

**MOLOKAI PLANNING COMMISSION  
REGULAR MEETING  
AUGUST 22, 2012**

*\*\* All documents, including written testimony, that was submitted for or at this meeting are filed in the minutes' file and are available for public viewing at the Maui County Department of Planning, 250 S. High St., Wailuku, Maui, and at the Planning Commission Office at the Mitchell Pauole Center, Kaunakakai, Molokai. \*\**

**A. CALL TO ORDER**

The regular meeting of the Molokai Planning Commission was called to order by Chairperson John Sprinzel at 12:03 p.m., Wednesday, August 22, 2012, at the Mitchell Pauole Center Conference Room, Kaunakakai, Molokai.

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

Chair John Sprinzel: Ladies and gentlemen, as we have a quorum, I call to order. We're now in session. Pleased to see our Maui friends. And it's also good that our two new Commissioners, after three meetings, still have a hundred percent attendance record, which is something of a – that should go in the *Guinness Book of Records*.

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

Chair Sprinzel: Okay, is there any public testimony on any planning or land use issue? There being none, public testimony is now closed.

**C. APPROVAL OF MINUTES OF THE MAY 9, 2012 AND JULY 11, 2012 MEETINGS**

Chair Sprinzel: Approval of the minutes. Two little things. I've mentioned them to Suzie on the July the 11<sup>th</sup>. Just simple mishearing of my terrible speech. And other than that, nothing. But I did want to just say two things. Very often these meetings are televised, as you know, and you tend to forget there's a camera in the background. And you know, I watched the telly at 9:00 in the morning and there was all sorts of bad language on it. Not that we don't all use it, but I think it should not really be in the public record, if we can avoid it. That's one thing. And the other thing is that May the 9<sup>th</sup> meeting, I thought we did an awful lot of good stuff. Really, it was very, very productive. So anyway, would somebody like to make a motion to approve these two minutes? Thank you, Janice. And seconder? Thank you very much, Mr. Bacon. Right. Next item. Too much paper.

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

Chair Sprinzel: I'm on too many painkillers. That's the trouble. Okay, forgive me for sitting in this honored Chair, but I've got a bit of a backache.

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

*It has been moved by Commissioner Kalanihulia, seconded by Commissioner Bacon, then unanimously*

**VOTED: To approve the meeting minutes of May 9, 2012 as presented, and July 11, 2012 as corrected by Chair Sprinzel.**

Chair Sprinzel: It's carried unanimously. The minutes are passed. Thank you.

Mr. Michael Jennings: . . . (inaudible) . . .

Chair Sprinzel: Certainly.

Mr. Jennings: I was not a Commissioner at the time, but this involves where I am employed, part of the May 9<sup>th</sup> minutes and everything. So I don't know if I can, legally, if I can vote on this or – I just wanted to throw that out.

Chair Sprinzel: You're just approving the minutes.

Mr. Jennings: Okay, okay. I just wanted to bring it up.

Chair Sprinzel: Thank you. So that's passed.

## **D. CHAIRPERSON'S REPORT**

- 1. Status of the Commission's Subcommittee on Rule Changes Report**
  - a. Rules of Practice and Procedure**
  - b. Special Management Area Rules**
  - c. Rules Regarding Special Uses in the State Agricultural and Rural Districts**
  - d. Shoreline Area Rules**

Chair Sprinzel: Chairperson's Report, wow, we got there quickly. This rules of practice and stuff that we're changing, special use and all this, it's been around for a very long time. And I would very much like us to submit our final changes for public hearing. Most of you on this Commission now weren't there when all this happened. It was under Steve Chaikin's rule. And he and Mike Hopper, our lawyer man, discussed all the legal points, and put it all together. And then Steve and I as the subcommittee went through every single line of it. And I've tried to explain it at the various meetings the reasons why these

things were changed. So I believe there's just a very few outstanding things. And what we're gonna do today is just briefly have our Deputy Director go through the items, and then it will go for a public hearing. So it's not over. We can change stuff. And as far as the emails from Lori, who couldn't be here today or the last meeting, it's not a problem because she can discuss anything she wants with the Deputy Director. And so it's not final. But what we do today is we pass it on to the public hearing and then it gets passed, okay? So I guess what we better have is Michele, yes? Thank you.

Ms. Michele McLean: Thank you, Chair. And aloha, Commissioners. Aloha to Commissioners Jennings and Rogers. I haven't had the chance to meet you gentlemen yet. I'm Michele McLean, the Deputy Planning Director.

Actually, four – we have four sets of rules: the rules of practice and procedure, SMA rules, rules for special uses in the State ag and rural districts, and shoreline area rules. So there are four sets of rules where amendments are being proposed.

My involvement with my boss, the Planning Director, really relate to just the SMA rules. The other three sets of rules, I would defer to Mike, to Corp. Counsel, who worked closely with the former Chair. And if Mike could just go through, maybe give a couple bullet point highlights on those. There seemed to be – I don't wanna overstate this, but my understanding is that there's pretty much consensus on those. There really wasn't much discussion left on those. But Mike can go through that and just see what questions you may have. And then when he finishes that, then I'll jump in with the SMA rules. And I do wanna read some emails that I exchanged yesterday with Commissioner Buchanan because she really would like for at least that one to be deferred. So I need to convey that sentiment to the Commission. I feel like we're okay with moving forward, the public hearing, but I need to make her wishes known to the Commission when we get to that point. So if I could ask Mike to go through the other three sets of rules, Mr. Chair?

Chair Sprinzel: Thank you very much. Yes, of course.

Mr. Michael Hopper: Thank you, Mr. Chair. I'm not going to go over all the details of all of the rules. You've been given copies of the rules. They're in what's called Ramseyer format, which means that anything that is underlined is new language and anything that's in brackets is being deleted. The one exception to this is if a new section is being added in its entirety. It's not all underlined. That comes into play for the rules of practice and procedure, I believe, which is Chapter 301 of the rules that have some sections related to appeals of notices of violations that are issued. That goes through kind of an expedited hearing process. That's Subchapter 9. It begins on page 301-12. That Subchapter 9 language is all new. So that's all new language. That can be confusing because it's not all underlined, but that's all new language that's being added to your rules.

As Michele discussed, I went over with Steve Chaikin mainly at his request to review all of the rules of the Commission, and essentially, give them an overhaul and try to make them as clear as possible, update them if there's things that needed to be updated, clarify things if they were vague, and try to make the Molokai rules a very smooth set of rules, a very clear set of rules. And what we also added were some updates that were made to other rules like the Maui and the Lanai Planning Commission rules through their review to try to get the Molokai rules to sort of be the most up-to-date set of rules that we could possibly get at the time.

As Michele said, we have several sets of rules. There are special use permit rules, practice and procedure rules which are general, shoreline rules, and special management area rules. After Steve and I were finished, I believe we did speak with the Commission on the rules, and requested that the Planning Department have their own comments on the rules since the Department would be administering the rules. Planning had some comments on the rules including, what Michele's gonna go over with you dealing with SMA exemptions and some other issues that were not part of the rules that Steve and I came up with but were added later on, and proposed changes to the rules in addition to those rules. But the rules that Steve and I had worked on as well as Joe Kalipi and Commissioner Sprinzel, who was a Commissioner at the time, now is Chair, covered a pretty wide variety of things. Planning had comments on a variety of the rules, and there were changes that were integrated, but I think their most substantive changes were – are things Michele's going to talk about.

Some of the highlights, again, I'm not going to go over every single change of the rules that Steve and I worked on were to come up with a clear enforcement procedure for shoreline violations, as well as special management area violations, to go over what the potential fines were, how the Director determined the amount of the fine, how notices of violation were issued for both shoreline and special management area violations, and how appeals of those violations were going to be heard by the Commission. The Commission also has under its rules of practice and procedure, an expedited review procedure, and that's Subchapter 9 that I talked about that will allow for a – sort of an expedited review of notices of violations that were issued that could appeal to the Commission. That's because those usually involve facts specific reviews, things that the Commission itself could probably hear rather than delegating that hearing to a hearing officer. And these rules are modeled after rules of the Board of Variances and Appeals over on Maui has that allow them to kind of hear those appeals and dispose of them quickly still with a very organized fashion for those hearings.

There's also an order to show cause proceeding that has been added to your rules that allow for a party or for the Commission to review permits that have already been issued for compliance and consider either revoking those permits, requiring an exempt action to come in and get a permit, or amend or delete certain conditions. And this would basically allow

somebody to say in addition to a notice of violation, which could be issued by the Planning Department, would allow the Commission to directly review compliance with permits if it has evidence that the permit's not being complied with. That's actually already in your rules to some extent. This process is a bit clearer and is modeled after the rules that have been added to the Lanai Planning Commission, and have been discussed with the Maui Planning Commission, and they were sort of modeled after the State Land Use Commission's rules. It would give you a way to review compliance with permits and even revoke those permits if there is a failure to comply with them.

Mr. Bacon: Can I just ask a quick question there?

Mr. Hopper: Yes.

Mr. Bacon: So who determines – I mean, do we pass by a lot and say, oh, look, they're building a house in the wrong place? Or how is it determined that we get to do this review or rescinding the permits?

Mr. Hopper: The rules states in Section 12-301-66:

The Commission on its own motion may issue an order to show cause, or the Director, or any party, or interested person may file a petition with the Commission for an order to show cause upon showing that there has been a failure to perform a condition, representation, or commitment on the part of a permit holder or a person who received an approval where the Commission was the final authority.

So that would allow the Commission itself to make its own motion, the Planning Director, if the Planning Director believes there's a violation, or an interested person to file. Again, though, that is a petition to ask for the issuance of an order to show cause. The Commission can reject that request point of order to show cause, and say we don't see enough evidence of noncompliance to open up a hearing to consider revoking the permit. The Commission, however, could grant that petition for an order to show cause, and review that permit, and decide whether or not it's in compliance. A petition that is filed with somebody has to contain certain information. That's also listed in the rule. Again, this is no different than the rule was when Steve Chaikin and I had reviewed this I think years ago. Actually, it's been with the Commission. So this language has been in there for a while. But that's the basic idea. And again, it's modeled after the State Land Use Commission's rules. And so it's to give the Commission sort of an ability to review. Again, this is – rather than a notice of violation, which is a separate process dealing with just somebody going out and violating the State law with respect to the SMA or your rules, this deals with someone who's actually got a permit or other approval from the Commission

where you already had jurisdiction to review that permit and have found that there's a noncompliance with that permit.

Chair Sprinzel: Incidentally, Commissioners, as this is so important, do feel free to raise your hands at any time and question, because that's our best opportunity now. And most of you, of course, have never done this – I mean, weren't on the Commission when it went through. Thank you.

Mr. Bacon: Okay, my other question is then if we are given false testimony by the person applying for that permit, and it turns out that we have verifiable proof or whatever it is that that's the case, do we just get to say, okay, cease and desist for now? Or do we have to go through this whole process, because usually the process takes as long as it would take them to finish the project?

Mr. Hopper: You typically have to go through a due process if a permit's been issued. Again, it depends on the facts, and I wanna see what you're talking about if you have a specific project in mind. But typically, you can't just revoke a permit immediately. There's some language in your current rules that give you some options, I think, but typically, if a permit's actually issued, you can't revoke that permit without giving some kind of a hearing. If it's based on a misrepresentation, that can certainly be brought up in that hearing to revoke the permit, but it's very difficult for a department or a commission to unilaterally revoke a permit that's been granted without a hearing summarily by itself. There's a lot of risks with doing that without having somebody have a hearing in order to be heard.

And that's about my summary of the new rules. Again, I didn't cover every single last change. A ton of the changes that were made dealt with clarification of things, dealing with things like what if there's no newspaper on Molokai at a given time, can publication be made in the *Maui News*, you know, things like that, dealing with kind of the more practical aspects of the rules that Steve Chaikin really went through and did a pretty thorough review, and had discussions with me. The couple things I mentioned were kind of things that I suggested adding, but I'm not gonna be able to cover every single change. Again, this is about the, I think, third or fourth time that the Commission has been – reviewed these rules. Certainly, not these Commissioners, so we can understand if there's more questions, but these drafts have been in the works for a while. It's unfortunate that Steve's not here, or Joe Kalipi's not here, but Chair Sprinzel was also I think involved in some of these discussions too.

Ms. McLean: Before I go into the SMA rules, just again to go over the procedures, the – once the Commission is comfortable with the proposed amendments, you would vote to send the rules out for public hearing. And there would be notice in the newspaper, other notice requirements that are in the rules, and then you would conduct a public hearing on those rules. So that public hearing would be scheduled at one of your regular meeting

times. You'd have a public hearing on the rules. And then you could follow up that public hearing again with a meeting to give your final approval to those rules. So once you vote them out, you would see them again at your final meeting. If as a result of the public hearing or just with any other input that Commissioners have, if you make further changes after the public hearing, we would depend on Mike's counsel to determine if we need to send out for public hearing again. So if you make additional changes and those changes are substantive, we might need to send it out for public hearing again. So that would happen again at another one of your regularly scheduled meeting times. So as the Chair indicated, this is not the last day. If you choose to move forward with the rules today, there'd be a public hearing and at least one more meeting. Any questions on the procedural part?

Mr. Bacon: So if we pass this out and everything is settled, does that mean that we can't make any changes to the rules—spot changes to the rules later on? Or is it going through the same process?

Ms. McLean: You could make changes again, and if those changes are substantive, we might have to repeat the public hearing, which is fine. That's what the public hearing is for. There may be a lot of testimony on one particular part, and you decide, oh, yeah, we should make that more restrictive or make it less restrictive. And so again, based on the input you get at the public hearing or your own thoughts, if you wanna make changes, absolutely, you can make changes. We may have to repeat the public hearing, but that's not a big deal. And we can certainly do that.

Mr. Bacon: No, I ask that because this has been a very long process. And I think Michael uses the word "timely" pretty loosely there. But it's – I was just wondering if it's taking so long because this is our one shot deal and that's why we had to get it right. Okay.

Ms. McLean: It's taking so long because my boss and I stuck our noses into it, and said, wait, wait, wait, before you send these out, we wanna make some – we wanna recommend some changes. So these were actually on the verge of ready to go for public hearing more than a year ago. And then when Will and I started last January, like, wait, wait, let's take a look at the rules. So we are partly to blame for that delay.

With the SMA rules, let me first read a couple of excerpts from the email that Commissioner Buchanan sent. She says:

I am concerned. I feel the rule amendments are the single most important issue the Commission is facing right now. I am concerned about the number of new Commissioners that may not be equipped to fully understand the ramifications of the substantive rule change. Currently, I'm not in agreement of one of the provisions.

Which I'll point out when we go through it. And actually, we do have some proposed changes to address the issue that she raised previously.

I feel it would not be diligent to send the rules out for comment knowing full well that there will be suggested amendments from at least this Commissioner. I am hoping since it sounds like you will hear this tomorrow that you take time to explain what this is all about to the Commissioners present. I hope it can be deferred to our next meeting date.

And so I emailed her back with some information on some of the changes that we understood were made at the last meeting. And then she added, "Without review, I remain hesitant knowing how rules get interpreted and how they may be contingent on other chapters and sections."

So she again has made the request to defer action at least on the SMA rules because she wants to participate in that discussion. She could very well, as Commission Bacon just pointed out, she could very well offer amendments after the public hearing. That might necessitate going out for public hearing again. So if you don't want to have to repeat the public hearing, the safest thing would be to defer today. I don't feel that repeating the public hearing is that big of a deal. I would like to see some progress, but I certainly acknowledge Commissioner Buchanan's concerns and where she's coming from.

Does everyone have the redlined version of the SMA rules? I know that Suzie brought extras if you don't have— Was this in the packets, Suzie? I think this was in the packets. Okay. So the – this is headed, "Director's Proposed Amendments to Chapter 302." And let's see. I'll just point out the substantive changes beginning on the second page, page 302-2, you see all of that red text continuing on to the next page as well. This is situations where the Planning Director can waive the requirement for a State certified shoreline survey. So when an applicant comes in with an SMA exemption or an SMA application, we're listing several circumstances in which the Director can waive the requirement that the applicant also provide a certified shoreline survey. This isn't a new provision, but it gives the Director more discretion on when he can waive. There were waiver requirements in the past, but this makes it looser, gives the Director more discretion on when he can waive.

I call your attention to number two there where it says involves minor structures and/or activities allowed in the shoreline setback area as specified in your shoreline rules. So that's one that ties back to your shoreline rules where a minor structure is defined. And there was previous discussion about whether you wanted to tighten up this language. Right now, minor structures are noted as those that don't artificially fix the shoreline, don't interfere with public access or public views to and along the shoreline, and minor structures shall include, but are not limited to landscape features or irrigation, minor single storied

service and recreational buildings, paved lanais, and beach use facilities, and paved walkways for public access. Those examples also used to include swimming pools, and that's one of the proposed deletions of your shoreline rules because there was a situation where a swimming pool was considered a minor structure and you folks weren't happy with that at all. So we're taking swimming pools – propose to take swimming pools out of that.

So I don't wanna go through too quickly if you need some time to look at these. Just in general, we feel like all the situations described there are situations where the Director should have the discretion to waive the certified shoreline requirement. A certified shoreline is a survey that a licensed surveyor completes. And then it gets sent to DLNR who literally, comes out and verifies it, and signs off on it, and certifies it. So that line is used to determine your shoreline setback. So it's an important document. However, there are some circumstances where we feel that that requirement can be waived.

Chair Sprinzel: Janice, you had a question?

Ms. Kalanihulia: I really don't wanna say this, but I feel that I have to. I remember that this started the last time that I was on the Commission. That was a long time ago that we began to look at this and start planning what the changes might be. Then I got off. And then Steve really took a deep dive into what it was. There was a lot of discussion, I guess, you know, when I look back at the minutes to see what happened. And now here we are with almost a brand-new group of people. And I don't – I can't figure out how they're gonna catch up if I'm sitting here trying to catch up and I was here at the beginning of the process. So maybe it's just me. Maybe I don't have the capacity to do it and they do. But it just seems like an awful lot. And it's a domino effect. Like you said, this ties into something else, and then you need to go back and look at that something else it ties into. And so I don't even know if that's a question. I just think that I don't wanna drag this out, but maybe we wanna hear from the new Commissioners how they feel about where we're gonna go from here.

Chair Sprinzel: I would like to add that from my recollection, and let's face it, my last meeting with Steve was nearly two years ago, so even I as the old hand here, you know, you forget stuff, and we were trying very hard to stop this having to refer to another chapter, and another page, and it should be in these rules, and it's in those rules. It really was trying to streamline it. So very few, other than this– And I can understand why Lori's worried about it because we are very hesitant to give anything away, as I'm sure not only Will but previous Directors have heard this promise over the years. I mean, it's been a long time. We don't wanna give up any power at all unless it's really provable that it's necessary. I agree we send too much. And we have too many rules, well, not rules, but too many occasions where people have to come to us to do a repaint of the Wavecrest Condo. I mean, we all agreed on that. And I think that's basically what we were trying to do is to cut down the not so important things, but where do you draw the line? And I would

like to hear from the newer – well . . . (inaudible) . . . , but the newer Members, how they feel about this.

Mr. Hopper: As a reminder, this particular section is asking when you as a Commission would want to see a certified shoreline done for projects. If it's something that the Commission want to have done for someone coming in for an SMA assessment, the Commission can require that. The Director, I think, and the department is saying we don't think there are cases where it doesn't seem to be either necessary or helpful to you in your review, and you can agree or disagree with the Director there, but that's this particular section. The section about whether or not you review SMA exemption requests is a different section, but I think Michele right now is going over the section dealing with when do you as a Commission wants to see somebody who is applying for an exemption to go and get a certified shoreline with the State of Hawaii for your review. And I think that's what Michele's looking at now in this particular section just to clarify for you exactly what this one section's about.

Mr. Bacon: I guess the question then is, is that because if we ask them to do that, that becomes a condition which we can't put on? I mean, it becomes a condition, then, right?

Mr. Hopper: No, it's part of the application. Before their application could be complete, they need to have a certified shoreline. So before they can even get processed, and be issued an exemption by either the Director or you as a Commission, they're supposed to follow these application criteria which include a certified shoreline. So before they even get to you, they have to have a certified shoreline.

Mr. Bacon: Okay, but what I'm saying, and you sort of explained it already, but in terms of, okay, if the Director determines that he doesn't think it's necessary because it meets these criteria, and yet that person– And so they have their "completed" application, and then they bring that application to us, and we review, and we all look at it and say, wait a minute, I know that there's a lot of erosion in that area, and we think that he does have to have that, does that become a condition because he's already – the application's already been accepted? Or–

Mr. Hopper: Well, it would come to you. If it still comes to you for review, what you could do obviously is say because of these concerns, we need an SMA permit. And then as part of that SMA permit requirement, you can require a certified shoreline. You can then place conditions on the project that require that certified shoreline and go that way. Conditioning a shoreline – or not a shoreline, conditioning an exemption is something you can't do. So you would, I think, appropriately say we need an SMA permit, and as a condition of that, we wanna have a certified shoreline. I suppose you could also say, can you do a certified shoreline? And if they agree, have that as part of their application. But again, your rules are supposed to really set forth the situations where you would want one and where they

wouldn't, and where the Director would have discretion to waive requiring certified shoreline or not requiring it. If you're not comfortable with allowing this waiver, you as a Commission don't have to provide that waiver. But I think the department has concerns with – and is voicing them with requiring an applicant in every case to do a certified shoreline and can explain those to you.

Mr. Bacon: Okay, because I think our concern is pretty much with – as Sprinzel was saying is that this, because we're familiar with the island, and because we know what's going on here pretty much, and the Director comes over here once every seven years or something, it's probably more frequently, but this shoreline kind of thing is really important to us whereas we shouldn't even be bothered listening to somebody coming in who wants to paint their building.

Chair Sprinzel: I think the shoreline thing cropped up because somebody was putting up an electric pole to run a wire to his house, as far as I can remember. And because it was in a certain – I don't know the exact rule, but he was required to do a shoreline survey so he could run the electric wire in a slightly different way than it was before. So I mean, that was the thinking behind that. I think you'll remember that, Mike.

Mr. Hopper: I mean, your current rules right now are very narrow with respect to when you cannot have to do a certified shoreline even for an SMA exemption. So basically, if a parcel abuts the shoreline, there needs to be a survey done except in certain cases, the Director can waive them. And there's pretty limited cases under the existing rule. There's three and under these rules, it's a bit difficult to see them, but under the existing rules, there's only three cases in which the Director can actually waive a certified shoreline. So in a case where a parcel abuts the shoreline and none of those exemptions or abilities to waive is present, that person needs to have a surveyor survey their property line, or survey their shoreline, send it out to DLNR, and DLNR has to give them an opinion. This is for any proposed action, not just for SMA permits. Any proposed action, they need to get a certified shoreline if their parcel is next to the shore. And I think Michele has explained her – the department's position on that. The department believes there should be other cases in addition to the ones currently in your rules that allow for the Director to say if you're coming in for either an SMA permit or an exemption, and you abut the shoreline, you do not have to do a certified shoreline because that process takes a lot of time and can be onerous. That's the department's condition and the department can articulate what – under what circumstances it is asking you to allow the Director to also do a waiver. So I think the question to the Commission is, when do you want to see a certified shoreline? When will that assist you in your evaluation of the project, and are there cases where it would not assist you, or you don't really need to see that in a certain case. And that's where these rules come in and where you would make that requirement.

Ms. McLean: The same proposed changes are being presented to the Maui and Lanai Planning Commissions as well. We have run into several circumstances where we look at every single word in the rules to try to figure out a way to waive the requirement, and we just can't find a provision that would apply till we get into a situation like the power pole. And we're just like, wow, there's nothing we can do. We have to impose that requirement. And we really don't think it's warranted, but we have to. And so we came up with language to describe those situations where it's just really problematic for the applicant for something really, really minor to have to go through the time and expense of doing the certification for something that really doesn't warrant it. That being said, I understand the concerns of this is very important, and you guys want – there may be circumstances where you wanna see these things.

Mr. Bacon: Yeah, I think one of the things is that, you know, we've talked about this before, and it's if we give away something, then we don't have that control anymore. And we may see something that we really don't like and object to, and then we would have to go through this whole process again to correct that. One of the things I've been thinking about in terms of say, painting, we've talked about that is that if we say our Planning person here, whatever we call our individual, our staff here, our Planning staff, okay, if we give them sort of like temporary rights to say, okay, if you're doing painting, you don't have to go through this whole process. But she in turn would give us a report each meeting and saying, I've been approached by these people, and this is what I have allowed to go by. And as soon as we say, okay, wait a minute, you should've really had them come to us, then we get to say, okay, you don't get that shortcut anymore. Then we still have some control over it. But it's not necessarily in the rules, and I don't know how you'd do that necessarily, but it just seems like it would be an expedient way for us to figure out maybe not on this level as far as that, but for certainly minor things that we shouldn't be listening to is if we give her the option of saying, okay, you don't even have to fill out that paper. And then she tells us about it and we, you know, pretty soon we get very comfortable with that, and we realize that she's doing, or the staff, or whoever is doing what we would like to see happen, then we could make it a rule or something. But in the meantime, is there some way that we can do a trial period where, you know, like the Director would say, okay, here's an example of what I would do? And instead of putting it down in writing, then we can all say, well, yeah, the intentions are good but – rather than having it in writing, and we give it away, and we don't get a chance to get it back.

Chair Sprinzel: Do we actually have a failsafe, Mike, if somebody say wants to do one of these things which the Director says it's okay, fine, you can put up your minor structure, and you don't need a shoreline? Can we then say, now wait a minute, we would like to see that? You know if we have a genuine discussion at the meeting and say no, we don't approve of that, can we make them go for a minor permit?

Mr. Hopper: Well, again, we're talking about the application requirements at this point. There's a separate section that the Deputy Director can talk to you about that is proposed to not have the Commission be the final authority on all SMA exemption requests. Now, that rule itself will require that anything the Director determines or recommends exempt still has to come to the Commission in the form of a relatively abbreviated list that the Commission is going to actually review and determine if they want to actually review those—any of the projects on that list that the Director is proposing for exemption, or if he's going to waive review of those items. That's a separate issue and the Deputy Director can discuss that. With that proposal, you would be able to look at the list at anything the Director's proposing to be exempt and decide by vote to have that reviewed at the next meeting. If you do not – if you are not able to take a vote, the rule right now says that that automatically goes to the Commission for review. Now, again, Michele can get into that detail, but this section of the rule does not deal with the Commission's authority to review anything. It deals with what the applicant has to have when they come to the Planning Department for their application. And this is not something that typically the Commission would get involved in reviewing which are application requirements per application. Now again, if you decide to review whatever application it was that didn't have a certified shoreline because the Director did not require it, you could look at that application and say we want additional information for that application. And I suppose that could include a certified shoreline like I said as a condition. But typically, the Planning Commission does not get involved with – it sets the application requirements by the rules, which apply equally to all the applicants. So that's how the Commission's involved. But as each application coming up comes up, usually the Planning Commission – in fact, never is the Planning Commission involved in determining what's required with that application for a given exemption or permit. The Commission could ask for additional information if that permit goes through, but these application requirements are supposed to be standard that you would wanna see with every application. And the real specific reviews can happen if the Commission decides– Again, if it's reviewing an SMA permit, it can request additional information. And if it decides to review an exemption, it can ask for additional information as well. But again, this section deals solely with when an applicant has to do as part of their application, a certified shoreline. The issue about whether or not the department can review the Director's determination is in another section of these rules–13.1. They're two different things, two different aspects of these rules.

Ms. McLean: And if the Commission isn't – doesn't feel like you can add some of these additional circumstances today, then we can just leave the language as it's currently written. That's another option. Just know we don't want to give the Director additional situations where he can waive. You'll just keep the waiver requirements as they currently are. That's certainly a possibility. Another possibility, I hesitate to say this based on Mike's comments, he's right that this is the administrative part, but we could keep the language as it's currently written, so not make any of these changes, and add one more situation if the Commission votes to waive the requirement. So if we do get an application that

doesn't meet one of the existing waiver situations, but we feel it should be waived, before we even process the application, we can present it to you and say can these guys not have to do this certified shoreline. And if you guys say okay, then they can proceed. So not making any changes to that requirement except giving you the authority to waive rather than giving the Director the authority to waive.

Chair Sprinzel: Sherry?

Ms. Sherry Tancayo: Oh, my goodness. I don't know if I'm like really lost, but to me what Mike just said was really, this isn't anything to do with us until it gets to a point beyond that. So why would we change anything? Because if we change something, we're giving him more power. If we don't change it, it remains the same. You still have to deal with us. So maybe I'm too practical. Maybe I'm not practical enough. I don't know. But my brain is like going what the hell is this – have to do with us, and why are we wasting this time? Because to me what he just said in laymen's terms is, this doesn't pertain to us. So – I mean and I know one of the big issues for Lori was giving somebody more power and I agree with that also. So I mean I don't know if continuing to tell us the same thing that you're telling us kinda wastes your breath too. Or maybe you have to do it, which is cool with me, but if we can stop this now because it sounds like to me it doesn't have anything to do with us, and take a vote, because I'm not in favor of any changes that gives the Director more power. But leave it the way it is now and maybe I'm out of line, if I am, John, forgive me, because like you said I'm new at these formalities, but – because we went through this I think my first meeting and my second meeting, too, and I was doing the same thing like, holy smokes. Then I read on it, and I did a little more stuff, and here we are again. And it just depends on who the Commissioners are here and when they're not here. So this could go on for years more. And it really doesn't pertain to us. Is that kind of maybe what somebody on the outside would see?

Chair Sprinzel: I wouldn't have said that strictly speaking, true. It pertains to us insofar as we have an awful lot of outstanding applications, and some of them are outstanding, I think Mike will confirm this, because we couldn't – it wasn't agreed before it came to us whether it needed this shoreline application thing. And that did involve an awful lot of effort, money, and time on behalf of the applicant. And we were really trying to protect the applicant by saying, well, if it is minor, and we really do mean minor, then maybe they shouldn't have to have a shoreline thing. Because on that particular case with the wiring, I mean it was just so ridiculous to have to spend what is probably thousands, isn't it? I don't know. It certainly isn't less. To run a wire from a utility pole to his house, it just didn't make sense. So that's how that started. And Mike and Steve tried to go the easiest way around it. And Lori and I were trying to say well, no, hang on, you can't give the Director power that we have. I mean, that was – the idea was, yes, we could say it doesn't need a shoreline survey, but we didn't think he should be able to say to us, no, this doesn't need a shoreline survey unless it was strictly outlined as it has been. I mean that's all. We're not arguing

about it. We're just saying where's the bit of paper that says he has to have a shoreline survey or he doesn't? And that's it as far as I— You know, we're not trying to say, oh, it's nothing to do with us, because everything's to do with us. I mean we've gotta give the exemption, or the Planning Commission, or whatever. Do you understand that?

Mr. Hopper: And here's the background that John's talking about. When I went over this with Steve Chaikin, there were also proposed amendments to this that would increase the situations in which the applicant did not have to do a certified shoreline. They're different than the Director's. The Director had different language. But when the rules originally came to the Commission, and Steve and I had looked at them, there were additional requests or there were different additional changes. They would involve, for example, if someone's only doing interior alterations to existing structures or existing utilities for which the Director approved best management practices are in place to protect the coastal environment, you wouldn't need to do a certified shoreline. Right now, if a property is doing interior renovations, and is located on the shoreline, before they can get an SMA exemption, which is a determination that the SMA doesn't apply to them, they would need to do a State certified shoreline. And that's what one of these was intended to prevent—if the person's doing interior renovations. Regardless of any effect that they would have on the shoreline or anything else, then you'd get a certified shoreline before they could even apply for an SMA permit.

Again, and I have to stress this, under the existing rules, there are three situations in which – actually, there's really only two situations in which a certified shoreline can be waived if the property is abutting the shoreline. And it says one is:

The shoreline is fixed by manmade structures which have been approved by appropriate government agencies, and for which engineering drawings exist to locate the interface between the shoreline or the structure. Or the shoreline is fixed by natural stabilized geographic features such as cliffs and rock formations.

And those are the circumstances under which you can not require a certified shoreline. Other than those two, every single time somebody needs even an SMA exemption, and their parcel abuts the shoreline, they need to do a certified shoreline. If that certified shoreline is something that you will be requiring or will be interested in reviewing, then that's okay to require, but that's – I don't know if you'd need to see a certified shoreline in every case. It's up to the Commission. But even in the cases without these rule changes, even as proposed by Steve Chaikin when he went over these, right now under the rules if you do interior renovations, you need to get a certified shoreline. And if that's too much, then that's up to the Commission, but that's what the current rules are.

Ms. Tancayo: Okay, I got it. That makes more sense, and maybe I just wasn't picking up on that otherwise, but that makes sense to me.

Chair Sprinzel: I think Steve and I spent more time on this, and I'm sure you and he spent more time on this, and the Director and the Deputy Director. It's a very important thing. I mean, you know, if you make somebody do a certified shoreline, you're asking them to do a heck of a lot of stuff. I mean if you were in that position, you would say, well, why I gotta do that? You know, it's rocks. It's a cliff, whatever. And all I'm doing is putting a power line, or painting, or something like that. So you have to look at it from both sides, and that's why everybody is taking so long on this. It's not that we don't wanna give up our rights to the Director. I mean that's not exactly what it's all about.

Ms. Tancayo: Okay, I understand that. What I didn't get at is I misunderstood Counsel the first time because it sounded like those rules that we're trying to change maybe didn't pertain to us, per se. But now I do understand that – what the interaction is, so I get that, and I agree with that.

Chair Sprinzel: He's a lawyer. You're not supposed to understand what he's–

Mr. Hopper: Just to try and it's hard sometimes, but it's essentially – these are application requirements. You're telling an applicant what you need to see. That's different than you putting conditions on a project after seeing that application, and either requiring more information in addition to the basic application, or requiring conditions which require that person to do something to mitigate an impact they're having. Typically, the application requirements which are set by the Commission, tell an applicant when they come to the department everything you want the department to review in order to make the determinations that you're asking them to make, or that you need to review as a Commission. And you do deal with these by making the rules generally. But once those rules are set, those are supposed to be a standard set of rules that apply to everybody so they know that the application comes in. These rules are set by public hearing. They could be changed by public hearing. But they don't get changed like on the fly when somebody decides to apply. They're what they say in the rules typically, they have to give you. Now, you can alter them by going through this public hearing process which is what you're doing now, but this is something that you do as public hearing process for the general requirements.

Now, what I could offer to do – this is the old section of the rules prior to the Planning Department reading them or proposing those changes, I could read the circumstances in which there was originally proposed to waive shoreline certification. And perhaps Michele can then go over the additional changes. Again, this is all in your packets. So this is all information you have access to. But, okay, Michele has a less confusing alternative.

Ms. McLean: I think I have a less confusing alternative. If we use the existing rules as the starting point, which are the two situations that Mike read, the shoreline is fixed by a manmade structure like a seawall, or the shoreline is fixed by natural stabilized geographic features like a cliff, and also the parcel's not abutting the shoreline— So that's what the current rule say—those three situations. There are only – in all of the redlined on these two pages, there are two others that we would really like to see added to that. So maybe we could limit the amendments today to just adding those two circumstances.

The first one is number one where it meets all three of the following conditions—involves no ground disturbing activity. So that would be interior renovations. Re-roofing—that's another big example or putting PV on the roof. So for number one, it has to meet all three: no ground disturbing activity, does not impede access to or along the shoreline, and does not expand any pre-existing, nonconforming structure or activity. So if you have an existing nonconformity, whatever is being proposed doesn't increase that nonconformity. So that would be one that we would really like to see. That relates predominantly with interior renovations, re-roofing, things like that.

The other one is at the top of the next page, no, 6, involves land for which a certified shoreline survey cannot be obtained due to encroachments onto public shoreline land from property not controlled by the applicant. So there are times when DLNR will not certify a survey because there are encroachments into public land. And so that applicant is stuck. DLNR won't certify it, and so they can't complete the application because they can't produce a certified shoreline. It's very, very rare that this happens. But those would be two situations where we feel like – you know, those are truly situations where we feel like the Director should be able to waive the requirement. So rather than looking at all the other redlines, if we stick with your original – the original rules that you have today, and if we can add those two, that would take care of the ones that we really feel are the most compelling.

Chair Sprinzel: Well, I would certainly not have any objection to that having spent a lot of time on this over the years. What do the Commissioners feel? Do you agree with me or do you disagree with me?

Ms. Kalanihulia: I agree with you.

Chair Sprinzel: Does anybody disagree? I don't think Lori would disagree either because she was much more worried about – well, I can't speak for her, but I know she was more worried about that particular phrase, "minor structures." I know that drove her bananas. And we couldn't get kinda round that. So how about somebody proposes that we accept these?

Mr. Bacon: I propose that we accept them as stated—these two additional items.

Chair Sprinzel: And a seconder? Okay, we have a seconder—Mr. Davis. Super.

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

*It has been moved by Commissioner Bacon, seconded by Commissioner Davis, then unanimously*

**VOTED: To accept the two additional items as stated by Deputy Planning Director McLean.**

Chair Sprinzel: Great. So that's carried. So, Michele, you can go back and put all that in as you wish.

Mr. Hopper: And again, just to clarify, after you give approval for these rules, my office has to complete review of them. There may be some non-substantive changes to wording and things like that. So we're going to try to finalize them without having to take them back to you again, and then just post them for public hearing. So that alteration is going to have to happen to be consistent with your vote. And when our office reviews, we'll have to make sure that that's the change that was made from our original draft.

Chair Sprinzel: So what's the procedure now, please?

Ms. McLean: Moving on to the next round of changes—pages 4, 5, and 6, and 7. There are two types of changes that were made on these next pages. One change is – just tidies it up. These pages still deal with application requirements. And some of the cleanup just consolidates the different types of requirements. So those, I am very comfortable in saying are non-substantive.

There are some substantive changes to these pages, though, where the application asks for the applicant to give a written description of the anticipated impacts. And it lists a set of criteria that the applicant has to address. Some of the language in your current rules is taken from the State Environmental Impact Statement Law, Chapter 343. These are your SMA rules, so these should follow the Coastal Zone Management Law, Chapter 205A. So a good example is toward the bottom of page 4, no. iv, where it's crossed out, "Any potential adverse environmental effects that can be avoided." That's not a criteria in the Coastal Zone Management Law. That is something that needs to be addressed if you do an EA or and EIS, but the department doesn't feel that that language should be in your SMA rules. It would apply if you do an EA or EIS. Same, the next couple lines, "Alternatives to the proposed action," that's an EA requirement, not a State Coastal Zone Management Law requirement. Same with "Irreversible or irretrievable commitment of resources."

On the next page, G, that's a housekeeping change: site plans, and dimensions, and so forth. That's been consolidated. So that's still a requirement. It's just consolidated in another section. Letter I on page 5 is also a consolidation.

Moving over to page 6, toward the bottom of page 6, no. 2, A, B, C, D, E, those criteria, again, that's the same kind of thing we were talking about before. On letter A, that language, "Commitment to loss or destruction of a natural cultural resource," that's not in Coastal Zone Management Law. You need to indicate if there is going to be an impact, but not whether there's loss or destruction. Letter B is not found in Chapter 205A. On page 7, letter F, talking about cumulative impacts, again, that's in the EIS Law, not in the Coastal Zone Management Law.

Again, these are the criteria that the applicant uses to write their description of their project and to make their argument that their project should be approved. These are not tests that the Coastal Zone Management Law requires them to meet. If they have to do an EA or EIS, they would have to meet these tests, but if they don't have that requirement – if they don't have to do an EA or EIS, the department feels that they shouldn't have to meet these tests as part of the SMA process.

Mr. Bacon: I guess I have a question on page 4 at the bottom, "Any irreversible or irretrievable commitment of resources." This is something that – so in other words, if in the process of building a house, I'm gonna fill in a loi, I don't have to say that to the Commission? Is that what–? Or to the Planning – I mean, to the Commission, and let them know that that's in fact what I'm doing? And not only am I using some fill, but no longer will that loi ever be available to anybody.

Ms. McLean: The project would have to disclose its impacts. And that would be an impact. To go so far as to say it's irreversible or irretrievable takes that a step farther. If they're gonna fill in a loi, you could argue that you could always excavate and restore the loi. So in that sense, it's not irreversible.

Mr. Bacon: Well, if they say you can do the same thing for a wetland, which in fact, you really can't because you can't duplicate what was there once you filled it in. So maybe loi wasn't the best example, but say a wetland. It seems to me like if that's something that is in jeopardy, or is that something that's – that could be happening, I would certainly, sitting on this Commission, I would wanna know that more than what size the house is, or what the footprint is, or what color it is, or anything else. I mean our resources are what we're sitting here trying to protect. And to even think of taking something out of our purview that has to do with that seems like the wrong way to go. So I would wanna keep that in whether it's in CZM or anything else. I mean that's something that we have to review. I mean that's what we're here to show our neighbors that we're protecting about our island.

Chair Sprinzel: But doesn't Item 3 there or iii say that, "Probable impact, including cumulative impacts, of the proposed action on the environment?" See, a lot of the things we deleted were deleted because it says it in three different places in different wording in the document. And we've tried to kind of put it into one place where it's relevant.

Mr. Bacon: Okay, but "environment" also – I mean that's a pretty broad term. And if I'm talking about let's protect the environment, that's like everything around us. That's the air, that's everything else. But if I say I'm trying to protect the resource which is that loi or that source, I mean, you know, all over the country, we're burying our richest farmlands to put up subdivisions. And pretty soon, you know, I mean there's all these hills around those great, fertile lands that they could build houses on that wouldn't disturb the fertile lands. But it seems to me like the resource is the thing that's important. I mean our cultural resources we talk about all the time, our food resources, and this– That's my point of view anyway.

Chair Sprinzel: Okay, the proposed action on the environment and resources.

Ms. McLean: Again, the department's effort in these sections is to bring the rules in line with 205A. It's certainly your prerogative to keep any of that language in, to retain any of it that you feel you need to. We feel that it goes beyond what 205A empowers you to do, but these are your rules. And so if that's a section you feel strongly about keeping, you can keep it.

Chair Sprinzel: What do folks think about adding the word, "resources" to "of the environment and resources?" Anybody object to that? Now, instead of cutting out 7 where it says, "Any irreversible or irretrievable commitment of resources," if we took just the word "and resources" and adding it to Item 3, "Of the proposed action on the environment and resources." "The probable impact, including cumulative impacts, of the proposed action on the environment and resources." Anybody unhappy with that? Okay, Michele, what do you say? What say you?

Ms. McLean: That's for you folks to vote on. It's an improvement to me over keeping Item 7 in its entirety.

Chair Sprinzel: Okay, propose? Motion?

Mr. Bacon: Propose we accept that change.

Chair Sprinzel: Nat. Second?

Ms. Kalanihulia: Second.

Chair Sprinzel: Janice. Okay.

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

*It has been moved by Commissioner Bacon, seconded by Commissioner Kalanihūia, then unanimously*

**VOTED: To accept the proposed change to Item iii on page 4 as stated by Chairman Sprinzel.**

Chair Sprinzel: Unanimous. Next?

Ms. McLean: We are into the homestretch. On page 8, unless there are any other comments to the changes on pages 6 and 7, page 8, the top section on page 8, those are just procedural – not procedural, but more like housekeeping, cleanup language. So beginning at the bottom of page 8 and continuing on to page 9, this is the last section that we have to review, and this deals with SMA exemptions, and this is what Mike referred to a few times. What the department had initially proposed, and that's the language on page 9, all of the red text, is that with exemptions, when we receive an exemption application, we present it to you very early on, and tell you the name of the project, the name of the applicant, where it's located, and a brief description, and then the Commission would vote whether or not to waive review of that project. And if you choose to waive review, then we would process it administratively and the Director could grant the exemption. If you vote not to waive review, then it would come back to you as it presently does. What we originally proposed is that if you didn't vote to waive, if you didn't have five votes, or if you – whatever the reason would be, then it automatically goes to the Director. But there was strong disagreement with that default situation at the last meeting. And so essentially, the language on the bottom of page 8 and the top of page 9, which is more or less the current review process, that would kick in. So unless the Commission specifically votes to waive review, the exemption would come to you for your regular review process. So you'd just get that kind of a sneak peek. When they come in, we would not have done agency comments, or analysis, or anything. This is just a first look. We have a re-roofing project. We just had the re-roofing project for the church. Do you guys wanna see that? You can say, no, we'll waive our review. Or it might be one where you're like, oh, isn't that property where there was grading without a permit? No, no, we wanna see that one. So you get that sneak peek, and then you decide waive or not waive. If you don't have a majority vote, or for some reason, you can't make a specific vote, then it will come to you. There won't be that default automatically goes to the Director. So that's the sense of what's being proposed.

Mike and I did work on some language, which essentially all of that text that's crossed out at the bottom of page 8 and the top of page 9 would remain. So you either waive review

or all of that text that's stricken would stay in place. And that would be your review process for exemptions. And Mike has made some tweaks to it, but I don't really think that any of those are major things.

There is one change that was proposed to that which is putting a time limit on once you decide that you are going to review an exemption that you make that vote within – that the applicant is notified within 45 days. So that would be new. And I think that was something that Chair Chaikin had proposed. Mike might be able to talk about that a little more.

Chair Sprinzel: Of all the timeline changes, in other words, where we've said a specific 45 or 30, were based on some careful thinking about how it works with the meetings. And otherwise it goes through automatically types of things. So we tried to make them as similar as possible, but there were occasions where we couldn't. So that explains that.

Mr. Hopper: The proposal would allow 45 days for review rather than 30 days for review to allow a little extra time. And the applicant can request extra time for review as well if they wanna either defer or postpone their application. But if that doesn't happen, then the Commission has 45 days to take action. If the Commission takes no action, then the project is deemed to be exempt. If the Commission decides to say it's not exempt and require an SMA permit, it has to issue findings and conclusions, and make that determination within that 45 days. Currently, you have 30 days. This is going to give you an extra 15 days. It's also going to clarify, which is actually current practice that if that decision's not made within that time period that it's deemed exempt. Essentially, the Commission should at least be able to determine if something is exempt or not within that timeframe. If it's not exempt, then you can take a vote as a Commission and say you need to get an SMA permit, but that's something that is going to have to be done within that 45 days.

And to clarify what Michele said, all proposed exemptions are going to come to you in a list, and you're going to have to vote on whether or not you want those – anything on that list to come forward as a more full review of the exemption request at that actual meeting. You have to take that vote at that meeting whether or not you want to have that reviewed at a future meeting or not. If you determine that you do not want to have that review, to waive it, and you take that vote, then that's going to be exempt. And all you will have reviewed is a couple basic pieces of information about that project. If you do not – if you vote to deny, or you vote to either review those, or you don't take any action at that one meeting, automatically, that's going to be considered a determination that you want to review that project as an exemption. Then that's going to be set at a future meeting date, and that meeting date in the future will start the 45-day time clock for you to review. What this adds then is that not every review will come before you as part of a full exemption request with all of the staff report and everything. It's gonna be basic information about the Director recommending exemption, and include this basic information as a form similar to the time

extensions' requests that happen on Maui County right now. And you can review that list and decide are there things on there that you do not need to review as a Commission. I think the idea was that it would expedite things a bit. Again, this was a Director-added change. This was not one that Steve Chaikin or myself had worked on. It's a Director proposed change. But I did assist the Director with this language as far as the – some clarification and other things like that that I'd be adding if this does become part of your rules that I would add before it goes out to public hearing, but nothing that would change the substance of what you've been told today.

Mr. Bacon: I have a question on the way this thing is written down here—the last couple sentences. It says, "If the commission votes to waive review of the application, the director may grant the exemption." So that means that we don't need to see this thing in any further depth and we just think it's fine that he goes ahead and does that. But "If the commission does not vote to review the assessment application, then its review shall be deemed waived," which is the same thing as the other sentence, isn't it?

Mr. Hopper: He must be looking at an older version.

Mr. Bacon: This one here. This red— I mean it seems to me like they're both saying the same thing, and either one we lose.

Ms. McLean: Right, that last sentence is what was problematic last time. So that last sentence will be stricken. So we said if the Commission votes to waive review, the Director may grant the exemption. If the Commission votes to review or does not vote to waive review either because of, you know, a deferral or lack of a majority vote, then the application shall be reviewed. So that's the change that we made that was raised last time. We didn't come up with new language and passed it around, because we have so many versions anyway. That is what you have now, yeah. So that last sentence would be stricken entirely. And Mike can give you what his recommended language is for what happens if the Commission does not specifically vote to waive review.

Mr. Hopper: This is what I have for the last two sentences, "If the commission votes to waive review of the application, the director may issue a final determination that the project is not a development and is therefore exempt." That replaces "grant the exemption." Basically, we wanna make clear if there's a vote to waive review, then it would be a final determination that it's exempt. The next sentence, "If the commission votes to review the application, or does not vote to waive review of the application at that meeting, then the department shall schedule a time on a future meeting agenda for the commission to review the application in its entirety and make an exemption determination pursuant to Subsection B herein." And then it goes on to the next section.

Ms. Kalanihulia: So if Nat hadn't questioned that specifically, how would we have known that that's not the correct language and that there was other proposed language? Were you coming up to that? Because it seems like we're kind of rolling through it, and I'm just confused how I have a copy that doesn't have the most updated proposed language. Because now, it makes me wonder if I have to ask for every red line, is this the most updated information or the most updated language.

Chair Sprinzel: We probably have – those of us who were at this from the start, probably have about 20 or 30 different versions of this. It just depends which one you pick up.

Ms. Kalanihulia: Well, this is the one I got in my packet yesterday. So I would think that this would be the updated most recent. And that makes me worry. That, more than anything makes me worry.

Chair Sprinzel: That's what I'm saying. That is the version that was passed on the last time we reviewed it, the last time the Commission reviewed it. We said, yeah, that sounds okay, but it was passed to Mike to put it into proper legal terms, and that's what he's been doing.

Mr. Hopper: Well, at the last meeting, I think Lori said she didn't like the fact that the automatic review, that if you took a vote, or if you didn't take a vote, or there is deferral, or they couldn't take a vote, it was deemed exempt. She had asked the department to draft different language that would allow for if there's no action taken that there was going to be – if there's no action taken, that makes it an exemption. I think the changes that I made I just did because they were something that Michele had distributed to me after I said, you know, to have the most recent version. If we need to make copies of the most recent version, and again, my understanding is this was the only one that's different than what the redline is on any of the previous versions because at the last meeting Lori had asked about making this change and the change was made.

Chair Sprinzel: Yes, we didn't want it to be automatic. That if there wasn't a vote – we couldn't vote because there was three to two or something, or there wasn't a quorum, that it automatically went through. That was the discussion at the time.

Ms. Kalanihulia: Okay, but it wasn't pointed out to us that there was additional language. It was only pointed out to us after Nat said that he had a question about the duplicative language or something.

Chair Sprinzel: I guess that's why we're here.

Ms. Kalanihulia: That's – well – but what if he hadn't asked that question, would it have been pointed out? I guess that's the part that makes me nervous.

Ms. McLean: Two things. We didn't provide the revised language because to me, I like making my notes on one copy and keeping that with me all the time. So if I get a new version, it doesn't have my notes from the old version, so I'm really hesitant to provide revision after revision after revision. When we got into this section, I did explain that verbally that what this section would do would be allow you to waive review. And then if you don't specifically waive review, then it would come to you as a regular exemption as you see now. I said it verbally. My notes from last time, in that section I have a line drawn across it that says, "If no vote to waive, they shall review. If no action, same as the current process." So that is absolutely what would have gone forward. That last sentence would have been stricken. So even if Nat hadn't asked the question, I thought I had described that adequately, but I guess I didn't when we just got into this section today.

Mr. Bacon: In a way that's out of context because you brought it up earlier than when we were actually on this thing. So my – I guess the other question I have is that since on the earlier page we said we wanted to add whatever we just said, "resources," and we took a vote on that, do we not have to do that in this case because this sentence is different than what we're looking at?

Ms. McLean: You would have to vote on changing this to what's in front of you.

Mr. Bacon: Changing the red?

Ms. McLean: Yes.

Mr. Bacon: Right, but we didn't know that.

Ms. McLean: Well, we haven't gotten that far yet. I didn't think we had gotten all the way through to this section yet.

Mr. Hopper: Just as a point, as I was describing the rule changes, I did mention that that was the – that's what the change was. I thought I was clear on that. And then I think that prompted the question from Nat. I don't think we were really finished with the full description of this rule. But it was brought up at the last meeting and that was something that was noted to Lori on her emails. If there was a mistake made at some point, then I apologize, but I'm trying to be as clear as possible. As far as reviewing all of the language changes completely, if you need to see all of the changes, substantive and non-substantive after our office reviews it, we can send it back to you again for another meeting. But as is typical with the Council, we do this often. They authorize non-substantive changes to be made by my office when we're finalizing it. Again, this stuff here about the – what happens if there's no vote, that's not non-substantive, but to note there are changes that are going to be made in certain sections to clarify things after this goes on most likely. If we need to see it again before it goes out to public hearing, then we can have another hearing for

that, if that's how the Commission wants to handle it. Or you can vote to change the language however you like.

Mr. Bacon: I move we change the language to which is what Michael said in terms of—

Chair Sprinzel: Secunder—Janice.

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

*It has been moved by Commissioner Bacon, seconded by Commissioner Kalanihūia, then unanimously*

**VOTED: To change the language as stated by Deputy Corporation Counsel, Michael Hopper.**

Chair Sprinzel: Thank you. Well spotted, anyway because we all missed that.

Ms. McLean: And then the other important change to this is again, on the bottom of page 8 and the top of page 9, the language that's stricken out would be retained. It would not get deleted. It would get moved after that section on page 9. So the Section 12-302-13.1 would begin with the regular paragraph on page 9 about voting to waive review. And then that would be followed by the redlined language on page 8 and 9, which says how the Commission would process the exemption if you choose not to waive review. So that stricken language would be un-stricken and would be kept. And that's the process that the Commission would follow for when you review exemptions.

Chair Sprinzel: Is everybody happy with that?

Ms. McLean: So this section before just had one process, which was reviewing exemptions, and now it has two options: one, waiving review; or reviewing the exemptions. So we're adding that waive review section.

Mr. Bacon: So this is basically, what we were talking about earlier in terms of somebody comes in, they wanna paint their house. We're letting it be a staff decision but we are reviewing it. Rather than just having the staff doing it, period, and we don't even consider it, this is sort of the same thing. It's a shortcut because the person hasn't gone through all the other application necessities, and gone through all the other departments, and that sort of thing. Okay.

Ms. McLean: They would've filled out an application and given us basic information. But before we write a staff report and do all of that leg work, we would present it to you and say we feel like this is something that can be handled administratively and we ask you to waive it.

Mr. Bacon: So we're making it easier for the customer which is what our goal is. Okay.

Ms. McLean: And hopefully, easier for you, because I know there's been some projects where you guys are like, why are we even looking at this, you know. So it'll free you from having to look at those.

Mr. Hopper: Again, you'll have – the only information you'll have is the name of the applicant, and the location of the property, and a brief description of the proposed action. And from that, you'll have to determine do you need a more full thorough review or no. And if you don't, then you can waive – vote to waive review. If you do, if there's either no action which means you can't take a vote at that meeting even if – you know, there's no deferral then. That just means it's automatically going to be reviewed at the next meeting – as soon as it can be prepared.

Mr. Jennings: So we will go to the 45 days instead of the 30? Is that correct?

Chair Sprinzel: On this, yes.

Mr. Hopper: Yeah.

Mr. Jennings: Okay. Thank you.

Ms. McLean: I suppose it would be appropriate for the Commission to vote to undelete that section on pages 8 and 9 just since you voted on the other changes.

Chair Sprinzel: Mr. Davis proposes.

Ms. McLean: To retain–

Chair Sprinzel: And second.

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

*It has been moved by Commissioner Davis, seconded by Commissioner Jennings, then unanimously*

**VOTED: To amend Section 12-302-13.1 as discussed.**

Chair Sprinzel: Passed unanimously. Thank you.

Ms. McLean: Well, that was it for the SMA rules. So now the decision for you is whether to vote to move these out to public hearing, or if you want to defer to have a final meeting

on them before sending to public hearing. I'd say again that that is what Commissioner requested and that's your call.

Chair Sprinzel: Nat?

Mr. Hopper: Oh. Thank you. Just to clarify the process again, you're going to need to vote and I think clarify which section, what rules you want to move forward to public hearing. You have some Director amendments, and you would I think need to clarify which of those amendments you would like to have included in that public hearing or in that – in those proposed rule changes. I think you were clear on some edits to the Planning Department's proposed rules earlier today. And so if that's a motion to move that on with the Planning Department's changes as amended, then you could do that. Once – if there is a vote to do that, to be clear on the process, then the rules will be noticed in the newspaper. There has to be a public hearing notice posted in the newspaper of a future meeting date. I think it has to be at least 30 days. And that would only happen after my office – it's your comments, my office being the Department of Corporation Counsel fully reviews the rules. I need to send it to my boss for review. We actually review all rules and ordinances, and come up with the final version which will then be published as a public hearing. Now, once that's published as a public hearing, that doesn't mean those rules are final. It has to go to public hearing, and you need to hold a hearing as a Commission to review those rules to get anybody's public comment. The rules will be referenced in the newspaper and anybody who would want to get a copy of those rules, the proposed rule changes, has to be given a copy of those changes. You'll have your meeting. Typically, if there are substantive changes made to those rules, we actually have another public hearing in most cases because the problem would be someone could say, "Well, I had notice of a different set of rules. You've changed what those rules look like. We want another public hearing." There are exceptions to that. So that's what the department's asking at this point is to take a vote to have a specific set of rules. Again, you've got four different sets of rules sent out to – for public hearing. That would authorize my office to go about finalizing these rules. Typically, we wouldn't have the Commission have another meeting to look at them after they're finalized, but again, you can do that. Or as Deputy Director McLean said, you could vote to defer this until the next meeting. Or if you want to see the final version of how Section 13.1 will look, you can also direct those changes to be made and have that at a future meeting. So a variety of options, but again, until this rules are publically noticed in a public hearing forum, noticed in the newspaper, and you have a meeting, and take a vote after that, and then the Mayor actually signs the rules, they won't become effective.

Ms. Kalanihulia: Could you reiterate Commissioner Buchanan's request?

Ms. McLean: I can read her email or just summarize. She did ask that – she was specific to the SMA rules. I can't make a statement one way or the other about how she feels on

the other three rules. But specific to the SMA rules, she requested that they be deferred. In other words, not go out for public hearing.

Chair Sprinzel: She had been through various meetings all the others have approved, and this was the only one because of the power given to the Director. Ostensibly, that was the main objection, as I recall.

Ms. McLean: I think she would be supportive of the changes that were made today, but I cannot say whether that would address all of her concerns. She might have other questions or concerns that haven't been brought up before. The changes today might not have addressed everything she was concerned about. So I can't say that we've resolved all of her questions. I can't say that at all.

Ms. Kalanihulia: Did she say she would come to the next meeting if we deferred it?

Chair Sprinzel: Well, yes, but the next – the meeting where all – the public meeting would be at one of our meetings, wouldn't it? So therefore, she could make whatever objections or alterations she wanted at that time. So it seems irrelevant to have another meeting yet again.

Mr. Hopper: Just to clarify, though, if you do make substantive amendments at that public hearing meeting, you're probably going to have to have another public hearing. Now, obviously, if the Commission wants to adopt rules a certain way, it doesn't limit it – you know, if one Commissioner agrees, but I don't think anyone can speak for a particular Commissioner or their opinion. Clearly the request has been made to you. But the Commission has the authority with five votes to pass these rules how it sees fit. So that's the decision I think before the Commission today.

Chair Sprinzel: Okay, well, after numerous discussions and comments, can we have a motion, please?

Mr. Hopper: Again, there's four different sets of rules and different versions of them. So I don't know if we can have clarification on how the motions would be handled ahead of time so we have . . . (inaudible) . . .

Chair Sprinzel: Yes. Well, I would personally say that as we've been through all four of them, this is the fourth one that we wanted to go through. And we put them all together and say, yes, let's send these on to the public hearing.

Mr. Bacon: Yeah, I would move that we accept or pass on all four of them. And we've addressed some of these other issues, and went about in terms of giving the department

head a certain amount of leeway there. I think that's been resolved and everything else seems to be resolved. So I move that we pass all four.

Chair Sprinzel: And—

Mr. Hopper: One clarification. That would be with the Planning Director's proposed changes as you've amended today?

Mr. Bacon: Correct, yes.

Chair Sprinzel: Okay, so we have a proposer, a seconder.

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

*It has been moved by Commissioner Bacon, seconded by Commissioner Jennings, then unanimously*

**VOTED: To pass on all four sets of rules to public hearing with the Planning Director's proposed changes as amended at today's meeting.**

Chair Sprinzel: Unanimous. So this will now go to us again at a public hearing at one of our subsequent meetings. Good. Thank you, folks. That's wonderful.

We're still on the Chairperson's report. Just one more small thing. The Vice-Chairman and I are going to the planning meeting on the 12<sup>th</sup> which is why we won't have a meeting here. And it's normally the Chairman's prerogative to decide who goes to these things. Well, I won't be the Chairman the next time around, I don't suppose. And I know Lori won't be because her term is up. But my suggestion would be with all these new Members that the two people we send to the next planning that's in '013 should be the two people with the best attendance records. So there's food for thought. It's a wonderful meeting. I promise you, if you go to it, you will learn an awful lot. In fact, there's too much to learn. The one on Kauai was just magnificent. And it's well worth going. It won't cost you anything. And you're encouraged to take husbands, and wives, and stuff. Of course, you have to pay for them except for the room. Anyway, that's the end of my speech. Director's report, Clayton?

**E. DIRECTOR'S REPORT**

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

Mr. Clayton Yoshida: Thank you, Mr. Chairman, Members of the Commission. We have circulated our list of pending and closed – completed Molokai applications. If there are any questions on either list?

Chair Sprinzel: The private hangar appears on there, Clayton. I thought we'd done our bit on that.

Mr. Yoshida: I believe we just have to close that out as that was discussed at the last August 8<sup>th</sup> Planning Commission meeting.

Chair Sprinzel: And Gerald Johnson's Paddler's Inn, I think we covered that, too, didn't we?

Mr. Yoshida: Yeah, I think that also has to be closed out. At the time that the report–

Chair Sprinzel: Oh, the Planner does that. Staff. Okay, staff. That's all I have on that. Anybody else?

**3. Agenda items for the September 26, 2012 meeting**

Mr. Yoshida: If there aren't any other questions, the next meeting is scheduled for September 26<sup>th</sup> as the Commission voted on July 25<sup>th</sup> to cancel the September 12<sup>th</sup> meeting because of the statewide planning conference. So if there are any agenda items the Commission wants to place on that meeting agenda. Right now, it's kind of off the radar because it's like five weeks from now, but – so we can't say for sure what items – which items will be on the agenda.

**F. NEXT MEETING DATE: SEPTEMBER 26, 2012**

**G. ADJOURNMENT**

Chair Sprinzel: Thank you, Clayton. And thank you, Commissioners. That was brilliant. You actually got it completed. I love it. So I call the meeting adjourned and thank you again.

There being no further discussion, the meeting adjourned at 1:45 p.m.

Respectfully submitted by,

SUZETTE L. ESMERALDA  
Secretary to Boards and Commissions

**RECORD OF ATTENDANCE**

**Present**

John Sprinzel, Chairperson  
Ron Davis  
Nathaniel Bacon  
Sherry Tancayo  
Janice Kalanihuia  
Michael Jennings  
Douglas Rogers

**Excused**

Lori Buchanan, Vice-Chairperson  
Zhantell Dudoit-Morris

**Others**

Michele McLean, Deputy Planning Director  
Clayton Yoshida, Planning Program Administrator  
Livit Callentine, Staff Planner  
Michael Hopper, Deputy Corporation Counsel