

**MOLOKAI PLANNING COMMISSION
REGULAR MEETING
OCTOBER 24, 2012**

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

A. CALL TO ORDER

The regular meeting of the Molokai Planning Commission was called to order by Vice-Chairperson Lori Buchanan at 12:13 p.m., Wednesday, October 24, 2012, at the Mitchell Pauole Center Conference Room, Kaunakakai, Molokai.

Ms. Lori Buchanan: The Molokai Planning Commission meeting of October 24th. I wanted to just quickly point out that we have staff here from Maui: our Secretary there, Suzie; our Corporation Counsel, Mike; Director Clayton Yoshida; and Director of our Commissioners – oh, Livit, our Planner; and Commissioner Davis; Dudoit, Tancayo; and one of our newer Commissioners. Hah? Yeah? Oh, I thought you was telling me something else. Doug Rogers. So hopefully, you guys all have an agenda. And I would like to start this meeting and call it to order.

B. PUBLIC TESTIMONY ON ANY PLANNING OR LAND USE ISSUE

Ms. Buchanan: And Item B is if there's anyone in the public wishing to provide testimony at this time on any planning or land use issue, you can do so now, if it's more convenient for you to do that now. Or you can wait and give testimony on the agended item for today. So you like, Auntie? OK. Auntie – can somebody take the mic. to Auntie because it would be difficult for her to go up and down. She can use this one too.

Ms. Judy Caparida: I need to ask the question because I never been here long time. And it was found that – it was told to me that if I wanted to paint my house or put new roofing on, I would have to come to our Planning Commission to get an OK. Is that true? That's what I needed to know. Is that true?

Ms. Buchanan: Auntie, if you think that your home is in the special management area, and if you not sure it's a good idea to come in and see Planner Livit to give her your tax map key, and then she can make one determination whether you have to put in an application. And if Corp. Counsel wants to expound on that, he can. But that's – you know ...(inaudible)...

Ms. Caparida: Yeah, other people ...(inaudible)... so I can help others if they need to know.

Mr. Michael Hopper: Well, in the rules, just for the public and the Commission, the rules define something called a proposed action. And that says "A proposed action means any use, activity, or operation proposed by an applicant on land within the special management area." So as far as what uses, activities, or operations that would cover, I think Planning Department's got a tremendous amount of experience with determining if things need to have an SMA assessment or not. But the basic answer is that if something is a proposed action, it is required to get an assessment. So that's the definition you're looking under. And Planning can, I think, help with kind of the details.

The Planning Commission here on Molokai has decided it wants to review all proposed actions. On Maui, for example, if something is a proposed action, it has its exemption review by the Planning Department. So you would go to a Planner. The Planner would review that and tell you if you need an SMA permit or not. The Planning Commission on Molokai has changed its rules and said the Commission itself is actually gonna make those determinations if you need to have – if you're exempt or if you actually do need to get a permit.

So that's the process, but I would recommend talking to Livit or someone with the department. I think that's good advice that Lori gave if there's any doubt. Again, though, that's if you are in the special management area. So there's a specific map. If you're outside of that special management area, then the SMA or the special management area rules wouldn't apply if you're in that SMA area.

Ms. Caparida: Thank you so much. That's what I needed to know. Thank you.

Ms. Buchanan: Is there anyone else in the public wishing to provide testimony at this time on any plan use – planning or land use issue? Yes? Please state your name for the record.

Mr. Anthony Fukuoka: Anthony Fukuoka, Building Inspector for Molokai. I just wanted to add a little bit more with Auntie's portion over here. As far as the special management area goes, that's totally, I guess, independent of the building permit requirements. So to add on to that, certain things you do, you don't necessarily need a building permit. So like you were saying, painting your house or reroofing of a dwelling. But if they're still in a special management area, you still need to do an assessment if it's required. So you may not need a building permit, but you still gotta go through that special management area assessment process. So that's two totally different things. I just wanted to add that on.

Ms. Buchanan: Come up to the mic., and state your name for the record if you have public testimony.

Ms. Diane Swenson: Hi. I'm Diane Swenson. I didn't plan to speak, but I'm gonna tell you guys that this rule is really a hardship on the local people who live in Ranch Camp. I mean, it's an expensive process. It's frustrating. So I think if you're gonna have this rule, you should at least simplify it for these people because I don't feel like it's fair to the people in Ranch Camp that need to paint their house, or put on a roof, or build a tool shed, or a dog house for their dog. I think that you guys need to make this easier on these people. Anyway, that's just my suggestion.

Ms. Buchanan: Thank you, Diane. Any more public testimony for the record? OK. Seeing none, public testimony is closed. And we are moved to agenda item C under Communications.

Ms. Buchanan read the following item description into the record:

C. COMMUNICATIONS

- 1. MR. WILLIAM SPENCE, Planning Director, requesting concurrence from the Molokai Planning Commission pursuant to their Special Management Area Rules, as amended, that a Special Management Area (SMA) exemption can be issued for the following:**
 - a. MR. LUIGI MANERA on behalf of HALE MAHAOLU HOME PUMEHANA submitting a Special Management Area Assessment for replacement of roof shingles, sheathing, flashing, gutters, downspouts, and water-damaged wood fascia on seventeen (17) multi-unit residential structures ("A" through "Q") used to provide affordable housing for seniors located at 290 Kolapa Place, TMK: 5-3-002: 168, Kaunakakai, Island of Molokai. (SMX 2012/0356) (Valuation: \$1,200,000) (L. Callentine)**

Ms. Livit Callentine: Thank you, Chair. Livit Callentine from the Planning Department. Yes, this project is on a property that is approximately, 9.8 acres of land in the State urban district, in the A-1 apartment Maui zoning district, and according to the Molokai Community Plan—multi family designation.

In this application, the department requests concurrence with our determination that this property is exempt from the requirements of Chapter 205A. The case for this request is that the site is partially developed and it provides affordable senior housing in Kaunakakai Town. The parcel is owned by the County of Maui. And it is mauka of the highway, and it is not located on the shoreline, therefore. The property is served by County of Maui, Water Supply, and Department of Environmental Management Wastewater Division.

The action is to replace roof shingles, sheathing, flashing, gutters, downspouts, and water-damaged wood fascia on 16 buildings spread throughout the project site. Some of the buildings have been completed prior to submitting the SMA assessment. And an after-the-fact fee has been paid. An additional ten buildings are proposed for reroofing as part of this subject application. The project was not transmitted to any agency for comments because it consists of repair and maintenance of existing structures, and does not involve any ground-altering activities.

The Zoning Division of our department noted that the property is in flood hazard zone "X" which is – which means that a flood permit has – a flood permit is not required. A very small portion of the project – of the property, not the project, but the property, a very small portion is in the "AH" zone, but there isn't anything built in that zone that we're considering today.

Moreover the department found that because the proposed action includes and involves the use of County land, it triggers compliance with environmental review. And it also qualifies for an exemption. And the class is operations, repair and maintenance of existing structures, facilities, equipment, or topographical features involving negligible or no expansion or change of use beyond that previously existing. Therefore, the department did grant an environmental assessment exemption as part of its review.

The value of the project is 1.2 million dollars. And it is for repair and maintenance and interior alterations to existing structures. Therefore, again, we request your concurrence with our finding that the project is exempt. Thank you.

Ms. Buchanan: Planner Livit, on the agenda item, I think we need to make one correction just on the record. It says "wood fascia on 17 multi-unit residential structures," and on the application it says "16." Can you for the record state if it's 16 or 17?

Ms. Callentine: I will ask for a concurrence from the applicant, but I believe that after the report was written, I learned that Building Q was also included in the request. And so that would make it 17 buildings. But I would like to again, just – if you give an applicant to explain if Building Q is included or not included in this request.

Ms. Buchanan: Would the applicant like to come up and concur on the number?

Ms. Jersula Manaba: Jersula Manaba, Manager at Home Pumehana. It's 16 buildings. Building Q is not included.

Ms. Buchanan: So Jersula, it would be A through—?

Ms. Manaba: A through P.

Ms. Buchanan: P? OK. Thank you. The record to reflect that concurrence.

Ms. Manaba: Thank you.

Ms. Buchanan: Is there any questions from the Commission to Planning staff at this time before I open for public testimony? Or did, Livit, did the applicant need to further explain what the—?

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

Ms. Buchanan: OK. So—

Ms. Callentine: They're indicating they don't need to. Unless you have questions for them, they don't have a presentation today.

Ms. Buchanan: Does the Commissioners have any questions for the applicant at this time? Seeing none, we will open to public testimony on this agenda item. Anyone wishing to testify, please come up and state your name for the record. Seeing none, public testimony is closed. Commission, before Planner Livit reads recommendations, you guys have any questions? None? If the Commissioners have no questions, then I will call for a motion.

Mr. Ron Davis: I move to concur.

Ms. Buchanan: OK. Since I could hear Commissioner Davis, I will take Commissioner Davis' motion to concur with the Planning Department's recommendation for exemption. Do I hear a second? This is an exemption. Sorry. Wait. First, do I have a second to the motion, then we can have discussion? OK. I have a second from Commissioner Douglas. The floor is open for discussion. Commissioners, any discussion or clarification?

Ms. Zhantell Dudoit: Actually, we were just wondering because usually when we looking at the agenda, and then we look at the supporting documents that come with that, on one side it says "submitting a special management area assessment," but it doesn't say anything about an exemption. The only time "exemption" is actually – or actually it says right here on the top, "SMA exemption can be issued for the following," but it doesn't state it right clearly like in here until you get to the back of the form. So we were just wondering 'cause I wanted to make sure we were looking at the same project.

And then the other comment I had was – and maybe it's just my oversight, but just to say and make sure that everything that we do is consistent and fair to everybody. Whenever the department has a recommendation at the end, it usually specifically says all government or applicable rules apply to this. But for some reason, and this is the first time I've ever seen it since we started, this two particular applications that we see in front of us

doesn't have any kind of wording on it. So I not saying that it should or it shouldn't. I just wanted to know what our standard practice is. And if those things are already covered, then why would we previously have made sure that we mentioned those things?

Ms. Callentine: Chair, I'd like to answer that question. Thank you very much for the question. It's a good one. The reason why you do not see that condition is because on an exemption, there are no conditions. We cannot put a condition on an exemption. So we put that as a standard condition on minor permits, but when it's an exempt action, we do not include that.

Mr. Hopper: Just as a note, that does not mean that if there's any laws that apply that they don't have to comply with them. They still would, but Livit's correct, for an exemption, you would not have conditions to that. That's why the recommendation would be just to exempt rather than a list of recommended conditions.

Ms. Buchanan: Are there any more questions for staff? We're still in discussion on the motion. Yeah, that was a good question, though, Commissioner Dudoit, because usually we see "must follow all best management practices," blah, blah. Yeah.

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

Ms. Buchanan: No, we just call it an exemption. If there's no more discussion from the Commissioners, I will call for the vote.

It has been moved by Mr. Davis, seconded by Mr. Rogers, then unanimously

VOTED: To concur with the Planning Department's recommendation.

Ms. Buchanan: Motion carried.

Ms. Callentine: Thank you.

Ms. Buchanan: Thank you. We are gonna move right along to Item C, under Communications, Item B.

Ms. Buchanan read the following item description into the record:

- b. MR. LUIGI MANERA on behalf of SWENSON REAL ESTATE D/B PENSION RET TR submitting a Special Management Area Assessment for replacement of termite and water damaged framing, flooring, and siding and replacement of damaged**

concrete footings and replacement of roofing, exterior stairs, and electrical system located at 245 Kolapa Place, TMK: 5-3-008: 010, Kaunakakai, Island of Molokai. (SMX 2011/0184) (Valuation: \$75,000) (L. Callentine)

Ms. Buchanan: Planner Livit?

Ms. Callentine: Thank you, Madam Chair. As you mentioned, this project is for restoration of a single family dwelling. And it is a dwelling that is more than 50 years old. The application was filed in April of 2011. And there was additional information submitted in – later in 2011, and also just recently we received our final piece of information in September of this year. The project is located in the State urban district on a parcel that's approximately 10,606 square feet in area. It's in the interim zoning district. And it's single family designated in the Molokai Community Plan.

The proposed action has been evaluated and determined not to be a development. And we request concurrence with the determination that the activity is exempt from the requirements of Chapter 205A. The applicant is requesting to reconstruct several buildings that have deteriorated over time on the subject property, including a single family dwelling, a separate kitchen, and restroom structures. The sizes of the structures are listed in the assessment for – in the description of the project. The dwelling is about 700 square feet. There's a separate building that contains a kitchen. It's approximately 290 square feet. And another separate building containing a bathroom approximately 60 square feet. These were all built circa 1924. This property is mauka of the highway and not located on the shoreline. It is served by the Department of Water and Department of Environmental Management. Furthermore, a portion of the project was completed without undergoing SMA review and is therefore, after-the-fact, and an after-the-fact fee has been paid to the County of Maui.

The project was transmitted to the Department of Land and Natural Resources, and the department's Cultural Resources Planner. SHPD, State Historic Preservation Division, stated that although the project is eligible for listing on the Hawaii Register of Historic Places under Criterion C as period architecture, with the documentation that had been provided to them, mitigation is complete. That's shown in your staff report as Exhibit 7. I'd like to also note that after the preparation of the staff report and its submittal, I received an e-mail from our Cultural Resources Planner. And he has stated that "Since the State Historic Preservation Division has already commented, you do not need my comments." And also that there is only one original window left, and the doors are no longer original, and there's been other modifications done to the home over the years, so he would not consider nominating the property to the Register of Historic Places.

The property is within flood zone "X," so again, a flood permit is not required. And the project was reviewed under Chapter 343 of the environmental law because the structures were built in 1924, which is more than 50 years ago, but it does qualify for an exemption class which is specifically, operations, repairs, or maintenance of existing structures, facilities, equipment, or topographical features involving negligible or no expansion or change of use beyond that previously existing. The department has granted an environmental assessment exemption for the property. The value of the property is approximately, \$75,000, and it meets the definition of not a development, which is repair, maintenance, or interior alterations to existing structures, and structural and non structural improvements to existing single family residences.

With that, I would be happy to take your questions. And the applicant and the applicant's agent are here today. And I don't believe they wanna do— Do you wanna do a presentation? Did you wanna say something, either of you? OK. Thank you, Madam Chair.

Ms. Buchanan: OK. I'll take questions if any Commissioners have questions for Planning staff.

Ms. Dudoit: Yeah, I just had one, Livit. I know we talked – and maybe Corporation Counsel can help me. This matter arose when we talked about the application for Mr. Otsuka. We talked about homes being built prior to 1976 undergoing LBP inspections. And so I did do some research, too, and I do know if you're totally demolishing those homes, then those things are a little bit more lenient, but I don't see anywhere in here, and unless I was mistaken that those things are not necessary under our rules, I don't see anything in here that has anything to do with that. And then that would flag my interest in knowing how you can ultimately say that this has no adverse environmental effect if you don't even know if an LBP inspection was done.

Ms. Callentine: Well, the department does not review projects for lead-based paint on a normal basis at all. If there was gonna be any comment on that, it would be through the Health Department. And the Health Department has to sign off on all building permits. So that would be at the point at which it would be caught would be they would be required. And they do have to get building permits for this, so that's where we would catch that. Thank you for the question.

Ms. Buchanan: OK. Commissioner Dudoit, did you want further—? You needed something from Corp. Counsel, you said earlier?

Ms. Dudoit: I guess she said no, but if he does wanna comment and make it clear for the—

Mr. Hopper: If there are independent laws again that apply, they're going to have to be complied with. It's not necessarily – SMA doesn't necessarily require lead-based paint mediation. I mean, that's going to be an issue whether you're inside the SMA or you're outside of the SMA. So if that's a requirement, then the applicant is required to follow that if it's either a state or federal law, and – I mean, would need to comply with that. If there is or not, I'm not sure. But as far as the SMA is concerned, that's not a special requirement through the SMA that the Commission would typically review. But if there's comments either from the applicant or if that's going to be triggered by a building permit review, then that's something that can be, I think, discussed. But again, that's not a special SMA requirement that deals with environmental effects typically, on the shoreline, on the coastal ecosystem that are unique to that system. So we typically wouldn't have that as a separate review for SMA only.

Ms. Buchanan: Any more questions from the Commission, Commissioners? OK. I have a question, then. Planner Livit, you was reading – I'm assuming I have the same document, but I did not see the location of the discussion of the after-the-fact permit. Would you please point that out to me? And what I have in my packet is the October 24, 2012-memorandum, the application.

Ms. Callentine: I would ask the applicant or the applicant's agent to come forward at this time with your willingness and answer that question.

Mr. Luigi Manera: Chairperson, Members of the Commission, Luigi Manera. Good afternoon. The question is, you wanna know how far is the extent of the after-the-fact?

Ms. Buchanan: Well, I was trying to follow Planner Livit when she was reading, and I couldn't find – my document didn't have the information that she was sharing. And so I heard after-the-fact permit. And so I just wanted more clarification on that. And if that's part of our information on the record, why don't we have it? That's my question.

Mr. Manera: OK. What I know is when I got involved in this project, I was called by, I believe, Diane Swenson. She received some comment or a phone call from Nancy McPherson at the time saying they doing some work without the proper permit. So I check into that. I went over to the site. And apparently, I don't know if it was your husband or somebody that was working in the interior of the building. They removed the floor because was all termites, all this thing. So I tell him to stop because we need to have the proper permit. At the time, part of the SMA process they ask how much was the valuation of what were removed. If I no make a mistake, was the amount of \$9,000 they come up with the value like that. That's when we submit everything to the County of Maui.

Ms. Buchanan: OK. Thank you. Yeah, I think that's all the question I get for now, but for – My issue is – thank you, Luigi, you can go, sorry – is with Planner Livit. If something's read

into record, I would hope that that we had the information reflected in our paraphernalia that is given out by Planning staff. And it's not, is it? Am I wrong?

Ms. Callentine: Well, if you'll look on – in your report on page 3, on the top of page 3, I say a portion of the project was completed without undergoing SMA review. Now, did I list out every single item? No, I didn't. But if you would look on the project photos which is starting with Exhibit 3, if you look at the second page of Exhibit 3– See, this is such an old house, and there's been so many different things done piecemeal here and there, it's very difficult to specify exactly what piece of lumber has been moved, what piece of fascia has been taken off. So you see the photos that shows it up on some blocks and some framing, and the whole apron at the bottom is gone. The – you see the doors. The stairs are gone on the door in the upper left-hand corner on page 2 of the photos. There's no stairs there. So there's a bunch of little pieces that have been done. It would be very difficult– If you're asking the Planning Department to list everything, I'm not sure it would be – end up being that useful to you. But if you want that, please, you know, we'll work on it.

Ms. Buchanan: Thank you, Planner, but hang on. What did you say about Exhibit–? Oh, there it is. The State Historic Preservation letter has waived and you guys have concurred. That's correct, yeah?

Ms. Callentine: Yes. And that letter is in Exhibit 7.

Ms. Buchanan: And the replacement and restoration, the footprint is not changing except for – well, actually, all the square footage you gave me, that 700, the 209, and the 60, there's no change in footprint. Is there any added rooms? OK.

Ms. Callentine: Not that has been represented to the department. The applicant is affirming that that's correct.

Ms. Buchanan: Yeah, the applicant has affirmed on the record ...(inaudible)... represents that. Any more questions from Commissioners to staff before I open for public testimony?

Ms. Dudoit: No, actually I don't have a question, but I do have a comment that I'd like to state for the record just in regards to this matter that is concerning to me. I know that we – we're looking at rules that we wanna change, and things that the Commission wants to recommend for changes. And I think it's pretty weird. I don't know the right word. But that we would– Auntie just sat up here and we confirmed that if you live in SMA zone, you gotta come before the Commission to get one approval just to paint your house. But on the same token, LBP inspections and the fact that a home built before 1976 could possibly have lead and poison our ground and our water is not even part of our SMA included in what we are overlooking. It seems really strange to me. So whether or not we, as a Commission, recommend that we just throwing all the responsibilities to the individual

departments that see the application after us, or whether we blanket everything and say these are the things that could possibly affect our environment and we going be consistent about it, I think that's really something important that we gotta look at 'cause it is unfair. I mean, I never really realize that until Auntie was sitting here talking about having to acknowledge if she painting the inside of her house 'cause she live in one SMA zone. But right here, we seeing one application to exempt somebody from – you know, to give an SMA exemption for something that could potentially be serious. And it's nothing against the applicants or anything, but I just wanted to state that for the record so that at whatever point it's appropriate, we address that concern.

Ms. Buchanan: OK. Thank you. Any more questions from Commission? If not, I'd like to open this for public testimony. Please come up and state your name for the record.

Ms. Judy Caparida: Aloha, everybody. My name is Judy Caparida. I've not been here in a long time, but I always think about you guys. You know, for me, when I'm sitting there, it's very inconsistent because I know for myself, I've been here so many times for all the things that we've been fighting for. And some you say it's OK. Then some that is so simple has so much hard times to get what they need. So if– I need a question. Is this the house that is up here, the one that is already falling down? It's almost like you have to build a new one. I mean, unless you going have to be consistent, I think that it's not fair. I need to say that 'cause I know for myself how much people suffering trying to stay for years, try to get things done for them. And then you can say it's exempted for something that is serious. No way. I don't feel that it is fair even how long I never been here. But every time I get one like this, I run through it. And that's what I'm here today. I think that you folks should be consistent in everything that you do because it's not easy coming over here when you have to work or what. Me, I no care. When I was in the wheelchair, I still came to the meeting because that's how much I love Molokai. And that's how we wanna keep things the way it's supposed to be which is pono–being right in everything that we do 'cause nothing works if it's not right. I think for some especially for those who get money, they get away with it. And those that no more money, that's the one we get hard time. So I need to let you guys know that that house over there, you better make sure you guys gotta follow up. Because they say something on paper, paper no mean nothing. You gotta see the work that they do to make sure that they are following the rules that they write down. So I need to let you guys know. I went through hard times to have my permit because you know why? Some of the places that they was supposed to be was not. And the one that was supposed to be was there. So they have to do all the darn thing all over again. So let's make it straight. Let's do pono because you folks are here for us. This is why we get Molokai own Planning Commission–to do what is the betterment for all our island because we are the highest pain of everything. So I come here to let you folks know that even if I'm lying down at home, I'm thinking of what's going on in this place. I love you guys. I only say what I feel that is truth and that we can better our living conditions here

on Moloka`i without the hassles, without pouring out all the things we are suffering from already. And we gotta come over here and face this. I aloha you guys. Thank you.

Ms. Buchanan: Thank you, Auntie Judy.

Ms. Caparida: You're welcome.

Ms. Buchanan: Any questions for the testifier? Anyone else wishing to provide testimony from the public? Please come up and state your name for the record. Seeing none, I will close public testimony. Any more discussion from Commission Members? Commissioner Dudoit?

Ms. Dudoit: Actually, I had a question. When the department, and this is on procedure, when the department states in our records the reasons for which something is deemed as an exemption, and then they have it classified like it is not anticipated that the proposed project will have an adverse environmental and ecological effect, and then it goes on to say that the sum of those effects will not adversely affect the quality of the environment and ecology. It also says that the proposed action will not affect it with a primary or secondary consequences of it. And I don't mean to keep on barking up the same tree, but what legally satisfies us that – 'cause I don't – aside from the DLNR saying that it's a historical site, and aside from all of that, I don't really see anything that says that it's not an environmental hazard. And the fact that we don't require LBP inspections or the acknowledgment that that's free of lead is not part of our process, then how do I comfortably agree if the process by which those things are acknowledged come after the exemption at the building permit stage? Because then if he finds out that that's lead-based, I just did not do my duty. If later on after I say, OK, this is one exemption, yeah, we all good at that 'cause I no think it's gonna affect the environment, and then the building permit guy comes up, and the inspector says you gotta go get one LBP inspection, and then the house is deemed that it has lead in it, and now is an environmental hazard, I, as one Commissioner, just made one really ridiculous mistake. So I wanna know how I comfortably according to how the department has given us this to review, how do I comfortably agree that there will be no environmental effect knowing that the house was built prior to 1976 and is older than 50 years old?

Ms. Buchanan: Or you can ask the department that question, but in your professional capacity as a Commissioner to this Board, if you're aware, and you have knowledge that might be inconsistent or different from what Planning staff has offered you, you have more than a right to state that on the record, and even follow that up by motion. Right now, today, it's asking for an exemption. If in your duties as a Commissioner you feel that that's not where you wanna go, then you can state that, and you can then move to that. We just went through this at the last Commission meeting where I also said the same that I did not concur with Planning staff's assessment of one potential project.

So you heard Planner Livit say earlier that the County department had determined that there was no environmental effect. And so that's the determination made by them on their assessment of the project. If you don't concur with that, then you don't. If we don't, we don't.

Ms. Dudoit: OK. So then legally, if say something happened and the building permit go through, we find out get lead, somehow something happened, somebody got poisoned, something got affected, when the lawsuits come about, are we party to that lawsuit because we concurred with the department that there was no – without thoroughly making sure that there was no environmental – adverse environmental effect?

Ms. Buchanan: Corp. Counsel can answer that. We are, yeah, under the blanket of the County, and so the County would pursue that in our favor as Commissioners, but I'll ask Corp. Counsel to elaborate.

Mr. Hopper: If you want to have a discussion of the Commission's liability, I recommend we go to executive session. So we could that if there's a vote.

Ms. Dudoit: Chair, can I call for executive session?

Ms. Dudoit: If none are opposed – any opposed to executive session? Oh, we have to. OK. Can I have a show of hands in favor of adjourning to executive session?

(There was a unanimous vote to go into an executive session.)

Ms. OK. We need a unanimous vote, and I just got it. So this Commission will adjourn into executive session so Commissioner Dudoit can consult with our Corporation Counsel on her duties as a Commissioner. Thank you.

(The Commission then went into an executive session at 12:55 p.m. and came back into its regular session at 1:08 p.m.)

Ms. Buchanan: ...(inaudible)... on B. And we left off with questions from the Commissioners. And so I will also call again if there is further questions of the Commissioners to Planning staff.

Ms. Dudoit: Anthony, can I ask you a question? As part of the building permit requirements, can you explain to us for the record if the LBP inspection is a part of that and what that process is?

Mr. Fukuoka: For Otsuka, for example– Anthony Fukuoka, Building Inspector. On Otsuka's one, for example, he came in for a demolition permit. So part of that demolition

permit has to be routed to the Department of Health. So when he came in for the demolition permit, it went to the Department of Health, and that's how they were kinda were – the red flags came up about the lead-based paint. Similar if you come in for a building permit would be routed to the Health Department. So like on your building permit plans, they'll get a copy. And if your house is beyond a certain age, depending on what type of work you're gonna do as part of a building permit, then the Department of Health might raise the red flags again. So if you're coming for a building permit, for example, and you're just painting over the existing paint, maybe it's not gonna be an issue with the Health Department. If you're demolishing things, it has to go to the dump like for a demolition permit, for example, then of course, the red flags will go up. But I think in this case because there was no demolition permit, I think that's why the Health Department was probably never routed for this one. Does that make sense? When they come in for a building permit, you know, as part of the plans, they might see that a portion of the building is gonna be removed or painted over, then that's when the Health Department would do the review on the lead-based paint, I would assume.

Ms. Buchanan: Any further questions for Planning staff? OK. Seeing none, I guess...(inaudible)... I was just checking if I closed public testimony. I did. If not, it is closed. So I will ask the Commissioners and call for a motion. We have a motion?

Ms. Sherry Tancayo: Can I ask one more question?

Ms. Buchanan: Sure.

Ms. Tancayo: Is it possible to open it back and ask for more questions?

Ms. Buchanan: Oh, yeah. Go ahead.

Ms. Tancayo: Is there gonna be any more removal of any material? And just for the applicant, what – and what are you gonna do with any of the old lumber and stuff like that? That would be my only concern is because there's no more – about the lead-based paint, and that was the big thing with Otsuka was we don't want this dumped in the landfill if it has lead-based paint on it. So that would be really my only concern.

Mr. Manera: Luigi Manera. I think all the demolition is done. What they did they removed the interior floor of the house and they have the exterior. It's funny. I asked the applicant, why not apply for a demolition permit? He said they don't wanna. They wanna keep the side walls the way they are. So what they did they actually removed all the floor. If you have to go over, there's no floor. There's only the exterior walls. So what they gonna do now is replace the interior floor, fix the window, and that's it.

Ms. Tancayo: OK. That— OK. That would answer my question 'cause I would have concerns if they were gonna do any more removal of any of the exterior that we put a recommendation in there that it could not be put in the landfill or that it would be tested before it went in the landfill. Is that possible?

Ms. Buchanan: That would not be possible because the application before us is to concur with an exemption. Anything other than concurring with an exemption today would be to deny the permit. And then the applicant would have to come back with an SMA minor permit which could be conditioned. Planner Livit?

Ms. Callentine: Yeah, thank you. Actually, the Commission can ask for concurrence – can ask for concurrence with a request that if there's going to be any more removal, they will follow such and such a procedure. You can make a statement like that and say to the applicant on record, are you willing to do "XYZ?" And if the applicant attests on record and confirms that they are willing to do that, that's considered to be a representation made to the Commission just like the application is a representation made to the department and the Commission. And you can still issue an exemption in accordance with the representations made.

Mr. Hopper: We've had the representations done in situations where I think the— Some of it's based on the project itself—what the project actually looks like. Some of it's based on, I think, that they've had an archaeological monitor on site in certain cases. But those are not conditions. And I think they are more difficult to enforce sometimes because you'd have to go back into the record and see what they actually are. As far as something – I mean, it's my understanding if they do more work than is allowed in this description, I mean, you're giving them an exemption based on what they're explaining they are doing in their project, correct?

Ms. Callentine: Yes, and what they've represented today which could be in addition to whatever they represented in their application.

Mr. Hopper: What I'm getting at is that they're saying they're not doing anything with the exterior walls at this point? OK.

Ms. Callentine: ...(inaudible)... they're saying.

Mr. Hopper: So if the Commissioner's concern is that if they do something in the future with exterior walls that can't go to the dump, if that's the concern, then they're not allowed to do anything to the exterior walls at this point anyway. Or is that what the concern was? Or am I missing it?

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

Mr. Hopper: Yeah, so for this project, this exemption is only to do what – I mean, unless the exemption itself has broader language, but it's to do the work that is described in the exemption request. And so if there's work done beyond that, then it needs to – it either needs to not even require it to come in for an exemption, or the exemption needs to be reissued again. I mean, that's why we have the project description here and that's why it's before the Commission.

Ms. Callentine: I'd like to point out to the Commission that on page 2 of your report, description of the project, there's a listing of the scope of work, Items A through G. The scope of work as stated on the project plans includes replacement of termite-damaged wood posts, beams, and floor joist; replacement of damaged concrete footing; replacement of all termite-damaged wood flooring; replacement of water-damaged studs and exterior wall siding; replacement of roof; replacement of all exterior wood stairs; rewiring the existing electrical system. I would like the applicant to correct that if that is not correct that that is what was on the building plans.

Ms. Buchanan: Can the applicant come? You have the application in front of you, Mr. Manera? On Items A through G, there seems to be some conflict in what was stated on the record and what is printed in the application. Would you like to clarify that for us?

Mr. Manera: Which one is that?

Ms. Buchanan: I'm assuming on Item D under the description of the project– You stated on the record that there was no replacement of exterior walls. However, in the description of the project, Item D, it says "Replacement of water-damaged studs and exterior wall siding." Can you please clarify?

Mr. Manera: Yeah, absolutely. If you take a look at the photo, the reason why I put that is because if you take a look, there's a couple photo that you can tell they removed couple siding.

Ms. Buchanan: What exhibit is that? Exhibit 3?

Mr. Manera: Yeah, that's one. If you take a look in-between the houses, they're missing...(inaudible)... siding. They already gone. Basically, all the demolition in the house is basically done. That's why they basically got caught because they start demolish before the permit.

Ms. Buchanan: OK. So that would've been part of the after-the-fact permit violation fees?

Mr. Manera: That's correct, yes.

Ms. Buchanan: OK. Let the record reflect that.

Mr. Manera: And also, if you look at the – there's another – I think it's called north portion. You can tell they already removed two portion of the siding on the – they call it north looking south back to the house. Yeah, that's it, yeah, right there.

Mr. Hopper: Livit, would it be possible to then alter this project description? I mean, it's a bit broad. It says "of exterior wall siding." I think Mr. Manera is clarifying that there has been some that has already been removed, but there's no plan to remove anything in the future at this point?

Ms. Callentine: Could I amend the description of the project in the report?

Mr. Hopper: Well, what I'm getting at is the Commissioner raised an issue with if there's more work that's gonna be done than has already been done, she wanted to make sure that that's not going to be going to the dump. Is basically the project complete or is there some more that's going to happen at this point?

Ms. Callentine: I haven't taken a look at the property today, but when I was there doing my site inspection, the project was not complete. So it's not 100 percent after-the-fact, no. If you're asking for a possible amendment to the wording of Item D on page 2 of the staff report, I would suggest the following language, "Replacement of water-damaged studs and previously removed exterior siding."

Mr. Hopper: And again, I don't know if this satisfies the Commission. It's up to the Commission, but I'm trying to think of any effective way to reflect what is allowed and what's not allowed. And if there's things that the Commission's concerned about that if it's not allowed in the future, then that would be probably the clearest way to do this rather than to say something's a condition or a representation. Maybe dealing with that as a project description to accurately reflect what's being done could assist. That's just my thought rather than having to require an SMA minor permit unless – if the Commission doesn't want to do that.

Ms. Callentine: I could do that. And I could– Well, I think the applicant would like to say something, but let me just say, yes, I could easily reflect that language, put that exact language, whatever the Commission prefers in the approval letter or the exemption letter, whichever way you go.

Mr. Manera: Hi. In regard to the description of the project from Items to A to G, it's all done except for E, F, and G.

Ms. Callentine: Say that again?

Mr. Manera: Except– All this has already been done except for E, F, and G. They never touch the roof. They never touch the stairway.

Ms. Callentine: ...(inaudible)... replaced the siding already?

Mr. Manera: Yeah, they removed it.

Ms. Callentine: Has it been replaced?

Mr. Manera: No, no.

Ms. Callentine: OK. Make that clear. If I could just help clarify that? I think what the applicant is saying or what Luigi is saying is that Item D, the siding has been removed but it has not yet been replaced.

Mr. Ron Davis: Luigi, the house is single wall construction, yeah?

Mr. Manera: Yes.

Mr. Davis: Is it gonna remain single wall or the repair gonna be done double wall?

Mr. Manera: No, single wall.

Mr. Davis: Going stay single wall?

Mr. Manera: Single wall.

Ms. Tancayo: The pictures that you showing here, that reflects what it looks like now?

Mr. Manera: Yes.

Ms. Tancayo: OK. One of my big concerns was and the reason I did bring it up is I was looking at the one you were looking at, the second page of Exhibit 3, north looking south back to the house. And if you look at the right side of the picture, I mean, obviously, that board right there is so termite-ridden that that's probably gonna have to come out. So that is my position was that it looks like more siding needs to come off just by these pictures. And that was my main concern is I think there's a little bit more probably demolition that has to be done here.

Mr. Manera: You talking the band?

Ms. Tancayo: ...(inaudible)...

Mr. Manera: Oh, oh, the side.

Ms. Tancayo: Yeah. Yeah, the side—

Mr. Manera: Oh, yeah, yeah, yeah. I saw that. I see that.

Ms. Tancayo: Yeah. So that's my concern is that there's gonna be more, you know, demolition that needs to be done. And I just didn't want to give you an exemption for something I'm not comfortable with at this point.

Mr. Manera: No, no, I understand too. What I know from them, they demolish...(inaudible)... so far. That's what they did. They said they not gonna do any more demolishing. And back to the first question when I say why you would do this when you can demolish the house, but they don't want it. And it's barely up. I think if we have a strong wind, the house is gone anyhow. It's probably cause more damage. I mean, I'm not gonna— What they tell me is they no do any more demolition on the site.

Ms. Buchanan: Thank you, Mr. Manera. Is there any more questions from the Commission for Mr. Manera? May I—? I'd like to clarify something for the record. Based on the testimony by the applicant's representative, and the description project, and staff's notes, please note that the following will apply unless somebody objects. Description of project, the scope of work stated on page — and this page 2 will include Items A through D with the clarification of Item D, "Replacement of water-damaged studs and siding." Does anyone not concur with that? And, Planner Livit, you have that? Again, Item D will say, "Replacement of water-damaged studs and siding," as stated by the applicant's representative. OK. Seeing no opposition, I will call for the motion.

Mr. Davis: I move that we concur.

Ms. Buchanan: Do I have a second? I have a motion to concur with the exemption and a second. Can I have discussion?

Ms. Dudoit: I don't know if I asking the proper question. I was trying to think of whether or not this would make sense. But, wow, there were a lot of things done after-the-fact. That really ticks me off because we not talking about somebody who doesn't know about construction, or housing, or laws, or building permits, or things like that. And the fact that you can come with Items A through G, and then say — and I totally am not talking about Luigi but — and then turn around and say, oh, A through D is done already, though, and we actually only need your approval for an exemption on the last three. If you had come to us with all these items A through G, and all that work wasn't done prior to just getting slapped on the hand and a fine, would we have approved this as an exemption? And I'm not sure if I asking or if I just so upset that I don't know what to ask. But I think it's wrong.

I mean, this house is not even in the bushes somewhere where you cannot even see 'em. And to think that government officials, people responsible for our community, all that pass by this house all the time, and it's work to this magnitude could've been done, and then to sit here and now tell us that according to the pictures we have that no more disposal, or demolition, or cutting, or siding going be removed I think is – I think is just a misrepresentation. So right now, I not sure exactly what I wanna ask. I usually try to be solution-oriented, but I think I just so am little bit upset and disturbed by this that I really don't know what to ask. So that's just my comments.

Ms. Buchanan: Any more discussion by Commissioners? Yeah, you can make a comment.

Mr. Hopper: Well, would it be proper to describe A through D as after-the-fact such that – I mean, unless there's further work to be done? If the approval is for after-the-fact, I believe that would mean that the exemption granted by the Commission is for what's already been done, and then the other items where there's still work to be done, those would be allowed. But if you do issue a blanket exemption for this, it would appear to allow for all of that work. Do we need further refinement of the property description here to clarify exactly what the Commission has been approving?

Ms. Callentine: Yes, I would suggest that for example in Item D– I think what we need to do is separate these into what has been removed and what has been replaced. And my understanding is for Item D, some things have been removed, possibly some things have also been replaced, but the biggest intention is to not – is to – the proposal – the replacement is still part of the proposal and has not yet been done. So I would suggest that if you wanna go down that route, we really make it clear what is exactly after-the-fact since we can tell from the photographs that not all of the exterior siding have been replaced yet. Some of it has been removed. So that would be my comment would be we need to specify clearly what has been removed versus what has or will be replaced.

Mr. Hopper: Can you recommend that wording or a–? I mean, I'm not sure. The Commission needs to understand that what is exempted as part of this is – I mean, if it's broad and seems to include something – you know, there's been project plans and that's what's being exempted. And it needs to be very specific, I think. If the Commission has concerns, those need to be very clear in this approval what exactly is being approved on. If there is a lack of clarity, then I think that that should be stated. If it's – if you wanna say after-the-fact for the stuff that's already done, then that's fine too, but it should be accurate. And do you have any recommended wording on how to be more specific? Again, I don't know if the Commission's interested in that or what exactly it wants to do. But just bringing that up as a possible suggestion.

Ms. Callentine: Well, in construction terms, normally when you hear the word “replacement,” and I think we have several people here who are versed in construction terminology, probably everyone on the Commission is, replacement means removal and replacement. You have to take something away in order to put it back. Now, what was not represented to me in the application was exactly which parts were after-the-fact that had already been done, and which parts were still to be proposed other than the parts that I could see that were missing. Obviously, those were parts that had been removed, and were going to need to be replaced before this could become a habitable structure again. If you would like to go through that exercise, we can do that.

Ms. Buchanan: Commissioner Dudoit, you had something to say? No? OK. Planner Livit, this is messy. I think this should’ve been straightened out before this application came to the Commission. It’s obvious that this is a straightforward concurrence of an exemption to an application. It is not an after-the-fact application because obviously that was done already, and I don’t know why that didn’t come to this Commission, and I don’t know how that was done. But per my – the Chair’s discretion, I will have the applicant, Diane Swenson, come up because she wants to ...(inaudible)...

Ms. Dudoit: Chair, we have a motion on the floor.

Ms. Buchanan: Oh, well. OK. Let’s–

Ms. Dudoit: We’re still in discussion.

Ms. Buchanan: We’re still in discussion. The Chair is just gonna table the motion and we’re in discussion because the applicant wants to respond.

Ms. Swenson: You know what? I’d like to give you the background of the house so you can better understand. Several years ago – well, this property used to be owned by the Pedro Family. And ...(inaudible)... who the tenant for years that didn’t really take– He lived in the Phillipines part of the time. Here, part of the time. Really didn’t take good care of the house. But in any case, I was a real estate broker and the transaction with the family, and they had exchanged this – the equity in this house and some cash for the oceanfront land out where they live. And we got ready to close escrow, and I don’t know if you remember, Steve Jenkins and two guys from the Mainland were the buyers. Well, at the last minute, they couldn’t get a loan. And so – and the whole thing was gonna fall apart. So I said that my pension fund – if they had good credit that my pension fund – they couldn’t get a loan because of the condition of the house. So I said if they had good credit that my pension fund would make the loan so everything could move forward. Well, everything– So Steve Jenkins was the guy here. The two guys on the Mainland that went on record because they had the good credit and the money. And they were there about six months. Quit making their payments. And then apparently what he did is he made little

cubicles, and he was taking homeless people, and renting the rooms, and taking their welfare money. And the whole thing was a great big mess. And the police were there all the time. And they weren't making their payments. To make a long story short, I had to get an attorney and foreclose on the house. And I couldn't get them out. So I finally had to get the police to go down and remove them for trespassing, physically, remove them. So I've had my nightmares with this house. I didn't know what to do with it. It was sitting there. And Esther...(inaudible)... and Tanya came to see me, and said that they would like to do it for a project, and they would like to lease auction the house. And so they're doing this project, but a lot of the mess and the work that was done was done by Steve Jenkins who God knows where he is. And he's the one who tore up a lot of the property. We don't even know what he did. And Esther and Tanya are trying to – they wanted this as a project to try to fix it and move forward. And so all of this has been done in good faith on their part. So anyway, I just wanted you to have that background. Thank you.

Ms. Buchanan: OK. Thank you, Diane. So we have a motion on the floor and we're still in discussion. Is there any more discussion?

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

Ms. Buchanan: That's OK. I'm not gonna take any more discussion from the public. Thank you. We are still in discussion. OK. Go ahead, Commissioner.

Mr. Douglas Gomes: I just wanna say that in the shape it's in now, it's clearly a hazard. So why hold it up?

Ms. Buchanan: Thank you. Before I call for the vote, any more comments from the Commission or Corp. Counsel? So you voting on the exemption as stand in the application with only the clarification of Item D and which I read earlier. There are no other amendments to this application at this time.

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

It has been moved by Mr. Davis, seconded by Mr. Rogers, then

VOTED: To concur with the Planning Department's recommendation with the clarification of Item D as stated by the Chair.

(Assenting: R. Davis, D. Rogers, S. Tancayo.)

(Dissenting: Z. Dudoit.)

(Excused: J. Sprinzel, N. Bacon, M. Jennings, J. Kalanihuia.)

Ms. Buchanan: Motion fails. Do I have another motion on the floor?

Ms. Dudoit: I don't know if it's a motion, but maybe just a suggestion. I would prefer that the department go back and resubmit this to us to do a deferral, and resubmit this back to us, which clearly defines on the record that we only looking at E, F, and G. And as Livit said, when you define in construction, replacement, it does include removal. So I mean, if they going stick to the fact that it is removal of the roof and removal of certain things that I think that it needs to be defined clearly on here. But right now, as the application stands with all of this included, I just not comfortable. So I don't know if it's a suggestion, or do I need to make a motion to defer until the department can resubmit using your suggestion that you did earlier or--?

Ms. Buchanan: Commissioner, my advice is for you to move to defer. Hang on. Hang on. Corp. Counsel wants to make--

Mr. Hopper: Just a comment that we're still within -- the rule requires the Commission to make a decision within 30 calendar days after the application is reviewed by the Commission. So that's from today. So the Commission could defer and request that additional information. And if the applicant is willing to say that I'm willing to go beyond the 30 days, then you can go beyond the 30 days. But the Commission could defer, but if the Commission doesn't take action in 30 days, by the matter of practice, it will be granted an exemption. But -- so what you could do today is request that additional information that the plans be clarified to state exactly what work is -- well, to have them clarified as you define for Livit. But I just wanted to warn the Commission that you've got 30 days from today to take a vote whether that's to require an SMA permit or exempt the project. You have to take that action within 30 days. So what this could do is defer this to the next meeting. I don't know if Livit has comments on what information she could clarify in the application, and you could discuss that with her, but that's -- I wanted to make sure that was clear that you've got 30 days from today's date to make a decision.

Ms. Callentine: Yes, thank you. If -- what I'm understanding that you would like, and the way my brain thinks, here's how I would provide it--you would like to know what has already been done and what will be done. And I would actually do that in sort of a table like these members, this thing, this is the siding, this is the stud, this is the flooring, and this has been done, this hasn't been done, partially done, what percentage partially done to make it very clear what has or has not been done, what will be done. If I've missed understood your -- the informational needs, I will be more than happy to -- I would love to get more information from you.

Ms. Buchanan: Commissioner Dudoit?

Ms. Dudoit: Actually, I don't think it's even necessary. I mean, because I was under the impression that we see after-the-fact permits, period. So Items A through D should've been on that when we reviewed it. But the fact that we are only -- are only asking to see

what is gonna be done from this point on, then we don't even need to see A through D because that's already done, and it just is confusing.

Ms. Callentine: Actually, if I could clarify?

Ms. Dudoit: OK.

Ms. Callentine: Even if a project has all or partially done, it still has to receive an SMA review in order for anyone to receive a building permit. So it's not true that you're not reviewing the after-the-fact. Obviously, you can't – well, in some cases, if it was them constructing something after-the-fact, you could say we order removal of that thing. But if it's the after-the-fact action is for removal of something, it's not likely, especially in this case, that you're gonna say go put that back, and now you can take it out. So you are reviewing both the after-the-fact component of this project and the proposed component of the project.

Ms. Buchanan: Thank you, Planner Livit. That is true. Planner Livit, to help you out and to help us out, if you review past applications, they are clearly defined as after-the-fact permits in addition to. And I think that's the problem that Commissioner Dudoit is having because that is not clearly defined on the agenda as well as very clear in the application except for one sentence. That's where we're having trouble because – in understanding that this is both. It is approving the after-the-fact permit as well as exempting the further action.

Ms. Callentine: No, no, no, I'm sorry. It's not – there's no component of this that we've recommended be granted a permit. We've recommended the whole project be exempted from a permit.

Mr. Hopper: Well, we're talking about after-the-fact work. I understand it's not a permit. It's an exemption. But some of this work I think the point is has already been done and some of it has not. And I think the Commission is asking for clarification specifically, which portions have been done and which have not. So it's not an after-the-fact permit. It's an after-the-fact exemption, which is correct, but it's still work that's been done. And I think in defining that here, the Commission would be clear, we're approving the work that was done here. We're approving work going forward. And kinda clarifying what exactly the exemption is for. If I'm misstating anything, the Commission should clarify. And again, that's the odd thing with after-the-fact. If it's an after-the-fact building, it's possible for the Commission to deny that after-the-fact, and then the remedy is to take building down, but it's very difficult with an after-the-fact demolition. I'm not sure what the remedy would be, but that's still an approval that has to – to become legal, that still needs to be approved.

Ms. Buchanan: OK. Commissioner Dudoit, you have any other? OK. So I'm still looking for a motion.

Unidentified Speaker: You want a motion to defer.

Ms. Dudoit: I'd like to make a motion to defer this item until the adequate adjustment to the application is made by the department and resubmitted to us within the 30-day time period.

Ms. Buchanan: Could I do a friendly amendment to say it would be on the next agenda?

Ms. Dudoit: Yeah. OK.

Ms. Buchanan: Any second to that motion?

Mr. Davis: I'll second that.

Ms. Buchanan: OK. I have a motion and a second. I'd like to call for the vote.

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

It has been moved by Ms. Dudoit, seconded by Mr. Davis, then unanimously

VOTED: To defer this item to the Molokai Planning Commission's next meeting as discussed.

Ms. Callentine: Madam Chair?

Ms. Buchanan: Yes?

Ms. Callentine: Your next meeting is not until November 14th – November 12th. Actually, that's true. Your meeting is on November 12th. So if we – if the applicant provides the application to the department, I will be happy to provide that to you. If I do not get it from them, I cannot provide it to you. So it's actually the applicant providing the information to the department is what's required. I just wanted to clarify that.

Mr. Hopper: Doesn't the department already have the information ...(inaudible)... ?

Ms. Callentine: The department does not have a specific list of what has exactly been done and what has not been done.

Mr. Hopper: Not even a list of A through G, what's after-the-fact and what's not?

Ms. Callentine: That's correct. Until today, it was not clarified to me that any – that which portions were after-the-fact and which were not. As I said, when I went on the site inspection, I could tell that some things were done, but I never saw the building before anything was done. And also as the applicant just clarified, some of this work was done by the previous owner. It's been years. It's a messy, messy project. It's a messy structure. And I will need for the applicant to clarify specifically prior to applying for the assessment application, which was on April 26, 2011, what work was done prior to that date, and what is still yet to be done.

Mr. Hopper: Livit, can you see what's there now, and that's after-the-fact, and then everything else is gonna happen after now is going to be not after-the-fact?

Ms. Callentine: Right.

Mr. Hopper: So I don't know if you need a detailed history of when everything was done but–

Ms. Callentine: Not when it was done but was it before or after they applied.

Mr. Hopper: Well, if it's after they applied, and they haven't gotten approval, though, then it's still after – I mean, at this point, whatever is there is after-the-fact, and whatever hasn't been done yet would be something the Commission would be approving, correct?

Ms. Callentine: Well, except that in this list that is in the report, some parts of each component have been done, and some parts of each component have not been done. For example, with the siding, some parts have been removed and as was pointed out today, some parts have not been removed. So I cannot say blanketly – in a blanket way, all the concrete footings are damaged and all of them have been removed. Or some of them may not have been removed. I would have to – I would have to go through and inspect every single component of this project, and I do not think that's how the department wants me to spend my time. I think that's for the applicant to state what they have done or not done to the department. And then I will represent that to you just like we do with any other application—they've gotta clarify the scope with us.

Ms. Dudoit: Can I ask a question to Livit about this?

Ms. Buchanan: Yes.

Ms. Dudoit: How did you make an assessment for what they would be charged for the after-the-fact permit if you didn't know what was done after-the-fact?

Ms. Callentine: This is the way the department does it. This is how Planners are instructed to do it. I would ask Clayton to clarify, but I'll just say that right now, the administration has advised Planners that by in large, unless there's some egregious, egregious incident like someone poured concrete in the ocean or something like that, we are to charge the minimum fee of one thousand dollars with no additional charge on that unless it's an egregious event. And Clayton, I'd be more than happy to have you jump in here and confirm or clarify that.

Mr. Hopper: Just to clarify, the after-the-fact fee is applied to be a charge to reimburse the department for the cost of actually doing the work to process the permit that— It's not actually a penalty. A penalty would have to be done after a notice of violation is issued and an opportunity to appeal. So if it costs more than a thousand dollars for the department to process the permit administratively, then that amount could be charged, and it could be over a thousand dollars if authorized by the budget. But to go anything beyond what the department is charging, and I guess we've had past problems with fees being in the hundreds of thousands in certain cases, and looking at that, and that was a concern. But, you know, as far as the after-the-fact fee, I guess a thousand dollars is the standard at this point according to the department.

Ms. Buchanan: I think at this point, the Chair itself will call for a point of order. Point of order, a motion was made, seconded, and a unanimous vote was taken on the motion to defer pending further information that the applicant has to provide. I will ask for the applicant to come and state for the record that they will make that information available to Planning staff within the time allowed in good faith knowing that we do have a timeframe of 30 days in which that information has to come back to this Board.

Ms. Callentine: Thank you, Madam Chair. I really appreciate your clarifying that. And also just to let you know that my reports for the November 14th meeting are due on Friday. So we need to make sure that the information will be provided to me tomorrow.

Mr. Manera: OK. Hi. Luigi Manera. The deadline is tomorrow?

Ms. Buchanan: Wait, wait, wait. I'd like to interject here. I think all that, Planner Livit, that you need to know by tomorrow is that this item will be on the November 12th or whatever the next meeting date is for review.

Ms. Callentine: Well, in order for the – in order for the packets to be completed and compiled and mailed to you, and the agenda prepared, all of this takes time, and there's a lot of different deadlines. My staff deadline for getting anything on your November agenda is Friday, the 26th of October. So I have to have all my reports done. And so if all I was going to do was to do a quick memo that says, Commissioners, this what's been provided to the department to further clarify the scope on this item requested that you

deferred until this meeting, to the November 12th meeting, then I can do that by Friday provided that I get a document that just clarifies exactly what has and has not been done on the project as you have requested. And so that would be what the deadline would be we're asking if Luigi would be able to meet.

Mr. Clayton Yoshida: I believe the report has been done. All the Commission is asking for is a clarification as to what work has already been completed and what work is to be done. That's what they're asking for. So if we can get that from the applicant, so it can go out with the mailout, so the Commission will have time to study it and bring their thoughts to the next meeting on November 14th, then I think we can pick up the discussion from there.

Ms. Callentine: And what is the deadline for the mailout then if I'm not writing a report?

Mr. Yoshida: The mailout will probably go out at least a week before the meeting. Now, we realize there is a General Election Holiday on the 6th. The meeting is on the 14th. I would say if we could get it by the end of next week, November 2nd.

Ms. Callentine: So that would be until the 2nd?

Mr. Yoshida: Yes, November 2nd.

Ms. Callentine: Until the 2nd. And that would be—

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

Ms. Callentine: The 2nd is Tuesday. No, sorry, the 2nd is Friday.

Mr. Hopper: And I mean, and it's just a statement of what's there now and what's going to be done from now. It doesn't need to be a history I don't think of who did what and when, right?

Mr. Manera: If it's only a statement like you just mentioned, I can probably do that if not tomorrow, by Monday for sure. That's not a problem unless you want the whole 10-page. But if you just do – explain each individual A, B, C, D, and whatever, that's fine. That's fine. Not a problem.

Ms. Buchanan: This Commission's understanding is not that. That is, we concur with that. Thank you very much. We're satisfied with that unless there's no agreement. So the point of order again, we have a motion that was passed to defer pending more information. Does any of the Commissioners need a few minutes' break? Or shall we just charge on? OK. Next. Continuing on the Molokai Planning Commission agenda under Communications, Item C.

Ms. Buchanan read the following item description into the record:

- c. **MR. LUIGI MANERA on behalf of IAN POMAIKAI SIMMS submitting a Special Management Area Assessment for the construction of a single family dwelling, deck, and individual wastewater system located at Mile Marker 19, 0 Kamehameha V Highway, Lot 6 of Waialua Beach Lots, TMK: 5-7-003: 002, Waialua, Island of Molokai. (SMX 2011/0440) (Valuation: \$95,000) (L. Callentine)**

Ms. Callentine: Thank you, Madam Chair. This is for a construction of a single family dwelling. And this is on a parcel which is 8,480 square feet which is – make a correction to your report on the first paragraph. Two numbers were transposed when it was printed out. So it's really 8,480 which is reflected later in the report correctly. This is on land that's in the rural district as far as the State, and zoning, and community plan designation. It's in the rural 0.5 Maui County zoning district.

This project is for a single family dwelling that is approximately, 864 square feet in area. And it will contain two bedrooms, and one bathroom, and an open living room, a dining room, and a kitchen. There will be an adjoining covered 384 square foot deck on the southeast end of the dwelling. There will also be a septic system included in the project and – a wastewater septic system. This project has been reviewed by the Department of Health and they have approved the plans for the septic system. And that's shown in Exhibit 7 of your report. The Department of Environmental Management, Wastewater Division, had no comments on the project. The Zoning Division of the Planning Department commented that the party is in flood zone "X" and does not need a flood hazard permit.

The department transferred – transmitted the application to the Department of Land and Natural Resources, State Historic Preservation Division. As noted, this application was filed September 29th, 2011. And it was transmitted and we have not received a reply from DLNR, State Historic Preservation Division. So in lieu of waiting for comments, the applicant requested that we bring the project forward. It is an exempt action. However, in the absence of comments from State Historic Preservation Division, the applicant is willing to commit to having on site, an archaeological monitor during all ground-altering activities such that in the event if any inadvertent discovery of human remains or other cultural or historic resources, all work shall cease immediately, and State Historic Preservation Division will be contacted immediately for further instructions.

The claimed value of the project is \$95,000. And we request that you concur with our assessment that the project is exempt from the SMA permitting requirement. It is not exempt from a building permit and all that that entails. Thank you.

Ms. Buchanan: Thank you, Planner. Is there any questions for staff from the Commission at this time? OK. Seeing none, at this time, I'd like to open up for public testimony on the agenda item any persons wishing to. Thank you, Auntie. Any public testimony? State your name for the record. OK. Seeing none, I will close public testimony. Again, to Commissioners, you guys have any questions about this project? It's a new dwelling. You heard what the Planner said. So if you have no questions, then I can call for a motion. Commissioners, do you guys need a five-minute break and I can reconvene? Or are you ready to make a motion?

Ms. Tancayo: I'll make a motion. I make the motion that we approve the exemption with the recommendations that Livit recommended that there be an onsite archaeologist there to inspect any ground movement especially, in the East End area down there.

Ms. Buchanan: Do I have a second? I do have a second from Commissioner Douglas. I have a motion. It's been seconded. And I will call for the vote. Oh, yeah, I'm sorry. We can have discussion. Thank you.

Ms. Dudoit: I just had a question. Have we as a Commission done this as a standard practice to just dismiss the DLNR's report and go with conditions attached to that? I mean, have we done this?

Ms. Buchanan: Yes, we have. We have done it several times as long as the representations are made on the record by the applicant which it clearly has been made. This Commission clearly recognizes in the past several years, the department's inability to answer requests in a timely manner. And so this Commission uses its own judgement, and it's been very – we've been very consistent at requiring that. And I think the applicant knew that and already chose to clearly convey that through the application. Does that answer your question?

Ms. Dudoit: Thank you.

Ms. Buchanan: So we have a motion that has been seconded. There's not any more discussion? Any discussion, Commissioners? Seeing none, I will call for the vote.

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

It has been moved by Ms. Tancayo, seconded by Mr. Rogers, then unanimously

VOTED: ***To approve the exemption with the recommendations as stated by the Planning Department.***

Ms. Buchanan: Motion carried. Thank you very much. Moving on. We're gonna go straight into the Chairperson's report.

D. CHAIRPERSON'S REPORT

Ms. Buchanan: The Chairperson said he's having a blast in Japan. No, I'm just joking. ...(inaudible)... That's his report. He's having a blast in Japan. And I have none except to point out, and I'm sure Clayton's gonna do it again, the next month is November, and we're only having one Commission meeting. And so we'll go right into the Director's report. Thank you, Clayton.

E. DIRECTOR'S REPORT

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

Mr. Yoshida: Thank you, Madame Vice-Chair and Members of the Commission. The department has circulated its list of pending and closed Molokai applications. If there's any questions on those, we'd be open to respond.

3. Agenda items for the November 14, 2012 meeting

Mr. Yoshida: Seeing or hearing none, our next meeting is – your next meeting is scheduled for November 14th. We do have these – the item that was deferred at today's meeting, the Swenson single family dwelling in Ranch Camp, as well as the Koheo Wetland item that was deferred from the – well, defaulted into a deferral from the last meeting, and possibly one other SMA assessment. Any questions on that? OK. That's all we have to report, Madam Chair.

Ms. Buchanan: Thank you, Clayton. Commissioners, you guys have anything else you wanna say?

Ms. Dudoit: I just had a suggestion. I noticed, Livit, I noticed that – or whoever writes the–

Ms. Buchanan: Excuse me, Commissioner. Planner, she's addressing you and directing you to – for some action items.

Ms. Dudoit: I don't know if I addressing you 'cause I don't really know who writes or prepares this stuff to submit before us, but it's actually easier and less confusing if it's stated right in the front part like it usually is what we are trying to approve or decide on. So whether it says SMA exemption or SMA minor permit, but today was a little bit confusing because really, one of the only places you found it was at the very, very end in one line under the recommendation. So I just wanted to make a suggestion 'cause it's actually easier to kinda know what we are discussing right forward, right in the beginning.

Ms. Callentine: So you're saying— And thank you for the comment. Are you talking about the way that it's presented on the agenda or in the report?

Ms. Dudoit: I think both. I don't know if I wrong, but normally when I'm reading my agenda and material, they're kinda almost exactly the same except the supporting information is attached to the back. And it usually says right out front what we're trying to make a decision on.

Mr. Hopper: I have a suggestion on that. That's a good point. Would there be any way to say like "Communications" maybe as another heading to have "Exemptions?" And then maybe keep the exact same wording otherwise, but just to have – because there's legal notice requirements, but maybe to have "Communications, 1, Exemptions," be a bold-faced heading, or "SMA Minor Permit" or "SMA Major." Now, I know it says it right in the line, but it might be easier – you know how it is per the – to have the subject heading maybe would be easier. And maybe in the report, you could have subject, "SMA Exemption," and then below that, "Luigi Manera." I mean, I don't know if that's something the department's comfortable with, but it might help somebody who's not as used to reading these or to be able to see it. And that's something that maybe Clayton or someone more than me would have to approve, but maybe that would help some people.

Mr. Yoshida: Yeah, I guess we can work on the – possibly on the formatting of the memo report to – and maybe specifically state in the subject, whatever, "SMA Exemption" or "SMA Minor Permit."

Ms. Callentine: And what about the agenda, Clayton? Can we reformat the agenda as our Corporation Counsel just recommended in order to have a section that is "SMA Exemptions" and "SMA Permits?"

Mr. Yoshida: Well, I guess for Communications, it's just the difference between SMA exemptions and SMA minor permits. SMA use permits would be public hearings and they'll be listed separately.

Mr. Hopper: So you'd have your generic heading which is "Communications" or "Public Hearing," and then under that item, the next thing rather than the whole project description could maybe be "Exemptions." And then even after that, "William Spence" after that. Or maybe even as 1, you have "Exemptions," and then below that as part of 1, "Mr. Will Spence." I mean, you could work on something that the department's comfortable with but, you know, if that's what's being asked.

Ms. Callentine: Yeah, the reason I brought Clayton into the discussion is because he formats and specifies the agenda format, I believe. And I couldn't – I didn't want to answer for him on that. But point taken and we'll work on that.

Ms. Buchanan: OK. Thank you. Any more – anything from the Commission Members before this meeting is adjourned? Well, on behalf of our Chair who is on vacation, I'd like to thank you all for showing up and doing business. And thank you for all your good work. This meeting is adjourned.

There being no further discussion, the meeting adjourned at 2:10 p.m.

Respectfully submitted by,

SUZETTE L. ESMERALDA
Secretary to Boards & Commissions

RECORD OF ATTENDANCE

Present

Lori Buchanan, Vice-Chairperson
Ron Davis
Zhantell Dudoit
Douglas Rogers
Sherry Tancayo

Excused

Nat Bacon
Michael Jennings
Janice Kalanihuia
John Sprinzel, Chairperson

Others

Clayton Yoshida, Planning Program Administrator
Livit Callentine, Staff Planner, Molokai
Michael Hopper, Deputy Corporation Counsel