dirt there. When I went down to Papohaku Beach and I said why are they clearing all the land because, I just thinking common sense here. I not one engineer but I can see if rain comes and you grade one area all that water is going to end up, and mud, from point A to point B which is the ocean. It never used to do that until the subdivision. I mean it did but not to the extent where after the subdivision was done and the diverting of the rivers were done. Now you have the same problem further on down the beach. More than one place, on several places where the runoff goes into the ocean. At the end of Papohaku Beach you have sand mining or whatever going on illegally or whatever, which a complaint is

being filed on illegal sand mining. But, to get back to this basin, it's like you would close up the two reservoirs over here and now you going open one more over here at one other area closer to the beach side. So that's my reason why I need one on-site inspection is I want to see where this basin is going to go. I don't know how you got permitting to do the clearing of this drainage ways that had grown in as a natural water shed I would assume, because in a water shed type of project your primary goal is to stop the erosion from the beginning. From point A, from getting down into the ocean where it's point B. A better project would probably be trying to do restoration upwards in stead of trying to do the drainage. I don't know.

Mr. Edwards: We started our first thought at looking at how many acres we could grasp with \$200,000, hydro seeded water, get it up established to reduce the run off on top. What we found out was we basically were able to get a couple 100 acres, several hundred acres, grassed and basically you run out of money to make it go. So this was kind of the solution we came to that got the most amount of mud out of the ocean for the least amount of, or for the available amount of money. I guess the other issue is prior to our acquiring the property the diversion channel that was cleaned up and put in and since grew in was designed to basically take that water in a way that wouldn't create problems for the county park. Right now it cuts through couple of lots as I mentioned, cuts off the county parks. We did consult with the county parks department on this project and were quite supportive of it and we also worked with the Soil Conservation Service and they supported the project. They were trying to get a letter of support here today but apparently it had to be faxed from Honolulu and something fell apart there. But I can see from the discussion that we'll probably do the field trip. I thought maybe the existing work was part of what was causing the problem. Again because of its environmental nature we did get an exemption from the county to do the drainage channel to help us get the project moving along faster and we also got an exemption from the county for our grading permit. Again to help us get as much as the money turned into actual construction and as little of it as necessary in the paper work. With that I'm happy to go away because I think I shot my 15 minutes now. But I'm happy to stick around too, that's your call.

Ms. Akutagawa: Corporation Counsel just informed me that a conflict may not exist and I'll have her explain why. So if the commission wants to make a decision today they can. So I'll just have Corporation Counsel explain.

Ms. Young: Thank you Chair. After thinking about this issue a bit more it occurred to me that nether the Board of Ethics opinion on consultants and whether or not they're conflicted out of making decision if they have performed some work for the applicant and I believe there is that allowance for independent contractors to make decisions on where

there is displace of relationship. So I would correct myself and say that there is no conflict for Commissioner Shimizu. Thank you.

Ms. Buchanan: I have a question for Julie. The county exempted the work that has already been done. If it's in the SMA how can you exempt that work without having to come to the commission?

Ms. Higa: In the SMA there is an exemption list and it's one of the exemptions for maintenance and repair of existing.

Ms. Buchanan: But you know inadvertently it would end up with this. At the time that you gave them the exemption you know that it would inadvertently end up having to go to a basin where they would have to get a permit right?

Ms. Higa: Technically I don't know if they need to even do that.

Mr. Edwards: Back in April we sat down with that exact set of plans and basically our approach was the, the planning Director at the time was we got \$200,000, how do we get as much as this money into construction to do an environmental good with as little as possible in plans and permitting. Basically sitting there for an hour looking at what we're trying to do, well what was there before it was concluded that taking the existing drainage channel section and doing that under exemption was fine and doing the basin as an SMA minor was fine. From day one we've known that it was a \$200,000 project, the cut off, the \$125,000 so it was a very deliberate attempt with the administration to try to get a project for environmental good to do as much good as possible. So it wasn't we did this and we came back and said we're going to do that. We were very candid and open with them on our plan on what we're trying to do.

Ms. Buchanan: I understand that Harold because if anybody, I can appreciate the conservation point of view of it and I would insist on putting something on just like this if I knew that you were having runoff discharged into the ocean. On the same note I just want to say that as a resident of Molokai I'm concerned at what goes on on the West side especially along the Papohaku Beach area due to a lot things that have happened in the past that were done without permitting and review and it's still going on and that's just my concern and still why I wanted an outside inspection.

Ms. Akutagawa: Our Mr. Quorum went off some where. I saw him go that way. Then you can make one motion after that Lori.

Mr. Edwards: Can I just say thank you for letting me have my 15 minutes of fame, I appreciate the opportunity.

Ms. Akutagawa: While you were away Degray Corporation Counsel, based on an opinion that was given out consultants are exempt from this conflict of interest thing. So Nobuo can vote but after hearing the information from Molokai Ranch Lori still wants to do an onsite visit. So we needed you so Lori can make a motion.

MOTION: I'D LIKE TO ENTERTAIN A MOTION THAT WE DEFER ACTION ON THIS APPLICATION UNTIL AN ONSITE INSPECTION IS DONE BY THE COMMISSIONERS ON JULY 9.

MOVED: COMMISSIONER LORI BUCHANAN

SECOND: COMMISSIONER DEGRAY VANDERBILT

MOTION UNANIMOUSLY APPROVED.

Ms. Akutagawa: O.K. this matter is deferred.

Mr. Vanderbilt: Can I just ask Corp. Counsel at a future meeting to go into that consultant thing? For instance if there was a consultant, I know there's a problem on Lanai with employee's of the Lanai Company that live on Lanai voting and if Lanai Company made them all consultants could they vote? I mean that's...

Ms. Akutagawa: Let's just have it on the next agenda.

Mr. Vanderbilt: Maybe when we have orientation or something like that.

Ms. Akutagawa: By the way on this Chairperson's Report on the Molokai Community Plan policy concerning prohibiting commercial activities on the east end, I'm not going to do a presentation on that. It was mostly related to the Halawa issue. So can scratch that from the agenda. At this time we'll have unfinished business.

## C. UNFINISHED BUSINESS

1. WAYNE K. NISHIKI, Chair of the COUNCIL PLANNING AND LAND USE COMMITTEE by letter dated February 21, 2003 transmitting Bill No. 84 (2002) entitled "A Bill for an Ordinance Amending Chapter 2.80 A, Maui

County Code, Pertaining to the General Plan and Community Plans” to the Planning Commissions for review and comments. (B. Miskae) (Previously discussed and voted on at the April 9, 2003 meeting. Last discussed at the June 12, 2003 meeting.)

Mr. Miskae: Thank you Madam Chair and members of the commission. My name is Brian Miskae

I'm the Planning Program Manager for the Long Range Planning Division. The staff report was previously transmitted I believe to the members of the commission which you should have in front of you and what I would like to do is go through it on a page by page basis, outlining the various changes, recommendations, etc., and maybe at the Chair's discretion pause for questions at each page?

Mr. Miskae went over the staff report.

There is a reference on the first page to, you notice under sections there's a cross out, community plan is crossed out and the word citizen is underlined. All the way through the Bill the reference to Community plan advisory committee has been used because we wanted to make sure that there is an absolute difference between the General Plan Advisory Committee and a Community Plan Advisory Committee. So where ever you see the word Community Plan Advisory Committee we'd like to leave it as Committee Plan Advisory Committee so that there's an absolute distinction. So under the purpose and intent section 2.80B.010 the only change that we had recommended is a spelling error changing the word though to through.

Mr. Vanderbilt: Brian we were asked to look at the situation and try to understand this and come back with various comments. I know the Maui Planning Commission commented on the changes and had some questions on some other things. But as we go through this if things aren't clear to us, would you be willing to sort of clarify some things?

Mr. Miskae: That's actually what I said I would do, is go through section by section and than pause for questions at each page.

Mr. Vanderbilt: O.K.

Mr. Miskae: Getting back to the very first section 2.80B.010 is on page two. The only comments at that point was to use the term community plan advisory committee and to change the word though to through. The purpose and intent is really a section of the bill that kind of tells you what it's all about. To improve the process of the general plan, to

provide plans that clearly identify what's policy and what's law, to establish an implementation or prioritization on accountability, to empower advisory committee's, in other words this the reasons for the bill.

Mr. Vanderbilt: On that it says clearly identify provisions that are meant to be matters policy and shall also identify matters that require action, having the force and effect of law. What is the difference between those two?

Mr. Miskae: On the face of it, something that's policy would probably be deemed to be a guide. On the face of it, something that would be requiring action would deemed something exactly that. Something that would require implementation of something. For example there might be a provision that would ask for the creation of, for sake of discussion, the creation of a traditional use district which is what the current Molokai community plan talks about. That would be something that would have the force and effect of law. Something you have to do. There might be something that might be a guide line that might suggest that you consider such and such and such, this would be a policy. So what we're going to try and do when we do the wording, the actual words of the general plan and of the community plans is differentiate between these two things so we try and get rid of the problems that I'm sure this commission has run into time and time again, what is policy and what are we supposed to do and what are we supposed to consider. So that's what the purpose and intent section is to talk about trying to draft a document that differentiate between these two things.

Mr. Vanderbilt: When they talked about being consistent, various actions of the county agencies including this commission have to be consistent with the general plan and the community plans. Is that, how do you determine consistency because you have goals, you have policies, you have objectives, you have planning standards, you have maps, is it all the provisions of the general plan and the community plans are enforceable as far as the consistency rule goes?

Mr. Miskae: The legal key, I may be stepping into Cindy's ground here, but the legal higher key for planning begins with enabling legislation at the state level. The state tells us what we can do in terms of our general planning and what we have to have in it. We go to our charter and our charter talks about specifically what we want to put in our general plan. Than we have our general plan, and than we have our community plans and than finally we have our implementation laws like the zoning ordinance, the subdivision ordinance, the grading ordinance, all of these things have to be internally consistent. In other words you start at the state law. If you were for example pass something in your charter that was inconsistent with the state law, you'd have a problem. The idea that is to have consistency

all the way down through the higher key of these various documents.

Mr. Vanderbilt: And during the review process, and that's what has happened before, is that Corp. Counsel's job to review these plans for consistency with other hierarchy laws before they're brought into our planning commission or to the Council?

Mr. Miskae: Any law that is passed by the County Council is always signed as to form and legality by the Corporation Counsel. So one would assume that the law would be legally drafted and legally passed.

Mr. Vanderbilt: Thank you.

Mr. Miskae: Again I'm stepping into Cindy's area here.

Ms. Young: I would agree with Mr. Miskae's comments.

Mr. Vanderbilt: Just one last thing it says encourage more frequent updates of the plans. Does that mean more than every 10 years, right now there's a concern that there's too many, people coming in to amend their due things with the plan all the time.

Mr. Miskae: I would think Madam Chair, Commissioner Vanderbilt that the language here really talks about making sure that our planning documents are living documents that we try and keep current so that if something comes up that is going to amend, for example community policy, that you would want to be able to introduce that into the plan and amend the plan rather than wait for the whole 10 years to go by.

Mr. Vanderbilt: Thank you.

Ms. Akutagawa: At the last meeting we had on Bill 84 I asked a question about, if the community plans are amended I think it was like, any individual could raise it and present it to the County Council or what have you. My question was, does that in fact trigger the EIS process, Chapter 343 where they talk about any amendment to the County General Plan and arguably the community plans which are under that would constitute, or would trigger Chapter 343. So I'm wondering if that's been looked at at all or if it's exempt?

Mr. Miskae; Madam Chair we would get to that sooner or later here but I'd like to cover it maybe now. Chapter 343 has a variety of triggers that trigger either an environmental assessment or an environmental impact statement. One of those things is an amendment to a county general plan. As we have decided to include our community plans as being

part of the general plans, any amendment to a community plan by the public would trigger an environmental assessment, at least an environmental assessment. Now if in fact the county goes ahead and proposes a comprehensive amendment process to its general plan or community plans and I use the word comprehensive. They would not be subject to the trigger. They would not have to do a Chapter 343 assessment. Now, this has been held for a number of years that any event proposed by the county would not trigger an amendment, would not trigger 343. This has apparently been found to be not quite correct. Office of Environmental Quality Control has indicated that if in fact the amendment is not a comprehensive amendment even though it's being initiated by the county would in fact trigger an EA. The process that we're talking about here in terms of being very comprehensible, would not trigger an environmental assessment.

Ms. Akutagawa: O.K. its been a while since I've read this but doesn't this bill in fact allow for individuals to come in and propose, not at the 10 year mark but at any time an amendment to the community plan and if that is in fact so, would Chapter 343 be triggered?

Mr. Miskae: There are in fact in this bill four occasions where you would be introducing amendments to our planning documents. The first would be the decennial revision process required by the county charter for the general plan. The 10 year policy in which case the county would not have to repair a particular, Chapter 343 is not triggered. The second would be an amendment to the general plan outside of the decennial process. Two tracks can be taken there. The first track would be an amendment proposed by the planning director or the planning commission, in other words by the county. That would not trigger an amendment, would not trigger a Chapter 343 unless it was a small type of amendment.

Ms. Akutagawa: You talking option two right? The county general plan, amendment, outside of the decennial process.

Mr. Miskae: The General plan has two processes. One is the decennial provision process and the other would be other amendments outside of the 10 year process. Now, the general plan the way bill 84 was previously drafted precluded the public from initiating amendments to the general plan. We had to convince the planning director or a member of the Council to initiate an amendment to the general plan outside of the 10 year process. The Maui Planning Commission in its recommendation has said we didn't agree with that. They felt that the public should have the right through due process to apply to amend the county's general plan outside of the decennial process or what they did agree to was these amendments are only accepted only one time a year and that's in the month of July. So



that in fact the amendments would essentially be piled up, if you will if there was a lot of them, so they could be looked at at more comprehensive way.

Ms. Akutagawa: So given that it's one time a year, one shot deal, more comprehensive it wouldn't trigger a Chapter 343.

Mr. Miskae: The way the bill has been amended to reflect what, it's not amended yet, but the way the Maui Planning Commission has recommended it to be amended is that it says if Chapter 343 is triggered by the application, than Chapter 343 would be followed. We had an individual from OEQC talk to us about the various nuances of Chapter 343, even he having worked at it for 12 years is very confused over the application of Chapter 343.

Ms. Akutagawa: I know and I worked on it for four years.

Mr. Miskae: So in many cases I think what you have to do is almost look at these things on the basis of each one an see where you are with them. The way the bill was recommended by the Maui Planning Commission is that if it's triggered you do it. If not, obviously you don't.

Ms. Akutagawa: I'm kind of looking at this like committee reports where we want to provide as much feed back to the County Council and so for the record I want County Council be flagged about this issue because I can see, I mean over all I like this bill but I can see how it can be unduly burdensome on just a citizen that wants to see a change and there's definitely a need for a change in the community plan process. But now this person has to kick down some dollars to write an EA just to make a change to the community plan. So if at all possible if this could be exempt or certain rules could be applied on when it might be triggered and when it might not be, I think overall there'll be a greater benefit to the public. The concerned citizen that wants to make a really legitimate change. The other side of this is you could have a big developer wanting to change the community plan during that one year in July process and it's something that's very significant and serious, but that person wouldn't be held to doing an EA. So there's a lot of give and take. I think it's a concern that should be raised to the Council.

Mr. Miskae: I think there's another thing Madam Chair, if I can just follow up. There is probably some discussion that's going to have to be made as to whether a textual change would trigger a 343 or whether just a change to the map may be done too. When you start changing maps there's an awful lot that's involved in that changing so your policy, your textual policy, may be that would not. So as I say, you're more familiar than most people with Chapter 343, it's not an easy thing to follow. You also have to look at the triggers as

they're set out are also, I suppose, challengeable if in fact it was decided that maybe an EA was not necessary. There's nothing stopping from say someone taking the matter to court and forcing it. It's still kind of a matter to subjectivity as to how you want to view it. The bill, the way the Maui Planning Commission has recommended it leaves that door open, if it applies use it, if it doesn't don't.

Mr. Vanderbilt: Following up on Commissioner Akutagawa, if somebody in our community has a legitimate change, it's in the best public interest and he convinces the Council, Danny Mateo or one of the other councils to introduce it or the planning director, Foley, to introduce it, would it have to go through Chapter 343?

Mr. Miskae: Again the reading that we got was that if it's not a comprehensive amendment, it may, I'm not saying it will, but it may trigger Chapter 343. If it's a map amendment it probably would if it's a textual or policy or that type of amendment maybe it wouldn't. Sorry I'm so gray on this but I really don't know.

Mr. Vanderbilt: Well is that something that's going to be determined before the Council looks into this so they can decide on whether you want changes every year, every five years, what ever? It makes a big difference.

Mr. Miskae: The way the bill has been recommended by the Maui Planning Commission is that anyone can apply to amend the general plan, anyone can apply to amend the community plan but only in July of each year.

Mr. Vanderbilt: Just one quick follow up on that, we hear individuals, anyone, the public and they sort of get crossed and blended in the whole thing.

Mr. Miskae; Anyone is anyone other than the county. Anyone means anyone other than the county.

Mr. Vanderbilt: So an individual that wasn't a land owner could make an amendment to the general plan and or the community plan?

Mr. Miskae: The way our application process is set up is if you would apply to amend the community plan or a general plan that had some specific reference to a particular piece of ground, you would need the owners consent to make the application.

Mr. Vanderbilt: But the planning director and the Council would not need the owners consent?

Mr. Miskae: They would not need the owners consent.

Mr. Vanderbilt: And if you would need any consent if you were going to make a text change to the general, anybody could make a text change to the general plan or the community plan.

Mr. Miskae: Again as long as it didn't affect a particular parcel of land.

Mr. Vanderbilt: Thank you.

Mr. Miskae: I lost my direction here, should I continue? O.K. we've kind of been jumping around a little bit. Chapter 2.80B.020 titled General Plan. We had testimony by a number of people concerning this particular section and one particular consultant Chris Hart had asked for some additions to this particular section. We also had testimony from a previous planning staff member for some changes and additions to this section. So you see the ones that are underlined under page three. This is the wording that Chris Hart wanted to put into the plan. Revisions proposed by Hart tend to clarify the visionary nature of the general plan. Proposed revision also underlines the importance of implementing policies and objectives contained in the general plan through changes to regulatory measures such as the Zoning Code, Subdivision Code etc. Hart further contends that any such regulatory amendments take place within one year from the adoption of the General Plan or Community Plan. Staff does not disagree with Hart in principle but has concerns about setting up a timed framework that may not be possible for a variety of reasons. In other words we don't want to put ourselves in a rigid, regulatory box. Staff recommends that only the words "to the maximum extent practicable" be adopted. We think this probably pretty well covers a lot of what he wanted to talk about. Additionally, another testifier recommended that language be inserted requiring consistency between the general plan and the community plans. We're recommending therefore that another section be inserted an renumbered as C so it would read, the general plan and the community plan shall be internally consistent with compatible goals, objectives, policies, implementing actions and land use maps.

Mr. Vanderbilt: Excuse me on C, which I believe was adopted by the Maui Planning Commission, wasn't it?

Mr. Miskae: That's correct.

Mr. Vanderbilt: We're going through, we'll get to the general plan later but they're hoping to get a general plan, there'll be three general plan advisory committee's, Lanai, Molokai

and Maui, and hope to get that, as I understand it, about two years, they're hoping. Then they're going to attack the community plans in the order that they were originally done and ours was just approved. So my concern is the format of the general plan, they're going to come out with a general plan and we're going to dealing with a community plan that probably is not consistent with that general plan and my question is, if the plans are not consistent which prevails? The provisions in the general plan or the community plan? Maybe that's a question for Corporation Counsel.

Ms. Young: The general plan would prevail in that circumstance. The community plan should be in conformance and comply with the general plan.

Mr. Vanderbilt: See that's the problem. They're not going to get to our community plan for a while. We have a community plan that was based on, was drafted based on the existing general plan so how do you see the process working where we're not, we don't really have a community plan and its taken us 11 years to get it approved.

Mr. Boteilho: We did think about that. In fact in the bill it says if an amendment to the general plan directly triggers an amendment to the community plan, that both shall be processed concurrently.

Mr. Vanderbilt: Well so if our general plan advisory commission comes up with a whole list of things and now the general plans are going to include a lot more than they did before, do we go right in to changing our general plan or do we have to wait for the community plan advisory committee to do it? I mean if it triggers than it could be done concurrently but we may not have a community plan advisory committee in place.

Mr. Boteilho: You are correct but you would still have the general plan advisory committee in place.

Mr. Vanderbilt: So they would come up with all these ideas and than if our community plan was inconsistent with those then you can throw the community plan out and we'd really be, this commission would only look to the general plan if there was any conflicts and consistency, is that true?

Mr. Boteilho: Yeah but the key word I would like to emphasize is directly triggers. It almost gets to be a no brainier kind of thing. If it directly triggers that you must amend the community plan than we would do it concurrently.

Mr. Vanderbilt: But if we didn't in the community plan, the general plan would rule

according to Corp. Counsel. So I'm just wondering how the whole process works. I know this whole thing is geared for the regional issues on Maui but than we gotta look where this over all plan leaves Molokai. That's the thing. Everybody's focused on Maui.

Mr. Miskae: That's not necessarily true Commissioner Vanderbilt. The bill is set in such a way that Molokai will have a 13 member general plan advisory committee. The general plan will have a specific section dealing specifically with Molokai and as far as I can see you guys worked extremely hard on the community plan. I can't see that we're going to have any huge policy changes.

Mr. Vanderbilt: So theoretically the general plan advisory could use as its draft documents going into their input of the general plan process is our existing community plan.

Mr. Miskae: I firmly believe that's what will happen too and probably the 13 members that are going to be your general plan advisory committee will likely transition to be your community plan advisory committee. Director Foley also indicated that he would like to try do three plans per year together. So in a period of three years we can do all 9 plans.

Mr. Vanderbilt: Thank you now that makes it a lot clearer if I gotta explain it to somebody.

Mr. Miskae: We tried to think this through honestly. O.K. moving right along. So on page four what we're going to do is add the words to the maximum extent permitted by law and we're going to add a new section that talks about the consistency. That's the staff recommendation. Are there any comments? Again we've recommended to the Council and to the Maui Planning Commission that the maps, the develop industry was very, very upset about having a map. But we were successful in having the Maui Commission recommend that the maps stay in. Moving along Madam Chair on page 6 we talk about an implementation program, bench marks, status reports and technical plans and studies. These are the things that would be used to back up the general plan. These are the things that would be used to get accountability, these are things that will be used to establish what's to be done, where and when, and how they would be paid for.

Mr. Vanderbilt: Where are you Brian, I'm sorry.

Mr. Miskae: Page 6. Implementation program, bench marks, status reports, over to page 7, technical plans and studies. Now...

Mr. Vanderbilt: I'm sorry where are you? Page 6? Status reports, o.k., thank you. My eyes are going bad. May I ask a question on those status reports? The director mentioned

that there were tremendous, there were a lot of these reports being done by outside consultants and we have a lot of concerns about our infrastructure capacity's here but from what I understand Molokai wasn't included in one or all or a portion of those technical reports and I'm wondering if those technical reports will include the fax and figures on Molokai by the time the general plan advisory committee starts working?

Mr. Miskae: Madam Chair the technical reports do in fact include Molokai and Lanai.

Mr. Vanderbilt: Thank you.

Mr. Miskae: Page 7 that's technical plans and studies. In number five you notice there's the word charities and, that has been crossed out. When the bill was drafted by Corporation Counsel, god bless them. They misspelled the word charette, it should have said design charettes meetings and they typed charities and meeting. For the Maui Planning Commission has actually by motion said don't put anything in there, just leave the word community designed meetings. Don't try to make it out to anything. We really don't care. If the word is in there it should be charette. Charette is kind of a puka, kuka type of thing when you trying to get together and talk on a community level.

Mr. Vanderbilt: Can I just make a comment? On the second sentence there the element shall include and every where else it says and not be limited to. Since this is involving public participation which has not been the best can we include the words but not be limited to like the other sections? Because I think there's going to be a lot of focus on Molokai to use every means we can on the public participation.

Mr. Miskae: We've said such as, we haven't limited to anything. We haven't limited to just those things, we just said such as.

Mr. Vanderbilt: So in the sense that means?

Mr. Miskae: Same thing.

Mr. Vanderbilt: Same thing. And than on just the community can we just say community meetings? Is that what you were recommending?

Mr. Miskae: No we'd leave the word design in. The idea is to have real table talk discussions.

Mr. Vanderbilt: So design means table top.

Mr. Miskae: Design would stay in. It's this commission that's commenting to us so how did you want to cover that?

Mr. Vanderbilt: I just didn't know what a community design meeting was. That's the problem a lot of times with wording you know people just don't know what they mean. Thank you.

Mr. Miskae: In light of sub-item B on that page 7, the words and sex cohorts have been taken out and the word distribution inserted. This was a recommendation by Council member Tavares and we have no problem with that. Page 8 at the top...

Mr. Vanderbilt: Excuse me can I just ask, the forecast shall be updated every two years, who's going to up date, this is on page 7, the last sentence in the next to the last paragraph. The forecast shall be updated every two years. Who will update it and what are the consequences if it's not updated?

Mr. Miskae: The department of planning has worked with the Department of Business, Economic, Development and Tourism to develop a econometric model. The model has been used state wide and it is being reduced to county by county and we've further broken it down into regions with our own model. So we have a model that has been developed by S & S Research that we can plug all these new numbers into. So every two years would be a matter of simply updating what we got by plugging in new inputs to get new outputs back out again. The county planning department would do that.

Mr. Vanderbilt: Thank you.

Mr. Miskae: Page 8 at the top of the page sub D, there was a recommendation to use the word historic as one of the resource and hazard constraints inventory. We have no problem with using the word historic. At the bottom of page 8 there's a large strike out of an entire section that says the County Council may waive the provisions of this section to the extent that they prevent obtaining or granting of federal aid on any project or the prosecution of work thereunder. For all intents and purposes what this is is that this did mean that if in fact the Council was going to do something that might have prevented getting bucks from Washington, that they could waive the provisions. But according to the previous Corporation Counsel that looked at this before the Maui Planning Commission he felt that they had the authority to waive whatever they want anyway. So he suggested that this wording be taken out. We've taken it out. Moving right along. Chapter 2.80B.040 Decennial revisions to the general plan. What this talks about is exactly what we're doing now. The decennial process and it talks about how that's done.

Mr. Vanderbilt: We have on 2.80B.030 you have three general plan advisory committee's. Now they're going to meet separately, am I correct probably and do their own work separately?

Mr. Miskae: I would think that they would meet separately and maybe have one or more together sessions.

Mr. Vanderbilt: So you would envision, there'll be a Molokai and Lanai section in the general plan. Do you envision that there will be certain other issues in the general plan that might be applicable to Maui, Lanai and Molokai?

Mr. Miskae: It's possible.

Mr. Vanderbilt: So if one of those was changed, than you would have to have a public hearing really on each island, right?

Mr. Miskae: Which would be the case now if in fact there's an amendment to the general plan there would have to be a public hearing probably held on all three islands.

Mr. Vanderbilt; And if all the islands meet there's more people on the planning advisory committee from Maui than there are on Molokai, which is logical, but would it come down to a vote in deciding on certain issues that may apply county wide?

Mr. Miskae: I don't know how this would come about. Our thoughts are that these general plan advisory committee's would probably act independent of each other in the beginning. Much of the policies that work well on Maui probably don't work here. Probably don't work on Lanai. Like our current general plan actually has a separate section for Molokai and Lanai and Kaho'olawe, there's no difference here in what we're proposing with this particular process. Again I would think that because each would act independent of the other that probably the policies and provisions applicable to each of the islands would be dealt with separately and probably outlines separately. Now if in fact an amendment to the Maui section affected the Molokai section yeah I would assume there would have to be a hearing on at least Maui and Molokai.

Mr. Vanderbilt: And than at that time the wording on the amendment, say Molokai didn't really want the amendment the Council could theoretically say except on Molokai, the following amendment applies, like they do in some other?

Mr. Miskae: They could, yes. So page 9 is decennial revisions to the general plan. On the



bottom of page 9 is 2.80B.050 non-decennial amendments to the general plan. The staff had proposed that only the planning director or the county council by resolution could propose amendments to the general plan outside of the 10 year process. Many testifiers came forward and said that this would be not at the best interest of the community. That we were foregoing due process and that we were taking rights away. Maybe they're right, maybe they're right. So what the planning director did was, you'll find on page 10 in a fairly long, drawn out explanation what the Planning Director subscribes to is that yes, anyone can make application to amend the general plan outside of the 10 year process, but the applications can only come in once a year and that is during the month of July. The reason we chose July was that's the first month our new fiscal year. So we probably know at that point what kind of money we have, what's happening, etc.

Ms. Akutagawa: Are these defined? You know how an individual could be a corporation in some laws and what constitutes a legally cognizable entity? I guess I'd like that further defined.

Mr. Miskae: We had three things actually here. We had the state, we had an individual and we have legal cognizable entity. We were reminded by Council member Tavares that the state is a legal cognizable entity so therefore we don't have to mention the state. So we boiled it down to individuals and legally cognizable entities. I mean I guess I would probably defer to corporation counsel, to me a legally cognizable entity is any person, corporation, any legally identifiable entity, person, corporation, business, what ever would be legally describable.

Mr. Vanderbilt: I'd just like to make a comment. I know that in listening to people on Maui and not the developers and I think planning director Foley said the same thing, people want to see some integrity in the community plan you worked for 18 months, 24 months, 30 months to put these together and then to be able to come right in, that just tends to allow major land owners and we were faced with that, just not going through the process and dealing with it and then coming in for an amendment at a later time when it doesn't get quite as much scrutiny. I was just wondering could Molokai, I mean if this commission wanted to say that the non-decennial amendments to the general plan may be proposed by the planning director or by the County Council only on the basis that if it were something good for the community and it really needed plan you should have no trouble convincing the planning director or the council that this was something that extra ordinary or worth while and in the best interest of the community. Rather than opening the door that every year you can have major land owners would come in for community plan amendments which they'll do because the property values are moving up so fast.

Mr. Miskae: Well first of all the section that we're talking about here is not the community plan. We're talking about only the general plan. We haven't gotten to the community plan section of the bill yet.

Mr. Vanderbilt: Well the general plan also, for Molokai. Say on Molokai it would only be the planning director and the...

Mr. Miskae: The only thing that anybody, any legally cognizable entity would ever want to amend the general plan would be the map and you're not going to have a map dealing with Molokai or Lanai. So probably you won't need to even worry about having these kinds of amendments.

Mr. Vanderbilt: You see I think that's what worries me, you say you probably won't have to amend. I mean people work all day, they do this where as major land owners and everything, they have to focus, they're focused on their project all the time and I would be too if I was the developer or something. So is there any reason why on Molokai we could just say that non-decennial could only be made by the planning director and the county council?

Mr. Miskae: There's probably nothing stopping you from doing that but again this is the county's general plan, it's a singular document. The preference would be to probably try and have consistent language here. Again as I say, Madam Chair, Commissioner Vanderbilt, the testimony that we got from the developing industry and Commissioner Vanderbilt was there through most of it, was primarily complaining about the map. They wanted to have the ability to amend the map. We're not going to have a map for Molokai.

Mr. Vanderbilt: We don't know if we're not going to have a map, do we? I'm just going with what you said earlier. The general plan advisory committee may want a map.

Ms. Akutagawa: Degray do you want to suggest different language than because we're going in circles about whether going get one map or not.

Mr. Vanderbilt: The county code is a singular document and here this chapter applies to all of Maui County except the island of Molokai, that's on the Zero Lot Line ordinance. So there are instances where Molokai feels something is not appropriate and might be more appropriate for Molokai. I would just suggest that on Molokai amendments to the general plan may be proposed only by the planning director and the county on the basis that if it's something really needed by our local community that they could get this planning commission to get the planning director to do or Danny Mateo and the Council to do it.

Mr. Miskae: Madam Chair I would need a motion.

Ms. Akutagawa: You want to make that motion Degray?

MOTION: I MOVE THAT THE LANGUAGE BE THAT NON-DECENNIAL AMENDMENTS TO THE GENERAL PLAN MAY BE PROPOSED BY THE PLANING DIRECTOR OR BY THE COUNTY COUNCIL RESOLUTION.

MOVED: COMMISSIONER DEGRAY VANDERBILT

MOTION FAILS.

Ms. Akutagawa: I know you're raising really good questions Degray, but if we end up stuck one place than I would like you to suggest language so we can move on.

Mr. Miskae: On page 10 at the bottom is the language that staff had recommended as a compromise to development industry, non-decennial amendments to the general plan may be proposed by individual and other legally cognizable entities during July in each calendar year. An environmental assessment in accordance with Chapter 343, HRS shall be submitted along with the request. The planning director or the county council by resolution may also propose amendments to the general plan and shall follow the same requirements as set out in Chapter 343, HRS, etc.

MOTION: I WOULD LIKE TO MAKE A MOTION THAT THERE BE A DEFINITION OF INDIVIDUAL'S.

MOVED: COMMISSIONER DEGRAY VANDERBILT

Mr. Miskae: Is there a normal definition of individual that we normally go by on a day to day basis?

Mr. Vanderbilt: Does this bill have any definitions planned for in the future?

Mr. Miskae: No.

Ms. Young: The term individuals does usually have a definition attached to it which would be person, corporation. I believe there's certain other entities as well but it might be better to have a definition of individual. It's the purview of this commission to suggest that that term be defined and same goes for the term legally cognizable entity. Although I believe

that when they say legally cognizable entities, I believe that term encompasses corporations but may not include certain entities such as union for certain unincorporated entities.

Mr. Miskae: Madam Chair the staff will include a definition section in this bill so you don't have to go through a motion if you don't want to.

Mr. Vanderbilt: Thank you.

Mr. Miskae: Page 11, on item D we added the words, following a public hearing. A new E which is underlined was changed to say prior to approving any amendment to the general plan pursuant to this section the county council shall hold a public hearing on the bill incorporating the amendment.

Mr. Vanderbilt: Excuse me Brian, a public hearing. If it's the general plan does the public hearing, would it be on Maui or would it require a public hearing on each of the islands.

Mr. Miskae: Well as we pointed out in the staff recommendation if the council leaves this section in which they put it in, if they leave it in an amendment to the general plan could have inter-regional significance in which case the public hearing should be held on all 6 regions on Maui island if the amendments affects Maui island and all 8 regions if the amendment affects Maui county. So it's a good possibility that the public hearing would have to be held throughout the county. It is not specific in the way the wording is set up here. It just says that a public hearing shall be held incorporating the amendment.

Mr. Vanderbilt: You guys are going to be pretty busy. Amendments come in every year.

Mr. Miskae: Page 12 under community plans you notice there's some strike-outs there, the strike outs are left in in the bill that we recommended to the county council and the Maui Planning Commission in light of the fact that we feel that the maps have to stay in.

Page 13 is all the things that have to go into the community plan. 14, all the things in a community plan. Page 15, 070, as I mentioned before we prefer to use the term community plan advisory committee, in other words so there is a differentiation between...

Mr. Vanderbilt: Excuse me, can I just ask a question Brian I'm sorry, you were moving kind of fast, but on C, exhibit b, shall preserve the physical integrity of the established land, parcel, boundaries, to the extent practicable.

Mr. Miskae: What page are you on?

Mr. Vanderbilt: That's page 12, C. The physical integrity of established land parcels shall be preserved to the extent practicable. What would be an example of something that would make it impractical to preserve the physical integrity of established land parcel boundaries?

Mr. Miskae: Putting in a land use designation through the middle of somebody's property if half their property is one thing and half is something else. The idea is to try and preserve as best as practicable the boundaries. You don't have a split parcel with half and half in another. Madam Chair I'm sorry I raced through this thing I thought we were only going to talk about the areas that were amended rather than every word.

Ms. Akutagawa: I prefer that.

Mr. Miskae: I was up to page 15. We recommend leaving the word community plan advisory committees in tack. There was some other wording that Council member Tavares asked to be put in, it's item C or section C on page 15. She asked the words each citizen advisory committee is charged with reviewing and recommending revisions to the community plan for its community plan area. We have no problem with that wording except we would say each community plan advisory committee is charged with etc. But I guess she wanted to be a little bit more specific as to the charge to the particular community plan advisory committee. The Maui Planning Commission had no problem with that, the staff has no problem with that.

Page 16, again there's the federal aid section that was deleted as we seemed to agree that it really isn't relevant. Continuing down to 2.80B080 we've changed the words, we want to leave the words community plan advisory.

Page 17, 2.80B.090 there is a new section E added. Prior to approving any amendment to a community plan pursuant to this section, the council shall hold a public hearing on the bill which shall be held in the community plan region. So specifically the community plan amendment is being proposed on Molokai. The hearing has to be held on Molokai, it can't be held in Wailuku.

Section 100 on page 18, these are amendments to community plans outside of the 10 year process. Council member Tavares felt there should be a five year cooling off period after the adoption of the community plan before any amendments are considered. We feel this is a fairly long time and that it may very well be something could come up and that we

should really look at the integrity of our planning commissions and our council to decide whether an amendment is frivolous or not. That we shouldn't block the process in having to be able to have people on a more regular basis. What we have done is we have limited the application to only being received during the month of July so it's only once a year that we can put this together and kind of look at the regional significance on them.

Ms. Akutagawa: I'm a little confused. This thing says five years you can only bring it up?

Mr. Miskae: Five year wording Madam Chair was wording that was recommended to be added to the bill by Council Member Tavares. We do not agree with that language.

Ms. Akutagawa: It conflicts with the previous language.

Mr. Miskae: It's confusing the way this was drawn up because what we tried to do is put in the language that was given to us by the council and then the underlined language is language that was proposed by members of the council after words, by members of the public after words, by members of the what ever. Then we tried to comment on that as a staff recommendation as to what the relevance of these revisions are and what the staff recommends. So in this case we do not recommend this five year period.

Ms. Akutagawa: So could this commission just concur with you guys?

Mr. Miskae: Gotta make one motion though right?

Mr. Vanderbilt: I'd like to comment on that again. We went through this with our community plan. Commissioner Akutagawa you were over testifying, everybody went through a long process, longer than any other community in the last minute and both the major land owner and the council made just tremendous changes to our community plan. As a matter of fact the major land owner here really didn't participate that much in the community planning process. I worry that if you open the door where people don't have to come in and lay their cards on the table when the whole community is looking at the island wide community plan knowing that they can come in after it's adopted, sit back, take in all what the community says than come in within a year. You're not going to get anybody to take seriously spending three years trying to put together a general and community plan knowing what happened after all the work in our community. So I would, when it gets to that point I would like this commission to consider what Council member Tavares said, no plans, the community plan couldn't be amended for 60 months. I mean, look at our community plan its got so much undeveloped land is already approved for development, I mean, you're just going to get people coming in every year and you guys don't have the staff and we're going

to be in here every day so I don't know. I just think to protect the integrity I would go with Charmaine Tavares' recommendation and she was out there in the various communities taking input.

Ms. Akutagawa: Make sense to me Degray.

Mr. Miskae: Madam Chair there's two safeguards that are built into this bill that really addresses this. First one being is the community plan advisory committee remains empaneled until such time as their plan is adopted. Which wasn't the case the last time. So the assumption is the group of people, the 13 people that have drafted the community plan stay with it until their plan is finished. Secondly with respect to applications to amend community plans after that process takes place were only accepted once a year. So this commission then could look at the impacts, the effects of those amendments. They won't be coming into you like every month. Only one time a year you'll look at them. So we think with these two safeguards one in the 10 year process that the community plan advisory committee stays with it till the end and the fact that we're only going to accept these once a year, really does protect the integrity of this community plan process.

Mr. Vanderbilt: I disagree Brian. Number one I don't see anything about the community plan advisory committee staying in tact, how that has anything to do with it. Number two as far as all the things coming in in one year, they're still going to come in and if people know they can't amend the community plan for 60 months they're going to get their okole in here and work with the rest of the community and lay their plans on the table. So, that's just my take on the whole thing and I know our community is very disappointed what happened during the last community plan process. So that's the reason for my position.

Ms. Buchanan: Well Degray nobody says it has to be five years, we can make our own recommendation. If you think you like Council member Tavares' suggestion and I know what you getting at because when we did our general plan at the last minute we had some major land owners come in and do one number on us at the last minute which changed everything. So there was nothing to safeguard that at that time. So it has some good points about it. But it doesn't necessarily have to be five years.

Mr. Miskae: We're kind of confusing two different processes here. The last time the major land owners came in and did a number on you because the citizen advisory committee had already been discharged, that's in the 10 year process. The citizen advisory committee were called your community plan advisory committee stays in tact until that plan is finally adopted. So there shouldn't be any of this last minute stuff because the citizen advisory committee is in charged right up until the time the plan is finally approved. These are

amendments after-the-fact, after the plan is adopted.

Ms. Akutagawa: Brian I think the last time this thing happened to us wasn't it just a direct communication with the county council? A total skip of the Molokai Planning Commission and the advisory committee, didn't it go straight to the council? So in this bill are there safeguards where any proposed amendment, not only goes to the council but goes to us?

Mr. Miskae: Again there's two processes here. The process that failed was the 10 year process. That's the one where the developers sort of sat back and, when you folks all finished, got your work done, the planning commission finished, transmitted it over to Wailuku and then all of a sudden the developers came out of the wood work and said hey no we want all this done differently. That's what happened and the council went ahead and changed a bunch of stuff on you guys. But that was the 10 year process. This time through the citizen's advisory committee stays empaneled right up until including the last date that that plan is adopted.

Ms. Akutagawa: And they would provide comments to the county council? Well you know this was the intent.

Mr. Miskae: They were discharged their responsibilities once the plan was transmitted, not now. The citizen's advisory committee stays empaneled up to and including the final day of the adoption. The second process, after the plan is adopted, now a guy wants to come in and change the plan, they gotta come to you to get it changed.

Ms. Akutagawa: Yeah I like that.

Mr. Vanderbilt: Well they always had to come to us to get it changed.

Mr. Miskae: But your concern was the developers was pulling a fast one and laying off in the woods. They can't do that now under this new process in the decennial process.

Mr. Vanderbilt: We see the attendance at our planning commission meetings and when you go through the process in the community planning level, when the whole review is going on for the whole island, you have everybody involved and people know what's happening. But if somebody comes in after-the-fact, after the plans are adopted, the next year they come in, a lot of people aren't going to continuing taking off work trying to figure out who's on first base. So I think it encourages people not to go through the process and lay their cards on the table. Because knowledge is dangerous on Molokai.



Mr. Miskae: I've nothing more to add Madam Chair I think I've made my point the best I can.

MOTION: I'D LIKE TO MAKE A MOTION BASICALLY TO SUPPORT COUNCIL MEMBER TAVARES' RECOMMENDATION THAT 5 YEARS OF 60 MONTHS BE THE STANDARD FOR AMENDMENTS TO THE COMMUNITY PLAN.

MOVED: COMMISSIONER DEGRAY VANDERBILT

SECOND: COMMISSIONER LORI BUCHANAN

Mr. Vanderbilt: Now when this says no amendments from the public would it be accepted in five years, somebody could still go to the planning director under Charmaine Tavares' thing and go to the planning director or the council and request an amendment?

Mr. Miskae: Yes they could.

Mr. Vanderbilt: So knowing it was something really in the public's interest they could go to the planning director or the council to get it through, I would say that the public which would include everybody else cannot make an amendment for 60 months or 5 years. If it's something that's really needed for our community than I'm sure the planning director or the council would make that resolution. So that's just my motion.

Mr. Miskae: Is this for the Molokai community plan or is that all 9 community plans?

Ms. Akutagawa: Just for Molokai.

MOTION UNANIMOUSLY APPROVED

Mr. Miskae: Page 18 had a whole bunch of things that had to go into the application. We felt rather ridiculous to try and repeat all this stuff and it's already in Chapter 19.510.010 and 19.510.020, we're just recommending that all this extra verbiage be taken out and just, it's a public hearing application, these are the things you have to do, same thing. So except for the fee we wanted to change all of that.

Page 20, the very bottom on E, added the words following a public hearing.

Finally on page 21, section G on that page said nothing in this section shall prevent concurrent processing of other actions related to a proposed amendment. Where an

amendment to a community plan directly triggers an amendment to the general plan, such matters shall be process concurrently. This was back wards. There's no way a community plan amendment should trigger a general plan amendment. So what we said in the language here is that we recommend the last sentence of that section be deleted because the general plan is the driving document, not the community plan so that's what we've done with that.

Ms. Akutagawa: Thank you Brian.

Mr. Vanderbilt: One brief comment on this, on page 5, very important thing in the vision statement. If you want it only to be for Molokai, fine. Where it says a vision statement for each island's economy, land use pattern and then after land use pattern put resource/environmental protection and social environment. I just want to get in there that the vision statement would include something about resource and environmental protection, not just economy, land use patterns and social environment.

MOTION: I MOVE THAT ON PAGE 5 UNDER THE ISLAND-WIDE LAND USE STRATEGIES BE CHANGED TO READ, THE VISION STATEMENT - A VISION STATEMENT INCLUDING BUT NOT LIMITED TO FOR EACH ISLANDS ECONOMY, LAND USE PATTERN, PROTECTION OF THE ENVIRONMENT AND CULTURAL RESOURCES AND SOCIAL ENVIRONMENT.

MOVED: COMMISSIONER DEGRAY VANDERBILT

SECOND: COMMISSIONER LORI BUCHANAN

MOTION UNANIMOUSLY APPROVED.

Mr. Vanderbilt: Thank you fellow members for bearing with me, aloha.

Mr. Miskae: Can I summarize Madam Chair? You are going to be adopting the staff report with the following amendments. To add a section on definitions, so we have a definition for individual, and legal cognizable entity. We are going to change Chapter 2.80B.100 so Molokai amendments have to wait for five years. We're going to add the words on page five, Island wide language strategies, a vision statement including but not limited to for each islands economy, land use pattern, protection of the environment and cultural resources and social environment. I think that was it.

Ms. Akutagawa: Sounds good.

Mr. Miskae: Thank you.

D. CHAIRPERSON'S REPORT

Ms. Akutagawa: Chairperson's report nothing.

E. DIRECTOR'S REPORT

1. Update on Hale O Lono

Mr. Boteilho: Madam Chair update on Hale O Lono, I checked with Council Services, it is pending in the Planning and Land Use Committee under Wayne Nishiki. They don't know when it's going to be taken up. However been there I would suspect that since your recommendation was no change, I think they will not take it up and that they will just let it die. Another recommendation of yours was that there be a citizen's committee and I have provided some aerial photos to Degray.

Ms. Buchanan: O.K. that's what I was wondering because I know the decision was to have a citizen's committee look into that.

Mr. Vanderbilt: This whole thing came up because the council asked for some definition of the 40 or more acres?

Mr. Boteilho: They had propose a change in designation from open space to park.

Mr. Vanderbilt: Who said no?

Ms. Buchanan: Our commission. That was from public testimony.

Mr. Boteilho: You weren't there at that meeting.

Mr. Vanderbilt: But now since than that open space bill has gone through and they're allowing a tremendous amount of uses in open space too. So that's the other thing.

Ms. Akutagawa: Yeah we were stuck between a rock and a hard place.

Mr. Vanderbilt: But was the committee supposed to look into this to identify the 40 or plus acres? Didn't somebody send us a letter to that effect? Council member Johnson or?

Ms. Akutagawa: Walter Ritte had explained some of the previous vision of the community was just to have a bathroom. Rather than have the county make the decision for us we'd rather have a citizen's committee to make recommendations on what they'd like to see happen. That's my understanding.

Mr. Vanderbilt: Yeah because the community plan says 40 or more acres would be set aside for park. It would be for some community use. O.K. thank you.

2. Schedule for future meetings

Mr. Boteilho: I was going to ask that you consider, and you don't have to really tell me now, but, if it's possible to start at 9 am, kind of like what we did today. The reason is that it would, we could catch Commercial Airlines rather than charter. So one would be cheaper. Two, we could get her faster and would save staff time.

Ms. Akutagawa: I'm in favor of that. Just no put 10 things on the agenda like today.

Mr. Boteilho: Although that's another bonus is that we could go into the afternoon if possible, if the commission wanted.

Ms. Akutagawa: Well we all got jobs and we were here five hours and I have to make that up. At all possible try to make the agenda manageable. But I do prefer the mornings anyway.

Mr. Vanderbilt: And is there any way to get things out to the commission a little more ahead of time? I mean set up your schedule because it's hard for people to run through all this stuff.

Mr. Boteilho: I'm in favor of that too but that might take a while because we have this existing system that I gotta fix.

Ms. Akutagawa: Than in the future Wayne how about when you guys do your agenda, do one quick run through to me before you guys send it out. Because I didn't know I was supposed to do this report.

Mr. Boteilho: I think Clayton just may have misunderstood what I told him. So we'll poll the rest of the members as far as the 9am. If we go 9 probably start in August. In fact I asked Parks today to pencil us in for August for both meeting in August.

Ms. Akutagawa: And you going schedule the on site visit right for the 9<sup>th</sup>.

Mr. Boteilho: I wanted to ask about that too. Would the commissioner's here be able to attend at 9:00 on the morning of July9? O.K. So we'll poll the rest.

Ms. Akutagawa: The other agenda items like the UH one and Hale Mahaolu going be on the agenda too?

Mr. Boteilho: That's in the afternoon at 1:00 because we couldn't get the morning on that. So I thought at the same time we have the site inspection in the morning.

Ms. Akutagawa: Nina you can make sure going get quorum because I'm still going to be conflicted out from one of the agenda items. So just make sure get at least 6 people. O.K. that's it.

F. NEXT REGULAR MEETING DATE: July 9, 2003

G. ADJOURNMENT

There being no further business before the Molokai Planning Commission the meeting was adjourned at 3:20 p.m.

#### RECORD OF ATTENDANCE

COMMISSIONERS PRESENT: 1. M. AKUTAGAWA, CHAIR  
2. L. BUCHANAN, VICE-CHAIR  
3. N. SHIMIZU  
4. D. VANDERBILT  
5. C. SEALES

ABSENT: 1. K. REYES  
2. R. RIBAO  
3. J. KALANIHUIA  
4. K. DUNBAR

STAFF: 1. W. BOTEILHO, DEPUTY DIRECTOR, PLNG  
2. J. HIGA, PLANNER

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3. B. MISKAE, LONG RANGE PLANNING
4. C. YOUNG, CORPORATION COUNSEL
5. R. NAGAMINE, PUBLIC WORKS, LUCA