

MOLOKAI PLANNING COMMISSION

REGULAR MEETING

OCTOBER 22, 2003

The regular meeting of the Molokai Planning Commission was called to order by Chairperson Malia Akutagawa on Wednesday, October 22, 2003 at 1:03 p.m. at the Hawaiian Homes Conference Room, Kulana Oiwi, Kalamaula, Island of Molokai, Hawaii.

A. CALL TO ORDER

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

B. APPROVAL OF THE MINUTES OF JUNE 25, 2003

Ms. Akutagawa: Any additions or deletions?

MOTION: I MAKE A MOTION TO ACCEPT THE MINUTES AS CIRCULATED.

MOVED: COMMISSIONER ROBERT RIBAO

SECOND: COMMISSIONER NOBUO SHIMIZU

MOTION UNANIMOUSLY APPROVED.

C. CONTINUATION OF THE ORIENTATION WORKSHOP II (continued from September 25, 2003 meeting)

Mr. Boteilho: Thank you Madam Chair. We'd like to continue the orientation workshop by starting with the EIS process and Environmental Assessment process again. We are in receipt of a proposed process by Commissioner Vanderbilt. What we'd like to do is have Kivette go quickly over again what the Planning Director is recommending.

Ms. Caigoy: Good afternoon commissioner's. What I did, I think what was disseminated to you was my presentation in full description, language of it as requested at our last meeting. I also included the OEQC guidance manual on the cultural impact assessment as well. What I'll do here is just again run through what the planning department or what the planning director is recommending as Chapter 343.

You'll see on the screen I've divided it up into three sections. On your far left is actions that will be conducted by the applicant or the consultant. In the middle screen are those activities conducted by the planning department staff and on the far right are the activities conducted by this commission.

Mr. Vanderbilt: Madam Chair is there a handout?

Ms. Caigoy: The first step would be the preliminary computations. This is when the applicant will submit the request for preliminary review to the planning department. The department staff will work with the applicant in scoping out the contents of the EA. A lot of emphasis will be pinned on this stage and this will be the critical steps. What we planned to do by scoping it out in detail we hope to stream line it with some respect.

Following the preliminary computation the applicant will draft an EA and file that with the department. Staff will then review the draft EA and then transmit said document to other commenting agencies, to the Molokai Planning Commission and to the OEQC. When we transmit the draft EA to the OEQC the department staff will be making a determination of whether or not it will be an anticipated FONSI or that an EIS will be required. This will be done on behalf of the commission. Once it's submitted to OEQC and published in the bulletin that initiates the 30 day public comment period. During the same time frame it will be transmitted to this commission. This commission will review the document and also provide comments on the draft EA of which those comments will be collected from agencies, the public and this commission by the planning department and will transmit those comments to the applicant. The applicant is required to incorporate the comments received and to respond to all comments received. That's incorporated into the final EA document. Once that final EA is prepared the applicant will submit that to the planning department staff who will review it and then transmit the final EA to the commission whereby this commission will review the final EA and make its determination whether it is a FONSI or that an EIS is required. If this commission feels that more information is needed if for some reason the document is incomplete, at that point the commission can send the final EA back to the applicant request that it be revised so that we start, you can see where the arrows follow, you can start over. Or if this commission feels that the document is complete then you can make a determination and that final EA will be filed with OEQC by the planning department and that then initiates the 30 day appeal period. So this is the process that was heavily debated at the Maui Planning Commission and it's very similar to what the planning department has been doing to date.

Ms. Akutagawa: Let me refresh my memory little bit. Now are these just for EA's where originally the planning department has been named as the final authority? Or is this all EA's that have to do with our island?

Ms. Caigoy: These are just EA's where this commission is found to be the accepting authority. So the planning department no longer is the accepting authority for a major SMA.

Ms. Akutagawa: O.K. so what will be the triggers where this commission will be the final authority, accepting authority? Is that any SMA determinations or is it any EA or EIS that affects Molokai?

Ms. Caigoy: It will be action on Molokai that, there's multiple triggers. For example this could be used as state or county land, or use of state or county funds would trigger this project.

Ms. Akutagawa: So it would be the use of state or county funds affecting Molokai lands or any community plan amendment affecting Molokai?

Ms. Caigoy: That could trigger, a community plan amendment.

Ms. Akutagawa: I know my understanding, the EIS, EA review process, I know during the preliminary computation phase there's a kind of a EIS prep notice or EA prep notice and that's put in the OEQC bulletin. So I think this commission should just be put on notice that these are some Molokai projects that are coming down the pipe. Just so that we get some advance notice.

Ms. Caigoy: Just to add to that, that was a concern the Lanai Planning Commission as well as what we've been talking about doing is putting together separate reports that kind of list, that will list out the different projects concerning Molokai and tell you at what phase they're in, in this whole Chapter 343 process. This will be included, I guess part of the director's report. Similar to the SMA report.

Ms. Akutagawa: Similar to how we've been initiating this in the director's report, list of pending Molokai projects. Just to give us the advance.

Ms. Caigoy: Exactly. I'll let you know because a lot of the projects, it's hard to say how long it's going to take to complete each step. Because a lot of this is in the hands of the applicant or the consultant. It could take them 6 months to draft a draft EA. Or it could take a month. So by giving you this report that will keep you up to date where ever you are in this process of each project that triggers a Chapter 343 process here on Molokai.

Ms. Akutagawa: I have another question. If Molokai Planning Commission is deemed the accepting authority, are we still held to the 30 and 45 day public comment period? In that sense we're gonna, because I know other agencies when they give comments I don't know if they're really held to any kind of deadline.

Ms. Loudermilk: Robin Loudermilk, Maui Planning Department. Depending on the project once determination has been made such as the draft EA has been issued, yes you can extend the deadline beyond the 30 day however when it comes to final decision making the deadlines must be met. So there is some flexibility in the OEQC process in terms of getting the information in a timely manner. There's nothing that says that an action has to be completed prior to the 30 or 45 day period. However once a decision has been made on the final acceptance, than the 30 day period for appeal

does apply.

Ms. Akutagawa: Now I haven't really been involved in the EIS prep review phase, but, just kind of help me out here. First of all what I'm concerned about is if we got 30 days to review the Ea and 45 days to review an EIS and we meet twice a month and sometimes we cancel meetings and these documents can be fairly thick, so, what I anticipate is some commissioner's are going to have a difficult time coming up with comments in a timely fashion. So I'm thinking maybe it would be better that in the EIS prep phase we get notice and if there's some kind of, I forget if they have some kind of basic summary of what the project is about and maybe the commission can be kept abreast of that and provide some preliminary comments, like please analyze the impact to such and such so that when they actually draft the EA or the EIS they're already addressing those issues and it'll make our work a little easier when we're going through the public comment phase which is only a short window of time. I think that's all I want to suggest.

One question too, is the procedure going to be, you're going to give us the whole EA, we're going to review it, we're going to meet and we're just going to toss out comments and staff will draft some kind of comment later based on the discussion at the planning commission meeting, is that what's going to happen? Is that the scenario?

Ms. Caigoy: This whole process is a working process. What we're trying, that's something we're still talking about. Do we just give you the document, or do we provide a short presentation to brief you on the document or point out issues that we as the department find and than discuss? I guess that will be open for discussion on how this commission would like that to take place.

Mr. Boteilho: If I may add Madam Chair, we think it'll work out o.k. Certainly we'll try to get the draft EA as soon as possible. I'm told that although there is that 30 day deadline it's flexible. You can go beyond it.

Mr. Vanderbilt: Where is that stated?

Ms. Loudermilk: There is no penalty, Robin Loudermilk. If you look at the rules for the Office of Environmental Quality Control as well as you go to the website, the draft date for deadline is after a draft has been accepted and published. There is an official 30 day public comment period, if comments come in after the 30 day, day 31, they do not necessarily have to be addressed. But that is at the discretion of the applicant. Usually they are. Our experience with the consultant who worked in Maui County is that if they know that comments are coming in they will hold off and answer those comments.

Mr. Vanderbilt: But they don't have to right?

Ms. Loudermilk: They don't have to.

Ms. Akutagawa: O.K. now if we're the accepting authority are there any deadlines placed on us as to how long we have to accept or reject it and if there's some kind of rule that says if we don't make a decision than it's deemed accepted, there's nothing like that right?

Ms. Loudermilk: No there is not.

Ms. Akutagawa: There's no time line for when an EA or EIS is accepted if we are the accepting or anybody is the accepting authority, correct?

Ms. Loudermilk: Technically that is true.

Ms. Akutagawa: In my experience I'm been part of the commenting phase and in many instances I don't hear until many months later if the thing not accepted or not. So I'm wondering if there are any rules or we just wait for the agency to decide.

Ms. Loudermilk: Depending on the type of project and the type of comments, for the most part, the applicant will rather spend the extra time in getting all of the agency and public comments in, address those comments with the extra month or two, get everything in, do the responses, depending on the comments they may need additional time to build additional work to answer that.

Ms. Akutagawa: I think realistically if we're the accepting authority and we have some problems with our EA, they know they gotta respond to it before we accept it.

Ms. Loudermilk: That is correct, that is correct.

Ms. Akutagawa: So I think maybe this commission should take notice of that.

Ms. Loudermilk: That is correct. There has been instances where certain agencies have waited a couple of months but due to lapse of funding or so forth they may push for the filing of the final document so they can encumber funds. We do come across that scenario sometimes. As Kivette said most of the EA actions or EIS actions will come before this board will deal with those applications done by private entities which meet one of the 9 triggers. Say they have a grant from the State of Hawaii, they have to go through the Chapter 343 process for a project in the SMA. But that does exclude a lot of projects that are agency initiated. So Public Works is going to do some

drainage improvement, their EA is accepted by the Public Works department. It does not come before this committee because it's an agency initiated action. I will be going through that later on. So we just wanted as a reminder what Kivette has indicated earlier, the types of EA documents that will basically come before this committee are private by non profit entities. They would not necessarily be governmental entities. They have a separate process.

Ms. Akutagawa: In those instances, I would urge that the commission still be kept abreast of those actions taking place. An agency action affecting Molokai lands. Because we still have an opportunity to comment regardless of whether we're the accepting authority or not. I want to make that clarification that we still get notice on those types of actions.

Mr. Vanderbilt: Madam Chair on the agency actions is there a preliminary consultation phase?

Ms. Loudermilk: Yes there is.

Mr. Vanderbilt: Who is in charge of determining what community groups and public agencies included in that preliminary consultation phase.

Ms. Caigoy: It would be that agency.

Mr. Vanderbilt: With regard to your presentation, did you refer to the administrative rules in HRS 200 and the Chapter 343 and the OEQC guide book?

Ms. Caigoy: This presentation was based off that.

Mr. Vanderbilt: There's two definitions in Chapter 200, one is an accepting authority and one is an approving agency. The way I understand it, an accepting authority which we've been talking about applies to agency EA, draft EA's. Whereas the approving agency really involves more of the private sector, is that true?

Ms. Young: Approving authority would be where the public, approving agency would be the agency that o.k's the EA work and the public work situation where public works proposes a project.

Mr. Vanderbilt: I wonder if it's a project that this planning commission has the final say on.

Ms. Young: That doesn't make a difference. It's who proposes the action and if the Public Works Department is proposing the action than they are the authority.

Mr. Vanderbilt: Let's just say it's a private application or developer.

Ms. Young: Than they would be the accepting authority. The agency that accepts or o.k's the EA or EIS would be called the accepting authority.

Mr. Vanderbilt: What is the Molokai, there was a case, Malama vs. the planning department and there was a very extensive explanation of that given by Corp. Counsel to the planning commission, very extensive. In that they were talking about that's the reason for this whole change because the planning department is no longer the approving agency. It's the planning commission, right?

Ms. Young: Well in that case it was for those specific facts that was presented. Not in all circumstances.

Mr. Vanderbilt: Let's just say it's a private development on Molokai. Say for instance Molokai Ranch wants to do a project in an SMA area, who is the approving agency?

Ms. Young: That is dependent on the action being or the discretionary approvals being sought. It's very facts specific based upon those discretionary approvals being sought by the developer or by the private entity.

Ms. Akutagawa: The clear situation would be if that action would require a community plan amendment, one, if it's within the SMA because that's within our per view.

Ms. Loudermilk: A special management area in itself is not a trigger for the Chapter 343.

Mr. Vanderbilt: But any amendment to our community plan.

Ms. Loudermilk: Any amendment to the community plan.

Mr. Vanderbilt: That's where this commission is really concerned about amendments to our community plan.

Ms. Akutagawa: I thought all SMA required...

Ms. Loudermilk: The city and county of Honolulu requires all applicants in the special management area to do a Chapter 343, however that is not required by the state law for the other islands. That's the county requirement and OEQC does not deal with those EA's.

Mr. Vanderbilt: The reason why I'm asking all these questions is because this was pretty much an all day debate with the Maui Planning Commission. On a private community plan amendment project on Molokai we would be the approving agency, right?

Ms. Loudermilk: The facts for the Malama Maui case which was discussed was a community plan amendment, a change in zoning, a district boundary amendment greater than 15 acres.

Mr. Vanderbilt: Where is it explained where we would be the approving agency, which is the reason we're getting involved at all on the determination of the FONSI and EIS, where is that in this presentation?

Ms. Loudermilk: In today's presentation it's not here. It was set forth in the presentation last time that we were here as the result of the Malama Maui case. We had also indicated at this point and time that the Corporation Counsel is still finalizing their opinion regarding the Hui Malama case. In the mean time they have advised the Maui Planning Department that in certain instances that the Maui Planning Commission would be the accepting authority instead of the Maui Planning Department. We are going through this now, the discussion before the Maui Planning Commission was very specific, it was specific towards the Maui Malama case which occurred on the island of Maui. Questions regarding that had to do, what were the situations regarding that case. That also included a community plan amendment, however Judge August said that since the state land use boundary amendment greater than 10 acres was also required, he delegated that authority to the State Land Use Commission.

Mr. Vanderbilt: I think the one thing this commission and responsibility to the community is on the community plan amendments. Those are the things that cause a lot of people to want to make sure that the planning commission is overseeing and the public is involved earlier in the process. So on a community plan amendment where a community plan amendment is required, would that?

Ms. Loudermilk: As I explained in the Hui Malama case not necessarily because the acreage was greater than 15 acres and they also had to come in for state land use district boundary amendment and the court.

Ms. Akutagawa: I think the concern is something went slip through the crack. My suggestion is we just give notice of any EIS or EA affecting Molokai period. If the commission or as commissioner's as individuals want to take the time to review the EA regardless of whether we're the accepting authority or not, than they have that opportunity to do so. If staff can be so kind to just give us advance notice. The second thing too, I'm not sure if the county has discretionary authority to determine who is the accepting authority. Is that OEQC's rule to determine who's going to be the

accepting authority?

Ms. Loudermilk: The Office of Environmental Quality Control does have (inaudible) if there are more than one agency, whether county or state or a combination fall into the equation and if the agencies amongst themselves cannot agree who should be the lead agency, than a request is made to the Office of Environmental Quality Control and they have a council of citizen volunteer's such as this committee to make that determination and they have their own criteria for doing that. We don't have the criteria, that's something that they handle. So there are provisions if there are multi jurisdiction or issues. The agencies, first step is that the agencies try to resolve it amongst themselves. Secondly if they cannot then they can go to the Office of Environmental Quality Control and than through that office there are provisions to make the determination on who will be the lead agency or the party in that sense.

Ms. Akutagawa: Given that, in these gray line kind of issue, than I would think just inform the commission and than we can talk story with other agencies if there's a multi jurisdiction. Maybe we can come up with a solution that is amicable to everybody than we don't need to feel that we're getting the wool pulled over our eyes. I think that's the main issue. Are you o.k. with that Degray?

Mr. Vanderbilt: Madam Chair I took the time to read through the minutes of the all day session that the Maui Planning Commission, I took the time to read through the administrative rules, Chapter 343 and their guide book which is 30 or 40 pages from the OEQC describing the environmental process. As the result of that I put together an alternative which is 90% the same as the one that we have but it'll answer your questions and it'll make sure that we're involved at the initial stage which according to the OEQC is the most critical, part of the process is, because that is set and in the past there's been an area where the community has really been a little bit short changed and its caused the process not to be stream lined and an example is the Maunaloa Golf Course. They didn't really get the community involved in the preliminary process or where the planning commission or some key agencies, which are planning commission would have recommended, as a result things were not addressed, they had to come up later, the Ranch had to do a supplementary EA and it just went on and on.

Ms. Akutagawa: Degray can you just kind of summarize.

Mr. Vanderbilt: If you look at that top thing it says that preliminary consultation and all it does is, the applicant submits something to the planning department, am I right Kivette? Initially for the preliminary they ask for some review. I'm only asking that that be shared with the Molokai Planning Commission and than according to the OEQC bulletin and the HRS rules it says it would be up to the Planning Department and the Molokai Planning Commission to advise the applicant to provide

what ever info is needed to complete the environmental assessment. At that stage our planning commission knows a heck of a lot more about the community groups that should be involved in the preliminary consultation and where the potential impacts may be other than the obvious ones. We can share our mana'o with the planning department and that gets back to the applicant and than they have a document that there aren't going to be any surprises and it really will stream line the process. We don't have to worry about not finding out about something. But if you read through these guide books it says the public should be involved and as much as possible in the early stages and so that was the change there, just to include our Molokai Planning Commission to get a copy of whatever is submitted initially to the planning department so we can give our input on what would be...

Ms. Akutagawa: Basically the prep notice.

Mr. Vanderbilt: And I don't know if they would have any problem with that. If so, what would be the problem?

Mr. Boteilho: Madam Chair if it's just a prep notice we would have no problem. If it's for the planning commission to meet formally, we would not be in favor of that. The reason, well during the preliminary consultation there really is no draft EA for you to review. Secondly, we are going to be asking the applicant to come to Molokai anyway to meet with various community groups. I guess thirdly, concerned about time, the Planning Director's recommendation is right now I think is 160 days, it will take and we fell that that's a little long already. Finally what the Planning Director is recommending is, basically the way it is now, so that I'll end madam chair.

Ms. Akutagawa: I think I can envision this being a simple thing like how in your Director's Report you list pending Molokai projects. If you can just list pending projects coming up for EA or EIS and if during that time on the agenda as you talking about these projects, can you just tell the applicant that he agree's with this, this and this instead of having it a big long drawn out thing. We don't need to collect comments we just want to make sure that the impacts to this, this and this are assessed, can you communicate that to the applicant? I don't think that's too burdensome. While we're at the commission meeting, you're doing your Director's Report, on the agenda you say o.k. we have project A, B, and C coming up as an EA or EIS prep and than you just do a quick summary of what the project is about and than this commission using its experiences, being people of Molokai, you know that may affect one heiau, you know, can you make sure that there's no impact to the heiau or what ever and you just communicate that to the applicant. We don't have to have a long drawn out meeting on comments because as you said before they haven't drafted the document yet. So we want to make sure that they assess what's already triggering in our minds that might be an impact.

Mr. Boteilho: We could do that certainly.

Mr. Vanderbilt: So Madam Chair they wouldn't have any problem presenting us with the prep notice right? At that meeting?

Ms. Akutagawa: And we can make that part of the Director's report. Just as we have the list of pending Molokai projects.

Mr. Vanderbilt: Can we make that part of the flow chart that we would get a copy of the prep notice?

Ms. Akutagawa: Sure. Is that o.k. with you folks, staff?

Mr. Vanderbilt: Let me just read what it says in the rules. It says, require the applicant to consult with citizen groups in the community's and individuals which would be affected by the project. So they're saying that they don't want to deal with the planning commission but they're responsibility is to tell them to meet with certain individuals or groups in this community that may be affected. Who better can tell, maybe give them some guidance to which would be those groups.

Ms. Akutagawa: I think we're all in agreement Degray. So let's, because the agenda is pretty long let's move on. So is there anything new on your matrix here?

Mr. Vanderbilt: It goes down, in the middle there's a little difference and the only difference there is, it says transmit, the Planning Department transmits the DEA to the agencies and transmits the DEA to the Molokai Planning Commission. Than the Planning Department and the Molokai Planning Commission reviewed the DEA, the draft environmental assessment, the reason why I put it down there is, you're concerned about our being able to review it in a timely manner. If I understand the process right, in that middle column it says staff reviews draft EA. Now is there a time limit in which you have to complete your review of the draft EA?

Ms. Caigoy: That middle step right there.

Mr. Vanderbilt: Right on top the first line. See the first line it says staff review draft EA. Are you bound to a time limit of 30 days?

Ms. Caigoy: Let me show you the time frame matrix that I also developed that correlates with the flow chart. Maybe I should have gone through this in the beginning. Again here's all the activities, these are the different agencies or commissioners and applicants. Here's the time frame here, 10 days, 20 days, 30 days. This is the preliminary consultation, we estimate, these are all estimates. It may differ because you know what the project is and so forth and the involvement. The preliminary consultation is estimated at 30 days. The next step is the applicant sends a draft EA, we

can't determine that time frame.

Mr. Vanderbilt: He has no time limits with what he can do?

Ms. Caigoy: No because some projects may be very extensive and may involve multiple studies where they have to sub contract that out as a consultant. Other projects might be quick and easy.

Mr. Vanderbilt: On the complicated projects he can have more time but we still have to, whether it's a simple project or really complex we only have 30 days.

Ms. Caigoy: Well let me continue, that middle step where you pointed out when the department receives the draft EA and the staff reviews that we also transmit it to the agencies, this commission and the OEQC. We designate 30 days here because once it's transmitted to OEQC that initiates that 30 day comment period. This time frame it's just an estimate as well because OEQC, the publication date, we might receive the document but it won't be published for another 15 days so than you can tack on another 15 days now it'll be actually 45 days. So these are just estimates.

Ms. Akutagawa: O.K. in that sense because the window for review is so short, I think what would make the most sense is the moment the planning department receives the document, whether it's published or not just transmit it to the commission. You let us know the meeting date that has to take place where we gotta come with our comments. In the mean time even though you guys haven't drafted a staff report yet, you can summarize it for us for those commissioner's who are still having a difficult time reviewing it. So in that sense those commissioner's who want to be extra diligent about reviewing it they can do so. For those who want to rely more on staff recommendation and observation that's fine. We can come up with our comments and staff transmits a letter of our comments.

Ms. Caigoy: Our intent is to get it to you as quickly as possible. We don't want to hold on to it for three weeks.

Ms. Akutagawa: So I suggest we get the document as soon as you guys get it regardless of whether it's published or not. So that will give us as much time as possible.

Ms. Caigoy: You'll get the heads up during the preliminary consultation phase. You have the heads up that they have submitted their request for preliminary review and it's on the table and you'll get notified or updated of the status. We'll also, the department has a position now that's going to be the primary job to coordinate this. So it'll be one person working with other staff planners depending on what type of permit is being sought to process the EPA and that person will be responsible for

drafting the report that will be included in the Director's Report. That will help to obtain that level of consistency and you can directly communicate with that person rather than going through a whole bunch of different staff planners.

Mr. Boteilho: Madam Chair maybe she was to modest to say but the one person handling all the EA's will be Kivette. So she's here she knows your concerns.

Ms. Loudermilk: But also we're still working out internally how this is going to work because in the past say if Kivette, like she has a Molokai General Hospital project and she's handling everybody on this commission and the public knows that if they have any questions regarding EA or the project itself they can contact the one person. Now you're going to be dealing with multiple people. So that's something we really got to work on internally on how, if your questions are on the EA process or procedures, that's Kivette. If it has to deal more with the content of the project and the analysis that's going to be somebody else. So we really need to make that distinction and let you folks know up front that there is a distinction.

Mr. Vanderbilt: Madam Chair could you go back to that original one?

Ms. Caigoy: The flow chart?

Mr. Vanderbilt: Yes. That middle one with all the writing in it, so where it says transmit to the Molokai Planning Commission, so we'll have the same time as the staff to review the EA and than we'll have another 30days during the public comment period to also review if we need to?

Ms. Caigoy: No, all that is concurrent within the same 30 day time frame as the public comment period.

Mr. Vanderbilt: So your staff reviews during the public comment period only?

Ms. Caigoy: When it's on my desk the first I'll do is transmit it out. Transmit it to the agencies and this commission and reviewing it at the same time as the commission will. The staff won't take an additional, like all those activities will be done...

Mr. Vanderbilt: Well when you send it to the agencies they're going to have some time to review it, 30 days or so?

Ms. Caigoy: That's right.

Mr. Vanderbilt: And you could be reviewing it too, couldn't you? And we could be reviewing it and than there's the public comment period after you sent...

Ms. Caigoy: At the same time, that's why it's all grouped to this one box. All these activities is conducted concurrently within the same time frame.

Mr. Vanderbilt: But when you go back up to the preliminary consultation period you send that out to various agencies for comment, don't you?

Ms. Caigoy: No it could be, that part of scoping is outlined by consulting with that agency prior to drafting the EA, or consult with this community group prior to drafting the EA.

Mr. Vanderbilt: You will tell the applicant to do that and you will tell them certain, recommend certain things that maybe the planning commission thought was important.

Ms. Caigoy: Yes, I'll do that too.

Mr. Vanderbilt: And than the last thing, as far as the anticipated FONSI or EIS, are there, who makes that determination, is it under the law, the planning, in cases where the planning commission is the approving or accepting authority, is it the planning commission or the planning department?

Ms. Caigoy: Technically the planning commission will make that determination but following input from Corp. Counsel the department can make that determination on behalf of the planning commission.

Mr. Vanderbilt: So you don't consult with this planning commission at all whether or do you before you make that determination?

Ms. Caigoy: No.

Mr. Vanderbilt: Even though the law says that we're supposed to have that responsibility?

Ms. Caigoy: Maybe I should have Corp. Counsel follow up on this one. This was a major issue that was brought up at the Maui Planning Commission and Brian informed us that this department could make the determination on behalf of the commission, if the commission delegated that responsibility to the planning department.

Ms. Young: Good afternoon. The law on this issue is quite frankly not very clear but it is our

interpretation of chapter 343 its intent and its language that technically this commission, this body is the appropriate body to do the anticipated FONSI that you could delegate staff that particular task to the planning department.

Ms. Akutagawa: Only if we express or delegate that to the planning department, correct?

Ms. Young: Yes. It would be this body's decision whether or not you want to do the anticipated FONSI or EIS or not. You would be the final say but that isn't often and available to you.

Ms. Akutagawa: From my own personal experience and to educate this commission this is a very critical point, you guys need to know this. FONSI is called a finding of no significant impact. Basically if an EA, there's an anticipation that it will be a FONSI, I don't think it's a direct, it's written in stone that it will be a FONSI, but the meaning of FONSI is basically that an environmental assessment is good enough, that the project is not significant enough to require an environmental impact statement, an EIS. An EIS is a more thorough document assessing every single impact you can think about. So, this has been the subject of many law suits of whether it should have been a finding of no significant impact or whether there should have been an EIS. So I think it's critical in my own opinion that this commission look really closely at whether it wants to delegate that authority to the planning department and to site an instant on Molokai that was so contentious, it had to do with I think the golf course, Molokai Ranch golf course that was proposed where the Ka Hula Piko is. There's numerous cultural sites and the planning department issued an anticipation of a finding of no significant impact. It concerned me personally as a commissioner and we had a big meeting and about 100 people showed up to give their comments. So, I want to avoid that kind of situation again. So, I just have to tell this commission that it's a critical determination of whether it's a FONSI or whether an EIS to be warranted.

Ms. Caigoy: Can I just note too that that's the initial determination and just an anticipated FONSI it's not the final determination. On the final EA you make the final determination and at that point for example the department did initial an anticipated FONSI, it comes before this commission and you read the document and you don't agree, nothing's saying that you have to say it's a FONSI. At that point you could still say an EIS is required.

Mr. Vanderbilt: Along those lines though there can be an appeal on certain decisions whether there can be some law suits based on three or four criteria. Is that correct? Where does, the process goes through where down on the bottom it says an appeal period.

Ms. Caigoy: This is when the public period appeal your decision.

Mr. Vanderbilt: So it could be the applicant too? How does the applicant if he doesn't agree with the planning department's initial decision or our final decision?

Ms. Akutagawa: Isn't it like 45 days?

Ms. Caigoy: Well with the EA I think, I don't have my materials in front of me, but for the EA process the appeal period is 30 days. When you mean the EIS process I believe the appeal period is 60 days.

Ms. Loudermilk: And the 45 day, those who can appeal, those who have provided preliminary comments as part of the EIS process. Now if it turns out that the applicant wants to appeal the decision, I think we have to look into that further to see if it has occurred in the past that a, because the bottom line is the environmental impact statement is an informational disclosure statement. So what you would be appealing as Degray said, several areas, one whether they actually got to the process correctly and two, whether the information provided meets all the different criteria and that's usually where the appeals come in, under one of those two categories. Whether it's the EA, at which there's a 30 day appeal process. After its been published in the Office of Environmental Quality Control newsletter for 45 days for the EIS after it has been published in that same newsletter.

Mr. Vanderbilt: Robin could I comment just on the litigation on page 9 of the OEQC bulletin it says litigation, the final avenue of participation. Public participation is through initiating legal action to challenge one of the following situations. The failure of the agency which is either you or us or somebody to require the preparation of an environmental assessment. The improper determination that an EIS is or is not required for the project and the improper acceptance of the final EIS. So when they're talking about litigation here and you're talking about appeal is that the same thing?

Ms. Loudermilk: Yes it is. The only way you can appeal is through circuit court.

Mr. Vanderbilt: So are there any damages involved in that kind of suit or not?

Ms. Akutagawa: I think we getting, O.K. Degray we need to be focusing on what our authority is on this review process and I think we kind of covered everything already. So in the interest of time we need to move on to the other agenda items.

Mr. Dunbar: Do you have a list of consultants that you go through that prepare the EA or?

Ms. Caigoy: That's to the applicant's discretion.

Mr. Dunbar: But if the applicant doesn't know who prepares them, who does that?

Ms. Loudermilk: Our director has been looking at those actions at which the department and now the various planning commission's will be the accepting authority that we would be picking the consultants, we'd be doing like an (inaudible) process. They would have to qualify. At this point and time though it is up to each applicant to decide who they want to have to do the documents and they can also find their own which several have. All you do is meet the criteria within the 343 administrative rules, that's all that counts. There's no certification or anything of that kind.

Mr. Dunbar: Thank you.

Mr. Vanderbilt: On that, Kip are you talking about the agencies that review the EA?

Mr. Dunbar: No.

Ms. Caigoy: It can be individuals again if they meet the criteria, the document, they can draft the EA. There are other consultants that we all know have prepared application packets that you've reviewed. But in the case of the Molokai General Hospital, the hospital is drafting their own EA.

Mr. Dunbar: Thank you.

Ms. Akutagawa: Let's move on.

Mr. Vanderbilt: Let me just ask one more question if I may. Is there, as far as the agencies that these things are sent out to and I refer to this draft environmental assessment, OEQC has a list of various agencies around the state and communities that can be consulted on draft EA's when they're sent for comments, who makes that determination of which agencies and community groups and everything will comment on the draft EA?

Ms. Caigoy: It's very similar to the SMA process. We receive the SMA application, planning department staff has a list of agencies and groups and we decide and transmit that out to the agencies depending on the type of project.

Mr. Vanderbilt: Do you have a list of community groups that should be consulted also?

Ms. Caigoy: We have some but if this commission would like to provide me with a more complete list.

Mr. Vanderbilt: That's something that could be done in the preliminary consultation period too.

Ms. Caigoy: Yes.

Mr. Vanderbilt: Thank you.

Ms. Akutagawa: Let's move on.

Mr. Boteilho: Madam Chair dealing with your initiation I just wanted, if there's no objections I would like to move that to the end because I'll be doing that. I'm always here so if we don't have enough time I can do it at the next meeting. But I'd like to get to Robin because she might not always be here.

Ms. Caigoy: I'd just like to make one more note. For those projects that require the SMA major permit, those type of projects will be coming before this commission three times. Once for the draft EA, this is when the EA is required. You'll review it once as a draft EA, twice as a final EA and the third time would be to make the determination on the SMA permit. So you'll actually see the project three times. The first two times you'll be dealing with the EA and the last time you'll be dealing with the SMA permit application, just to let you know.

Mr. Vanderbilt: Madam Chair Wayne sort of summed it up quick with one point I'd like to get, is it clear with the planning department and staff that as far as the determination of the FONSI or the EIS that it's still at the discretion of the Molokai Planning Commission whether they want to give that on a project by project basis to the planning department?

Mr. Boteilho: That is very clear.

Mr. Vanderbilt: Thank you.

Mr. Boteilho: O.K. Madam Chair if there's objections I'd like to call on Robin Loudermilk to present the rest of your orientation.

Ms. Akutagawa: Five minute stretch but just before we stretch let's try and save the questions towards the end so we don't get stuck on one issue.

Ms. Loudermilk: O.K.

After a short break the meeting was reconvened at 2:15 p.m.

Ms. Loudermilk: Good afternoon members I'm Robin Loudermilk, Maui Planning Department. I'd

just like to briefly go through an introduction to Land Use Regulation and Planning in Maui County. For some of you will be a review, for those it will be an introduction to various state statutes and county ordinances that come before us and this commission. I'd like to start off with the introduction. We'll be going through the Hawaii State Planning Act, the County General and Community Plans, Zoning, State Land Use Law, other boards and commissions, other planning commission permits and approvals, environmental impact statements, coastal zone management. Basically the slide show that I have, I passed out earlier, it's a multi-page document with six sides so you can jot down what ever questions or notes you have and you can also use this for reference in the future. For example we have a small portion on EIS but what changes occurring regarding the EIS as we, Kivette has provided a separate and distinct presentation to cover that.

I'd like to start off with the Hawaii State Planning Act which is chapter 226. It was adopted in 1978 and it sets fort the establishment of a statewide planning system to include overall theme, goals, objectives and policies; establishment of a statewide planning system and priority guidelines. Through chapter 226 was the enabling legislation for the county general plan. It sets forth the required elements such as desired population and physical development patterns, unique problems and needs, land use transportation systems, implementation priorities, actions and so forth. That's basically the state plan. It was a policy document, its relationship to the various counties that's been enabling for the county plans that we have today.

Next I'd like to go to the county general plans and the community plans. This is found under chapter 2.80A of the Maui County Code. It basically sets forth broad guidelines for future growth. In Maui County we have 9 community plan regions in which the island of Molokai is one. Just some general features of the community plans, they're revised every 10 years. Pursuant to the county charter the community plans are part of the general plans. We do, as part of the last community plan update process there was a citizens advisory committee and the criteria was set forth in terms of the number of citizens and how they were to be appointed. Before I go on to revisions and amendments, within the past few months bill 84 has come before this commission and that is basically the, it was initiated by Charmaine Tavares of the Council when she was the Planning and Land Use Chair to evaluate, basically they evaluated this past update, what could be improved and so forth. That's the result of the bill 84. As of right now it's still with council but in terms of the provisions and how to implement it that's what the bill 84 would do and it would than provide the department and the county with the criteria to go forward in this upcoming community plan and general plan revision. However until bill 84 gets passed or filed, there are three ways in which a community plan can be revised. One a proposal by the planning director, two a proposal by a county council resolution and three, proposal by a state or any individual. So at this point and time this is how the proposed revisions come before you. Most of them come by individuals but there are the other two avenues through the planning director or county council. If you have your questions, jot them down now and

hold them till the end.

Next we'll be going through Chapter 46 and county zoning. The Hawaii Revised Statutes allow the counties to establish zoning and to provide guidance on how zoning should be accomplished. It's also this state law to allow for the establishment of the planning and traffic commissions. As part of chapter 46 this phrase is very important. " zoning in all counties shall be accomplished within the frame work of a long range, comprehensive general plan prepared or being prepared to guide the overall future of the county. Zoning shall be one of the tools available to the county to put the general plan into effect in an orderly manner" why this is important is that we're trying to address this in bill 84. We've been very good in community planning, evaluating the community plans but we have not done anything to rezone properties to come into conformance with the community plan. There is a provision in bill 84 that allows the council to do that. As it is right now we have again, very good community planning but there has been very little rezoning on all three islands.

Title 19 is the Maui County Code, we have two provisions, we actually have two types of zoning in Maui County. We have interim zoning provisions and they were created in the late 1950's for the purpose of providing interim regulations pending the formal adoption of a comprehensive zoning ordinance and map. That's why we have a lot of interim zoning on Molokai today. A lot of Kaunakakai has been rezoned, comprehensively rezoned and portions of Maunaloa Town but the remainder of the island, we have a lot of interim zoning.

We have Article II which is the comprehensive zoning provisions and this is to regulate the utilization of land in a manner encouraging orderly development in accordance with the land use directives of the Hawaii Revised Statutes, the revised charter of the county and the community and general plans of the county.

In relation to the county zoning we have one of several actions but we have change in zoning applications which come before this body which is a request to change the zoning designation from one designation to another. For example from interim to residential.

We have conditional permits. What conditional permits do is it'll allow the land owner to use the property in a manner in which the zoning does not allow for. This is a case by case review by the planning commission with a recommendation to the council. So basically the proposed uses are not allowed based upon the unique circumstances regarding the proposed use it may be something that the county will allow to occur on the property.

Lastly what we have is the county special use permit. Within Title 19 under the various zoning designation you'll find a list of permitted uses and you may find a list of accessories and than you'll

find a list of what we call special uses. What special uses require is an additional level of review by the respected commission to ensure that any potential impacts can be mitigated and the use be compatible with the zoning and the surrounding land use. Both the change in zoning and conditional permit final decision is with the county council. This commission provides recommendation to the council. The county special use permit, this commission is the final decision making authority. This again will go through the change in zoning, the conditional permit which I previously talked about as well as the special use permit.

The intent of a project district development is to provide for a flexible and creative planning approach rather than specific land use designations for quality development. Basically the project district is a special zoning ordinance adopted for that particular project area. You do not necessarily have to follow the existing zoning in title 19, you create your own zoning and you need to justify how that zoning will assist in the development of the project. An example on Maui would be the Maui Lani development. There are three phases to the process, two of the three phases require public hearings with the planning commission in the affected community plan region. So if one should come up in Molokai the first two public hearings would be on Molokai, conducted by this commission.

Then there's what we call a planned development. The distinction between the planned development is that you do follow the current zoning for the property. However there may be some environmental constraints, land use constraints, we provide you flexibility in clustering and designing the project so you have more open space and you would incorporate the topographic features into the overall project design. The planned development, the first step, only the first step comes before the planning commission. The rest is administrative. So there's a distinction between the planned development and the project district. Project district is basically its own zoning for the project, that's adopted by the council and the planned development uses the existing zoning but uses other tools within title 19 to cluster and design. A planned development as an example on Maui would be Pua Mana in Lahaina. As you going in, you coming from Olowalu side and you entering into Pua Mana, on the left hand side. The environmental constraints had to do with flood way, are there streams going through there, some coastal hazards and this planned development process allowed them to use the underlined zoning but reposition and design the project to get the same amount of units on less space as well as minimize any environmental impacts to the structures from the flooding and the stream beds that went to through the area as well as the ocean coming. Now Pua Mana is a much older development, it's from the late 60's early 70's, there are not too many more planned development that has more less been replaced by project district. But it's still on the books. Some projects are encouraged to go through a planned development route rather than the straight zoning. Economically they can do it. Does that answer your question?

Next we'll go to Chapter 205, Hawaii Revised Statutes, state land use law. What chapter 205 does is designates all lands in the State of Hawaii in to one of four state land use districts: urban, rural, agricultural, and conservation. Also it sets forth criteria for the districting of lands and it also identifies permissible uses within each district.

There are several state land use law actions that occur. One is a district boundary amendment and what this does is it allows for the reclassification from one district to another and to reclassify lands from the state agricultural district to the state urban district. The second type of action in the state land use commission special use permit and this allows for the establishment of unusual and reasonable uses not permitted in the state agricultural and rural districts.

I'd like to quickly go through the district boundary amendment. For district boundary amendment greater than 15 acres and all lands in the state conservation district, the amendment is filed with and acted upon by the state land use commission. The county of maui planning department is a mandatory party to these proceedings. Districts boundary amendments less than 15 acres are filed with the maui planning department and acted upon by the Maui county council. The planning commission conducts a public hearing and transmits recommendation to the county council.

Regarding the special use permits, for special use permits greater than 15 acres it's filed with the planning department and acted upon by the state land use commission. The planning commission conducts the public hearing and transmits the recommendation to the Land Use Commission. Special use permits less than 15 acres are filed with the planning department and acted upon by the planning commission.

So we just want to briefly make you aware of other boards and commissions that the department services or provides comments to this commission. We have the Maui Redevelopment Agency, Urban Design Review Board, the Cultural Resources Commission, Hana Advisory Committee, Arborist Review Board, Napili Bay Civic Improvement District. Basically the urban design review board reviews all SMA permits and makes recommendations to the appropriate planning commission regarding the design element of a project. These SMA permits are non-residential. They do not review residential permits.

The cultural resources commission provides comments on special management area application located in historic districts. There are three historic's all three are located on Maui, two in Lahaina, one in Wailuku. Additionally the respective planning commissions in here we have Maui Planning Commission, but Molokai Planning commission or the council can also refer our request or comments from the commission. That's part of making independent recommendations to various boards and commissions. Usually it's with the special management area depending on the type of

cultural resources that we know are in site and we'll take it to them for additional review.

The arborist board is actually with the parks committee and they make recommendations related to tree's or subdivisions, public right-of-way within parks and they may nominate exceptionally trees for protection.

Other types of permits and approval, off site parking, accessory use permit, zoning code amendment and planning department or planning commission initiated action. Last time we met you folks did an action on a off site parking approval basically if an establishment needs to fulfill their off street parking requirement according to Title 19, if they cannot fulfill it on the lot in which the establishment is located and they need to go to another piece of property, that's where this comes in. So no public hearing is required it's basically a communication item. However when the application that was before you also required a special management area permit so there was discussion on the off street parking but basically it's an administrative approval.

We have an example here, on the larger shopping centers on Maui for financing purposes they're cut up into a lot of different lots but they're all part of the same project. So this is similar to the Watanul project the last time.

Accessory use permits in various zoning districts such as hotel, neighborhood business, so forth, accessory uses are identified again no public hearing is required it is a communication item to the commission. An example would be earlier this year I bought before the commission the Kehau Pule car rental project and is located in the business country town district, it's not an out right permitted use, this commission did a determination that it would be allowed. There can be amendments to the zoning code itself, different types of actions that could be initiated by council. Public hearing would be required within certain time frame, the planning commission, the respected planning commission's would hold a public hearing, provide their recommendations back to the council. The findings and recommendation must be transmitted back to council within 120 days from the receipt of the resolution. Common example, change to Title 19, which we had before you this past year was the open space zoning ordinance. Also the planning director or planning commission can initiate changes. The public hearing would be held by the respected planning commission. The council must review and act upon the proposed revision within 180 days of receipt of the transmittal from the planning director.

Environmental Impact statement, this is just a brief summary of what we have been going through, this is what the big picture, we've been doing a lot of details, this is more of the big picture. Chapter 343 Hawaii Revised Statutes, it sets forth the criteria as to when an environmental assessment and an environmental impact statement is required. It also allows for exemptions of the chapter 343

review process for certain types of actions.

I'd like to go through the actions that trigger chapter 343. We have the use of state or county lands or funds, funds to be used for feasibility studies for which possible future programs or projects which the agency has not approved, adopted or funded. Secondly any use within lands classified as conservation district by the state land use commission under chapter 205. Any use within the shoreline area as defined in section 205A-41 and in our terms that's basically the shoreline setback area which comes before this commission. Any use within any historic site as designated in the National or Hawaii Register as provided in the Historic Preservation Act of 1966 or chapter 6E of the Hawaii Revised Statutes. Amendments to existing County General Plans. Reclassification of any lands classified as Conservation District by the State Land Use Commission under Chapter 205. The construction of new or the expansion or modification of existing helicopter facilities and lastly this was an Oahu trigger, any use within the Waikiki area within the Waikiki special district.

Regarding accepting authorities, so this may answer some of Degray's questions he had earlier. Under agency actions, those are the actions in which Public Works is going to be doing drainage improvements, the Mayor and or Governor or their authorized representatives are allowed to accept the document or the exemption or the final EIS.

Applicant actions, those actions by individuals, the agency that is processing the proposed request so for the most part that would be the Maui Planning Department or Maui Planning Commission. Basically the commission, so those would be the actions such as the, potentially a community plan amendment, a special management area shoreline setback variance would come before here and that's just general, we're not going into, this can change regarding, depending on the situation surrounding that project. Again, like in the Hui Malama case, the court ruled that even though a community plan was required and would need to be processed through this body, and eventually through the county council, Judge August determined that it was the State Land Use Commission who was the accepting authority for the EA document. Again the shoreline setback variances, is the various planning commission.

There are actions that are exempted. There are 10 classes of actions that are exempted and they are defined in the Hawaii Administrative Rules. However, all exemptions are inapplicable when the cumulative impact of planned actions in the same place, over time, is significant or when an action that is normally insignificant in its impact on the environment may be significant in a particularly sensitive area. For example a construction of a storage shed in the middle of a farm, maybe insignificant but if you're going to build the same shed next to a wetland you have significant issues. So it's in relation to the type of action and the location of the action. So in that case all exemptions are off and would be required to go through, at the minimum, the EA process.

In summary for the review process is real quick, does chapter 343 apply, if not then pau. If yes, then we gotta see if the project qualifies as an exempted project, if yes than pau. If no then we need to continue. Does an agency anticipate any significant impacts? No than an EA is prepared with an anticipated FONSI. If the agency does anticipate any significant impacts we can than direct the applicant to go straight to an EIS. Remember you don't necessarily do an EA, a final EA before going to an EIS. There will be some actions in which you know up front that an environmental assessment would just not cut it and you have them go directly to the EIS project. There may be some projects where it is a bit boarder line but based upon the information coming forth that no we would, they would file an anticipated FONSI we would not issue the FONSI, we would issue an EIS prep notice instead indicating the project would have to go through the EIS process.

Lastly the coastal zone management which is chapter 205A. The statute itself has objectives and policies and implementation actions. For your information all the lands with the exemption of federal lands in the State of Hawaii are part of the coastal zone. Meaning that there area potential impacts to the coast line that can occur to properties up land. Than we have the special management areas in which this commission and our department deals with on a fairly regular basis. Than we have the shoreline setbacks. So those are the few components of the coastal zone management. We have 10 categories of objectives recreation, historic, scenic, open space, coastal ecosystems, uses, hazards, managing development, public participation, beach protection and marine resources.

I'd like to go through some of the objectives. For example, economic uses, provide public or private facilities and improvements, important to the State's economy in suitable locations. Objectives for coastal hazards, reduce the hazard to life and property from tsunami, storm waves, stream flooding, erosion, subsidence and pollution.

Some of the policies, recreational resources, providing and managing adequate public access to and along shoreline with recreational value. Economic uses, concentrate coastal development in appropriate areas. Scenic and open space resources, preserve, maintain and where desirable, improve and restore shoreline open space and scenic resources. Coastal ecosystems, exercise an overall conservation ethic and practice stewardship in the protection, use and development of marine and coastal resources. Coastal hazards, control development in areas subject to storm wave, tsunami, flood, erosion, hurricane, wind, subsidence, and point and nonpoint source pollution hazards.

So I just wanted to introduce you to some objective and policies on the water program, the coastal zone management program in which the special management are and the shoreline setback do further evaluation.

The findings and purpose of the special management area, the legislature finds that, special controls

on developments within an area along the shoreline are necessary to avoid permanent losses of valuable resources and the foreclosure or management options, and to ensure that adequate access, by dedication or other means, to public owned or used beaches, recreation areas, and natural reserves is provided. The legislature finds and declares that it is the state policy to preserve, protect and where possible, to restore the natural resources of the coastal zone of Hawaii. All development within the special management area requires an SMA permit. There are two kinds of permits, Major and Minor. Minor permits are projects valued at less than \$125,000 in which there are no perceived impacts. The planning commission reviews and approves this. Major permits are permits valued at more than \$125,000 or they can be less than \$125,000 but they have potential for impacts and a determination can be made whether they should go through the review process. The distinction between the minor and major permit in relation to this commission is the type of review. Minor permits may target one or two agencies to review based upon the specifics of the project. But with the Major permit we send it to a wide range of state and county, non governmental agencies for review. It's a much more thorough review and analysis based upon the proposed project. We do have definitions of what includes development. They are very broad and general such as change in density, placement or erection of solid material, construction, reconstruction, demolition, you see it's very broad but the challenges, what does development not include and this is set forth by the state law. So construction, development does not include a construction of a single family residence that is not part of a larger development, subdivision of a parcel of land into four or fewer parcels with no associated constructed activities are proposed. Structural and non-structural improvements to existing single-family residences where otherwise permissible. Those are just some, there's about 15 and they're all in the state law. What this commission can is find and define what each of those definitions need. For example two or three years ago this commission further defined a commercial, non-structural improvement to commercial could include a tent put up for 14 days and put down. Prior to that time each one of those had to come before this commission. So that's an example of how to further refine or more of what does not constitute a development. However, if any excluded use like a single family resident may have cumulative impact or significant environmental or ecological effect on a special management area, that use or activity or operation shall be defined as a development. Basically we have the guidelines for the review of the developments proposed in the SMA. All developments shall be subject to reasonable terms and conditions set forth by the authority in order to insure adequate access, publically located recreational areas, provisions made for treatment, disposition and management of a variety of waste, alterations to existing land forms. Basically these guidelines are part of our report to you and how things are evaluated. For example no development shall be approved unless the commission has found first that the development will not have any substantial adverse environmental or ecological effect, except as such adverse effect is minimized to the extent practicable and clearly outweighed by public health, safety or compelling public interest. Consistent with the objectives and policies and special management area guidelines of this chapter. That the development is consistent with the county general plan and our zoning. The

authority should seek to minimize where reasonable development which would reduce the size of any beach or other area usable for public recreation. A development which would reduce or impose restrictions upon public access to tidal and submerged lands and so forth. Or interfere or detract from the line of sight toward the sea from the state highway nearest the coast and any development which would adversely affect water quality, existing areas of open water free of visible structures, wildlife habitat, fishing grounds, etc.

That's basically in a nut shell the shoreline management area. Lastly we'd like to go into the shoreline setbacks. The distances range from 25 feet to 150 feet from the shoreline, depending on the lot depth. At least for the island of Maui the department has proposed changes to setbacks based upon coastal erosion rates. Those are not adopted. I'm not sure when we'll be doing that analysis for the island of Molokai. In the shoreline setback there are structures that are prohibited within the area, however there are certain exceptions. Such as structures necessarily for existing agricultural or aquacultural operations that occur in the shoreline area. Minor structures which do not affect beach processes or artificially fix the shoreline and do not interfere with public access or public views along the shoreline. Repair of existing permitted structures.

There is a variance process and variances maybe granted for prohibited structures, including landscaping, depending on the landscaping, a drainage improvement, a private improvement that would not either adversely affect beach processes or fix the shoreline. No variance shall be granted unless appropriate conditions are imposed, to maintain safe lateral access to and along the shoreline, minimize risk of adverse impacts on beach processes, minimize risk of structures failing and becoming loose rocks or rubble on public property and to minimize adverse impacts on public views to, from and along the shoreline. That concludes this very brief introduction to some and introduction to other of the various planning and land use regulations that we in Maui County and we at the Molokai Planning Commission deal with on a regular basis. That concludes my presentation.

Ms. Akutagawa: I have a few questions. You know for the shoreline setback, does sea walls constitute any kind of development within the shoreline setback area?

Ms. Loudermilk: Yes it does.

Ms. Akutagawa: But it's nothing that the commission reviews at all?

Ms. Loudermilk: Depending on the location of the seawall. Normally the seawall would be on part of a private property on the land side to protect the property from the ocean.

Ms. Akutagawa: Does the planning commission even look at variance request of a shoreline setback?

Ms. Loudermilk: That's a good question. For Molokai I don't think so. I think the shoreline setback rules delegate a lot of the review authority to the department. However we would get back to you.

Ms. Akutagawa: I know that's a real major issue. Does the shoreline setback also in the SMA or is it the shoreline setback and than the SMA?

Ms. Loudermilk: The shoreline setback is part of the special management area. So they would at a minimum do a special management area review in regardless whether they're in the setback or not. If you want to vary from what the allowed use is in the setback, than the question is does it come before this commission?

Ms. Akutagawa: If you can follow up on that and let us know. You see where developing the community plans and this kind of zoning thing, decisions are made, how is it made?

Ms. Loudermilk: The special management area that we have in Maui County was initially adopted with the passage of the shoreline, the special management area and shoreline setback rules in the mid 70's. At that time the state law mandated that the special management area be 300 feet from the coast line. As time went on, each commission for the respective islands were required to come up with their final special management area setbacks based upon the criteria set forth in the law. So for Maui County at that time there was only one planning commission it was the Maui Planning Commission. I believe in 1979 they adopted the maps that we use today. So it's the planning commission who sets the boundaries for the special management areas.

Ms. Akutagawa: There's no trigger that says, you know like how there's a 10 year time...

Ms. Loudermilk: No trigger for review.

Ms. Akutagawa: So if this commission wanted to review the SMA boundaries now and setbacks we would raise it...

Ms. Loudermilk: Raise it, let Wayne know because we would have to budget a lot of money for it because we gotta do the environmental reviews. What you have to justify why you want to either extend the boundary or move the boundary in. You have to justify why you want to move the boundaries. It's based upon the criteria that is set forth in the law. So we have to do an island wide analysis of that and than we have to go to the public hearing process. This commission would than be the authority to adopt the new boundaries.

Ms. Akutagawa: And on Molokai is it typically 300 feet in or does it follow Kamehameha Highway?

Ms. Loudermilk: It really varies, some places like Kaunakakai Town all of it is in but you go outside of Kaunakakai Town it's back to the highway. You get to certain areas on the east end it goes up and then it goes back down. I think at Kaluakoi it's very.

Mr. Shimizu: I always felt there was a drunken guy that drew that line. Because the line went like that as you said. It wasn't consistent.

Ms. Loudermilk: Upon reviewing the maps for Maui County as well as I assisted the Big Island in doing their initial revisions in the 90's, each place is unique on how they decided. On some places they decided we have the highway but Kaluakoi it looks like it was either an old road or trail or some sort of land feature that somebody thought would have been there forever. So it's a combination of all of those things.

Mr. Shimizu: I guess each time they drew a decent line.

Ms. Loudermilk: If that's something this commission wants to do we'll relay that.

Mr. Shimizu: Like I said it looks like a drunken guy drew that line.

Ms. Loudermilk: Some of the lines, they do not, when you look at it they do not appear to make sense. But you go back and talk story to people that either lived in the area and they can tell you exactly what was there before and why that line was put there.

Mr. Shimizu: O.K. if the line was straight the county would gain more revenue?

Ms. Loudermilk: The special management area basically what it is, is a review of the natural resources of the property. You have to do the special management area even if you're in the state conservation district and it's the most pristine property. It doesn't discriminate against the proposed land use. What the legislature has said is that o.k. county's you sold the properties however you feel right but we will use this special management area as a review process to minimize any impacts that that underlined land use may cause in the coastal area. That's basically, it has nothing to do with revenue.

Mr. Shimizu: But if I'm wrong you correct me, I always felt that people that owned property by the SMA is liable for that portion of land that's in front, is that true?

Ms. Loudermilk: I would say partially true. I'm not too sure if liable is the correct word. But the step, that same house could cause much more impact than the house in the SMA.

Mr. Shimizu: No like people walking on the SMA in front of your property, they get hurt, they can sue the property owner that's adjoining to that?

Ms. Loudermilk: Yes and that has nothing to do with the special management area. There are, that has to do with a related issue of public access to coastal areas. Part of that does, is talked about in the special management area but in terms of the identification of those legal accesses that has really, the establishment has nothing to do with the special management area.

Mr. Shimizu: One question, is the whole island of Molokai have its own SMA?

Ms. Loudermilk: All the coastal areas of all three islands.

Mr. Shimizu: All the coastal areas, not the whole island?

Ms. Loudermilk: No. It encircles the coast of the island. So it's not the whole island in itself. It's just like people that squiggly line of Kaluakoi.

Mr. Shimizu: Thank you.

Mr. Vanderbilt: Robin speaking of the SMA as far as you said this commission would have to justify any movement in the SMA line. Is there any document which shows how they justified the existing SMA lines as far as any impacts on the coastal resources?

Ms. Loudermilk: We have looked and we have not been able to find. We looked in the minutes because if the question comes up all the time, why was this line here, that is a disadvantage for us.

Mr. Vanderbilt: Well I've talked to some people here on Molokai that were on that original coastal zone thing and they said basically the process was going and it got to the end and they just basically followed the road around. There's no rhyme or reason as to why it's there. As far as our plan goes, our community plan says review and revise the SMA boundary to include the entire island of Molokai except DHHL and Kalawao County, that's an implementing action.

Ms. Loudermilk: That still needs to be funded and we still need to do the study to justify or not justify the movement of the lines.

Mr. Vanderbilt: So you're saying that if we want to initiate if this commission wants to initiate we gotta wait till you get some money?

Ms. Loudermilk: Yes because the types of study that's going to have to be done we can't do it in house.

Mr. Vanderbilt: Well how do we find out how long that's going to take or what this commission can do to help lobby for whatever needs to be done?

Mr. Boteilho: We are looking at that, trying to revise the boundaries. Right now we're not at the point where we know exactly what our work plan will be.

Mr. Vanderbilt: Is that for all the islands?

Mr. Boteilho: Yes.

Mr. Vanderbilt: Well in the other community plans have in there, can we request that when you set out your work plan you make Molokai first?

Mr. Boteilho: That's a possibility, would be up to my director, I have to ask him. So any way, yeah, we don't know our work plan so therefore we don't know our budget at this time. We're going to try and get it in this year but we cannot guarantee.

Ms. Akutagawa: In the mean time is there some kind of criteria this commission can look at as to what would justify boundary, SMA boundary?

Ms. Loudermilk: I can get that for you, not from our department but the city and county of Honolulu does this all the time and they have choke, thick documents and I would, in house, I wasn't aware of this work plan so what, we need to check in house where we're at and where we're going. Two, what are they basing this on and we should be able to get that to you folks.

Ms. Akutagawa: And even from your own expertise when you said you helped the Big Island in the 90's, what kind of criteria you guys looked at.

Mr. Vanderbilt: Just one other thing, in the 1980's this has been in our 1984 plan and it's also in this plan. So its been, it was in 1984 now its been 20 years, so, I think it's long over due to look into that thing. I guess that's the problem with our community plan, we got all these implementing actions such as adopt appropriate subdivision and roadway improvements, standards to provide afford ability

and rural character and there's more and more and none of these implementing actions have taken place, none of them, zero. None of them from our 1984 plan. So, what's the, I mean, the community worked so hard on all these things and is there anything the commission can do to start implementing some of these things, send a list and say we want to implement certain things?

Ms. Loudermilk: I would say one, you go through Wayne, he's here, he represents the director. Two you guys can go to the Mayor. Three you guys can go to your council person and four, go to budget. It's all a matter of lobbying and political will.

Mr. Boteilho: And also Madam Chair, that's one of the good things about bill 84. Bill 84 sought to address that issue of implementation. Also at the top of my head there were several things that would be required from now on is that the planning director shall check with every agency on the status of every single implementation action. That would be transmitted to the council along with the county budget.

Mr. Vanderbilt: Will that be done with our exiting community plan?

Mr. Boteilho: No. It was meant for the next community.

Mr. Vanderbilt: So we might as well trash this?

Mr. Boteilho: No. I would say the, hoping that the general plan advisory committee is going to be starting off early next year, so that might be a forum for us to look at for further implementing action and their priorities. Certainly if something really needs to be done, we can expedite that.

Mr. Vanderbilt: On the SMA boundary you said we set the boundary line but if it's not approved by the Mayor, it doesn't have to be approved by the Mayor?

Ms. Loudermilk: It does not have to be approved by the mayor. The special management area boundaries are approved by the respective planning commission's. It does not have to go through Council buy you do have to do a lot of public hearings.

Mr. Vanderbilt: And it does not have to be approved by the mayor?

Ms. Loudermilk: Nope.

Mr. Vanderbilt: Thank you.

Ms. Buchanan: On the exempted actions, is that what happened in the cruise ship issue where corporate counsel exempted, they didn't think that they needed an EA or needed to come before this planning commission because it was exempt.

Ms. Loudermilk: I cannot speak to that.

Ms. Buchanan: maybe Corporate Council can.

Ms. Young: That project was not exempted under the list. That was actually determined not to need an SMA permit and I'm talking about only the ship coming into the waters, docking apparently, anchoring approximately three miles from shore and the passengers coming in on the tenders into the dock. None of that activity occurred within the SMA area and so therefore because it does not occur within the SMA area it does not need a permit.

Ms. Akutagawa: But then I thought it wasn't deemed a development?

Ms. Young: The mere coming in, the mere walking in off of the tenders, that by itself did not constitute a development by itself. If there is an activity that is going on that is something more than that, than perhaps the department would have to do an assessment to determine if that constitutes a development.

Ms. Loudermilk: We talking two things, one is the SMA and one is the EIS.

Ms. Akutagawa: I have a question about zoning. Two questions about zoning. First, what activity or development is allowed in interim zoning and in terms of special zoning designations does Moloka'i have any special zones, project districts at planned development zones?

Ms. Loudermilk: Regarding the interim zoning I believe that's part of the packet that we give to you in title 19, it's one and a half pages. If you don't have that we'll get a copy, we'll get another copy to you. General would be like a house, your residence, maybe a church or school, farm structures, those types of structures that were around in the 1950's that were part of the pretty much every day life of the people living in Maui County at that time, hospital's, most of your public-quasi/public institutions, care home facilities.

Ms. Akutagawa: O.K. what's the process to change it from interim to something else, does it always come to the commission?

Ms. Loudermilk: The way that Maui County works is the rezoning is either initiated by the

landowner or in the past few years council has been fairly active in rezoning certain properties in the urban district, interim to another designation. Those are the two mechanisms. Bill 84 is trying to address that in that again, we've been very good at community planning but not rezoning so how do you get the zoning as much as possible to be consistent with the community plan. Bill 84 is providing a mechanism that the council has the ability to initiate the rezoning within a certain period of time. Again in here the planning commission can also initiate rezoning. So those are the three options that we have and I know at one time there has been talk about a comprehensive rezoning, I know something was done in Kaunakakai Town but it stopped there. I don't know where it's at at this point and time. That's something that can also be re-pushed, maybe it could be a tag team effort.

Ms. Akutagawa: Did the CAC's work on our zoning?

Ms. Loudermilk: No. CAC's will be strictly community plan. However, as an ad-jump, not necessarily the CAC but what will be in people's minds would be, well the council has the potential to rezone my property, automatically. So if they decide to, the community might plan my property x they will also have the ability to rezone my property up or down to meet x.

Ms. Akutagawa: Yeah so does that get into the whole taking issue?

Ms. Loudermilk: The potential could be there if there are, if people perceive the zoning, rezoning to be a down zoning of their property. The potential is always there.

Ms. Akutagawa: In terms of zoning you said there's state zoning and there's county zoning. So is the county zoning kind of like a sub set of bigger class of zoning fashioned by the state and than there has to be some kind of consistency with state zoning?

Ms. Loudermilk: Yes that's a good starting point. The county zoning is a subset you have the urban district, you have the rural district, you have the agricultural and conservation district. Those lands in the conservation district are all administered by the Department of Land and Natural Resources. So the county has no control over them. Regarding zoning it has to be consistent for the zoning to be able to be implemented, it has to be consistent with the state designation. For example if it's urban and you come in with a BCT, that's consistent. If it's urban and you come with an open space that's consistent. But say you're rural and you're B-2, sorry you cannot you need to meet the state rural standards. You cannot use the county B-2 standard because the state rural zoning does not allow for that type of use out right. So that's how it works. The state sets forth the criteria, the county's further refine the uses under each zone and if there's incompatibility, the state designation will take precedent.

Mr. Dunbar: I have a question and it regards a lot of what actually happened on Molokai just because we're all rural, but there lies along our shores (inaudible) and whether it be state land or private land or county or federal and we have them all, the shoreline boundary is an exterior of that lokoia. It's not where the water touches the shore.

Ms. Loudermilk: If its been certified and approved by the surveyor....

Mr. Dunbar: You can't even touch them they say this is ours....

Ms. Loudermilk: That's true, Molokai is unique in terms of the shoreline areas and the lokoia....

Mr. Dunbar: But now you have a fishpond that sits out there and its shoreline boundary is the exterior of this wall, period, that's the way it sits. So now what is the jurisdiction with someone coming back to me and telling me oh yeah now you have a shoreline setback area and you have an SMA area. I don't have any of that? Your fishpond sits out in there, that's the shoreline out there not over here where the water touches it. There's also a number of other things. There's grants that people own, the county's and the state's have taken into their mind to say o.k., there's too much work to figure out what's grant 308 and what is grant 3730 and what is grant 3009, and all the other grants that make up a number of parcels of people's property that front this whole south shore. The county, state or administration, they come in and say here's your property tax key but you know that property tax key could encompass three or four grants, I got one of them that sits right above Charlotte Seales that got 6 of them in there but there's only one tmk. I basically have 6 parcels that sit behind that, not one tmk. Tmk made it easier for you folks but all the old designations, when we go back 90+ years having owned all of that, there are 6 parcels behind all owned by different people at various times of their lives. There's a parcel that sits above Charlotte's house that's in the water and it is a grant. So, when you begin saying we want to do this, to this SMA area, it ain't that easy.

Ms. Loudermilk: No it's not. But you know what I think it would be a good opportunity to clear all of this up.

Mr. Dunbar: Every time I hear clear it up I like see what's going to clear before it's up.

Ms. Loudermilk: No, that is true. Because depending on who you talk to because I talk to the state surveyor and for the most part in his mind, when you talking about Molokai and the lokoia, yeah to him that shoreline would be the wall, the exterior wall. How that works with another bureaucratic agency for what every they need to do, I shutter at the thought but we deal with it.

Mr. Dunbar: That's what I want to hear, wow, designate the whole island. Because we have that fear

of what makes it work.

Ms. Loudermilk: I think in terms, two things, in terms of just zoning in general to get it comprehensive, you know there's been many efforts. Maybe we can go back and see to what has gone forth the last time. Where they actually started something or didn't do anything. My understanding was if you're in the urban district than you were interim, that was a thrust because why penalize all these people who have been there for years and years, activities, houses, what ever, why penalize them because they don't need the fine provision of the interim zoning code. Let's get them zoned more appropriately. Now in relation to the rural and ag, part of it had to do with the adoption of those zoning ordinances but, for the urban interim we can go back and see what has or has not been done since the last push, where they're at especially now that the community plan has been adopted and that was part of the discussion too.

Mr. Dunbar: I have one other question and I'll get out of your hair, in the special management area where they try to define development, if the county finds at some point and time, legislation it says this is or is not a development is that concrete? Will it last forever with the land that was determined during that case?

Ms. Loudermilk: No it's good as when it was put into the state law.

Mr. Dunbar: Which means it could be exempt at one point and later one taken away at some other point.

Ms. Loudermilk: Correct. Because the state legislature makes a determination on what is not a development. They found that it was easier to do that than try to further refine those five nebulous portions of what is a development. Because potentially anything could be a development. But it's at the legislature, not at the county, at the legislature, at the state level where those changes to what is not a development. That is a separate and distinct versus implementation or not implementation.

Mr. Dunbar: Thank you.

Ms. Akutagawa: O.K. second part of my question and this is something that is also a question from the community passed on, are there any project districts of planned development on Molokai and if so, who reviews such applications? Are there applications for any kind of development in this type of zoned areas?

Ms. Loudermilk: The only one that I could think of that may be off hand might be Kaluakoi. But other than that, we'll get back to you on that. Project or planned development districts on the island

of Moloka'i as well as the shoreline setback, who reviews and approves. First of all the project and planned districts on Molokai and also who reviews and approves and then in relation to your earlier question regarding the shoreline setback, who reviews and approves the variances as well as how our sea walls are treated.

Ms. Akutagawa: Because I'm concerned about these special zones because they allow for flexibility in the planning approach. So that kind has a potential cause for impact if not review property. Any other questions?

Mr. Vanderbilt: As far as what Kip was talking about, if the state law changes and it says something, now is the development that may not have been before, it's all more than likely that they would grandfather any development that has been approved, fire is not going to have them tear it down will they?

Ms. Loudermilk: They would usually grandfather it in.

Mr. Vanderbilt: The other thing is, I was just asking because I didn't know. As far as the general plan it says all county laws shall be consistent with the general plan which I guess includes the community plans, then some where else it says all administrative actions shall be consistent with the intent of the community plans and general plans.

Ms. Loudermilk: I'm not aware of where that would be.

Mr. Vanderbilt: I think I've seen it but my question is actions by our planning commission, are they considered administrative actions when you approve SMA permits or approve special use permits?

Ms. Loudermilk: The step is a legislative process.

Mr. Vanderbilt: So our actions have to be consistent. The other question I had was in our community plan there's various planning standards and when you talk about something has to be consistent with the community plan, with regard to the planning standards, does the development whether it be a subdivision or anything else have to be consistent with, not only the goals and objectives but also the planning standards of the Molokai community plan?

Ms. Loudermilk: I think that's one we're still struggling with because the staff is for community plan and the zoning may be different and which precedes which, we're still struggling with that.

Mr. Vanderbilt: The only reason I ask because on our agenda today there was a letter regarding this

subdivision at the West End, a major subdivision and Mr. Foley wrote a pretty lengthy letter saying you need to conform to all these things including planning standards in the Molokai community plan and I assume if they don't the subdivision can't get approved.

Ms. Loudermilk: The planning department, if the director has written that I have not seen that letter so I cannot comment on that.

Mr. Vanderbilt: It's in our packet, it was sent for today's meeting.

Ms. Loudermilk: Once you get preliminary approval you dealing with subdivision issues.

Ms. Young: Maybe if I could shed some light. There's some confusion as to when you have to become consistent or consistent with or conform to the community plan. That is dependant on what kind of action is being sought. For example if they're seeking subdivision approval you do need to conform with the community plan in the code. Like for example the SMA, for the SMA permit you need to be consistent with the community plan, with the relevant community plan.

Mr. Vanderbilt: And the general plan.

Ms. Young: So it depends on the type of approval or what you need in order to proceed with your development. That would determine whether or not you need to be consistent or conform to the community plan.

Mr. Vanderbilt: When Bill 84 gets passed, we went through all these things and a lot of them will change when bill 84 comes, or is there going to be an update to this commission, maybe there could be just a written report on how the changes on bill 84 what's in or what's out based on what we learned today so that we're not...

Ms. Loudermilk: Sure it'll just basically change the general plan process and the community plan components, it won't change everything else. At this point and time because we're assuming what is there now will be passed as is.

Mr. Vanderbilt: When is it going to second and final reading, is it November 7?

Ms. Loudermilk: It is but you can never say never.

Mr. Vanderbilt: Just say it does pass, I mean there's some pretty radical changes I thought. Maybe not.

Mr. Boteilho: I can see it changing anything like the zoning process or anything like that. The intent of bill 84 was for the next round of plans. So I don't see too much changing. Some changes though, there is a provision in bill 84 which says the most recently enacted ordinances including general and community plans shall prevail if there is a conflict with the county code and the community general plan, one. Two, once the community plans are done the planning department is going to be required to submit to the council a list of things that need to be changed, county code, or what ever, zoning.

Mr. Vanderbilt: Then is there any talk about in the planning department on this zoning because you were at the planning conference and if you talked to a lot of these planners, everything, one of the real problems for Maui County is the pyramid zoning, is there any talk about the planning department doing something where you don't have all these different type zoning under this one zoning?

Mr. Boteilho: Yeah there is talk but we have a list of priorities on legislation and we have only one person working on it. Right now the priorities are agricultural reform, transient vacation rentals that sort of thing.

Mr. Vanderbilt: Madam Chair can I ask a question, I have several more questions and everybody's falling asleep right now. Would it be o.k. with you if I just forwarded those to the planning department and not ask them now?

Ms. Akutagawa: That's fine Degray.

Mr. Vanderbilt: I have your approval on that?

Ms. Akutagawa: Yes.

Mr. Vanderbilt: Thank you Madam Chair.

Mr. Boteilho: Degray just send it to Mike Foley because that way we can channel it.

Ms. Akutagawa: And if you can give us the answers to those questions too. I just want to make sure that anybody in the public did have questions, this was on the agenda and any person in the public can testify on any agenda item. Anybody from the public want to ask a question?

Mr. Vanderbilt: Madam Chair can I just ask one question, what Kivette did on the second round, we had the slide presentation the last time with Kivette when we didn't have the notes, then she put all her dialogue under the slide and then today we had a presentation where we just got it today but,

from the slide presentation it could get out to us in advance and then what the planners going to say be written down on the slide so you're not always taking notes and you can really get it, it's a lot easier to follow, at least what I thought.

Ms. Loudermilk: Just to let you know I don't script like Kivette. We will advance as much as we can.

Mr. Vanderbilt: You said about what was on that slide presentation.

Mr. Boteilho: The issue of getting things out earlier, you know what, I'm going to start that. There may be a transition period but I agree. I think things should be going out earlier. I'm talking about item 13, meeting agendas. As far as the scripting that's something that we'd like to avoid because that's a lot of work. That's a lot of work and sometimes it's better to be verbal anyway. It's hard to put down exactly what you're going to say.

Mr. Vanderbilt: Like today was an outline, that was already done with the Maui Planning Commission.

Ms. Loudermilk: The scripting wasn't.

Mr. Vanderbilt: But you did script it so why, what would be wrong. If you're sitting there and you get just a bunch of slides in the mail and you say all right just sit through the presentation and ask questions, but it's tough if you've haven't been through the process. Anything you can do to help in advance, it'll just make the meetings go that much smoother I think, that's all.

Mr. Boteilho: So by like scripting you mean like an outline? We can take a look at that.

Ms. Akutagawa: That's going to be the subject of my chairperson's report. Are we pau with this section?

Mr. Boteilho: I can go through the parliamentary procedures really fast unless you want to save it.

Ms. Akutagawa: Save it for the next meeting.

D. CHAIRPERSON'S REPORT

Ms. Akutagawa: I need to nip this thing in the bud now because I feeling some kind of tension and growing animosity. I've been e-mailing Wayne about this issue. O.K., it has to be address so I'm going to address it now regardless of whether they left or not, that's their prerogative if they want to leave early. What I perceive is going on, the dynamic that is being played out is almost to a certain level and accusation that staff is not providing enough information. I look at this situation from two different angles. One angle is, I encourage commissioner's to do their homework, to exercise new diligence in researching the issues because I want this commission to make well informed decisions. At the same time I don't want staff to be accused of withholding information. So this issue has been creeping up time and time again as to what information is relevant and valuable to this commission

to use. So I'm proposing a solution that if there is some material that a commissioner utilizing his or her due diligence and doing his or her homework properly finds an item in the file that may not be part of the file that staff provides, that that commissioner provide at least a warning notice of wanting that to be part of the supplemental record for this commission to review. Then have staff do the mail out. Understanding that we might receive these documents at the last minute but if it's for supplementation I don't see a problem with that. If a commissioner exercising due diligence finds additional things in the file, not within the time limit, I'm going to have that commissioner take responsibility in informing the commission of those items. What I will not tolerate is any accusation that staff has been withholding information deliberately unless there is such a blatant thing that has occurred that has proven that. I want us to have good relationships and harmony on this commission and with staff and I value that staff has provided us with information and gives us reports. Because it makes us as volunteers, it gives us an easier time in making decisions. So I want to really ask this commission to be sensitive to each other and to be sensitive to our staff that supports us. So I ask that we exercise our common sense.

Another issue is time management. We need to really focus on questions on the relevance, (inaudible) issues at hand, whether than get caught up in secondary issues. So there may be times that I'm going to be curt but it's not because I have disrespect for any of the commissioner's it's in the interest of moving the meetings along. The thing we also have an obligation to get these agenda items acted upon because what we're experiencing is a lot of things are being deferred and this may cause undo delay and may actually, prejudice or burden applicants. So let's try to be sensitive to each others needs and act within common sense judgement and business like. That basically concludes my report.

Any questions?

Mr. Shimizu: Thank yo Malia. I feel the same way you do. I feel the staff is doing a damn good job so I rely on staff and I humble with them because they the paid worker's, I'm a volunteer. I can't read through all this so I rely on staff 105%. Thank you.

Ms. Akutagawa: One additional comment, I also recognize some tension within the commission members itself because a certain commissioner asks a lot of questions and I don't want these people to feel that they gotta limit their questioning. I'm just saying use your common sense on how you ask the question and hone in on the main issue and I don't want to see stuff like everybody under their breath, shaking their head, that's not good, that's not professional and that's not nice, period. Let us be respectful of each other.

Mr. Vanderbilt: Madam Chair I'd just like to comment, thank you for your comments. With one

reference to maybe accusing the staff that they were not providing us all the information, I don't know if it was regarding Simone Bosco in that letter that I referred to, was that it?

Mr. Boteilho: It was.

Mr. Vanderbilt: It was, o.k.

Ms. Loudermilk: Not only that but when I did the BCT you brought a letter out of the files and accused me of not...

Mr. Vanderbilt: Well I apologize and the next day I apologized to Simone if that's what, but it's very frustrating to this position and I think, as I talked to Wayne the Maui Planning Commission has files so the commissioner's over there can go in and look at the general files any time they want and so can the public. We don't have the luxury here. I happen to be in Maui sometimes so I go and look at some things coming up. In previous planning commission's it was agreed to that we would have duplicate files here on Maui for not only the planning commissioner's if they so choose to go look but also the public. Our people don't have that chance before they come to a meeting to testify to go look at a file. So, I talked to Wayne about and maybe he's going to bring it up about maybe having duplicate files with our planning commission.

Ms. Akutagawa: I'll make it my personal responsibility as well to follow up with staff on seeing that can be done because I agree, a lot of these commissioner's don't travel much including myself so if there is a need to look at the file, I think it should be available. At the same time I neglected to suggest that if it's not too burdensome for staff, depending on how fat the file is, if they can bring along the file, the relevant files for what ever agenda items we have for a particular meeting so that if there's a question that requires further clarification staff can access that piece of information at least make it available to the commission or to make copies. That way we all can receive the information needed.

Mr. Vanderbilt: So we're going to push for duplicate files in our office?

Ms. Akutagawa: I think I'm going to do that for a long term. But for a solution for now especially is just have them bring the whole file.

Mr. Vanderbilt: The other thing Madam Chair is that Nobu doesn't get paid, neither does anybody else and we're trying to do an awful lot more than the Maui Planning Commission in a lot shorter time. For instance at 3:43 they had almost a whole day on that and I don't know how long on the orientation and everything and they meet, starting at 9 and some times go to 3 or 4:00 in the

afternoon and we only have three hours to meet. So, Wayne was going to see if he could get things earlier and that would help because then you can review and focus your testimony rather than sit here and hear something for the first time and try to have to, it's tough. We have a responsibility to the public and I take that pretty seriously and I'm sure all the other commissioner's do too.

Ms. Akutagawa: Any other comments before we move on?

E. DIRECTOR'S REPORT

1. List of pending Molokai Projects
2. August 13, 2003 letter from Wayde Lee requesting the following:
 - a. Status of the Molokai Ranch Ag. Subdivision in southwest Molokai
 - b. Halawa Valley situation update
 - c. Reservation of 40 acres at Hale O Lono Harbor for public use of the community
 - d. Status of the community plan implementation
3. Update on the Big Island Hokulia Court Decision
4. 2003 Hawaii Congress of Planning Officials Conference - October 8-10, 2003, Westin Maui Hotel
5. Oct. 29 Public Works Public Hearing on rules Relating to indigenous Hawaiian Architecture Structures - 10am Mitchell Pauole Center
6. Nov. 12, MoPC Public Hearing on Molokai Ranch's Proposed Maunaloa Manager's Row Land Use Changes

Mr. Boteilho: First of all I wanted to offer a choice if I may. If you like we could schedule the Director's report for the next meeting. But I'll yield to any particular questions from the members.

Mr. Vanderbilt: Number 6, this manager's row land use changes has been the subject of an earlier EA and so I hope that a summary can be made of sort of what when on there and I think there was a law suit involved in that.

Ms. Loudermilk: The lawsuit has to do with the EA. Is that correct?

Mr. Vanderbilt: I don't know. But I hope the back history were brought up to date, this doesn't come on like a new project.

Ms. Loudermilk: No, no, we'll have the brief history, I wasn't intending on putting the lawsuit but that it was withdrawn. The applicant previously withdrew the project.

Mr. Vanderbilt: They withdrew the project so the lawsuit was withdrawn, or the lawsuit just lapsed?

Ms. Loudermilk: I have no idea. All I know in relationship to the brief history and relation to the planning department in that area is that...yeah.

Ms. Akutagawa: This is different from that whole ag. subdivision.

Ms. Loudermilk: It's the small component that complies to the manager's row.

Mr. Vanderbilt: Which they were going to keep for the employee's use. It's the one going up.

Ms. Loudermilk: They're coming in for a district boundary amendment and change in zoning because as part of the community plan update.

Mr. Vanderbilt: Is that just going to be on the manager's row or some other lots too?

Ms. Loudermilk: Just the manager's row.

Mr. Boteilho: Just one more thing, how do you guys like this meeting here, should we meet here all the time?

Ms. Akutagawa: Everyone looks happier.

Mr. Vanderbilt: Well I think this is more compatible than one long table.

Mr. Boteilho: And if we did expect 50 people we could have a row here and put up 50 chairs. I had a planning committee meeting here once and we did that.

Ms. Akutagawa: Maybe exercise judgement, if we know for sure it'll be a controversial meeting than we'll have it at Mitchell Pauole or something.

Mr. Boteilho: O.K. Halawa Valley the one tour operator is going to be submitting for an SMA assessment. I've instructed the zoning inspectors to go out and look for other tour operators.

Mr. Vanderbilt: Are we going to answer Mr. Lee's letter? We got a written report sort of on the ag subdivision and we just got a bunch of verbal stuff on Halawa but are we going to respond to it? What's the protocol on something like that?

Mr. Boteilho: If the commission wishes we can do a written follow up.

Ms. Akutagawa: Yeah, I think so. That would be a courtesy to write a letter to him. Any questions before we adjourn?

Mr. Vanderbilt: Madam Chair just one, just one, do all the Maui Planning Commissioner's have their own mikes? We're talking about speeding up meetings and everything else.

Mr. Boteilho: I was thinking about that today. I don't know.

Ms. Akutagawa: I'm happy with these mikes. We had this one rinky-dink mike passing all the way down, hey, I'm happy with it, more technology, that's fine. Anything else?

Ms. Buchanan: The Molokai Ranch Ag. Subdivision, they not moving right?

Ms. Akutagawa: Was it formally withdrawn?

Mr. Vanderbilt: No they asked for an extension I think.

Mr. Boteilho: Yeah I don't think it's formally withdrawn but according to the applicant and public works they said that really nothing is happening.

Mr. Vanderbilt: But they could ask for an extension right?

Mr. Boteilho: I'm not sure.

Ms. Akutagawa: I think it's o.k. because this permitting process keeps proceeding and we asked specifically for corporation counsel's opinion on what other permits may be triggered. I think it's really critical. Ask if the Ranch is withdrawing completely this project because I think at that meeting we discussed for potential chapter 343 trigger and now we have this Hokulia decision. This was long time ago when John Min was the director and they never followed up. Try go over the minutes because my brain is fuzzy. There are certain permitting triggers that we looked at and we asked for corporation counsel's opinion and nothing happened with that. This project is still kind of dangling so we need to respond to the community on the questions of what other permits will be triggered.

Mr. Boteilho: Just a general note you wanted corp. counsel's opinion on what other permits will be triggered?

Ms. Akutagawa: You guys need to look at the minutes because it was even on AKAKU, so look the video.

Mr. Shimizu: Wayne you let me know if I'm out of order, this thing about the radio station down at Kaluakoi, what's happening?

Mr. Boteilho: I don't know.

Mr. Shimizu: Can you find out?

Ms. Akutagawa: Put it in your director's report next time.

Mr. Boteilho: Radio station you mean the transmitting station?

Ms. Akutagawa: The Christian station down Kaluakoi side.

Mr. Shimizu: If the thing is cancelled they should start taking the towers down.

Ms. Akutagawa: O.K. nothing else? We'll defer the remaining items for the next meeting.

F. NEXT REGULAR MEETING - November 12, 2003

G. ADJOURNMENT

There being no further business the meeting was adjourned at 4:02 p.m.

RECORD OF ATTENDANCE

COMMISSIONER'S PRESENT:

1. M. AKUTAGAWA, CHAIR
2. L. BUCHANAN, VICE-CHAIR
3. C. SEALES
4. N. SHIMIZU
5. J. KALANIHUIA
6. K. DUNBAR
7. D. VANDERBILT

8. R. RIBAO

STAFF:

1. W. BOTEILHO, DEPUTY DIRECTOR OF PLNG.
2. K. CAIGOY, PLANNING DEPARTMENT
3. R. LOUDERMILK, PLANNING DEPARTMENT
4. C. YOUNG, CORPORATION COUNSEL