

**MOLOKAI PLANNING COMMISSION
REGULAR MEETING
MARCH 27, 2014**

*** 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, 2200 Main St., Suite 315, 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 11:22 a.m., Thursday, March 27, 2014, at the Department of Accounting and General Services (DAGS) Conference Room, 45 Makaena St., Phase I, Kaunakakai, Molokai.

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

Chair John Sprinzel: So I can call the meeting to order. Before we start, I would just like to talk a little bit about the Lanai tragedy for the people and hope your thoughts and your prayers are still with the people who were involved, the three who were killed, Richard, the pilot, Kathleen and Tremaine, from the Planning Department. And to me, Tremaine isn't just a name in the newspaper because she was our secretary on the Urban Design Review Board, so it's a colleague, and James, who was our counsel many times, seems to have been the hero of the whole thing, and if there can be any pleasant moment is he did pull two people from the wreckage, Douglas and Mark, who were quite badly burned, and as I say, I hope your prayers are for the families and for their speedy and complete recovery. Thank you.

B. PUBLIC TESTIMONY - At the discretion of the Chair, public testimony may also be taken when each agenda item is discussed, except for contested cases under Chapter 91, HRS. Individuals who cannot be present when the agenda item is discussed may testify at the beginning of the meeting instead and will not be allowed to testify again when the agenda item is discussed unless new or additional information will be offered.

Chair Sprinzel: I'm not going to hold the public testimony at the start because we got four separate items and we'll get kind of so confused if somebody starts to talk now. So the next thing is Resolution Thanking Outgoing Members so, Clayton, I guess it's you is it or Michele.

C. RESOLUTIONS THANKING OUTGOING MEMBERS - JANICE KALANIHUIA and JOHN SPRINZEL

Mr. Clayton Yoshida: Thank you, Mr. Chair. We come to the conclusion of, well, for one of you, a five-year term, and for the other, more than a two-and-a-half year term, so we

wish to thank you as well as the Mayor has a letter thanking you for your volunteerism and a framed certification of appreciation so -- well, maybe we can read this into the record. It'll be very quick. Very quick. Okay, first of all, and the lei is on the way. Okay, first of all, Resolution of the Molokai Planning Commission thanking Janice Kalanihulia:

Whereas, Janice Kalanihulia has served the County of Maui since August 2011 - oh, remember that she did serve one full five-year term before - as a member of the Molokai Planning Commission; and

Whereas, Ms. Kalanihulia has served with distinction and has performed her duties in the highest professional manner with the Molokai Planning Commission; and

Whereas, Ms. Kalanihulia's term of office expires March 31, 2014; now, therefore,

Be it resolved that the Molokai Planning Commission hereby commends Ms. Kalanihulia for her dedication and untiring public service to the people of Maui County, especially the people of Molokai; and

Furthermore, be it resolved that the Molokai Planning Commission expresses their sincere appreciation for Ms. Kalanihulia's services and extends their best wishes in her future endeavors; and

Furthermore, be it resolved that copies of this Resolution be transmitted to the Honorable Alan M. Arakawa, Mayor of the County of Maui; and the Honorable Gladys C. Baisa, Council Chair of the Maui County Council.

Mr. Yoshida: So if all of you can sign the reso.

Ms. Michele McLean: We also a similar resolution for Chair Sprinzel, and rather than reading that in full, I'll read the letter from the Mayor:

Dear Mr. Sprinzel, Congratulations on a job well done. On behalf of the people of the County of Maui, please accept my deepest appreciation and gratitude for your dedication and service on the Molokai Planning Commission. Your efforts and contributions have made a positive difference.

I truly believe that it is important for citizens to play an active role within both our community and government. The process of recruiting and selecting nominees to the various Maui County boards and commissions has given me a greater appreciation for volunteerism and community service.

I would like to commend you for your willingness to devote your time, energy, resources, and insight to the betterment of Maui County.

Once again, thank you very much for doing your part to make our county the best that it can be. I hope that your experience has been rewarding and worthwhile.

Sincerely, Alan M. Arakawa, Mayor, County of Maui.

Chair Sprinzel: Janice?

Ms. Janice Kalanihulia: I want to thank the staff, the Planning staff, thank you. I want to thank the Planning staff for all the work that they have done to help this Commission move smoothly over the years. I haven't always agreed with everything you've said, but that doesn't matter. I don't have to, right? But I really appreciate the dedication and the, you know, trying to do the right thing for Molokai. This, I said this the first time around, my first five years, and I'll say it again, this is an extremely difficult role for me to play because planning and this, you know, these rules and regulations are so far out of what I do everyday that, you know, I would have to read every document over and over again to be sure that I was prepared and at least knew, you know, what was going on because the decisions that are made at this table can change the face of Molokai for good or for bad, and I just hope that everyone left on the Commission realizes that it's such a huge responsibility and honor to be able to do something like this for your community. So I thank everyone for their support and I'll miss you guys.

Chair Sprinzel: Well, it's been a decade of pleasure, actually, on Maui with the Urban Design Review Board and here, on Molokai. It's been a pleasure working with the staff who are just terrific, and with the Commissioners, even those who don't always turn up, and with the kupuna and with the local community. I hope I haven't insulted too many people with my Hawaiian pronunciations but I've only been here 32 years so it does take a while. Anyway, thank you. I've been really blessed to do this.

And now, I'm going to hand it over to Joe first because his public hearing thing is a little bit complicated. We've been doing this for over five years. Steve and I, when Steve was chairman, and I were the subcommittee, and Michael was the counsel, and I have to say this has been gone over and over and changed and over, and the last time Steve and I met officially, before he left us, left the Commission, we went over every line. Since then, it's been in front of this Commission, and public who happen to turn up a dozen times, I don't know, so we are far from the perfect finish. So I'll now hand it over to Joe.

D . PUBLIC HEARINGS (Action to be taken after each public hearing.)

The general topics of the rule amendments are as follows:

- 1. Provide for greater clarity and consistency throughout the rules;**
- 2. Streamline the process for enforcement of SMA and Shoreline violations including appeals and make the penalties consistent with State law;**
- 3. Allow the Commission to waive review of proposed SMA exemptions;**
- 4. Allow the Commission to enforce permit conditions and approvals using an order to show cause process.**

Mr. Joseph Alueta: Thank you, Chair Sprinzel. I'll be doing probably a tag-team for the rules just to try to get -- I'll probably much get the ball rolling on some of the summaries. Those, as you know, Chair Sprinzel, you've been deeply involved in the amendments and so, obviously, we'll call on you greatly to explain some of the changes. Our Corporation Counsel, Mr. Hopper, is here special because he has, again, also spent a lot of time working on these rules as well as our Deputy Director, Michele McLean. So again, there's three areas of the Molokai rules that are being amended. Chapter 12-301, Chapter 12 -- which your -- I'm sorry. Chapter 12-301, which the rules and practice for the Molokai Planning Commission, that's your general rules and operations for this Commission. Then you have your Chapter 12-302, which deals primarily with the special management area rules for you Planning Commission. We also have Chapter 303, which deal with your rules and practice for a special use permit in the state agriculture and rural districts. And then you have your Chapter 304, which is your rules and practices, primarily dealing with the shoreline area for Molokai.

And I guess, like anything else, you need to go back and look at your laws and rules and see whether things have changed, whether things need to be updated. And in the case of Molokai, as well as all the other ones, you have to go back on a regular basis even if it's on an annualized bases just to say, yeah, everything is still good, or no, we need to tweak that. In the case of Molokai, there was more -- I guess there was one substantial change, but then, for the most part, there was a lot of just minor changes, primarily, you know, to provide greater clarity and consistency throughout the rules; you didn't want to have -- you wanted to provide a little more consistency between all four in difference areas; streamline the process for the enforcement for both the SMA as well as the shoreline violations, including an appeal, make it clear that they're consistent with state law but also so that you are the, if there's an appeal on a violation, it comes before the Planning Commission and not to the BVA; allow the Commission to waive the review of the proposed SMA exemptions, I know we've sort of been maybe doing these in that way but it was never officially adopted; allow the Commission to enforce permit conditions and approvals using an order to show cause. Again those were the primary changes for it.

There was a -- I mean we did do a -- we did a couple legal notices. One wasn't exactly perfect, and that was actually the publication of all the rules verbatim in both *The Maui News*, which is the legal requirement, as well as the *Molokai Dispatch*. We had some

concerns over it so the department -- that's why we had to defer the meeting. We ended up doing another publication. Again, all of the rules were placed on the county website for people to download to get the accurate ...(inaudible)... so we did comply with all of the notification requirements that are required as part of publishing these rules. Interesting enough, one of the amendments is clarifying the publication for rule amendments and that is when available, we will publish locally in the *Molokai Dispatch* or whatever newspaper is available on Molokai.

I believe -- and also, the Planning Commission should have received this March 27 memo from our Deputy Director going over some of the non-substantive changes, more typographical. If I can, I'll briefly go over them. They're on the table. It's very short. For the rules, 301, which is your first one, these are your Rules of Practice and Procedures for the Planning Commission. Change to the letter size, obviously, there's not an 8-1/2 by 13 letter, at least not in one that we can get on relatively inexpensive basis, so we're going to stick with our standard size of 8-1/2 by 14 for legal size. Again, also in Chapter 301, Section 16, paragraph C, we wanted to make sure that additional copies can be provided to the director if you request. And on 301, still the Rules of Practice and Procedures, section 78, in the event of witnesses, failure to appear, correction at the top, again a typographical error. My boss is pretty picky. She's pretty good at this so --

And then moving on to Chapter 12-302, and that's pretty much your special management area rules, on Section 12-C, subsection (2): Upon receipt of the above requirements, applications shall be deemed, we want to put "complete for agency transmittal." This is the same language that we find in pretty everywhere. For most times, there's -- I guess sometimes it gets confusing on all the three different planning commissions when we have an application come in, there is when do you deem the application complete. There's two methodologies -- two different areas of complete applications. One is when you got all the information needed to transmit, and that's what this is talking about. The other one is when it's all the information, we've transmitted it out, we've got agency comments back, and the application is now ready to be heard by the Planning Commission, that's another notice of completion that the department does. We're kind of -- we do that, one, to comply with state law and we want to make sure that it's clear that this one is just dealing with when you got enough information to send to agency comments. Section 302-12.E involves substantial impacts to public facilities such as increase, and put "demand on," and so like on drainage, sewers. This was approved by the Commission but was inadvertently omitted from the draft so we want to make sure that was added in these rules. Also the SMA, you have if the director determines the proposed action is not consistent with the County General Plan and community plan, and then we want to put "or zoning." Change the "and" to an "or" is appropriate, and the property may be inconsistent with only some designations. And then on Section 16 of that same 302 for your SMA, the most current state certified shoreline survey if available. This uses more a precise language we feel.

Dealing with your 303-4, and this is for the rules of practice and procedures for dealing with your special use permits, state special use permits, zoning and flood confirmation form complete and signed by the department. The same language found in other Molokai Planning Commission rules, so we just want to be consistent in that aspect.

And then the last, I guess the department is, on our changes, is on dealing with your -- the first item that's on the agenda, which 12-301, which is your practice and procedures, this is the whole enforcement notice to show cause, I believe, and at this time, I believe the administration is looking to I guess retract that -- defer the action on that section of the rules so that we can rework it. The same thing happened on Maui. Maui also has not adopted this, Maui Planning Commission has not adopted this section in their amendments, and so the administration want to go back and rework on some of the language before we bring it before this Commission, so we just want to defer that portion. That portion of Chapter 301.

At that, again, that concludes my summary presentation. Again, Chair Sprinzel is a wealth of knowledge on how a lot of these were come about with the former member Chaikin and then Corporation Counsel was also heavily involved in it so, hopefully, they'll be able to answer many of the other questions that come up.

Chair Sprinzel: Thank you, Joe. Before we go on, one of the reasons, of course I was on the subcommittee doing rules, as an ex-race car driver, we had to obey a lot of rules, but the main reason was to get around and not to actually follow them, and, Michele, would you like to speak next about --

Ms. Zhantell Dudoit: Chair?

Chair Sprinzel: Our Deputy Director.

Ms. Dudoit: Chair, can I just -- can we just clarify how we're going to work through these because it's a lot of information, I wrote down a whole lot of questions for each section that I have, so I just wanted to know, are we to ask questions while we're on a particular item, or is the department going to explain everything, then have public testimony, and we go back over them or?

Chair Sprinzel: We're going to just hear from the Deputy Director about the general changes, and then we're going to go through each one. Don't forget, the Commission has been through these many times.

Ms. Dudoit: Yeah, but some of us on the Commission have not been here when you went through those so there are some other questions that I have, but I was asking because Joe

went through this and I have a question on one of the items he talked about. Do you want me to wait until we're there in the -- or --

Chair Sprinzel: Yes. I think we'll just have the statement first and then we'll have the individual stuff. So either Michele or Michael, whoever. They both worked very hard on this.

Mr. Michael Hopper: So for a little background, I think this is at least the fourth time the Commission seen the rules. We, years ago, Steve Chaikin approached me about making amendments to the rules generally and wanted to go over every section of the rules to discuss potential changes, any problems that we had, and also the Commission actually voted to appoint a investigative group to investigate rule changes, and go over them, and I think Mr. Sprinzel and several others, including Steve Chaikin, and I think Joe Kalipi, while he was chair, also was involved in this a lot, and a lot of it was Steve talking with me over the phone, going over each section of the rules, and discussing them, and changes that he thought that would be a good idea or me seeing anything that I thought should be changed, and so I helped with proposing several sections that could be changed to make either clearer, more efficient, or more in line with what the standard practice was either based on state law or based on what the county commissions were doing at the time.

There's four sets of rules. One is the Rules of Practice and Procedure, which governs general practice before the Commission, filing of documents, and kind of universally applies to everything the Commission does.

Another set of your rules is the special management area rules that deals with what's called the "special management area." That's an area that is designated on maps that are on file with the state that designate an area from the shoreline to a certain area inland, depending on where the map is, and within that area, the Planning Commission has significant jurisdiction based on state law to oversee development in that area, and those rules govern how the Commission does that, including rules for granting permits based on requests for development in the SMA as well as enforcement when someone does something in the SMA that they are required to do -- get a permit and decide not to get a permit.

There's also the shoreline rules for the Commission, which dictate, again by state law, the Commission's overseeing of work within the shoreline setback area, and there were some changes made to those rules as well.

And finally, there's rules relating to special uses in state agricultural and rural districts. That's something the Commission gets to decide based on state law on areas under 15 acres within the county. If someone wants to do a use in a -- generally, it's in an agricultural area that's not permitted in the state agricultural district. That doesn't deal with

county zoning; that deals with the state agricultural designation, and if somebody wants to do something that's not allowed, this Commission can allow that under certain circumstances by issuing a special use permit. It should be noted that this Commission is the only Commission that has rules for state special use permits. Maui does not have one. Lanai does not have them. They rely on the State Land Use Commission's rules. So the Commission's actually ahead of the curve on those rules. Those are essentially being adopted and there's very little substantive change -- very little change to those at all, but that's being adopted as a new subsection to be, essentially, to meet what the current list of rules you have to make sure that they're in the correct list of rules, basically. There really isn't any change to that subchapter being made.

So I'll start with kind of what I see as the major changes, try to give you a quick summary. I'm not going to go over every single line again. This was all published in the newspaper. The topics were published in the newspaper. The rules have been made available to the public. And, you know, this is I think, like I said, about the fourth time that these have been before the Commission. Again, commission members have changed so, hence, the update, but this has been before the Commission, as Mr. Sprinzel has told you, for several years.

1. MR. WILLIAM SPENCE, Planning Director', transmitting proposed amendments to the Rules of Practice and Procedure for the Molokai Planning Commission (Section 12-301-1. et. seq.) (J. Alueta)

So, I'd like to start with amendments to Chapter 301, which is the title "Rules of Practice and Procedure for the Molokai Planning Commission." And I think the first kind of significant change that you're looking is several places, first place is on page 301-7, that's seven pages in, is public hearing notice, and essentially it allows a public hearing notice to be published, currently it says, "of general circulation in Maui County." This allows for publication in a newspaper that is printed and issued at least once weekly on the island of Molokai, if it exist. If such a paper does not exist, it allows for publication printed and issued at least twice weekly in the County of Maui. So if there's an option to put notice in a Molokai paper, this allows that as long as it's within the island of Molokai to publish the notice in a Molokai newspaper, which makes sense, and that's a change that's being proposed. Again, that's in a few different areas of these rules, but it says if the newspaper exist, then you have to publish there. If it doesn't exist, then *The Maui News* is acceptable.

And then most of the other changes there are non-substantive. You get to the first kind of real substantive change for -- on Sub-Chapter 7, which is on page 301-9, that deals with order to show cause. Again, the Deputy Director has asked that you defer action on this section, and she can go into the reasons why. But what that section had proposed to do is, this section right now, which is 12-301-65 of your rules, on page 301-9, it deals with enforcement of permit conditions after the permits have been issued and representations

made. Right now, you have a very general procedure listed in your rules. It says, "The authority shall upon motion by any person, including itself, have the right to review all special management area permits and special use permits to ensure compliance with any terms and conditions made a part there." And then it says later on, in the section that's being deleted now, it goes through the procedures for that. That's how the Commission can basically review permits that have already been granted and determine whether or not to, if there's been violations of them, they could rescind the permit or require other additional essentially enforcement procedures. This has been changed to mirror the State Land Use Commission's procedure, which is called "an order to show cause procedure," which is a typical procedure used for enforcement of permit terms and conditions. It also, additionally, allows the Commission to enforcement representations made to it for -- during, for instance, SMA exemption decisions by the Commission. It essentially gives a more detailed process by which the Commission would conduct itself in an order to show cause, and it also goes over what hearing procedures it's going to use. The hearing procedures, such as how evidence is going to be admitted, how witnesses will be called for the parties, etcetera. Again, the department is asking you to defer this, which would leave the current rules as they are, and your current rules do say, by motion, you can enforce conditions on permits, but the department can go into detail on why they're requesting that that be deferred at this time.

And also, the next issue, after order to show cause, is on page 301-12, at the very bottom, there is a new sub-chapter being added called "Sub-Chapter 9." And before I go further, I should probably restate, if Joe hasn't -- I think Joe's already stated it, but when you're generally reading these rules, anything that's underlined is new language that is being added; anything that is in brackets is what's being deleted from your current rules. By state law, that's a requirement to show that in the rules, generally. This Sub-Chapter 9, at the bottom here, is an entirely new sub-chapter, and because it's an entirely new sub-chapter, it generally does not have underlines, brackets, or anything. All the language here is new. And this Sub-Chapter 9 is modeled after the rules of the Board of Variances and Appeals, and it gives the Commission, basically, an expedited hearing process for several types of contested cases that it can hear for either notices of violation for violations of the rules, or for order to show cause hearings. And if you don't adopt the order to show cause language, I would suggest that you also delete "and orders to show cause" from this language as well just because that won't make any sense if you don't have order to show cause language. Sub-Chapter 9, I won't go over all the details of it, but, basically, it gives instructions for appeals from shoreline and SMA violations. It says what has to be in the notice of appeal from a violation. Again this is a case where someone's issued a violation, they disagree with it, and then they appeal that violation and it comes to you as commissioners. So the Planning Director will have issued a violation against somebody, and they disagree with the violation, the appeal comes to you if they file an appeal. So what this Sub-Chapter 9 does is go over the rules for what has to be in that notice of appeal, and how the Commission, when it gets that appeal, is going to conduct the hearing,

and it gives a very expedited process where, essentially, the parties set forth their evidence, they conduct a hearing that the -- they're not allowed to appoint a hearing officer, the Commission have to hear the case itself, and the hope is that this is going to be a more expedited hearing than your average contested case hearing. And again, this is modeled after the Board of Variances and Appeals in Maui, and it provides for an expedited hearing. That is essentially the main substantive changes we have for the Rules of Practice and Procedure.

I want to go over the next set I have is the Special Management -- oh, sorry. Oh, you want to finish this and then go over that? You want to have testimony on each separate section?

Chair Sprinzel: Yes.

Mr. Hopper: Oh, I think we have to do that. That's correct. Alright.

Mr. Alueta: Does this -- I mean I just want to get clarification on, you know, on the Chapter 9 you said was new hearings of appeal for violation and order to show cause. Because these are the general rules and practice for the Planning Commission, does it only -- does it apply to special use permits as well as SMAs or -- because you said it was only for the special management.

Mr. Hopper: Special use permits wouldn't be appealed to the Commission. They'd be decided by the Commission. If there's an appeal from a special use permit -- you mean for a violation of a special use permit?

Mr. Alueta: Or a violation.

Mr. Hopper: I don't think we have that in there. It's mainly for an order to show cause you could have that for, so the order to show cause could be a violation of any permit issued by the Commission. So actually these rules would apply for an order to show cause, not for NOV's for violating the ag district. That would be handled by state law. But the -- you wouldn't be issuing an NOV for a violation of a state special use permit under these rules. I think that would fall under state law. If you're talking about an order to show cause to enforce the condition, I suppose you could have that through this process, but that's something that would come -- that would be covered by these rules. But I don't know of any NOV's that would be issued -- if you're talking about issuing NOV's for special use permit violations, then you're getting into HRS 205, and that has some of its own enforcement procedures. Plus, you're also probably talking about zoning enforcement there too, which would go to the Board of Variances and Appeals in those cases. You wouldn't have the Planning Commission hearing appeals for a ag violation, for example, of 19.30A.

a. Public Hearing

Chair Sprinzel: I think it might be time for public testimony on this. Is there any public testimony on this first rules and practice, 301? In view of the vast amount of stuff we've gotta get through, I'm going to limit each person to three minutes so we can, perhaps, have another go later.

Mr. John Givens: I'll to beat that limit.

Chair Sprinzel: And please state your name before you start.

Mr. Givens: My name is John Givens. I'm Vice-President at Wave Crest at Mile 13 here on Molokai. We're an oceanfront condominium project. The -- and I'm speaking on my own behalf though, not some sort of fish holes at the moment. Sub-Chapter 7, of Section 301, I would support deferring. One of the things that it talks about, which is what I guess has been proposed, the -- page 301-9, one of the things that it deals with I think was enforcement of representations people make when they apply for a permit. Oftentimes when people apply for permits, they may be -- make certain representations that are simply aspirational that they want to try to do this for the community or do that, and so I don't think necessarily enforcing as a violation against someone because they made some aspirational representation is necessarily a good thing. But otherwise, I would generally support deferring on that item.

Chair Sprinzel: Thank you, sir.

Ms. Dudoit: Can I ask him a question?

Chair Sprinzel: Sure.

Ms. Dudoit: Can you just -- I wasn't sure that I understood what you were trying to say.

Mr. Givens: One, I was just trying to generally support what I think was the director's position on deferring any action on adopting the proposed changes in subsection (7), beginning at page 301-9, and as one example, when they were reviewing -- it said that if someone makes a representation when they're going in to get an exceptional permit, someone might, I probably won't be able to come up with good example of something ...(inaudible)... someone comes in and says, "I don't think I should be -- this process should be applicable to me. I should get an exception from it because I intend to teach hula lessons or something on my property." And people's lives change and something might happened to their kids, they might change, and so because people's lives change and things, and sometimes representations made might be an aspirational type that trying to

enforce something like that, which I think is contained within that section, would not necessarily be a good thing.

Chair Sprinzel: Yes, please.

Ms. Kalanihulia: I know it's my last day at school, and I'm heady from the flowers that I have around my neck, but did anybody tell us why we're deferring this? Why we're being asked to defer this? Well, maybe before people come up and say what they think we should hear, why we're not -- we're being asked to defer it. It kind of sounded like you knew more about it than we did and that worried me, to tell you the God's honest truth.

Ms. McLean: Thank you. The language that's being proposed, actually, the same language was proposed for one of our other boards and commissions, the Board of Variances and Appeals, and we do agree that an order to show cause process should be put in all of our board and commission rules. The way that this process is outline, it ends up being a two-step process in front of the Commission where you first hear what the issue is and then decide to have a hearing on it, and then at another meeting, you have the actual hearing to make your decision. And we felt that we could put that into just one meeting rather than two meetings where the information would be presented, you could discuss it, and make your decision at one meeting if you chose to. So we're asking for the deferral because to amend the language the way that we're thinking will just be a whole lot to go through. We thought that because it's an important process, to just leave the existing language alone for now and then we'll come in with proposed language that we could start with fresh and make the amendments on the process at a later date. If that -- if the Commission has read the proposed new language and wants to go forward with it and approve it as it is today, that's fine. We'll still come back at a later date with what we think is a better process and you can consider the changes then. We just thought it would easier to leave the existing process for now and we'll come back in a couple months with what we think is a better one-time, potentially one-time review by the Commission than a required two-time review. So that's why we asked for the deferral.

Chair Sprinzel: Thank you, Michele. Public? Oh.

Ms. Dudoit: I have a question. So as it currently stands, when we look at limits or the amount of time that we have to make a decision, if somebody comes before us with a proposed plan, we have some time to think about it, then the hearing comes, and then we're mandated by a certain amount of -- or a timeline when we have to make a decision. So now that you're going to condense the two, is the timeline for the amount of days that we're allowed to make a decision lengthened?

Ms. McLean: It's not -- neither of these, the existing language, what's being proposed today, and what we're talking about, none of them proposes a certain amount of time. The

proposed rule change would require that the Commission meet two separate times. It doesn't indicate how much time, it doesn't force an amount of time, but you need to be able -- you would have to meet two times in order to make a decision. What we're suggesting is that that can be done just once. So if there's a violator, a really egregious violator, and it comes before you and you hear all the information, you can't make a decision on that at that time. You have to wait and then have another meeting to make your decision the way it's proposed now. What we're suggesting is that when the information is presented to you, you're able to make a decision right then and there, if you choose to. If you don't want to, if you need more information, you can defer, take it up again at another time. Also looking at the flip side of that, that if you have someone who really hasn't done anything wrong, again, you'd bring it before you, present the information, and then you'd have to wait for another meeting to make your decision versus just one time, the information is presented to you, and you can say, oh, you know, there's nothing to this. You're fine. So looking at from both sides, either a really horrible violation or when nothing is truly wrong, the process we're thinking of would allow you to do that in just one meeting, if you choose to. The setup now would say you have to hear the information at one meeting, and then hold the hearing to make your decision. So that's it in a nutshell.

Ms. Lori Buchanan: Good afternoon. For the record, my name is Lori Buchanan. I was kind of surprised that was going to get deleted at this time, but since you were on that subject, that whole section, I would just ask, because I don't understand the last part of that new section -- I mean the order to show cause section, that's on page 301-11, where the last few lines of that sentence says, "may be modified or waived by stipulation of the parties and informal disposition may be made in any case by stipulation agreed settlement consent order." I wanted that defined because that kinda shows again that we're trying to work something out instead of going to next full blown contested case type of hearing, which I think this whole order to show cause sets up for. I might be wrong. And then there's other enforcement. And then my other question would be status quo. If it's status quo, what has been the regular response by staff when this Commission has, by motion or whatever, reported notices of violations? What has been the response because we, obviously, been working through it for years without defining all of this, taking this language out of the Board of Variances and Appeals? Just one more comment. On the part about hearing notice. Hearing notice has always been one stickler for Molokai people and one consistent argument we hear at meetings of people saying, "I never know. I never know. I never know. I never see nothing. I never know." So I don't think that this new language helps that very much, and the reason is it's basically saying, okay, okay. We're going to put it in the Molokai paper. But if we don't have a Molokai paper, we're still going to put it in one Maui paper that is circulated twice a week that Molokai people never get. So I don't see how that's helpful. I know in the past, Planning staff has actually gone and posted, and I know that the county liaison for the County Council goes as their staff and actually posts these notices in recognized places throughout the community, you know, general store east end, Maunaloa Post Office, Kualapu'u, that kind of stuff, Bank of Hawaii. So I would hope that

we could amend this to reflect that Planning staff would make that effort to at least do postings in general recognized areas in the four or five districts throughout Molokai because I have yet -- I've never read *The Maui News* because I never get it. And I think that's about it 'cause I understand the rest.

Chair Sprinzel: I seem to remember, although it's a lot of years ago, we did suggest putting it on the notice boards, but somewhere between then and now, it disappeared.

Ms. Buchanan: Yeah. Well, you know, I find myself apologizing to many boards and commissions at the state and federal level for living in a rural community, and it gets tiring for me to try and explain our hardships in a rural community, like this meeting, like all state meetings, we have no video conferencing, I cannot pay the base price 'Ohana Hawaiian, 'Ohana now is a hundred bucks one-way to fly to Oahu. I fly to Oahu every damn week to attend meetings because we don't have capabilities in a rural community and I'm kind of getting tired of apologizing for living in a rural community. So I would just hope that some understanding of our hardships could be conveyed in a way that I think it's simple to post one stuff on the bulletin board. I do it all the time. So that's it for 301. Thank you.

Chair Sprinzel: We're only 30 feet away from a teleconference place in the next office.

Ms. Buchanan: And I'd like to address that. Apparently, other state agencies cannot use it, for whatever reason. It's only used for Department of Education. The Board of Land and Natural Resources, other state divisions and agencies don't have the capability to use it. Thank you.

Chair Sprinzel: I think I said at the last meeting, it's the FBI and CIA, they don't talk to each other either. Next please? There being none, yes, I'd like Michael just to sum up and he could, perhaps, tell us what we're voting for. I mean whether we should vote or not vote in view of the fact that some of it is now being held and deferred.

Mr. Hopper: I think Lori had a question about the stipulation. I think that deals with -- generally, anytime you have a contested case, the parties can settle it. Under the new order to show cause, a motion can be brought by the Commission itself, any interested party, who is just anybody, which is in your current rules now, or the Planning Department, and so this would allow the Planning Department and the party or the -- whoever initiates the action and the party to agree on a settlement. For example, let's say that they were supposed to do something under the permit and they're not doing it, and they bring the action, and then they do that thing; then that could be something where they could enter into a settlement. But that's pretty standard in any type of contested case hearing to allow the parties to enter into a settlement. Again, if it's the Commission who initiates the action, then the Commission itself would need to, obviously, be okay with that settlement and would, you know, dismiss the case if it was satisfied with compliance. But as far as the

director's request, I do know of a one-page order to show cause process that the Board of Variances and Appeals is looking at right now. If the Commission wants to do defer until it sees that, that's certainly an option that the Commission has. So I don't take a position one way or the other, but that's something the Department's requesting and is a feasible action for the Commission to take if you want to defer to see that -- to see that proposal instead.

Chair Sprinzel: In view of that, I'm happy to accept a proposal.

b. Action

Ms. Kalanihulia: I'd like to make a motion that we accept the proposed amendments to Chapter 301 as written without the deferral, and with one change, and I'm not even really sure where that change go but I think it's on page 301-7 where it's talking about the notice, and I'd like to see something added in there that there would be notice posted on bulletin boards in each district on Molokai because that really is the way that we pass information on in this community, and that's it.

Chair Sprinzel: Very good. A seconder?

Mr. Jennings: I will second that.

Chair Sprinzel: Any discussion?

Ms. Buchanan: A point of order. I can call for a point of order? Can I approach the ...(inaudible)...

Chair Sprinzel: No. Sorry.

Ms. Buchanan: I just wanted to -- because my second question was never answered.

Chair Sprinzel: No. We're on discussion with the Commission now.

Ms. Dudoit: We're in discussion? So he explained that first one, but I have a question to -- for Corporation Counsel. So just to clarify, when you say that "the parties," meaning the applicant and maybe the department or the director can come up with a solution, that doesn't mean that all parties have to agree to it, so the Commission basically, if the director decided that there was, in this appeal process, a way for them to work it out, you would just -- they would just notify the Commission and we would have to agree to that, or all parties subject to agreeing on this matter with the Commission being the final authority?

Mr. Hopper: Well, normally, the Commission -- if the Commission brings this before it on its own motion, I guess you could consider the Commission a party. The Commission's generally not going to be a party to its own contested case. There's parties and the Commission's conducting that hearing, generally. Normally, the Commission wouldn't be a party to that hearing except in the case where it brings its own -- where it brings the case itself by filing the motion. If you want to require the Commission to approve any settlement, you could do that, but I mean this is general language if parties to a contested case wants to dispose of that case by a settlement, that they can do it. If you wanted the Commission to review and approve any settlement, that's something that you could add, but that can get -- that's not typical for contested cases. Now, I would say this is more common in a case of a notice of violation where there's like fines and things like that involved, and the director would settle with the person. And in cases where there's a notice of violation issued by the director, the Commission does have to approve that settlement if there's a SMA or shoreline violation. In this case though, it's not a requirement that the Commission approve this particular settlement, and this was general language put in there to recognize and it actually mirrors the language the Lanai commission has right now, I believe, that there could be a settlement at any point during the hearing. In this case, the Commission would not have to approve it because unless the Commission were a party by bring the action itself, so in the case of the director bringing the order to show cause, or a third party, someone out there bringing an order to show cause, that third party and the applicant or the director and the applicant could settle without the Commission's permission and have it dismissed. Now, I suppose the Commission after that could say now I want to bring this back up and I want the Commission to have its own motion to continue the enforcement proceedings. So this is a little awkward how it would work because the Commission would always have the power, unlike in an NOV case, to just bring up this order to show cause itself, like you could say, Chair, I want to have an order to show cause initiated against this person, and Chair could say, okay, next meeting we're going to have this hearing, we want notice to be sent to that person, and then it's before you as the Commission. So the settlement process here, it's a little iffy how that would work, to be honest, because after that settlement, the Commission itself could later on say, you know, we didn't find out what the settlement was, we're not satisfied with this, you know, we want to go forward. And so, frankly, it may be a good idea for the applicant, in that case, to make sure the Commission knows what the settlement is so the Commission doesn't go and do that afterwards. But again, I've never dealt with this process before a Commission. This is the first time this Commission's going to have that process. And I think Lori's other question was how has that been dealt with in the past, and I know of no case where any party actually kind of motion before the Commission to initiate, under these rules, a review of a specific permit. The closest thing would have been Zappacosta where there was a contested case hearing before the Commission to review an exemption, but that was under an appeal and it was not filed under the correct -- the ruling by the Commission was that that should have gone to circuit court, and that's generally where appeals of the Commission's decision go is to circuit court except for noncompliance with the permit. Of course, that case wasn't really

noncompliant with the exemption because the exemption was issued and like the next meeting that happened, so there wasn't noncompliance with the permit, that was a review of the decision the Commission made and that should have gone to circuit court, and in those cases, it would go. So as far as an actual enforcement case where there's been something sent before this Commission to review compliance with a permit, I don't know of one that was brought under these rules before. Basically meaning, I don't know if this provision's ever been utilized before. I didn't know about it until we kind of review of the rules and found this as part of the rules. And like I said, this is the only Commission that I've seen that has a rule like this in Maui County. It's ver vague though as far as the process, which is why the order to show cause I think is a little better process for you, but the department has said that they've got something they're looking at for both this Commission and the BVA to even be a better process and I think it's -- you could look at that and look at that as a potential process as well. There's a lot of different way to do that. I'm not saying the land use commission has the best way. We just went through a process with them and it's excruciating, to be honest with you. So anything that that can be refined to or assisted with would be, I think, appreciated by everybody.

Chair Sprinzel: Are there anymore Commissioners with a comment, otherwise, we shall have a vote.

Mr. Hopper: Does this include the changes proposed in this memo that the department, the non-substantive ones? Okay.

Ms. McLean: Chair, if I may? I just wanted to propose some specific language for the notice so that we make sure that we have it right when you make the motion, and I would also ask that, because that notice language is in two places in these rules, that you want the same amendment --

Chair Sprinzel: In both. Yes.

Ms. McLean: In both places?

Chair Sprinzel: That was one of the things we tried to do when we formed this because there were so many different interpretations on different pages, we were really trying just to make every one the same. And also, the timelines were different for everything and we tried -- those were the two main things we set out to do.

Ms. Dudoit: And excuse me. Before you go through that, since we're in discussion, can I just ask Commissioner Kalanihuia why you are wanting to go against the department's recommendation to defer?

Ms. Kalanihulia: Wow. Oh wow. Okay. Because I think we've worked really hard on this. It's come before us over and over. It began right after I got off the Commission last time. And I actually kept up with it a little bit through some of Steve Chaikin's days, and I just think that if it was imperative that we had this change that it should have been brought to us before this very moment, and so I think that we -- if we pass this as is, they can come back with their recommendations, and then we can take another look at it. But I just am fearful that if we leave this hanging out there, it'll be another, I don't know, long time before we -- before it gets dealt with.

Ms. Dudoit: So before we make a -- and I appreciate that, I wanted to understand so that I can make a better decision for myself, but I just wanted to give the Commission something else to think about. If we adopt this subsection 7 as it is written right now, there's one particular piece of property on the East End, I think I addressed it to the department at the last meeting where the Chows own, violation, I said it on record, choke violations over there, the way this is written right now, if they and the department came up with an agreement to justify all the wrong that is going on over there without us being a party to it or without language being clear to it, I believe that we would not be doing justice to the environment, to the culture, or to our responsibility as the Commission, so I really think that there -- we just -- and I don't know how fast the department would be able to come back with what their recommendations would be, as it stands right now, I think it's pretty general so there's a way for us to intervene in the discussion and go ahead and do what we need to do to make things right. But I don't know. Just reading through this thing, and I totally appreciate that you guys worked on this for years and years, but I just don't think that adopting language that is not clear, especially if it's a new rule, maybe a little bit more time for the department to clarify and make things little bit more specific and, especially 'cause we're setting precedence might be another thing to think about.

Chair Sprinzel: I would agree with you if all of us had been five years on the Commission, but that's not the way this works, new people arrive, old people leave, and the paperwork has been there the whole time. I mean it's not -- it hasn't been hidden. We've been looking at it and, you know, it could go on for an awful long time, and I think it does give the Commission the right to interfere if we find somebody like your east-ender misbehaving. I'm pretty sure of that. And as counsel says, he's never heard of a case of this happening, so we are talking about something that isn't an everyday occurrence, mind you, looking after the rules and regulations on Molokai hasn't exactly been a very accurate science. Okay, can we have a vote? All in favor of the motion --

Ms. McLean: Chair, excuse me? Could I make sure that the language on the notice part is what the Commission is looking for?

Ms. Kalanihulia: Then I'd like to have discussion with folks here about where we should post those. No one has any --

Ms. McLean: Commissioner, you suggested the term "district." Is that well understood? Does that need to be defined or?

Ms. Kalanihulia: I think it's probably well understood that there would be a notice in Kaunakaka, on a bulletin board that is generally accepted to be a place where people -- there are four? There are four in Kaunakakai? Do I have to name them?

Ms. McLean: Well, the language that I had noted was: "Notice shall be posted on at least one community notice board in each of the districts on Molokai that is accessible to the general public."

Ms. Kalanihulia: So that would be one on East End, one in town, one Kualapu`u, one in Maunaloa.

Ms. McLean: So the four --

Chair Sprinzel: And it says "at least" so we could post more.

Ms. McLean: At least one, so I think it might be better for the department's purposes to specify those four areas.

Ms. Kalanihulia: Okay.

Ms. McLean: Okay. So with that language in the different locations.

Ms. Kalanihulia: Thank you.

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

It has been moved by Commissioner Kalanihulia, seconded by Commissioner Jennings, then

VOTED: to accept the proposed amendments to Chapter 301 as written, without the deferral, and to include the following language: "Notice shall be posted on at least one community notice board in each of the districts on Molokai that is accessible to the general public" as discussed.

(Assenting: B. Buchanan; R. Davis; M. Jennings; J. Kalanihulia; D. Rogers)
(Dissenting: Z. Dudoit)
(Excused: D. Swenson; S. Tancayo)

Chair Sprinzel: Motion is carried. We'll go to the next one, please. We'll do SMA and --

2. MR. WILLIAM SPENCE, Planning Director, transmitting proposed amendments to the Special Management Area Rules for the Molokai Planning Commission (Section 12-302-1, et. seq.) (J. Alueta)

Mr. Hopper: I can go into the SMA rules a bit. I'm just going to cover what I believe are the most substantive changes. Again, I'm not going to go over every change. I think the first substantive change is that we're talking about the assessment application within the SMA. Again, just so you have your rules, it's amendments to Chapter 302, that's 3-0-2, Special Management Area Rules for the Molokai Planning Commission. You all have that. On the third page, which is 302-3, there's a requirement for when a state certified shoreline survey has to be provided with an assessment application, and I think the department had said that this can be very ...(inaudible)... in some cases, in addition to Steve Chaikin having a concern with that, and so there were some additional exception carved out for when a state certified shoreline has to be provided with an assessment application; again, this can be case where someone doing interior renovations. And so under -- you have (i), (ii), and then under (iii), it says, "The proposed action involves no ground disturbing activity, it does not impede access or along the shoreline, and does not expand any preexisting nonconforming structure activity, as defined in the Shoreline Area Rules of the Molokai Planning Commission, or enlarge structures in the direction of the setback, or the proposed action involves land for which a certified shoreline survey cannot be obtained due to encroachments on public shoreline lands from property not controlled by the applicant." Those exceptions, I believe, were requested by the Planning Department, in consultation with them, and so they can explain why they believe they are appropriate exceptions for when a shoreline survey, a state certified shoreline survey has to be provided.

Going forward, most of this, again, is processing issues. I would note, you have page 302-8, that's several pages later, rule 12-302-13, this is a notice requirement and again, we have the requirement that it's published at lease, in a newspaper, published at least once by a -- in Molokai newspaper. This is notices required to be provided by applicant. The previous notice you looked at was notices required to be provided by the department for rule changes. However, this is notice required for -- by applicant, so I don't know what changes, if any, you would want to make to this, but again, this is the applicant's requirement to provide notice to people, not the department's requirement to provide notice. So noted there that right now it says a Molokai newspaper. And there's another section there for -- and then there's another notice section, 302-9, which appears to be --

Ms. McLean: That's the director.

Mr. Hopper: That's the director's requirement to provide notice.

Ms. McLean: So we could add the same --

Mr. Hopper: So if you want to have the same amendments, I guess you can do that provided the director is okay with providing that the same notice. Now, probably the most significant requested changes of the rules, of any of them, is on page 302-10, and I wouldn't say it's an incredibly significant change, but it is a significant change. These are your exemption determinations. Now, as you know, the Commission determines whether or not a project is exempt from getting an SMA permit, unlike the Molokai -- the Maui Planning Commission has the director make this determination. Here on Molokai, the Commission determines if a project is exempt from getting an SMA permit, and this was language that was proposed by the director as part of the proposal for you to consider. The director can talk more about the details. But it essentially allows that an applicant who -- the Planning Department reviews their application and determines that they're exempt from getting a permit, under state law; they can forward essentially basic details of that application to you; then you can review the location of the development; it requires them to include the name of the applicant, the location of the subject property, and a brief description of the proposed action. And the Commission gets to vote at that hearing whether or not it wants to essentially fully review that exemption or waive its review of the exemption request. It's kind of like a pre-screening that the Commission would do to determine if they want to even look at that exemption more or if they're okay with waiving their review. If the Commission decides to waive their review, then the action's exempted. If the Commission decides to review it or doesn't get enough votes to decide to review the application, then it's going to be reviewed at the next meeting like you would any other exemption. Again, this is something that the director proposed and can explain why, but it's a significant change to your rules. And then in addition, you have a recognition that if the Commission does not make a determination and notify the applicant in writing within 45 calendar days, the proposed action shall be deemed exempt. This is the Commission's practice right now. If the Commission doesn't make a decision within a certain amount of time when the exemption is presented to you, it's deemed exempt. This is making it clearer and gives you 45 days, I think rather than 30 days, so it gives you extra time there, but that's another change that's important.

Chair Sprinzel: We did that because it used to be 30 days and that meant you could miss a meeting, and we didn't have a chance to re-discuss it. That was something we insisted upon as I think Lori will agree.

Mr. Hopper: And then the rest of these changes, there's not much until you get to -- one thing requires, in page 302-17, subsection (f), dealing with amending the SMA boundaries. The Commission is required to have a two-thirds vote to amend the SMA boundaries. This wasn't there before, The Commission could do it by -- with a study, the Commission could do it by majority vote. This was Steve's amendment and he said he thought that this was a major change and should be approved by a super majority, and so that's why that's being

proposed. A two-thirds vote would be six votes rather than five, so again, it's not a huge change but it is an extra vote that's required for SMA boundary amendments. And then my probably personal favorite set of changes, if you go to 302 -- it kind of begins on 302-19 and continues on to the next few pages, it continues dealing with issuances of notices of violation and order. This really kind of a clears up -- cleans up a section both here and kind of also has mirror changes in your shoreline rules for how SMA violations go about being undertaken against other people. It clarifies several things. First, it clarifies how the person is served with the violation; if they refuse to accept service, the violation can be published, sent by publication, or posted on the property. That's in the event where there's a violation and you try to either hand deliver or send it by certified mail, and the person doesn't pick it up, you can post that on the property or put it in the newspaper and service will be deemed as received.

In addition, there is the fines, under your current rules, are the maximum fine for an SMA violation is \$10,000 for an initial fine and \$1000 per day. For years, since I think about 2006 or '07, the state law had said the maximum fine for an SMA violation is \$100,000 initial and \$10,000 per day, so that was about six years ago -- well, that was even more than six years ago, about eight years ago, I think, and the Commission had those fines at 1000 per day and 10,000 initial. That's 10% of the fines that are allowed by law or the maximum ones that the Commission authorizes the director to charge. So those are being amended to basically mirror the state limits, which state that a person can be found -- if they're found guilty of the SMA violation, let's say, it can be up to \$1000 -- sorry, \$100,000 initial fine and \$10,000 per day for a violation, and the director determines that violation amount in issuing the violation; this provides the director with criteria for determining that. Again, there is no criteria in there right now. This gives the director criteria for determining how much the fine is. And it also states that the appeal goes to the Molokai Planning Commission. Currently, the appeals go to the Planning Director, and the Planning Director's decision can be appealed to the Commission. And that's kind of a backwards procedure because it's the Planning Director that issues the violation, so you would be appealing back to the director, who initiates the violation, and that's a little odd. So this has the Commission hear the violation. Again, this is mirrored in your shoreline rules, so when I go over shoreline rules, I'm not going to talk about this section again, but it's essentially mirrored. And appeal of the notices of violation, as I said, go through Sub-Chapter 9, of your general Rules of Practice and Procedure, so we've consolidated the hearing process these SMA violations and shoreline violations into one section of your Rules of Practice and Procedure. So your SMA rules have this and then they say go to Sub-Chapter 9 for appeals, and your shoreline rules have similar language and it says go to Sub-Chapter 9 for the appeals process. So again ...(inaudible)... of detailed when you review it, but I basically explained to you what, you know, what the purposes of this are, which is to make clearer your ...(inaudible)... processes that you're authorizing the director to undertake; make clear the fine amount and the criteria the director determines in determining what the fine is; and how the appeals are heard. So I don't know if the director wants to talk a little

bit more about the one SMA exemption section that's being altered, which is something the director requested, but that's all I have for this section.

Chair Sprinzel: Thank you, Michael.

Ms. McLean: Thank you, Chair. I'll make a couple of comments, if I may. I'll start with the easy stuff. I'm assuming that there are two areas in these rules that deal with notification that's the department's responsibility. There's the one area Mike pointed out that's the applicant's responsibility to do notice, but there are two areas on pages 9 and 16 where it's the department's responsibility to do notice. So if you'd like to include that same language on the posting on community notice boards in the four districts, there are two areas where you might want to do that. I'll also comment on the -- on those first changes --

Chair Sprinzel: Excuse me. Anybody object to that? No. So that's okay.

Ms. McLean: The reason that the director and I first got involved in these rules was -- were the requirements for the certified shoreline survey, and we wanted to propose the changes that are here that we reviewed with the Commission for two different reasons. There are some situations -- now a state certified shoreline is when an engineer does a physical survey of the shoreline to determine exactly where the shoreline is, and it's important information to have, it's good information to have. They're only good for one year. After the engineer does it, then the state certifies it. The DLNR certifies it. There are a couple of circumstances where the state will not certify, and that leaves the applicant unable to apply, and so, in those couple of cases where the state will not certify, we felt that the director would be able to waive that requirement when it's just impossible for them to get a certification. The other example is when -- and we have heard from Commissioners who've asked about the status of applications where someone's waiting to get their survey or they don't have the money to get the survey, and they're doing interior renovations or something that doesn't affect where that shoreline is. We're like: Why are we requiring that person to do that? So in the one instance where there really isn't a justifiable reason to have that survey, we wanted the director to be able to waive the requirement. So that's why we got involved with the rules. So when we were coming to the meetings, and going through the rules, at those same meetings you were also reviewing exemptions and other applications, and there were some of the exemptions you didn't even have discussion, you just moved to approve, second, and issued it, and you say to us: Why do we even have to look at these? We said, well, your rules require that you review them. And so the area where the changes are proposed for the exemption process, it would have the department present to you just a real snapshot of the pending exemptions that we have, and for you to sort out the no-brainers from the ones you want to review, and if you can't decide that, as Mike explained, if you can't make those clear votes, then they will automatically come to you. But the ones that you see that, gee, we don't need to bring applicant in, we don't need to have the full hearing on it, then you say we don't need to review that. Director, you

can go ahead and issue your exemption. So that was the thinking behind that process so the ones that really you feel like you don't need to review, the applicant doesn't go through as lengthy a process, but then the ones that you want to review or if you can't decide will still come to you.

Chair Sprinzel: There was a lot of discussion, as Lori will know, about particularly Wavecrest where there was a lot of re-habitation, or whatever you call it, reconstruction inside the units and every one had to have a shoreline thing so we thought that was a bit silly, but we didn't want the director to have the sole opportunity to tell us whether we could or couldn't accept it, so that was a bit part of the discussion that it came back to us and if there was a disagreement. Okay, public testimony, please.

a. Public Hearing

Mr. Givens: John Givens. I have a comment and it addresses -- there's the exact same mirrored language in I think 302, 303, and 304, and so the issue that strikes me the most is the level of fines that are suggested in these three amendments. Currently, the level of fine is a maximum of \$10,000 a day -- or \$10,000 as an initial fine, and \$1,000 a day thereafter. What's being proposed is that that be increased ten times to a first \$100,000 fine followed by \$10,000 a day of fines. On Molokai, the median family income is \$40,000 a year. You would pretty much bankrupt, if you ever applied those maximum level of fines, I doubt there's anyone on this island that could sustain paying those fines without being bankrupted. Just as an example, what's proposed is, for all three of these, an initial fine of \$100,000, followed by 10,000 a day, in a 30-day month, that's \$300,000. That means in one month's time, someone violates one of these rules, they get hit with \$400,000 in fines.

Chair Sprinzel: At the director's discretion.

Mr. Givens: At the director's discretion. Hopefully, the director will always be a reasonable person. We've seen roads in New Jersey, bridges closed by high-level government officials. There are times where things happen, and giving someone authority, and I think -- and maybe this is a better way of addressing it -- that discretion exist, there's a possibility that something bad could happen ...(inaudible)... but assume there is ...(inaudible)... if what you're really saying is the director will never ever really fine somebody 400,000 in a month, 300,000 the next month, the 700,000, a million dollars by the third month that they haven't fixed this on poor Molokai where we make \$40,000 a year, the director will never do that. Well, if that's the case, why are we passing a law to say that? All it will do is sit there as a threat to people, which I don't think is a very Hawaiian approach to things. If you're going to put in a fine that high, it's basically -- if it's a fine that you would never go to and you would never use, then all you're really doing is just having it there as a threat and I don't think that's a very Hawaiian thing, so I --

Chair Sprinzel: Well, Mike will explain to you, but it is a state law.

Mr. Givens: It's what the state --

Chair Sprinzel: You gotta go and tell the state that they're fining too much.

Mr. Givens: I think if the state came in and fined a Molokai landowner a million dollars in three months, that would still be unreasonable. Even just because the state does it, is it right for Molokai? Is it right for this level of income, this level of people on this island to be talking about having the director on Maui come over here and fining someone that much money, and so I think that fine is too high. And then a separate comment I would make is there's no initial step before that fine. It says the director may do these things, but it would be nice if there was an initial step --

Chair Sprinzel: You definitely have the right to tell the man to correct his mistakes before.

Mr. Givens: And that's, I guess, what I'm suggesting is that before you ever get to this level of fining people, I think a nice Hawaiian approach would be to, if not required in the statute, strongly encourage, the director strongly encourage the people before they start fining people that reside in Molokai to go talk with them first, and that's not stated in the language, and I think it would be good to state something in there that before we send out a fine, we shall go talk to them first. So that's -- and I have the same comment about, I realize you're not on 303 and 304 yet, but I have the same level concern, just because the state says it's okay to fine someone on Molokai that much, do you want to go there too?

Chair Sprinzel: I think at all the meetings of the Commission that discussed this, that was accepted. Anyway, Michael, would you like to -- okay, next?

Mr. Wade Lee: Aloha. My name is Wade Lee, and, first, I'd like to thank all the Commissioners for taking the time 'cause I know take a lot of time, but I like a little bit time for talk what is Hawaiian. I represent the Pala`au Moku for the Aha Ki`ole, and it is a Hawaiian way of bottom-up and not talk down, and we've been in a lot of issues that was hard on Molokai and we felt that this, in 2006, we became the advisory to the Department of Land Natural Resources because it started off that they wanted to stop laying net, moi moi net, and as a Hawaiian, we felt it would incriminating if they did that, and out of that came my cousin John Kaimikawa, who suggested that we use the Aha Ki`ole method, which comes from the ahupua`a to the moku, then to the lead to make the decisions. So we're a community-based process and we really got tired of family on one side of the road holding signs, and family on the other side holding signs, but the outsiders playing us like pawns. So this was a good way for we have representatives from every ahupua`a to sit down and actually talk about what really matters to us and protecting the resources because we don't have 7-11 or Matson over or Costco, yeah, because 30% of all our table

is subsidized by subsistence on Molokai, and that's the study that has been done. So I want to go back to the shoreline management. The Aha Ki`ole, in 2006, was passed by legislature. Yeah, I am the Moku of Palaau and the ahupua`a we have is from Kalani Beach all the way across down to Palaau, all the way to -- well, it said Kahanui but I going tell you guys Kaunakakai Gulch so you guys can see the -- that's the boundary, okay. In each ahupua`a, we're still looking for -- we just four ...(inaudible)... just for have a representative, yeah. The rest of them we got covered, Hoolehua, Kahanui, on the other ways, and because Palaau on the bottom was shared and detached to the ocean and the mauka, we decided that all the ahupua`a reps who represent when he's gone, so let me just tell you just little bit how it works so you can understand.

If you were to pass one law to say that Halawa can kayak, then we would have one issue in Palaau with Kona Moku and we would sit down talk because the kayak going land in Moomomi, but that's not our kuleana for go tell Mana'e what they like do because what we do in Hoolehua or Palaau is different concerns. Right now, this sounds like one cookie-cutting process, and for you Molokai guys, you know already, things are different on Hoolehua to Kaluakoi, yeah, to Mana'e, but if things that they decide going hanaino or, you now, going hurt the resources on our side, then we need to sit down. So the process of the Aha Ki`ole has made that available to the people on Molokai to discuss some very hard issues and we try to be neutral, although a lot of the guys in that process have their own mana`o but when they come and represent as the Aha Ki`ole, there's a difference. So the po`o that was started on Molokai, Auntie Vanda Hanakahi, she the one that helped explain John Kaimikawa`s message. It is statewide. So I want to tell the Commissioners that before we this very community plan, because you know community plan, even though that's your bible, it's a living document. You know what I mean? Konahiki management is adaptive management. What happened last year, not the same this year, the moi not running the same this year as running last year. You know what I mean? Yeah? So with the community process, I think we would like to be a resource for the Commissioners and for Maui County to kinda share the kuleana, and not have that whole responsibility to make all these decisions without us community, and then you find yourself in one room with 200 Molokai guys yelling again. Yeah. And then we could be the ones to go and go to the communities and kind of sort it out and talk and maybe tell you some of these things are not appropriate in those places, and some of these decisions don't lie in the director's hands or the Commissioners' hand because you know Molokai, they get one big mo`o, plenty times these truck, the construction companies, so instead of all that happening, be real good if we just allow the community process, to give them a chance to say what needs to happen in their place because they live there. So I just want to put that out. The Aha Ki`ole right now is passed on because Auntie Vanda is ma`i, or sick. Karen Poepoe is the ho`o for -- and she goes to the big Aha Ki`ole meeting statewide that represents Molokai, Kaluakoi is Byron Espaniole, and Haulola Kaopuiki, Kona side is -- Kawela Moku is Uncle Mervin Dudoit, Kona side is ...(inaudible)... and nephew Junior, okay, so we've been having regular meetings, quarterly meetings, as well as our executive meetings just for Palaau we

have like every two months we try get together or when things arise, so the last one that we did was management down Moomomi, was something really big DLNR tried to push, so we went nihi with all the people in Hoolehua because that's the users and now the management is good, pretty much good. We gave everybody a chance to say something. So I want to put that out there to say maybe we should defer this and then we can talk story a little bit more with the Aha and what are the issues, give a little bit more time, and not put 30 days 'cause you know, if uncle tell me go his house get something, then you gotta go right away 'cause he going give them away, but if they going talk, he like do something, he just going wait till I come for help him. We don't have to put constraints, 30 days, 40 days. That's really not Molokai style, and if it's the government's style, then they can do that, for the people on Molokai, that's Hawaiian is when the thing going happen, going happen for a reason because that's the right time and that's the right spirit. Yeah. So that's all I wanted to say. But mahalo for all you Commissioners because I know it's a big kuleana on your shoulders to come over here every time and take this on and mahalo all you Molokai for taking this on. And all I like say is you know the Aha Ki'ole that we're available and we want to be a -- especially in resources, special management, we got a big issue and so we like kinda say try stop this little while and then we go talk some more story and we would go to the community and put some of the hard facts forward, okay. So mahalo.

Chair Sprinzel: Thank you very much. We do have the kupuna, the Caparidas particularly, here every meeting, I'm surprised they're not here today, so we do listen to them. I promise you.

Ms. Kalanihulia: Wayde, is there -- have you read this? Is there anything in particular that bothers you or --

Mr. Lee: Yeah, 302.D, F, G. There's no culture in there. No more culture. And when you talk resources, I like know who is the cultural resources, and I think we get some good practitioners out there who actually fishing over there that can help you guys to determine what going effect, yeah, and where you going locate stuffs when not time for go over there and put the guys in the ocean that going disturb the breeding process, you know. So I think there's no culture in there in your resources, 302-6, page, on the bottom. I don't know what dash was that, but I just went read the bottom. I taking that from the bottom of the page, 302-6, the thing is D through H.

Ms. Kalanihulia: Okay.

Mr. Lee: Yeah, so the first one, doesn't have culture inside, and the culture is the one that keeps the kanawai, or in other words, the how you act in certain places, how you, you know, how you conduct yourself. What is the protocol. So I give you one good protocol. On Molokai, you go somebody's house, you no can just go. You gotta go "hui." You ask

permission. That's the permission, "hui." Or you go pick limu somebody's place, you no just go pick. If I go Mana'e lay net, I gotta go ask my brother-in-law Russ who live over there. Hui. I can come up? Yeah. I go send my nephew. He going send the nephew with me and it's okay. So it's a little bit different and those are unwritten rules that we like to have written in that that's culture. If I go Uncle Billy's house, I going, "Hui." You know just go. And if he no look, you know what that means? You not welcome 'cause maybe he no more food for you or you no more -- or maybe something else, you know. I not going say it, but that's one unwritten rule that we should put inside there. That's how we conduct ourselves over here, it's not done by you break your rules or what. It's by asking permission. So just simple things like that to put inside, okay, so I hope I went answer your question, 306. And I haven't read the whole document, but I know one thing, I guarantee you the whole document, we going get some things for say about how shoreline management should be done. That's why we created this to be part of Department of Land and Natural Resources because there's one, get a lot of rules that they have that are not consistent with Hawaiian fishing, that is opposite, yeah, 'cause they cookie-cutting, and it's adaptive management, konahiki, so we're trying to bring back the konahiki. So anyway, okay, pau. Mahalo.

Ms. Buchanan: I'm glad he brought up the community part of this because more than three years ago, this Commission voted to expedite review of our community plan. The reason why we voted on the record to expedite the community plan is to avoid stuff like this where nine people were making decisions for the entire island. That is the reason why. There were substantive changes, was Title 12, I don't know what was, Joe was working on stuff, and I felt that they were substantive that it really needed an entire community to provide feedback on, that it wasn't just based on what I thought, what Zhan thought, what our Chair thought. It was really what our community thought of. Our last community plan was so late; the time it was actually approved, was the end of the tenure, and we was like wow, and here we really need it and we still behind the gun with community plan. And again, to me, this is the issue again. Yeah, we wanted changes to the SMA and our rules. Yeah, we wanted all of that. But at the same time, that was supposed to be concurrent with our community plan amendment. Even the people who were chosen to be on there was waiting so long that they weren't even enacted, and then we just got recent calls maybe months ago saying are you still interested in serving. Okay, so prefacing that, the biggest concerns I have is with this chapter, in Chapter 302. It does -- the biggest issue I have is dealing with the director's addition of the exemption stuff. From day one, ten years ago, we never like 'em, and ten years later, I still no like 'em. And I'm very adamant about not liking it. And what the director had just previously said, excuse me, Deputy had just mentioned, if you read the rules, it doesn't say that. You don't interpret what she said with what it says in black and white. What I see, in black and white, is a lessening of my oversight as a Commission on projects that I should be determining whether it should be exempt or not, not the Planning Department, not the Planning Director that changes every time we have one new election, but should be this Commission. I'm not in any favor of

giving up any review of exemptions, and I felt that they was going little bit too detailed about you gotta see them all or not seem them all. I thought that was silly. I still think it's silly. My hope would be that this Commission will vote to defer this section for the Planning Department to have a separate meeting just to address this and it would be at a time and at a venue that would accommodate this community in order to provide feedback. And if you want me to take your time now to go through everything that I feel I have an issue with in 302, I can do that. If you like go there, we can go there, and I can start page-by-page. I'm okay with that.

But again, the main issue is, you know, yeah, we printed them in the paper. I turned to Ella, I said, "Ella, you read them in the paper?" She said, "No. I never." I was like, "I never even see it either in the paper." I don't read every issue of *The Molokai Dispatch*, and so I might have seen it and was so far off, I didn't think about it. But on the -- I see cut and replaced, and that means to me that it's substantive and a lot of changes. 302-3, if we like go there, 302-2, the thing is this is not the venue for me to ask questions of staff because I'm not a commissioner, I'm a public testimony, you know, testifying. I have questions for staff to clarify on this as a community member. Is it an appropriate time for me to be questioning them in this setting? I don't know.

Chair Sprinzel: But didn't you have the opportunity when you were on the Commission to question about all this? This was all published well ...(inaudible)...

Ms. Buchanan: These amendments were not in there. They weren't in there. This is the first time we've seen them. They're all there? From when? From three years ago? Or four years ago? This is the same amendments? And on the record, we made the same disagreements that we did not like those amendments and here they are again still yet. I don't know how many times to say I no agree with this. I no agree with us lessening our power as a Commission to review exemptions. I going set you one example. Kaunakakai Town. At the time Kaunakakai Town was being renovated, we all looked at each other as Commission Members and we said, "Oh, we never even see that permit come through." They were like renovating the old Misaki Store, and they was doing stuff. We never saw any of that. That goes back to the exemption now. Automatic. And we cancel our meeting, cancel our meeting, and then before we know it, something was exempted because we never had one meeting and we never had respond to the director's exemption. Nobody knew. And we always say, "How did that project get through?" Well, it was an exempted project. "How come we never seem 'em?" I guess we never make the time extension. So, we all know anything that goes on in Kaunakakai Town or along the shoreline, triggers an SMA application. When we see stuff going on and we don't know nothing about it, you gotta question yourself why don't you know about it. It was supposed to come to you for review. And that's all I saying is I don't want to get away from that.

And how many people have come to this meeting stating notices of violation, and we've done nothing, and in order to address the other gentleman's concern about fees and fines, I mean look at Pflueger, what happen to him on Kauai. That's an extreme case of how you going levy fines on a person that has done egregious stuff. And we sit here -- I mean take the French's for example, when she renovated her house. What kind of fines was levied there? Was off the chart, but we all disagreed and we asked, we begged the department to come and make those fines less. So Molokai has never had to go there. And even if previously we voted to put all of that language in about protocol, yeah, we was doing fine saying we can do 'em anyway. I can, today, put in a notice of violation in East Molokai on the property that Dudoit, Commissioner, was talking about. Where does that go? We've done it many times. So that is my concern. I no like that portion. I no like that. 302-3, I have questions: Does the Commission have to concur with the director's exemption? How many time has the department put the monkey on our back to make the determination of development, not a development? Is this a development? Is this not a development? Do you concur it's a development? Do you not concur it's a development? Why we gotta be put in that position? Nancy Williams is another good example of her structure on the shoreline. We never agree. You went agree. What happened there? Okay. That's another good example.

About shoreline certification. Shoreline certification is important. Yeah, we could waive them because you went come in and tell me I going 200 feet past the known last shoreline certification. That's a no-brainer. But it's not written so to make that very clear. Again, I giving up my own common sense for somebody else who no live here to make that determination. I don't want to do that.

302-5, all the way down at the end, I mean in the middle, it says, "The director shall request such agencies to review and comment on the application," blah, blah, blah. And then whether the proposed action is or is not a development. And I asking: Is this different from before? And like I said, why was we asked to make that determination in the past?

Next page, 302-6, (e), "The director shall evaluate." Okay, the director shall evaluate all of this stuff where he said never have culture, all the way down to the next page, 302-7, (f), the director shall make determination and notify the applicant in writing 30 -- they taking out "30 days" and making it 75, and then all the rest of that. I no like the director do that.

Next page, 302-8, (g), If the director determines that the proposed action is a development and requires a special management minor or use permit, and if the proposed action is not consistent with the County General Plan," blah, blah, blah, "the director shall notify the applicant," blah, blah, blah, "amendment is required and can be processed concurrently with SMA" -- I mean, again, if the director determines that, where does the Commission come in to concur or not concur?

And then 302-10 is where the real issue for me comes in, on page 302-10, 12-302-13.1, Commission review and final determination. They taking out "final determination." I go throughout the state and actually brag that Molokai Planning Commission is the only Planning Commission in the State of Hawaii that has the final determination on all SMA permits and exemptions. I brag about it. I'm proud of it. I'm really proud that we, as a community, have that authority and power to say, yeah, we the final authority. We gotta concur with the Planning Director's recommendation. We say yes and we say no. No other district, no other community in the State of Hawaii has that authority over their shoreline. That is awesome. That's exactly what the Aha trying to do. Why would we want to lessen that in any way? That is a no-brainer to me. Just my opinion.

So all of that stuff inside there, some of it is good, and no get me wrong, all of these stuffs we worked on, a lot of them is good, the enforcement part, all of that part is awesome. But this is an issue for, 302-11. And then item (d), on 302-11, if the Commission -- item (d), If the Commission does not make a determination and notify the applicant in writing within 45 days, it's exempt. It's exempt. Sorry. We never have one meeting, 45 days went lapse, go ahead do your project. It's exempt. If I was smart, I would come up with every reason, if I knew I wanted my project exempt, to delay your guys' hearing, no more quorum, no more whatever, my project is exempt. I don't know if I like that in there. I like take 'em out. Yeah, the rest is just 30 days, 302-13, the days again. I think sometimes it's important for us to remember what our kuleana is under state law, under State Land Use Commission, it's 15 acres or less in ag. Coastal Zone Management law, going get plenty attention from climate change. So more and more scrutiny going be put on 205.

And then 302-17, all I wrote on top here was "Whoa." I don't know why. Section (f), Commission may amend special management area boundary -- okay, okay. The Commission must approve an amendment to the special management area boundary by two-thirds vote of members present. We wanted to amend the boundaries, yes. I know that. I was hoping that that would be after one -- our community plan amendment going start in order to get input from our Aha Moku, and get input from our community as to where we should draw these lines. Where was important to have these lines. I guess, you know, we can still vote on it and still go through our community plan by just saying by two-thirds vote of the members present. I don't know if that's good or not. Sometimes we not present.

And the notice of violation and stuff on 302-20 is okay, I guess. 302-21, I was kinda taken aback by item number (4), the first one, "The degree of cooperation provided by the violator during the investigation." I was like, "What? What is that?" So if you cooperate, I going charge you less? I mean I can see why it's helpful having done one Lacey Act on the Big Island where Fish and Wildlife had prosecuted people. It did mention at the degree of cooperation of the violators came out in them resulting in less violation. I mean fine. And then (e), about if the violator seeks a negotiated settlement. Again, transparency. How

your community going to know what was done behind closed doors? I'm sure it's all public notice, but your community doesn't know that. And proposed settlements. I didn't know what that meant on 302-21 at the end, at the (e). 302-22, speaks to the fines. Yeah, to approve going from zero to thousand in one second is kinda whoa. Maybe your community wanted to chime in on that. And then the appeals of director's decision.

And I'm not here to stop the wheels of progress. I just was hoping that our community, in the last three years, would have had our community plan amendment and all of this stuff would have been brought up and discussed at that time, and that's how come, from time to time, I always ask where's our community plan? Where is it? Where is it? What are we doing? And that's it for 302. Thank you. Sorry.

Chair Sprinzel: Thank you. Commissioners, I think public testimony is closed, so now, Commissioners, what are your views on all this? Michael? Oh --

Mr. Hopper: The only -- just a couple of points. One is that the negotiated settlement in the case of an SMA violation has to be approved by the Commission, so it's -- they can do a settlement, and we've had this on Maui a few times but never here, but the Planning Commission has to look at what the settlement is and approve that, and Maui's done that a few times for violations. Also, I wanted to let you know the reason the fines are up is because the state law, since 2006, has set the maximum fines that a commission can charge for an SMA violation because I guess someone went to the state legislature and said we're having a problem because these developers are just continuing to do this and they say it's the cost of doing business, we need to increase the fines, and the state legislature increased the fines and allowed the -- gave the counties the discretion to charge the maximums allowed, and so for Lanai Planning Commission, these changes were made over the objections of Castle & Cooke there, but those changes were made. There were some other changes made there as well. But the idea was that why would you limit yourself less than what the state law would allow you to charge. But that is up to the Commission. If you want to set the director a limit that's lower than the state law allows the director to charge for violations, you could do that. That's up to the Commission. But I think that's why there's the proposal of this amount. This amount mirrors the state law maximums for each -- for daily and initial fines, and those have been in place for a while. So the Commission's rules have essentially allowed 10% of the maximum fines. But it's up to the Commission, ultimately. If you would like to limit the director to a lesser amount, that's completely within your discretion.

Chair Sprinzel: Commissioners? Director.

Ms. McLean: Thank you, Chair. I just wanted to add on the exemption language. This was something that the Commission asked us to prepare for you. There were a couple of meetings where you saw SMA exemptions and you said to us, "Do we really have to have

a full-blown meeting on all of these?" The process that's outlined here and the way that -- we read the way that Corp. Counsel reads it is that every single exemption would still come to the Commission. They would be presented in a snapshot way, and then you can decide from those which ones you want to have a full-blown meeting on. The ones that you don't think you need to have a full meeting on, you can say, "Director, go ahead and issue the exemption." So that's what's being proposed here. As soon as we get an application in -- let me backup a second. Right now when we get an SMA what's called an "assessment application," the department already says we think this is exempt, or we think this requires a minor permit. So we already make that distinction and send them to you one way or the other, either as an exemption or as a minor. What would happen under this is the ones that we feel are exempt, as soon as we get them in, before we do a staff report, before we send it for agency review, we give you a snapshot, and you look at it and you say, "Oh, they're going to do interior renovations? We don't need the full application. We don't need a full-blown meeting on it. Director, go ahead and process." And then the ones that you don't make that decision on, you will continue to see the way you see them now. So that's what we understood you to want from us and so that's why this language is draft as it is. We didn't come up with this. This was -- we came up with the language, yes, but the process is what we understood you to want. You wanted to be able to quickly go: No need. No need. Yes, we want to review. Yes, we want to review. Yes, we want to review. Thank you.

Chair Sprinzel: I think if we went back to the recording of the meetings where this was discussed, I think Lori and Michele said exactly the same things when it was said, and there we still are.

Mr. Hopper: Just to comment to clarify. I think former commissioner now, Ms. Buchanan, was talking about these rules. The original set of rules years ago that were sent out didn't have this 13.1 change in the shoreline rule change. The Planning Department reviewed them and then recommended additional changes, among other things, including these, those were given to the Commission though, and noticed, and the Commission had a chance to discuss them after reviewing the original rules. So there were, I think, like I said, at least three or four times prior to today they've been reviewed by the Commission. I think in one of the earlier versions, it might now have had these, but certainly in one of the later versions the Commission did review this language and consider it. So all of this with the exception of some non-substantive changes that we made at Corporation Counsel after reviewing them, were reviewed by the Commission prior to them being published. So I just wanted to make that clear. I'm not saying that everyone on the Commission agreed with making all of the changes, but I'm saying that they were reviewed by the Commission.

Chair Sprinzel: Zhantell.

Ms. Dudoit: I just have a question for the Director. So as it is currently written, when you say that you give us a snapshot and then we're able to tell you which ones we want to -- do we have to vote on that, or can any Commissioner appeal to you and just say I want to put that on the next agenda?

Ms. McLean: The language that's before you today, you would have to vote on it, so you would have to have a majority vote to say we want to review. It wouldn't just be one commissioner who could do that.

Mr. Hopper: And then just to note, it says that if there's not enough votes, it says, " If the Commission votes to review the application or does not vote to waive review of the application at that meeting, which includes taking no action," let's say you have five people and you can't get five votes, "or voting to defer action, 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." So if you don't get enough votes to waive review, then it automatically comes to you for review. But then once that happens, if you don't get enough votes to exempt it, then it's automatically exempt in 45 days after that. But the initial review that comes to you, you gotta vote to waive review, and if you can't do that for whatever reason, it automatically comes to you like the normal exemptions are now.

Chair Sprinzel: And as I said, we move from 30 days to 45 so that there wouldn't be the opportunity to miss a meeting and have it automatically approved. So we did think -- we tried everything, you know. And, Lori, you were there. I mean it's not like we did this in the absence of those who are against it.

Ms. Dudoit: Are we -- how are we organizationally doing this now? Are we going to call -- are you calling for a vote and then we're discussing, or are we all just all sharing our opinions on what's going on?

Chair Sprinzel: I would like a proposal and then we can discuss it, which is our normal pattern. And if there isn't any, we'll defer it. I mean that's simple.

Ms. McLean: If I can also comment that if there is action on these today, there are four what we call "housekeeping amendments" on the memo that was passed around, plus there are the two areas relating to public notice where you might want to consider that same language. If there are areas of the rules that you're comfortable moving forward on, you could specify those areas that you want to leave alone because some of these it is -- it is important to have clarification, so if there are large sections that you're comfortable with, you could specify areas not to move forward with today if that's what you choose.

Chair Sprinzel: It is up to you, Commissioners.

b. Action

Ms. Dudoit: Okay, I'd like to vote to defer this section, 302 and 303. I just think that there are some really significant -- okay, just let me make that motion and then we can have discussion, and I can go over. Okay, so defer 302.

Chair Sprinzel: Is there a second?

Mr. Doug Rogers: ...(inaudible)...

Chair Sprinzel: All in favor to defer ...(inaudible)...

Ms. Dudoit: No.

Mr. Hopper: ...(inaudible)... clarify something?

Ms. Dudoit: Yeah, go ahead.

Chair Sprinzel: ...(inaudible)... we haven't had enough discussion.

Ms. Dudoit: Corporation Counsel, you wanted to clarify something?

Mr. Hopper: I just may have to note, if you don't adopt this section dealing -- if you don't adopt the section dealing with the SMA violations, then I don't know if we can adopt Sub-Chapter 9 of the Rules of Practice and Procedure that you already voted because that talks about notices of violation being heard by the Commission under that section because your current rules have the notices of violation going to the director, I don't think we can have Sub-Chapter 9 the way it is. I'll have to take a look at that. The enforcement part of 302 and 303 are kind of meant to be read in concert with Sub-Chapter 9, and so I want to reread those and just double-check. You may need to go back and defer action on the original rules as well or at least on that section to be consistent to not adopt the Sub-Chapter 9, but I'm going to have to review that real quick.

Ms. Kalanihuia: I have a question. May I? You know, I have a lot of scribbles and arrows and question marks, but the question I had, and it may have been answered somewhere along the line, was why is "and final determination" being removed? The Commission review and I think it means and has final determination of special management area exemptions. So why are those words being removed?

Ms. McLean: Are you on page 302-10, 120-302-13.1 in the title?

Ms. Kalanihuia: Yes. Sorry.

Ms. McLean: Because if the Commission waives review, then the Commission would be allowing the director to make the final determination. So the title right now suggests that the Commission makes the final determination, and that wouldn't be the case if you waived review.

Ms. Dudoit: But so then my -- so I just -- I hate being the only one who always seems to be like the troublemaker and I doing vote in the opposite of everybody, but so if your language was changed to say that we still have -- the Commission still -- would it be as simple as if you're saying you're giving us a snapshot of every project, and it's enough for us to be satisfied that we don't need to see the whole book 'cause we pretty much know by the synopsis that it's okay, why then wouldn't the Commission still have, on the record, the final decision of whether or not that project was exempt? 'Cause it seems to be inconsistent. If you're going to allow the Commission to be the final people, I mean we're still hearing, right, evidence from you, and we're backing you up, but in some sense, it still would make more sense to stay consistent that the Commission still had the final authority, otherwise, why would you -- my fear is if you're saying we don't have the final authority, and you can review, and then you're showing us the snapshot and, you know, those kinda things, what stops you from eventually not even giving us the review?

Ms. McLean: If we didn't give you a snapshot, that would be a violation of your rules. We couldn't do that.

Ms. Dudoit: So what is the snapshot for if we're not making a -- if we don't have the final decision on that determination?

Ms. McLean: Under state law and also under your rules as they are now, to determine that something is exempt is determining that it's not a development, and to make that determination, you need to go through a whole bunch of criteria. And so right now, when you see an exemption application, you know, there's a lot of text that goes along with that and you guys look at the map and photos, and read the description, and you understand what those potential impacts are. And what in the recommendation is a lot of legal language that spells out, in accordance with the law, what things you consider in order to make that determination. You guys don't go through and read all of those every single time, but it's in the staff report, it's in the recommendation, that needs to be done anytime an exemption is determined. And so that's always done prior to presenting something to you where we say we think this is exempt because we've done the analysis, and then you guys agree or disagree. We're giving you the snapshot, all that isn't done already, we give you the snapshot and if you say we don't need to review that, then we go back and we do all of that analysis so that it's documented so if there's ever a question, did you look at all the criteria in the law before you made that exemption, we can say yes. And so that analysis needs to be done whether the Commission makes that decision or whether you waive review and allow the director to make the decision. So again, it was what we

understood your request to be was you want to see early on whether or not a project needs to come to you, and if you say it doesn't -- here's an example, under this method with the snapshot, if we present it to you and you say we don't need to review it, then we go through our steps, we go through those criteria, and if we come across something, we go, whoa, you know, this is probably a minor permit. This isn't an exemption. Or we look at it and go, you know, this should probably go back to the Commission, then we would process it a different way. It's just that's done at a later point after you've seen that snapshot.

Ms. Dudoit: So where does the liability for the determination on that exemption lie in that situation? If we don't have the final authority but as a body, we've met with you, we've heard it, we say there's no need because you said it's okay, are we still liable for that decision as a body or do you take full responsibility as the director for that decision?

Ms. McLean: If you waive review and allow the director to issue an exemption, then that's the director's decision. If you issue the exemption, if you say we want to see it, and then you issue the exemption, that's your decision.

Ms. Dudoit: Okay, so just to clarify, legally, if we waive review of an application that came before us with your recommendation as the Planning Director that it's okay and it's an exemption, we hold no legal responsibility for that particular project should anything come up? We cannot be held responsible in a contested court hearing, we not going be a party to the decision that was made, somebody come up with one violation and say we going sue the county and because you made a wrongful decision for that exemption, are we exempt from any legal holdings because we had -- or because we said we trust you and we waive the review, are we party to any liable legal action?

Chair Sprinzel: I think you'll find we aren't liable anyway.

Mr. Hopper: In general, you would have immunity for acting under the scope of your authority even if it's issuing a permit, if you're talking about personally being sued. If you're talking about the Commission being -- having a decision on a appeal permit, I would say, under this section, if you waive review, it says, "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." So that's saying that's the director's final decision if you waive review. If you wanted this to be clarified because I do see and it sounds like you have the issue with the deletion of "and final determination," and again, I, myself, have no preference if you want to amend this rule or leave it out, it's not a difference to me. But if you want to put back in "and final determination," say, "Commission review and final determination or waiver of review of special management area exemption," because if you don't waive review, you are still making the final determination, and if you decide to waive review, you're not making the final determination. You're essentially letting the director's decision -- you're saying I don't need to review this. You're saying I'm not going to review

it. And on Maui, they have that similar with, what is it, time extensions? They send something to the commission saying do you want to review these time extension requests? And if they don't vote to waive review, they're deemed approved. And if they do vote to waive review, they're put on the next agenda, and I think that's kind of what the director modeled this after. So if you want to change that language in the title to clarify that, that can be done also. Really what this is is saying, in certain cases, you can waive review, and if you don't, then you're still the final decision-maker and it's back to how it is right now. So you could change the title to "Commission review and final determination or waiver of review of special management area exemption," which could maybe be a more accurate but probably more wordy title but still probably a more accurate title than just deleting "final determination."

Ms. Dudoit: Okay, since we're in discussion, I have other questions. First, I wanted to make a comment that I was part of the Coastal Zone Management team back in, I forget, 1986 or whenever, and, you know, part of the necessity of having Coastal Zone Management shoreline surveys and Molokai pretty much being an SMA district all over the place was because we're an island. Anything you do on an island affects the shoreline eventually. So when we talk about deleting things, like proposed action involves no ground-disturbance activities, and even the example of you're doing an interior renovation at the Wave Crest and you shouldn't have to, you know, you should be exempt from that automatically, I don't agree because you do interior renovations that affect plumbing, electricity, eventually if affects the ground, any ground surface activity that we don't still eventually, at some point, to some degree, will affect our shoreline, and that's just what happens on an island. So it's not as easy for me to look at something like this with all these deletions of why you should waive shoreline surveys and, perhaps, it's not a matter of just deleting that or saying that's not necessary, but more us coming up with the Aha Ki'ole or whatever community groups we have, or even setting up system by which we have a certain amount of criteria for how shoreline surveys should be done, it doesn't have to be state certified, but I do think it has to be done. And there's also a part in here that says, "The proposed action --" let's see, the Molokai Planning Commission or a large structure in the direction of the setback or the proposed action involves land for which the certified shoreline survey cannot be obtained due to encroachment into public shoreline lands from property not controlled by the applicant. Okay, if you doing a home or development, whatever, next to a public place, and you going to be abut up against them or in anyway is next door or neighboring to where these encroachments are, shoreline property not controlled by the applicant, I don't think that's one excuse for it not having a shoreline survey, and so I completely disagree with the language and verbiage on that whole portion from the proposed action involves no ground-disturbing activities and those kinda things. There's a whole bunch of other specifics and information that needs to be had when we're talking about -- and not to beat up something that's already done, but Nancy Williams' property, the nene preserve are just a few of the things that, you know, we can talk about that this would have been an issue.

The other thing, since we're going over them and we can discuss everything at once, is I just wanted to go back over the fines.

Mr. Alueta: Commissioner, I just wanted to ask one question on that line.

Ms. Dudoit: Sure.

Mr. Alueta: Thinking -- because, obviously, staff is going to have implement or, you know, determine what -- in your line of thinking, the information on where the certified shoreline is, how does that aid you in your determination as to the impact of that interior renovation as opposed to the impact to the general SMA area? Because the exemption for the -- that waiver from having a certified shoreline is just for the certified shoreline. It is not for a waiver from the SMA. It's just as to whether or not you need to submit a state certified shoreline with your application. So I'm on the second floor of a condominium or I'm on just the ground floor of a condominium, and I'm doing interior renovations because I'm renovating my bathroom, I need to go through an SMA assessment because I'm -- the whole property is within the special management area, okay, so there is going to be an assessment, it's just does the information of where that certified shoreline is going to impact you in your determination as to whether this project is exempt or not exempt, and whether it's a minor or a major? And the reason why the language is spelled out specifically is because, from the department's standpoint, we don't see that the information of having knowing exactly where the certified shoreline is doesn't improve or negate our analysis of the project. And so I'm just trying to find out --

Ms. Dudoit: Well, let me ask you this. If you put in verbiage to what we were talking about before where the director has the ability to exempt a project or not, or maybe I not talking about the right thing, but then why would you need to put this language in there?

Mr. Alueta: Because if a project is on the shoreline, right, if it abuts the shoreline, okay, meaning you have a 20-acre parcel or 5-acre parcel, and the building is on that 5-acre parcel, right, the parcel abuts the shoreline, by the current law and rules, a certified shoreline is need as part of the assessment, okay. But what we're saying, in certain aspects of a project, right, that information of going through the hassle of doing of a certified shoreline for a property owner is cumbersome. So you have every unit in a condominium project would have to have a -- would have to do a certified shoreline if there is not an active one for that property. So that's where -- and that's why the rules came about. That was part of the why because you have these third floor, fourth floor condominium projects that are -- they're in the SMA area, and technically you need to, with the way the rules are written, you had to have a certified shoreline as part of your submittal requirement for you to go forward with you project, for us to take the application and deem the application complete, for us to do the analysis of what is -- what are the impacts of your bathroom renovation, your interior bathroom renovation, and that was holding up people

submitting applications, and you kinda -- and for us, we're like whether you're -- we know there's a shoreline, whether we know the exact location of the shoreline, doesn't improve my analysis. And that's all. And we only picked out the ones that, from the director's standpoint, picked out what they felt were going to be the most common ones where we clearly don't need that information to do a good job, I guess is what we're saying.

Ms. Dudoit: So I guess the reason why I'm asking is because, okay, so I deal a lot on the state side with environmental review processes with the Department of Hawaiian Home Lands, so in our state, when the -- everybody who builds a home on Department of Hawaiian Home Lands is required to do an environmental review. Now this environmental review can cost you up to \$7,000, so what the department has done is upon setting up a subdivision say, they do an initial environmental review, which is part of a public record, and everybody building a house in that subdivision can go to the department, obtain that review, add on their specifics of their project onto that, and submit that as evidence. So they don't need to do it, you know, they don't need to go over the same information all the time, but what it did was -- nobody is exempt from providing the information necessary to protect our cultural and natural resources in addition to that. So what I'm saying is if a piece of property is given to somebody, five acres, like you said, and they gotta go to a shoreline assessment, that's a given. On someplace like Wave Crest, of course we don't want everybody on the second floor who renovating their bathroom have to come in. But why wasn't a shoreline survey done for the Wave Crest property period? And why everybody in Wave Crest be privy, as a property owner, to get information that they can attach to their application so everybody satisfied, the Hawaiians satisfied, the people who using the ahupua`a as a subsistence gathering place satisfied, we, as Commissioners, not burdened with a piece by piece, you know, we're not streamlining or setting everybody up, but on the same hand, we're all doing our due diligence to provide for the existence of these kind of subsistence places on our shoreline as best as we can instead of putting words in our policies that say you just don't need to do it because it's too much of a hassle. Somebody had to have done it at some point. Oh, go ahead.

Ms. McLean: The certification is only good for one year. So if the Wave Crest does it, like someone in the Wave Crest does it and then, five months later, someone else comes in, then it's already done and they won't --

Ms. Dudoit: Okay, so the state requires that on the environmental review side, through the Department of Agriculture, through State Historic Preservation and all that, that every years, the department is responsible to renew the application, it's not a lengthy process, it's have you had significant changes on there, they deal with the University of Hawaii to talk about erosion, climate changes, things like that that affect that, so it's not doing it all over again, it's not even a very expensive process, but it is a responsibility of the landowner to ensure that those things are updated. So for Wave Crest, Molokai Shores, let's say, so Uncle Billy can take this back to his association, it would seem -- okay, well let's use Hotel

Molokai as a good example. It would seem that there are violations and things being done under our nose because they were only required to do this environmental or shoreline survey once, one time. After the year, we didn't even check on them whether or not they did an illegal barrier to stop water from the restaurant. We didn't do any kinds of -- we didn't -- we don't have any information on whether or not the renovations they doing right now included things that they didn't tell us about because shoreline -- because that shoreline survey was only asked for them once. So to me, how we cure that without making people go through tremendous expense is if the Wave Crest didn't review or didn't do their updated shoreline survey or they've had changes, then doesn't that bother anybody? Doesn't that bother anybody that the pool falling into the ocean? Doesn't it bother anybody that salt water backs up into the pool because of erosion? I mean I just -- I feel like we should instead of subjecting or taking -- putting language in there to exempt people, we should be working with what we have and maybe strengthening our policies.

Ms. McLean: This section of the rule deals with application requirements, so this is what, on all these pages, is a list of things that an applicant needs to include with their application before the department can do anything at all with it, and one of those requirements is the certified shoreline, which is only valid for a year. So that whole process needs to be done. For the state to certify the survey, they don't update it. They actually send a surveyor out to the property to verify what the engineer did, and oftentimes they do make changes, so it's not as if they just do a cursory check of their work. They go out and resurvey it. So it's not a process that can just be updated. So before we can even accept an application and do anything with it, that certified shoreline needs to be there unless the director has the authority to waive. The director already has some authority to waive. The language that's on that page that's existing are situations where the director can waive already, and we're just suggesting to other opportunities where the director has the discretion to waive, it doesn't mean that he will waive, but has the discretion to waive. And again, that's before we can do anything with it. So once we get that certified shoreline, and we process the application, you know, our process takes a while, and then it comes to you guys, you know, as an exemption, as a major, whatever, that process runs its course, and then after that approval is granted, if the approval is granted, then they have to get building permits and whatever other construction related permits they need, then they're able to do the project, and by then, probably a year has gone by, we don't have a mechanism to then go back and say, oh, re-certify your shoreline. It's just, at some point, the applicant fulfills their responsibilities and they must build in compliance with the permits that were issued and if there's a questions about that, then we can, you know, we can followup or the building permit guys can followup but what --

Ms. Dudoit: So say that I wanted to agree with you on this and I said, okay, I understand what you're saying, how would you know, without a shoreline certification, if there was -- if it did not impede access along the shoreline and does not expand the preexisting

nonconforming structure activity as defined in the shoreline area rules? How would you know that if you didn't do a certification?

Ms. McLean: That relates to the proposed development itself. So if the development is, for example, it's set far back, if it's a very deep parcel and the development is set far back, would be one circumstance where it wouldn't impede access along the shoreline. If there's an existing beach access on the property or adjacent to the property and the development has no bearing on that whatsoever, that would be another example of how shoreline access wouldn't be impeded by it.

Ms. Dudoit: Okay.

Mr. Doug Rogers: I think the Shores and Wave Crest and Hotel Molokai 'cause they were all built like 40 years, I don't think they even had to have a shoreline certification I think. Did they?

Ms. McLean: Probably not. And I think that's, you know, one of the existing waiver opportunities is that there's already -- the shoreline is fixed by manmade structures, which had been approved by appropriate government agencies and for which engineering drawings exist, and some of those case, you know, it was pre-permitting so they're grandfathered, they're allowed to stay there, but we don't have engineering drawings.

Mr. Rogers: But that's why.

Ms. McLean: And so in those cases, if it's interior renovations, then, you know, what's being proposed here is that the requirement can be waived.

Mr. Rogers: ...(inaudible)... shoreline survey ...(inaudible)... boundary.

Chair Sprinzel: I think it's time we ought to consider a vote, but I've advised that if you delay this, you have to delay the first one as well. And furthermore, can I ask you, are you happier with the existing rules than these?

Ms. Dudoit: I happier with having more control. I mean I believe that I joined this Commission because we are an active voice and a venue for the community to be able to have their say and, you know, whether we disagree a lot as Commissioners with each other, part of the beauty of sitting on the Molokai Planning Commission is knowing that we're privy to hear every single thing that's happening on our island and we know exactly what is going on, and I mean I agree that there are things that need to be adjusted and changed, but I not sure that giving up so much of our final approval and final decision making and streamlining everything is the best thing. So again, I appreciate that everybody worked hard on it. I know that even though this is my second term, I wasn't here on the

Commission when you folks were working through all of this, but, yeah. And then just for the record, I'm going to withdraw my motion 'cause I really just wanted to talk about it. So I'm going to withdraw my motion, and then I'll leave it to -- and then ...(inaudible)... 'cause I know he really didn't want to defer either but --

Chair Sprinzel: Can I have another motion then, please? If we don't have a motion, it's delayed anyway.

Mr. Hopper: If there's no motion, then you should also defer action on the first set because they're contingent upon adopting the second part of --

Chair Sprinzel: I did explain that ...(inaudible)...

Mr. Hopper: Oh, you did? Okay. Sorry. I was gone for --

Chair Sprinzel: So?

Ms. Dudoit: Can I ask why or maybe the other Commissioners can -- I mean 'cause it seems I'm a little bit interested as to how come nobody else has a motion in the yes or no.

Chair Sprinzel: Well, having spent a lot of time on this, I was quite happy to see it concluded one way or the other, and as there's no way, I pass it on to the next chairman.

Mr. Ron Davis: Well, the concern I have is if we defer this, yeah, you know, you folks said you've been working on this for a long time and it's taken a long time for it to come to the table, if we defer all this, how much longer we going have to wait before it comes back to us again? That's my concern.

Chair Sprinzel: You want me to guess? Five years?

Ms. Dudoit: Okay, I have a solution, and I just want to make sure, from the director and Corporation Counsel that I'm correct in this. You're not taking away our authority from being able to review applications even if you deem them that they can be exempted, we're still going to have an opportunity, as a Commission, to want to hear about that project and to wanna be able to be the final authority should we deem that necessary.

Ms. McLean: Absolutely. Every SMA, every proposed SMA exemption will come to you.

Ms. Dudoit: Okay.

Ms. McLean: And you decide whether to waive review or not.

Ms. Dudoit: And then aside from that -- ok, go ahead.

Mr. Hopper: I want to get down to the details of that. If you want to see where that is, please look at page 302-7, there's 302-7, that's the bottom, that's not the rule number, that's the bottom, that's the page number, page 7. If you look at subsection (f), this is what the director has to do after they review everything, after they review the assessment. It says, "Based on the assessment, it is either," there's no. 1, and no. 1 used to say, "is recommended exempt from the requirements of this chapter." So "recommended" is being taken out, and it's being taken out because if you do waive review, it's not a recommendation anymore. It says, "is exempt from the requirements of this chapter because it is not a development pursuant to Section 205A-22, HRS, as amended, and that the director's determination has been referred to the Commission for review or waiver of review, which shall be processed in accordance with Section 12-302-13.1." And 13.1 says, what the Deputy Director said, which is you can either waive review of it, in which case that determination is final, or if you decide not to waive review, then you have the same rights under the -- that you currently have right now, and it says, "If the Commission votes to review the application or does not vote to waive review of the application at that meeting, which includes taking no action or doing to defer action, 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." We're back on 13.1, which is where the previous section sent us. And then subsection (b), if you look at it, that's on page 302-11 later on, subsection (b), most of that is unchanged from your current rules that says, "The Commission shall make a determination and notify the applicant in writing within 45 calendars after the application is reviewed in its entirety by the Commission, unless the applicant requests additional time, that the proposed action is either exempt or not exempt." And then subsection (d) is the automatic approval. But what it does is that takes it -- if you vote to waive review, then your determination is final, which is why they adjusted the section of the previous section of the rule that I read. But if the vote is to review the application in its entirety, it will come before the Commission, and the section is mostly unchanged, it has a 45-day review period instead of a 30-day period, and it makes clear that after that period, it's deemed exempt if you don't take action. Right now, you have a 30-day period that's deemed exempt if you don't action based on the wording of the rule. This makes it clear. But it also gives you an extra 15 days, as a Commission, to try to take action. So that's what the change is right now being proposed.

Chair Sprinzel: And further, we did, at every stage of the discussions and the whole process, and Mike knows this, was to insist that we had no loss of authority in every possible way, and Michele I'm sure will agree because we kept with her about it that we didn't want to give up anything. The language may be a bit different, but in every instance, it was our decision at the end of the day. Anyway, I'll be happy to have a proposal.

Ms. Dudoit: Yeah, I was going to make a proposal but I just have one more question for the director. On 302-5, under section (1)(A), and I talked about this before 'cause we came up with this issue several meetings go, but why is everything else under the proposed changes using the word "shall" and only where it says "valuation may be verified by the director," why isn't that not a "shall" either?

Mr. Hopper: Just comment. That's existing language right now. That's not new. That's in the same language. It's because the director, and we just had a contested case on this on Maui actually, the Rock & Brews case, I don't know if you followed that at all, but Jim Simmons, from KISS and a group had built a bar in Paia and the valuation was challenged, but in any case, it says, "may be verified by the director." Basically, if the Planning Director has trouble verifying the valuation, they can go to the Public Works Director and ask for their assistance, they don't have to, but they can. They don't do it in every single case, which would result in every single valuation of every project having to go before the Public Works Director, and so that's what your existing rules say and it's what they've always said. But that's, just to clarify, that's existing language right now. And I would say that if you do make that change to make everyone go to them, I think you should probably talk with the Public Works Director about being able to do that for every application and that kind of is a substantive change from the rules that wasn't originally a part of ...(inaudible)...

Ms. Dudoit: So if somebody contested the valuation of a project, we would have to go to a contested court hearing or can that -- is that something that can be done through the appeal process that we talked about earlier with the violation?

Mr. Hopper: What could happen, that's not an NOV appeal process, that would be appeal of a director decision. Actually, see here's the thing. On Maui, valuation is very significant because SMA minor permits, the only reason a valuation is significant is to determine whether you need an SMA minor or major permit, and on Maui, that's very significant because the minor permits, the director signs off and then they're done, and that's what happened with this Rock & Brews project. An SMA major permit goes to the Commission for review and approval, and that's what the group challenging the Rock & Brews was concerned about. They said this should go to the Planning Commission for a full hearing for everybody, and it didn't. The director approved it and it went through. The commission ended up hearing it and agreeing with the director that it should have been a minor permit. On Molokai, that's a distinction. The Commission hears minor permits and the Commission decides on major permits as well. I don't see, frankly, a significance that valuation has with respect to this because an exemption determination isn't based on a valuation. It's determining whether you got an SMA minor or major permit. I mean the big difference between that is that you got different public notice requirements. But just to note that you guys make the final decision on a minor permit. So the appeal on Maui with a director determination that it was a minor permit and so that minor permit got appealed to the Planning Commission as a challenge, and the Planning Commission had to decide on

that, and the commission unanimously agreed with the director. Here, you wouldn't be challenging the valuation. Someone wouldn't challenge the valuation until after it went through the Commission's process and the Commission granted a SMA minor permit. So that challenge would actually go straight to circuit court. So they could take the Commission to court, not just for the valuation issue, but for the issuance of a minor permit. That would go to court. That wouldn't be an appeal to you guys. That would go straight to court because you guys have the final decision. If the director, under these rules, had the final decision on a minor permit, then it would go to you guys as an appeal, but the director doesn't. You guys have the final decision-making on a minor permit anyway. So if Rock & Brews had happened over here, you would have seen the permit anyway and the group that was challenging that, really, their challenge wouldn't have made sense because their whole challenge was saying that you should have a full hearing in front of the Planning Commission where people can intervene and stuff like that. And in front of this Commission, the minor permit goes before you anyway. So there's very little distinction between a minor and a major permit in this Commission.

Ms. Dudoit: Okay. I just have one more question and then I going make a motion. Joe, you know earlier, you talked about 302-8 and it says, "If the director determines if the proposed action is not consistent with the County General Plan, community plan," and you changed "and" to "or." Why it's because all of our plans are not consistent with each other so we do the "or" so that we can have it at lease be consistent with one? I mean wouldn't it be better to say "and" and try to ensure that we're as consistent with all of our plans and mandate that we are consistent with all of our plans?

Ms. McLean: It would be great if all of our plans were consistent with each other. Changing "and" to "or" would mean that if you have, for SMA purposes, a proposed use has to be consistent with the community plan, the general plan, and the zoning, and by using "and," in this particular context, it said if you're no consistent with all three, then the director says that you need to amend whichever one isn't consistent. Chances are that the use is consistent with one of those, and so it's saying that you might not be consistent with the others, not all three as a package are inconsistent, but maybe one or two are consistent and the other isn't, so you're saying "or" rather than "and" with all of them together.

Ms. Dudoit: Because I guess what I always thought was that the community plan superceded any of the others. Is that correct? On Molokai, we've always dealt with it that way.

Mr. Hopper: Actually, they all exist independently of one another. The zoning is supposed to be consistent with the plan. Really, whenever you do a community plan, all of the zoning should change to be consistent with the community plan. Interestingly enough, on Maui, a few times that's happened and residents have said we don't want to make this change

even though it's what the community plan says. So that's interesting. But the state law requires, if it's a development, that you guys can't issue a permit unless you find that the use is consistent with the community plan and the zoning. So even if your zoning's different for some reason, you gotta be consistent with both if it's a development; if it's not a development, if it's an exemption, then the community plan doesn't have to be directly complied with. But if it's a development, then you gotta be consistent with both. And so that can be problematic sometimes if they're all out of whack, which is why they should be made as consistent as possible. But you gotta meet both of them if you're applying because, as a Commission, you have to find in some way consistency with the community plan and the zoning before you could issue a permit.

Ms. Dudoit: So why would we change the language if we already know that?

Ms. McLean: It's -- this has no practical or substantive change to what this language means. It's just grammatically more correct. It still says that proposed uses have to be consistent with their land use designations in the SMA.

Ms. Dudoit: Okay, I going tell you why. I wanted to make a motion to approve 302 but I don't agree with changing that word simply because even though it's grammatically correct, I don't think it's factually consistent with what we're looking for. When we have things that are conflicting, like our zoning and our community plans, then what we need to do is go in there and change them to connect. We don't need to cause a bigger division by one word where it's okay to have them all not connect because, ultimately, all these things were put in place so we can have a more organized and, you know, functioning community. And so I would like to move that we approve the changes made and amendments to Chapter 302 with the exception of 302-8 -- sorry, it's 12-302-12(g) and not change the word "and" to "or" but to keep the word "and" in that verbiage.

Chair Sprinzel: Do we have a seconder? Janice. Do you want any discussion? In which case --

Ms. McLean: And with the two sections where there's notice, the same language as before?

Ms. Dudoit: To include the -- yes.

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

It has been moved by Commissioner Dudoit, seconded by Commissioner Kalanihulia, then unanimously

VOTED: *to approve the amendments to Chapter 302, including the language regarding notice, as discussed, and with the exception of 12-302-12(g) to not change the word "and" to "or" in that verbiage.*

Chair Sprinzel: Wonderful. I guess we'd better get on with the next one. Does anybody need a break? Two-minute break.

(A recess was called at 2:09 p.m., and the meeting reconvened at 2:16 p.m.)

Chair Sprinzel: We are back in session. Gosh, I've spoken more at this meeting than I have in the last two years, which is why I've lost my voice. Okay, 03, public hearing. Oh, yes. We better have Michael tell us which are the big changes.

Mr. Hopper: I'd recommend next we do the shoreline rules, perhaps, if that's okay with everybody? 304, yes.

4. MR. WILLIAM SPENCE, Planning Director transmitting the proposed amendments to the Rules of the Molokai Planning Commission relating to the Shoreline Area of the Island of Molokai. (Section 12-304-1, et. seq.) (J. Alueta)

So 304 are your shoreline rules, and there's very few changes to these rules to be honest. There's another notice requirement for -- on page 304-3, and I guess there's a public notice of the application as defined there. I'm not sure if that's a -- I'm not sure if that's an applicant mailing or a -- or an applicant mailing, so I don't know if you want to change that if that's a -- yes, I think that's a little bit odd of an existing section, that's when you can waive -- authority waiving a public hearing requirement. That's a bit odd -- oddly worded. But, anyway, we changed the notification there to require a publication. I don't know if you want to expand that. Maybe Deputy Director, when she gets back, can review that and see if that's one that she thinks that we should have the publication changed.

The only other -- the only read substantive change here is in the enforcement section, and this basically mirrors the enforcement section of the SMA rules, and the reason this is significant is because you don't have a clear enforcement section in your shoreline rules right now, or at least not one that's clear. The enforcement section right now says, "Any person who violates any provisions of these rules shall be subject to the penalties provided for in Chapter 205A-32, HRS." And so it just refers to HRS, it doesn't go through the violation procedure, it doesn't go through the appeal procedure, or anything like that. So we basically added the same stuff that you have in your SMA rules. We have the same fine amounts. I would note that because your rules currently reference 205A-32, and the penalties therein, these rules already allow you to fine -- or already allow the director to fine

\$100,000 initial and \$10,000 per day, because in that HRS section, that's what's allowed. So that's allowed whether or not you take action today, those fine amounts, unless you want to decrease them. But, basically, I would recommend this language. These rules also, by the way, state that appeals go to the -- or heard in Subchapter 9 of your rules. So that's in section -- that's on page 304-6, that's subsection (4), "Any appeal shall be in writing and delivered or mailed and postmarked dated to the Commission within thirty days, as stated on the notice. Upon receipt of an appeal, the department shall specify a time and place for the person subject to the order to appear and be heard. The hearing shall be conducted by the Commission in accordance with the provisions of Subchapter 9 of the Rules of Practice and Procedure of the Molokai Planning Commission." Again, another section referring back to that first section, which is why these are all kind of to be read in concert with each other. That's so we didn't have to write a separate hearing appeals section for every section of the rules. There's a central one for you to look at.

And then there is no section about appeal of the director's decision. That's been added at the -- on page 304-7, going over to the next page, appeal of director's decision. That, essentially, again mirrors the appeals provision under your SMA rules and talks about which decisions are appealed to the Commission, which ones are appealed to the circuit court.

And, Michele, while you were gone, we had a question about there's a notice provision in section -- on page 304-3, (d), these are for shoreline setback variances, subsection (d)(3), it talks about notification in the newspaper, public notice of the application. I wasn't sure if that was a section that dealt with Planning Department's notice or an applicant's notice because the Commission has been saying, if it's an applicant notice, it's okay with just the Molokai paper; if it's a department notice, they want to have that be in the different districts in addition to the paper. So I didn't know if you knew about exactly on that one. Maybe if you go through public testimony, the department can look at that and then can kind of get that clear, if there's going to be further public testimony. I'm finished with my presentation. Again, this is nothing that you haven't already seen in the SMA rules, to be honest.

a. Public Hearing

Chair Sprinzel: Okay, public.

Mr. Givens: John Givens. I'll be brief. First, on the first page of the amendments, and I realize this is probably a tiny bit off topic from the minor proposed amendment there in 12-304-7, determination of shoreline. They're only valid for 12 months and I would just put a ...(inaudible)... in the assistant director's ear that there may be instances where someone puts in for that determination, by the time they get their building permit, get their variance, 12 months have already lapsed and --

Chair Sprinzel: We have had that.

Mr. Givens: And then it's a very expensive process and people then back into the process of perhaps having to go back and do more of these surveys, and so to the extent that, in the future, you could consider making either special exceptions for someone who is in that boat or changing that time frame to 15 months or 16 months because the process does wind up being slow, just like the process of passing this rules is slow, someone could get --

Chair Sprinzel: You think this is slow?

Mr. Givens: No. No. I don't mean today. I mean you've been at it for years, that's what I was suggesting. You've been at it for years and so the same thing could happen if somebody --

Chair Sprinzel: I think when it happened, from my memory, the applicant had got his or her shoreline thing done at the time of the application even though it didn't come to us ...(inaudible)... a year later but it was still accepted. But that's only from record.

Mr. Givens: But, at any rate, that 12-month period, if you could expand that slightly, that may be able to --

Chair Sprinzel: That's the law. That's nothing to do with us.

Mr. Givens: I'm just raising it to the director. And then, finally, the -- you do have the discretion to keep the fines at a more not such large ...(inaudible)... and so I would again urge you that if you did a \$10,000, \$1,000 fine, \$10,000 initially, \$1,000 a day fine, which is what you have done historically with the other rules we were just looking at, that's \$40,000 for the first month, and \$366,000 of fines for the first year. There's nobody on Molokai that if you fine them \$366,000 for the first year, you won't have their attention. And what's proposed is \$100,000 with the first notice of violation as a potential maximum, and at \$10,000 day for 365 days, that means your first month, \$400,000 of fines, by the end of the year, 3.66 million dollars of fines, I don't think that that's a level fine that we should be imposing on any of our neighbors on Molokai.

Chair Sprinzel: While I hear you, it's better to have a high limit and not have to go -- I mean if you look at the law for any crime, it's always far more than the chance they'll give, pretty much, and I think I trust our director as not to consider Molokai a bank source.

Mr. Givens: And there are a lot of times in those things in the law where there is a fine it's the first time you engage in, you know, there's a structured system where the first time you're drunk driving, it's \$1,000, and a second time, and there's none of that here, and so I would just urge more reasonable numbers in a smaller financial community.

Ms. Kalanihulia: I'm curious. Are you a developer?

Mr. Givens: I am not.

Ms. Kalanihulia: Planning, since you're in development and not, you know, okay, you are not.

Mr. Givens: I own a condo on Wave Crest. I own a piece of land on Wave Crest. And someday I will -- I mean not on Wave Crest, on Molokai, someday I will build a house and I'm --

Chair Sprinzel: If you look at page 304-5, item (2)(B), it says "Previous violations by the same person," so that --

Mr. Givens: It's something to be considered.

Chair Sprinzel: It's already considered.

Mr. Givens: I'm just concerned about 3.66 million dollars of fines.

Chair Sprinzel: Because you haven't got the money I guess.

Mr. Givens: I don't have the money to pay the \$40,000 a month fine plus \$10,000 a month thereafter and I don't think anybody on Molokai --

Chair Sprinzel: Maybe it'll keep you honest.

Mr. Givens: I don't think anybody on Molokai does. Thank you for time.

Chair Sprinzel: Thank you for you --

Mr. Givens: I'm going to go and go get lunch.

Chair Sprinzel: Thank you for your testimony. Lori, anything from you? No? Good. Okay, Commissioners?

b. Action

Ms. Dudoit: I'd like to move to approve the amendments to Chapter 304.

Mr. Davis: Second.

Chair Sprinzel: All in favor --

Ms. Dudoit: Oh, with the -- just noting the public hearing notices and if there are any that we need in here.

Ms. McLean: Oh, the answer. Actually, if you look at the proposed amendment, you're bringing up the question in subsection (3), if you look on that same page, go up to subsection (c), it says, "All applications shall be heard, noticed, and processed as public hearing matters in accordance with the Rules of Practice and Procedure," so earlier, in the Rules of Practice and Procedure, the applicant has their notice requirements and the department has their notice requirements, which not includes that, so that's what it refers back to.

Mr. Hopper: So it should read in (3) add the districts?

Ms. McLean: Well, what (3) says that is that after the public notice, even though the notice is posted the same way that you post for a public hearing, it technically isn't a public hearing unless someone asks for a public hearing, and (3) says, "No person has requested a public hearing after public notice. For the purposes of this section, public notice means just notice in the newspaper." That ties back to just the applicant requirement. That ties back to just the applicant requirement but already the department has done the community notice as well. If it's left as is, the notice was already on the community bulletin boards so it doesn't need to be changed in order for the notice to be on the bulletin boards because that's already in the rules.

Mr. Hopper: Leave it as proposed or --

Ms. McLean: Yeah. Leave it as proposed.

Chair Sprinzel: Secunder? Did we have -- we did. Yes. Can we vote?

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

It has been moved by Commissioner Dudoit, seconded by Commissioner Davis, then unanimously

VOTED: to approve the amendments to Chapter 304.

Chair Sprinzel: Thank you. Carried unanimously. Now, the last one, agriculture.

3. MR. WILLIAM SPENCE, Planning Director, transmitting the proposed Rules of the Molokai Planning Commission relating to the Special Uses in the State Agricultural and Rural Districts on the Island of Molokai (Section 12-303-1, et. seq.). (J. Alueta)

Mr. Hopper: Thank you, Mr. Chair. This was very interesting for me to find. Molokai was the only Planning Commission that has rules for special use permits. The State Land Use Commission, for areas under 15 acres, delegates their decision-making authority for special use permits to the Planning Commissions, and in this case, the Molokai Planning Commission for areas on Molokai for special uses in the state ag district and the rural district. These are for uses that are not outright permitted, and they have to come to you and meet a certain criteria to determine if they're allowed. This is a use permit. It's not an SMA permit. So it's a use permit. It doesn't matter if you're in the SMA or not. It's whether you're in the state agricultural or rural district. This has no -- this has no underlines in it because, essentially, this was originally adopted years ago and was kind of a in an odd section of your rules, it wasn't in the proper section, so that's why it's all shown as new. It was moved to 12-303-1, and so right now, you have 301, 302, special use permits are 303, and the shoreline rules are 304. So you're not showing any changes right here, and I don't believe we had any substantive changes other than maybe in notification and requirements. Since you're making that change, we may need to see if that was done in here. These would all be applicant hearings though, I think, rather than departmental, so I think we could leave those as is. But I don't know if you have any comments on the rules. I don't think we really made any changes to them that were substantive. I remember these being the brief -- most brief I think section of the rules we went over. I don't think we added a whole lot of extra stuff to them, so if you've got questions on any sections. Admittedly, it's hard to tell what, if anything, new we put in here, but I don't think there was very much at all when we went through it so --

Chair Sprinzel: There is, yes, there is one.

Mr. Hopper: Yes. In your letter that the department sent, there are, on page 303-4, rule 12-303-4(7) says part of the application requirements are a state land use district boundary description, community plan designation, county zoning designation, if any, and any other special designation. That's information that has to be provided. The department is requesting that that be changed to "A zoning and flood confirmation form," which provides the same information. It's just something that's a term of art that I guess they use. There's a specific form where all of this information is provided by the department. So unless the department corrects me, you can correct me if I'm wrong, you're changing the language there but you're providing the same information. It's just saying what you have to provide.

Ms. McLean: That's correct. And we're using that language about the form county-wide in all of our boards and commissions for that particular piece of information.

Mr. Hopper: Kind of to let people know where to go to get that information.

Ms. McLean: That there's a form.

Mr. Hopper: Yeah. Right.

Ms. McLean: Yeah.

Mr. Hopper: Okay.

Ms. Dudoit: So you're just adding in that particular form. You're not deleting anything in place of it?

Mr. Hopper: You're deleting (7) and adding the form. The form provides all of that same information to the Commission, the designations and everything.

Ms. Dudoit: Oh, okay. So you're taking out the whole thing and just putting "zoning and flood confirmation?"

Mr. Hopper: Number (7). And if the department can correct me, that provides all the same information, including any other special designation, whatever that means, frankly. I'm not sure --

Ms. McLean: It can be flood, plan unit developments --

Ms. Dudoit: And is this form available for public viewing, like the other state land use boundary form, I mean, you know? 'Cause the other stuff you can find, yeah, if you're looking for it. Can you find this form with all that comprehensive information on it?

Ms. McLean: And the form is actually part of the application. There's a blank form that's in the application packet, so it's already in there, and as a stand-alone form, it is also available.

Mr. Hopper: Basically, the department, upon request, zoning enforcement division reviews their records to make those determinations for the property so they have to go and look at old maps or wherever else, they provide that information, and so an individual applying for this permit, to provide that information, would generally go to the department and ask them what is this? What is my property zoned? What's the state classification? And the department would verify all of that and provide that information. Okay. And then, in turn, that's provided to the Commission as part of this, so, of course, the state designation should be either agricultural or rural, so there we are.

Chair Sprinzel: Okay, our member of the public.

a. Public Hearing

Ms. Buchanan: Okay, I never understand what you just said.

Chair Sprinzel: One is my support system.

Ms. Buchanan: I never understand what you just said about the proposed language and replacing the 12-303-4(7). Maybe I'm lost.

Mr. Hopper: I'll try to do a better job with the explaining. So number (7) requires that the applicant provide certain things. The applicant has to provide the state land district boundary description, that's going to be urban, rural --

Ms. Buchanan: Maybe I don't have that paperwork.

Ms. Dudoit: Here. Right here.

Mr. Hopper: That's in the special use rules. Sorry. That's Chapter 303, proposed.

Ms. Buchanan: Okay. What is this? That's this? Okay.

Mr. Hopper: So 303-4 --

Ms. Buchanan: 313 ...(inaudible)... the internet. Maybe that's why I don't know ...(inaudible)... where is it? Oh, this one right here. Okay. Zoning and confirmation form for number (7). Okay. Now I know what you talking about.

Mr. Hopper: This says here's the stuff you have to file with the Commission for a agricultural -- for a special use permit, and number (7) says you have to tell the Commission the state land use district boundary description, which is the -- either ag, conservation, urban, or rural, and because you're applying for a state special use permit, it really should be ag or rural, because those are classifications, community plan designation, county zoning designation, if any, and any other special designation. The Planning Department is proposing having that section deleted and replaced with, "A zoning and flood confirmation form completed and signed by the department." And what they are saying is that that form provides the state land use district boundary description, community plan designation, county zoning, and the flood form would provide any other designation. So that's what the department's -- they want that changed so that there's a form and they're saying they're making that change universally for all the other rules so

applicants know that's where they go to do that and they'll try to, I guess, guess on their own or something.

Ms. Buchanan: So how does that work on Molokai 'cause I know when we go to the department and we talk Anthony Fukuoka, and we're looking our zoning designation or something, and then we gotta call Maui actually, does this -- where's the paper? How do you apply for this zoning and flood form?

Ms. McLean: The form is in all of the application packets --

Ms. Buchanan: For the SMA?

Ms. McLean: A blank form --

Ms. Buchanan: Okay.

Ms. McLean: For all applications.

Ms. Buchanan: For all applications.

Ms. McLean: Plus, the form is available as a stand-alone form and an applicant just puts in the address and TMK number, faxes it in, we complete it, and fax it back.

Ms. Buchanan: Oh, I see. See that's why. It goes straight to Maui. It doesn't come over here. Okay.

Ms. McLean: Or you can include it as part of your application with the addressed filled out, send it in, and then we complete it at that time.

Ms. Buchanan: Okay. And then under Subchapter 2, on page 303-6, so only the underlined stuff has been changed from -- so there's no actually no changes except for what is underlined.

Mr. Hopper: Actually, this is all -- because we're replacing this as an entirely new section, there's no underlining. Most of this is the exact same as your current rules.

Ms. Buchanan: It's the exact -- okay.

Mr. Hopper: But you can't rely on the Ramseyering because this stuff ramseyered because it's a brand new section. I don't think that we have anything in there that's different from your current rules, there may be a few things that Steve and I went through, nothing substantive that I can think of, but this is the correct form of publication of the rules. It

doesn't have every change in it. It doesn't have the changes in it by ramseyering, but I would read the whole rules and be comfortable with those rules as a whole in order to be comfortable adopting them. I mean I would say look at everything.

Ms. Buchanan: Okay. So on like 303-7, number (7) at the top, "The economic feasibility of the use or project as demonstrated by the applicant." That's already there. That's not something we just went threw in, huh?

Mr. Hopper: Yeah. No, I don't think we added that.

Ms. Buchanan: Okay. Okay, just checking. Okay, alright, because we know that special use permits should only be used for a time for a special use and it doesn't -- it shouldn't replace zoning.

Mr. Hopper: And by state law, they're only for a limited period of time.

Ms. Buchanan: Right.

Mr. Hopper: And that's actually in another part of your rules but --

Ms. Buchanan: Okay.

Mr. Hopper: Most of this is governed by state law already, which is why Maui commission and Lanai don't have rules for this. They actually just go by the state law. We have rules and have had rules for a while, I guess, to clarify things. You're right. They're supposed to be temporary, although, you have several landfills across the county --

Ms. Buchanan: Right.

Mr. Hopper: And the state that have been going on for decades --

Ms. Buchanan: Right.

Mr. Hopper: And anytime someone goes to change a -- to urban, there's a lot of controversy in those cases.

Ms. Buchanan: Yeah. And on Molokai, one perfect example I think is like Manae Goods and Grinds where they're going on maybe 20 years now under one special use permit, and obviously have -- and are not complying to our stuff because we keep on setting time limits instead of encouraging them to go in for a zoning change, and then also their permit was not supposed to be transferred without prior written approval and I don't ever remember this Commission approving their sale of the business or exchange of business, same like

how when Tony Wickes took over Kehau Puni in town, right by Yoshinagas, that he never came in for one permit, was always Kehau's permit that was supposed to be for one car and then had problems because it turned into a service station and all that kind stuff, so that's the reason why we have special use permits for a time because this, ideally, supposed to be working on getting their business where they belong, like the vet center that was not zoned properly for what they wanted to do, and then we kept on trying to fit one round peg in one square hole, or whatever the square -- okay, thank you.

Chair Sprinzel: Thank you, Lori. Commissioner, anybody propose a --

b. Action

Ms. Dudoit: I'd like make a motion that we defer Chapter 303 just because I feel like I need more time to just make sure that I understand all this stuff even though it's -- I mean I don't know why it seems so new to me, like I've never seen it before, but maybe -- so I'd like to motion to defer.

Mr. Hopper: If you defer, you need to pick a specific date when we're going to have the next meeting because the original public hearing notice said today was going to be the day so you should -- whenever your next meeting date is. If you do defer these, it should be specified.

Ms. Dudoit: Can we defer to the next meeting?

Mr. Clayton Yoshida: If that's the desire of the Commission, the next meeting date is April 9.

Chair Sprinzel: That doesn't give you enough time to give notice for a public meeting does it?

Mr. Yoshida: Yeah, it's just that, you know, we're going through this change over so we'll have two new commissioners on April 9 and they will have to educate themselves.

Ms. Dudoit: But they're not new, right? The two new appointed commissioners are not necessarily new. Diane and --

Mr. Yoshida: The two new commissioners are Marshall Racine and Larry Lasua.

Chair Sprinzel: Does anybody want to second that? No. Does anybody have an alternative proposal, like accepting it? No?

Ms. Kalanihulia: Commissioner Dudoit?

Ms. Dudoit: Yes?

Ms. Kalanihuia: Is it because you want to see the old version and look at it? Because if I were going to be here on April 9, I would want to see the old version next to this version. Is that what you're thinking?

Ms. Dudoit: That was part -- yeah. That was one part of it. And then the other part of it is just I'd like to look at the state -- look at the state law and, you know, the state policies and just go side to side and see what it is. I mean I'm curious as to why the Molokai Planning Commission developed their own rules if everybody else is following something, and if we just duplicated what the state did, there must have been a reason for us to come up with our own rules that was except for Molokai, 'cause we love to do that, so I just -- I'm a little bit confused and I thought maybe a little bit more research might make us better able to make a decision.

Chair Sprinzel: I think it's possibly because we have all these exceptions we put in ourselves.

Mr. Hopper: Actually, I think what happened was the Molokai commission in to being after the other -- after the Maui commission did. You're actually later in existence and actually ahead of the curve in that respect as far as coming up with state special use permit rules. Maui and Lanai should have state special use permit rules. The Maui commission should. The state law, while it provides a broad criteria, it doesn't give you specifics, like what kind of stuff you want to see in an application specifically, how notice is provided. Incidentally, notice is only provided -- notice is only provided to adjacent neighbors. I don't know if you have a change in here, but we had a challenge on Maui of a state special use permit that was upheld but the only criteria that the commission used was the state law itself and the land use commission's own rules. You have the ability to have your own rules to go over the details that you want to put in there, and I think that's part of the background. Now, I wasn't here when they were originally done. I think the original ones were a long time ago. I think they were signed by Guy Haywood, as a deputy, years ago, so this was --

Mr. Yoshida: I was here when they were originally done.

Mr. Hopper: Oh.

Mr. Yoshida: When the Molokai Planning Commission was created through a 1988 charter amendment and the members were appointed and confirmed in 1989, Guy Haywood was a deputy corporation counsel, and Guy, we dealt with that initial commission, you know, Walter Ragsdale, Glen Borden, Richard Kamakana, Pauline Castanera, Fred Bicoy, all of them back then, and Guy felt it was important to have these special use permit rules as sort of a prototype for the other -- for the Maui Planning Commission, however, it never got

carried over, it always on the list of things to do for the Maui and Lanai Planning Commission, so that's why only the Molokai Planning Commission has special use permit rules though all three Planning Commissions deal with special use permits in the state ag and rural districts.

Chair Sprinzel: Yes, 'cause I went up in front of that commission to get my house permit passed.

Ms. Dudoit: I think that the other, you know, there are several projects coming up, one of them which is the Molokai High School proposed project for their windmill and their extension that is on ag lands, and this is going to be really helpful when we're looking at it, so I just would like some time to look at it, be familiar with it, know what we're voting on, and make sure that the rules that we're going to be guided by to make those decisions in those future projects are something that we can understand, so that was my reason in wanting to defer.

Mr. Rogers: Deferring this isn't going to affect all the other ones?

Chair Hopper: Say again?

Mr. Rogers: If we defer this, it's not going to affect the other ones?

Chair Sprinzel: I don't think so.

Mr. Hopper: No. I don't think so. Yeah, I mean this was provided with the earlier rules and everything, so it goes along with them but I don't think -- I'm trying to think. I don't want to be wrong on this. But I don't think that --

Chair Sprinzel: As far as I remember, we didn't change anything. I mean we just took it as it was because there was nothing we objected to. It didn't affect anything except -- well, at all.

Mr. Hopper: I think, primarily, it's being move to Chapter 303 as the new chapter to be consistent with your other rules. Right now, I don't even know, maybe someone can look it up, but I'm not even sure what chapter it's under. It's a strange reference. I don't think it's not even --

Mr. Yoshida: I think it's Chapter 3.

Mr. Hopper: Yeah. So it's not even Section 12 right now. I mean it's a -- they're very old and so they're not inconsistent with the sections of the rules we have right now.

Mr. Rogers: Yeah, if it doesn't affect the other ones, I'll second the motion.

Chair Sprinzel: We won't have anymore discussion because we've had the discussion.

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

It has been moved by Commissioner Dudoit, seconded by Commissioner Rogers, then unaimously

VOTED: to defer the proposed amendments to Chapter 303 to the next meeting.

Chair Sprinzel: Okay, so that one is tabled till the next meeting along with all the complications of a public hearing. So I would like to thank Steve.

Mr. Hopper: Do we have a date on the record for the next hearing just so it can be announced for the public?

Mr. Yoshida: Oh, yes, April 9, 2014.

Chair Sprinzel: Okay, I would like to thank Steve, who put a lot of effort into this; Michael, who put a heck of a lot of effort into this; Joe, who put an awful lot of effort, as he always does; and Michele, who I remember put a terrific lot of effort into it.

Mr. Hopper: Thank you, Mr. Chair. The Chair put plenty of effort into these as well.

Chair Sprinzel: Anyway, and I just -- I'm so glad we got these done before I left. I wish we got our general plan through, but, you know, that's how many years now, 18 or something is it? That even is longer than my term. Anyway, thank you. It's now time for the director.

E. DIRECTOR'S REPORT

- 1. Agenda Items for the April 9, 2014 meeting**
- 2. Pending Molokai Applications Report generated by the Planning Department (see Appendix A)**
- 3. Closed Molokai Applications Report generated by the Planning Department (see Appendix B)**

Mr. Yoshida: Yes. Thank you, Mr. Chair. Your next meeting is on April 9, and besides dealing with the special use permit rules, we'll have the two new members here, Diane Swenson will be returning, we'll have election of officers for the new years, chairperson and vice-chairperson, we'll have a part 1 of the orientation session regarding the Sunshine

Law, ethics, planning framework, and you will be dealing with a SMA assessment for the new residence, on page 3 of 3 under the open projects, Grant Howe, new residence, construct new residence at the Maude Hill Schroll Trust property at Puko`o, so that's what's on the table for the next meeting on April 9, and then we've circulated our pending and closed Molokai applications report if there are any questions on those. Seeing none, we thank the Commission again for your dedication today. This is probably the longest meeting that we've had in a while, probably longer than the past five meeting combined, but it was good that we brought at least three of the four rules to come ...(inaudible)... which began when John Sprinzel, Napua Leong and started their journey on the Planning Commission five years ago, so we thank that, and also probably only John Sprinzel is still here from five years ago, but we also thank again John Sprinzel and Janice Kalanihuia for their dedication and service serving on this Commission, sometimes for the second time, and wish you well in future, and you can take your nameplate, but leave the plate.

F. NEXT MEETING DATE: April 9, 2014

G. ADJOURNMENT

Chair Sprinzel: I wondered how you spelled that. I was over. We are adjourned. Thank you.

There being no further business brought before the Commission, the meeting was adjourned at 2:54 p.m.

Respectfully submitted by,

SUZETTE L. ESMERALDA
Secretary to Boards & Commissions

RECORD OF ATTENDANCE

Present

John Sprinzel, Chairperson
Michael Jennings, Vice-Chairperson
Billy Buchanan
Ron Davis
Zhantell dudoit
Janice Kalanihuia
Douglas Rogers

Excused

Diane Swenson
Sherry Tancyo

Others

Michele McLean, Deputy Planning Director
Joseph Alueta, Administrative Planning Officer
Clayton Yoshida, Planning Program Administrator
Michael Hopper, Deputy Corporation Counsel