

**MOLOKAI PLANNING COMMISSION
REGULAR MEETING
NOVEMBER 12, 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, Michael Jennings, at 12:02 P.m., Wednesday, November 12, 2014, at the Kualapuu Community Center, 1 Uwao Street, Kualapuu, Molokai.

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

Chair Michael Jennings: We're going to get started here. We've got everybody here so I want to say thank you, thank you to the board.

B. PUBLIC TESTIMONY

C. APPROVAL OF THE MINUTES OF THE JULY 9, 2014 and AUGUST 27, 2014 MEETINGS

Chair Jennings: So we're going to ask for public testimony. Is there anybody that would like to make public testimony at this time? Okay, seeing none, we will go down here to the approval of the minutes of the July 9, 2014, and August 27 meetings. Do I hear a motion for approval of those minutes? Doug makes the motion. Is there a second? Diane second.

It has been moved by Commissioner Rogers, seconded by Commissioner Swenson, the unanimously

VOTED: to approve the minutes of the July 9, 2014 and August 27, 2014 meetings.

Chair Jennings: Okay. So first on the agenda here is -- oh, Unfinished Business, I'm sorry. Ben, would you?

Mr. Benjamin Sticka: Thank you, Mr. Chair. It looks like our Administrator's trying to get a hold of a couple representatives for the meeting today, so I'll introduce the first item, which is under the Unfinished Business on your agenda today.

Mr. Sticka read the following agenda item into the record:

D. UNFINISHED BUSINESS

- 1. MR. DILIP GUNAWARDENA of the LDE GROUP, LLC requesting a Community Plan Amendment from Single-Family Residential to Multi-Family Residential and a Change in Zoning from Interim District to A-1 Apartment District for the Chopra Hale Apartments project, a sixteen (16) unit multi-family apartment complex and related improvements to be used for affordable rental units on 1.04 acres of land located at 190 Makaena Place, TMK: 5-3-004: 028, Kaunakakai, Island of Molokai. (CPA 2010/0005) (CIZ 2010/0007) (B. Sticka) (Public hearing was conducted on September 24, 2014.)**

The Commission may take action on these requests.

Mr. Sticka: So good afternoon, Chair and Members of the Molokai Planning Commission. The first item before you was deferred from the September 24 Planning Commission meeting. The Commission, at that time, requested additional information to be provided in order to make a recommendation on the proposed community plan amendment and change in zoning requests. Specifically, the Commission asked for, no. 1, provide a representative from the Department of Water Supply, provide data on the need for affordable housing on the island of Molokai, provide data on the flood and wastewater calculations based upon the proposed project, provide data on the related traffic impacts for the proposed project, and, finally, provide data addressing response times for emergency service vehicles, including a representative from fire and also the Maui County Police Department. I believe there was also a request for a representative from Public Works. Since the meeting, staff reached out to the Department of Water Supply, Public Works, the Police and Fire. The police and fire both confirmed that they would be in attendance at today's meeting. Both directors from Water Supply and Public Works should now be available by conference call for questions of the Commission. And, finally, the applicant will be addressing the Commission's questions related to the affordable housing and the flood and wastewater comments.

And just as a refresher to the Commissioners and members of the public, this is a request from the applicant, Luigi Manera, on behalf of the LDE Group, requesting a community plan amendment to amend the property from single-family to multi-family, and a change in zoning on the property from interim district to A-1 apartment residential district on approximately one acre.

On August 14, 2014, the Molokai Planning Commission reviewed the environment assessment in which agency comments were made available during the review. The Commission accepted the final environment assessment and issued a finding of no

significant impact at their November 13 meeting. As of November 7, 2014, the Planning Department has received one letter against the project, and one letter of support for the project.

At this time, I'll hand it over to, I'm not sure, to the applicant or perhaps the conference call. Then I'll hand it back to the Chair. Thanks.

Chair Jennings: Thank you, Ben. Public testimony now. If anyone has anything to say, please step forth and we will accept your testimony, excuse me. Okay, seeing none, is there -- is the applicant here? Luigi, please?

Mr. Luigi Manera: Hi. Luigi Manera, applicant. I think I submitted all the things you asked me of the comments from the wastewater, and I think there was another one from impact, traffic impact study was done, and also I think there was another one, I think was the Water Department, Wastewater.

Ms. Zhantell Dudoit: Maybe I can help. Okay, so most of the questions polled were from me, at the last meeting. When we got the documentation from the department, with the recommendations and with the applicant being present, there were several different -- I felt that it was not adequately or given to the extent that I needed it, and then because we had a whole bunch of testifiers who had the same questions, Ben wrote me an email asking me to, specifically, outline questions that I had for the department, so maybe, Chair, what we should do is go down the list of all of the -- since the department people are here, and I can clarify for them what it was that I had questions on, the first was to provide a representative from the Department of Public Works to discuss concerns regarding ongoing or potential impacts from the proposed project. And do we have a representative from the department of -- okay. So I can state it again, but my concern, major concern was if one department within the county, like Department of Planning, requires us or recommends that we approve a change in zoning, do they, first, consult with people, like Public Works or other, Wastewater, to ensure that those departments can sustain the financial burden or the resources that they need to carry this project from beginning to end? Is it an unnecessary and unwarranted step for us, as a Commission, to approve a change in zoning for a project which can never fully be efficient enough to provide quality of life for the services that is needed for the people in the area? So that was my main focus with the Department of Public Works being that they would be responsible, you know, for road improvements and other technical details that already are obviously a problem in the area - overcrowding and parking, the access for emergency service response being that there's only one entry in and out of the place - so that was the purpose of the Department of Public Works' involvement in my questioning, but I'm not sure. Okay, so if we cannot address -- are they on the phone, Clayton?

Mr. Clayton Yoshida: We're trying to get them on the phone but I guess they can't hear us, the Public Works Director and the Water Director. I don't know if we have somebody from Fire here.

Ms. Dudoit: Okay.

Mr. Yoshida: If you have questions for Fire.

Ms. Dudoit: And then so what about Department of Water Supply, Wastewater Division? Same ...(inaudible)...

Mr. Yoshida: Yeah, they're together --

Ms. Dudoit: Oh, okay, okay.

Mr. Yoshida: The Water Director and the Public Works Director.

Ms. Dudoit: Okay. So then the next one was provide a representative from the Department of Fire and Public Safety and the Police Department to discuss concerns regarding ongoing and potential impacts from the proposed project. So before the representative comes up, I just want to make it clear that my reasoning for asking this question was the statements we got in the packet merely said there is no reason why they cannot officially deny the project. What I wanted was a better local perspective. You, as a responder, knowing that there's only one entrance in and out, and just very specific details so it's easy for somebody pushing a pen, in an authoritative position on the island of Maui, to say that there's no potential impact, but it's different when our responders are present at the meeting and can address concerns, if that is within your scope, to be able to address concerns that really affect the response time and the adequate amount of attention that we can give those people in real time, in real effect, and not just according what somebody proposes is going to be okay based on data and calculations, but real life experiences in this community. So that was my reason for asking that question.

Mr. Manera: I do the study they required. I don't know why nobody's over here respond. I just don't know. Who? Oh, the Fire?

Ms. Dudoit: Yes.

Mr. Manera: Okay. Go ahead.

Chair Jennings: Mr. Schonely?

Mr. Richard Schonely: Hi. My name is Richard Schonely. I'm with the Maui County Fire Department. I'm the fire inspector here on island. And I had correspondence from -- which one is Ben? That's you, Ben? From Ben and my captain, Paul Haake, who is the head of the Fire Prevention Bureau, and, basically, the question was asked us regarding fire protection, you know, and we had responded with him regarding the change in zoning on requirement for gallons per minute, spacing of hydrants, depending on the occupancy, if it was to be sprinklered, fire alarm required, etcetera. As far as your question, Zhan, you know, regarding responding over there and any kind of problems for first responders, I'm going to have to defer that to, you know, the guys who are on the line and to the fire chief, and my superiors. We respond over there now, you know. And this type of project, I don't think that we should, or in my opinion, I shouldn't be the one to state that it's a go or a no because of responding there. We respond there now. We take care of the public in that area. I wanted -- I think it's best for me to defer that to my superiors on that answer, if that's okay with you.

Ms. Dudoit: Yes. Thank you very much. Okay, so this is a little bit disappointing but, in actuality, I think that the fact that we are in a location where it's hard for those residents to get to this meeting, this might have been a blessing in disguise that the department heads were either unable or not in attendance. But going forward, I also asked to provide data on the need for affordable rental housing on the island of Molokai, and if there was some specific site or documentation that proves, per population, economic status, and what have you, that there is some kind of -- it's easy for somebody to say there's a need, but I do know that there are several affordable rental housing throughout the island, including the Maunaloa facility that is fairly empty, and so we were looking for documented need.

Mr. Manera: ...(inaudible)...

Ms. Dudoit: Yeah, we saw, but it just kinda said that there was a need.

Mr. Manera: Yeah.

Ms. Dudoit: Yeah. But it doesn't give us any specific calculations, or I could say there's a need. I actually think there's a need for affordable houses for sale 'cause rentals don't bring in any -- especially not for an out-of-state or out-of-island owner of the property. It doesn't really have a positive effect on our island except for that somebody's gaining the rental assistance and especially on Section 8 using our tax dollars and it's going out of state. So my thought was is there any kind of documented proof based specifically on Molokai that there is a need for affordable rental housing aside and beyond somebody, an applicant, as I much as I trust and love you, that says there is a need?

Mr. Manera: Well, first, that one don't come from me. It comes from the County of Maui, Department of Housing. I think it's the only -- it's the best I can do. This is not from Luigi.

Ms. Dudoit: Yeah. And so -- and so --

Mr. Manera: And they give you a number.

Ms. Dudoit: Right, but this specifically pertains to rental assistance program on a waitlist.

Mr. Manera: Okay.

Ms. Dudoit: So it has very little to do with -- so it says, "In the County of Maui, the wait list for the island of Molokai," but a lot of that have to do with financial burden placed on the Section 8 program itself, so it doesn't necessarily cite the need for the structure or the housing. So maybe it's not your -- I mean, you know, so that's what I was asking for. This wait list has been at the 2,000, 3,000 for years and years and years, yet, it's the first time that organization or an applicant has come in to try to put up a 16-unit affordable housing complex and use that as a reason to be able to justify needing it. What about -- I mean 2,001 people on the island of Molokai on a wait list, well, I'm pretty sure because there was a standstill and a moratorium on the wait list for several years, that a lot of that wait list people have either bought houses or are no longer on that list.

Mr. Manera: Like I say --

Ms. Dudoit: And actually, it's 201.

Mr. Manera: 201 ...(inaudible)... I did -- I called the state. They never answer. I sent them -- that's the only people that answer with some -- all this information I guess.

Ms. Dudoit: Okay. Thank you. And then the other was to provide flood and wastewater calculations based upon the proposed project. So in the other documentation that we received, it just said that it's in a Zone X. So it specifies that it's in a flood zone. Maybe, Luigi, you can --

Mr. Manera: It's in Flood Zone X, so that means there's no flood. That's the meaning of that. So there's no flood so there's no study to be done.

Ms. Dudoit: But isn't it true that when you look at a flood zone map, it specifically is related to flood zones as opposed to high tide water, tsunami, those kinds of things and no necessarily pertaining to rivers and streams that are adjacent to the project property?

Mr. Manera: No. I actually have the brand new map. They're going to be effective in September 2015. This is the new for the whole town of Kaunakakai. They remove the parcel.

Ms. Dudoit: Yeah, so do the flood zone mapping, as it is charted here, reflect and include overflow or flooding from adjacent rivers or streams?

Mr. Manera: This is for the adjacent stream.

Ms. Dudoit: Okay, so including the Manila Camp --

Mr. Manera: The Manila Camp.

Ms. Dudoit: River that runs and is diverted above the subdivision?

Mr. Manera: Yeah, and the levy. The levy.

Ms. Dudoit: The levy.

Mr. Manera: Yes.

Ms. Dudoit: Okay. Okay, so we going be able to get that?

Mr. Manera: Oh, sure.

Ms. Dudoit: Okay. Okay. And then the next was to provide related traffic impacts for the proposed project. So what we got in our packet was the Police Department's acknowledgment that a statement from the chief just merely saying there will be no significant impacts, which obviously, to me, is inaccurate.

Mr. Manera: But I did the traffic study. We had some firm in Honolulu to do the traffic study.

Ms. Dudoit: I'm so sorry, but was this provided in our packet earlier because I didn't get it? So I'm just thinking that it's kind of unfair to me, and the rest of the Commissioners, to be able to process all of this right now. So in the essence of time, I don't know if the questions that I asked or the material that I asked to have was adequately provided, and I don't know if you want me to keep on going to take up more time, or should we just defer this issue?

Mr. Manera: Can I say something?

Ms. Dudoit: Sure.

Mr. Manera: This traffic study was -- you guys had it for the past three, four months. It was part of the package, was part of the environmental -- everything. It was all included for

months and months. Take a look at the date. If they never give it to you, I don't know, but ...(inaudible)...

Ms. Dudoit: Yeah. I'm sorry, but this is the first time I have ever seen this.

Mr. Manera: Well, I don't know what happened. I have the book ...(inaudible)...

Ms. Richelle Thomson: Commissioners, if I could interrupt. I do have the Dave Goode and Dave Taylor, the Directors of Public Works and Water, on the phone. It's a little low tech but we could try it this way and see if it works, if you're able to hear them and vice-versa, so I'm going to put them on speak, and let's see how it works.

Ms. Dudoit: ...(inaudible)... on the phone?

Ms. Thomson: No. David Goode and Dave Taylor. Can you hear me?

Mr. David Goode: Yes.

Ms. Thomson: Okay, so here we go. I'll convey the questions to you just so that you can hear clearly and we'll let you know if they can hear you as well.

Mr. Goode: Okay.

Ms. Thomson: I'm sorry. Do you mind restating your question. I did tell them what --

Ms. Dudoit: Who are we talking to?

Ms. Thomson: It's David Goode, is the Director of Public Works, and Dave Taylor is the Director of Water Supply.

Ms. Dudoit: But not wastewater. Okay. Hi, thank you for joining us. I just wanted to restate some of my concerns. We asked, last meeting, for the Department of Public Works to discuss concerns regarding an ongoing or potential impacts from the proposed project, and the reason that I asked this question in the beginning was to get clarification whether or not if the Department of Planning recommends that the change of zoning happen and the project go through, with the increase of population, traffic, etcetera, would the Department of Public Works foresee having to improve or do any kind of changes to their current facility and the things they're responsible for, and if so, does the Department of Public Works have the funding or the resources to ensure that this project can go through and that it wouldn't prohibit or lessen the quality of life for the existing members and residents in the Manila Camp area?

Ms. Thomson: Did you get that question?

Mr. Goode: Come again.

Ms. Thomson: Okay, I'm going to take it off speaker and I'll repeat it. The question whether this project, it's a 16-unit apartment building that would be built in Manila Camp, which is single-family residential subdivision, whether this project would overly burden both the need for future improvements, infrastructure improvements, and whether that would reduce the quality of services provided currently to the residents of that subdivision.

Mr. Goode: All infrastructure or specifically for water or for road ...(inaudible)...

Ms. Thomson: I think in general, both for water, and roads, and right-of-way and things like that, basically, the gamut of services being currently provided to that subdivision.

Mr. Dave Taylor: I'm Dave Taylor, Director of Water Supply, and I'll answer the question for water. The Department of Water Supply, when we review building permits, constructions plans, etcetera for review, we only approve new projects if there will be no burden on existing customers, so when they come with this project ...(inaudible)...

Ms. Dudoit: I'm sorry, I cannot understand ...(inaudible)...

Ms. Thomson: Dave, it's not working, sorry. I guess we're going to have to try a different plan ...(inaudible)... my cell phone so it's not working though. Clayton may try to give you a call back on the speaker phone and see if it works but we'll let you go for now.

Ms. Dudoit: Okay, so just let me come to my questioning, and then I just going to be quiet and let the Chair and everybody else decide whether or not we want to keep on talking about this. But the other question I had for the department, which I'm not sure that Ben and I discussed it by email, but I was under the impression that there was a moratorium on zoning changes until the community plan -- the new community plan was finished. If not -- if it is, then I guess this is a moot subject. If not, then my question was if a project like this or a change in zoning were to be done right now, because I also see that there's another change in zoning in our agenda today, and then the community plan come up and they decide that that area is not -- that is not the type of designation they want in that area, completely don't want it to be, you know, listed as such, what happens to the projects we approve? Do they get grand-fathered in? Does that change? How does that work? Because we're so -- I mean so say if were like five years off from the community plan, but we're like a month away from the community plan, so what happens? And is it smart for us to keep on putting change of zoning issues on the agenda when we're so close to the community plan that supercedes our decisions anyway?

Mr. Yoshida: Well, if the community plan amendment is passed with the multi-family designation, and the zoning had passed with the apartment zoning, you know, that's what exist. Now, if the, in the context of the comprehensive -- the update of the Molokai Community Plan, which is -- may start in January and take two years, it would just be inconsistent with the community plan, you know, the zoning, the zoning would prevail if it's not -- because it's not in the SMA so they don't have to have that consistency, per se, this property. Again, the council will be the decision-maker, final decision-maker on both the community plan amendment and the update of the Molokai Community Plan, so they would be approving in full knowledge that if they approve the community plan amendment, and they approve the comprehensive review of the Molokai Planning Community with a different designation, they will be approving it with full knowledge that there is this inconsistency because they're the final decision-makers on both.

Ms. Dudoit: At this point, are we bound by any legal recourse to have to make a decision or can we defer till the community plan is done?

Mr. Yoshida: I believe under chapter -- Section 19.510.020, of the code, applications which require a public hearing, item A.7. states, "The commission shall transmit to the county council findings, conclusions, and recommendations for all changes in zoning and conditional use permits within 90 days and within 120 days for all other applications requiring council approvals after the application is deemed complete by the Planning Department. However, if a consolidated application for a community plan amendment and change in zoning is submitted," which this is, "findings, conclusions, and recommendations shall be transmitted within 120 days." So according to the code, the Commission is supposed to submit their findings, conclusions, and recommendations within 120 days after the department sent the letter to the applicant saying you application is complete, your public hearing is scheduled for September 24, and do your noticing, publish once a week in a newspaper, and send out a notice to the neighbors, neighboring landowners within the 500-foot radius.

Ms. Dudoit: ...(inaudible)...

Mr. Yoshida: Well, I guess that's always been in the code.

Ms. Dudoit: How many of our 120 days are we into right now?

Mr. Yoshida: Well, according to the staff report, let's see, under Procedural Matters, let's see, on September 16, 2014, 58 days to the public hearing, the Planning Department mailed a notice to the applicant and appropriate state and county agencies notifying them of the scheduled public hearing, so if that September 16th date is correct, it's -- well, maybe we could check but, because the hearing, I believe the hearing was on September 24th, so I would think that they would have --

Ms. Dudoit: So, technically, if -- okay, 'cause our Commission meetings are sort of not -- we don't have a lot, right, between November and December, yeah? So if we deferred and say we would have till January's meeting to be able to make a decision, not that I saying that would take that long, but I'm just trying to get a feel of --

Mr. Yoshida: Yeah. I believe -- well, if they had a January recommendation, it still would be outside of -- I believe it would be outside of the 120 days, but they still could submit their recommendations.

Ms. Dudoit: What do you mean outside of the 120 days? You mean more?

Mr. Yoshida: Yeah. I believe it will be more than 120 days because if the hearing was on September 24, the first public hearing, the one we had at the DAGS conference room, then the department would have sent out a notice to the applicant at least 45 days, 45 days prior to that, so you're talking about early August, so 120 days from early August, it would be early December.

Ms. Dudoit: ...(inaudible)...

Mr. Yoshida: Yeah, that's when the department notifies the applicant, when the application is complete ...(inaudible)... for public hearing, send out their notices at least 30 days prior to the hearing, publish a notice in the newspaper once a week for three consecutive weeks.

Mr. Marshall Racine: ...(inaudible)...

Mr. Yoshida: Yeah, the clock would start when we send that letter to the applicant.

Chair Jennings: Could we -- could we use the microphones, please, Marshall? Okay. So it would be early December. Excuse me, Richelle.

Ms. Thomson: Thank you. Just a couple of quick thoughts. So you have a good list of your concerns and your considerations, and even that you're having these issues brought up, so it depends on whether you need further information or whether you have enough information to pass on your recommendation and along with your concern, your recommendation will be either to approve or recommend denial of these, the change in zoning and the community plan amendment, and you would list your concerns for, either way, you would list either your concerns or recommended conditions, so those are -- that's the action that you could take. You could defer it, but like Clayton was saying, you're going to run into some time limits, it doesn't mean that you can't provide your recommendations even following that, but your -- the time limits in the code say 120 days so, you know, if you have sufficient information to handle it at this meeting, you know, you could do so if you feel if you have that.

Ms. Dudoit: Well, is there a moratorium on change in zonings?

Ms. Thomson: No.

Ms. Dudoit: Okay, so I don't know, Chair. I don't know if -- I mean, do you want me to make a recommendation off of what I feel, or does the other Commissioners want to have a say at something? I mean --

Chair Jennings: You do what you want to do. If you would like to make a motion, then make a motion.

Ms. Dudoit: Okay, so I'd like to make a motion to defer to our December 10 meeting just because there were very specific questions and representations from departments that we asked to be present and with the understanding that the Department of Fire was present but has deferred to response as opposed to public safety, that the Police Department was not present at our meeting, that we do have a letter from the Department of Wastewater that contradicts itself by saying, "The plant currently has adequate capacity to accept the estimated flows of the project but cannot guarantee it until the permits are issued." So there are several different agencies that have not been present, so also -- also, I haven't really gotten a clear answer between the department and the county agencies on my very first question, which was: Do you folks talk to each other to ensure that the recommendations you make to us on a project it can be adequately supported by the other departments in which a project like this would put a burden? And I don't know if that's standard procedure. I don't know if, you know, anybody even cares. But I just want to make the responsible decisions. So -- and I also think that the location, which I know we cannot help, but when we're far away from the middle of town where people are -- have access, there was a lot of community members when we were in town, there are no community members today, so that bothers me a little bit too. So that would be my motion I guess.

Ms. Diane Swenson: ...(inaudible)...

Ms. Dudoit: Is that doable, Richelle?

Ms. Thomson: I think that if you -- if you sent this to council either with a recommendation to approve or reject the request, you could note your concerns and you could be as specific as you'd like, you know, as far as saying that you -- some of the concerns are that you don't know if there are, you know, adequate public infrastructure, etcetera, and all of the concerns that you brought up are quite valid in terms of you recommendation either for or against.

Ms. Dudoit: But it has to be -- but are recommendations or our concerns has to be attached to either an approval or a denial?

Ms. Thomson: Yes.

Ms. Dudoit: Well, to be honest, I'm not comfortable with either one right now so -- which is the preface of my deferral but --

Chair Jennings: Okay, Zhantell has a motion out there. Do I hear a second? Oh, could you -- Susan or Zhantell could we have the motion again, please? I guess the motion is to defer. Am I correct? Okay.

Ms. Dudoit: So as part of the -- we're in discussion, right, since Marshall seconded?

Chair Jennings: Yeah. Yeah, yeah. Yes.

Ms. Dudoit: Okay. So as part of our deferral, we would like to insist that the representatives from the Department of Public Works and Wastewater Division, Police, and Fire response -- submit -- or, actually, to be here to testify or at least have a method in which we can talk with them at the December -- a representative that is capable of the information and making the -- yeah, and talking with us.

Chair Jennings: Okay. Now there's -- that's Zhantell's motion, there's a second, Marshall, okay. All those in favor -- oh, excuse me. Any further discussion? I'm sorry. Commissioners?

Mr. Lawrence Lasua: Chair, I'd like to say that, you know, as Commissioners here, when we ask for information, it's better that it be here when we do this. If it's not, then we have to go through this. So I would like the staff to think about what is presented here today and to make sure that if we defer this, that the next time, these people are either here or some representative 'cause they just waste our time doing this, okay.

Ms. Swenson: You know, I tell you, it's not fair to the applicant so I think that we need to get it figured out.

Ms. Lasua: It's not fair to the applicant, it's not fair to the people the applicants are working with, okay, it's not fair to the planners, and it's not fair to us.

Ms. Dudoit: And I just also, since this is on record, wanted to include that it's ultimately not fair to us either because it makes us look inefficient and like we're constantly deferring things because we don't understand or not -- but behind the scenes, when we ask things and we don't -- we need to be very clear about what we're deciding on, and so when we

ask a question or we ask for representation, it would be nice to have clarity, and whether or not people in the audience or, you know, anybody else thinks that it's silly and we asking questions that are nonsense, the point is that we, as commissioners, to make a decision need to be well informed and need to feel secure about what we choosing, so thank you.

Chair Jennings: Okay.

Mr. Schonely: Can I comment, please?

Chair Jennings: Oh yes, Mr. Schonely.

Mr. Schonely: I just want to make it clear that my captain did have me respond to this meeting, and that the Fire Department was present, but regarding the correspondence with Ben was all regarding, you know, fire flow requirements, hydrant spacing, etcetera, which you guys all know, but Captain Haake wanted me to, you know, let you know that Fire Inspector, Richard Schonely, assigned to Molokai, will be assigned to attend the November 12 Planning Commission meeting. If he is not able to answer any questions posed to him regarding this project, those questions will need to be directed back to him, at the Fire Prevention Bureau, for immediate comment. So if you specifically want to ask the captain regarding response and etcetera, I can't provide that information, but I just want to make sure that, because Ben had corresponded with Paul regarding all this other stuff, specific and formal comments on the project itself will not be available until engineer drawings are provided and the plan review process for building permit applications have started. So we're not even there yet, but Fire Department is here, I showed up, and I want you to know that those questions that you have are important, and if you could address them to Captain Haake, he might be able to respond. So thank you very much.

Ms. Dudoit: And also make sure note, Chair, in our recommendations that when we ask for a representative, we are asking also for a representative from the -- what division was that? From response and not just public safety.

Chair Jennings: Luigi.

Mr. Manera: I want to say something.

Chair Jennings: Yes, sir.

Mr. Manera: In regard of the deferral and deferral, you guys wasting time. What about my time? When you guys had this for over one year and a half and you not even look. It's horrible. The information I gave you today was given to you one year and a half. That's ashame.

Ms. Dudoit: First of all, I did look over and over and over again. And the questions I asked are because that pamphlet did not adequately suffice the information that I'm asking for. So in no way did I disregard that for a year. I specifically am asking key points that I talked with Ben about over and over because even when we were at several meetings, which we asked you and other members, they could not suffice us as far as information provided.

Chair Jennings: Okay. Luigi, thank you. I appreciate it. Thank you, Mr. Schonely. If there's no more discussion, then we will have a vote.

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

It has been moved by Commissioner Dudoit, seconded by Commissioner Racine, then

VOTED: to defer the project to the December 10, 2014 meeting.

(Assenting: R. Davis; Z. Dudoit; L. Lasua; M. Racine; D. Rogers)

(Dissenting: B. Buchanan; D. Swenson)

(Absent: S. Tancayo)

Chair Jennings: Okay. Thank you. Okay, next? Ben, what do we -- oh, Clayton?

Mr. Yoshida: I guess, Mr. Chair, we can't start the public hearings until 12:00 because that's when they were advertised. If you want to move to Communications or to Director's Report, we can do that, or if you want to call a recess until 12:00.

Chair Jennings: Let's -- I don't want to -- why don't we go with the Kamehameha Schools, which would be F. Let's just do the Kamehameha Schools.

Mr. Yoshida: Okay, and then you want to come back?

Chair Jennings: Then we'll come back.

Mr. Yoshida read the following agenda item into the record:

F. COMMUNICATIONS

- 1. KAMEHAMEHA SCHOOLS submitting their 2014 Annual Report (October 24, 2014) as required by Condition No. 11 of their Special Management Area (SMA) Minor Permit for after-the-fact (ATF) improvements for an aquaculture operation of a former lessee D&J OCEAN FARMS consisting of the construction of a 1,680 square foot**

storage building and hatchery, 160 square foot pump house structure, 2200 linear feet of road improvements, and grading for shrimp ponds, ditches, and drainage improvements at TMK: 5-6-006: 008, 024, and 034, Keawanui, Island of Molokai. (SMX 2011/0002) (SM6 2011/0004) (Valuation: \$26,400) (B. Sticka)

The Commission approved the SMA Minor Permit by action taken at its November 9, 2011 meeting.

Condition No. 11 of the SMA Minor Permit reads:

“That the applicant shall submit an annual report to the Department and the Commission for review addressing the status of compliance with each of the conditions set forth in this SMA Minor Period for a period of five (5) years.”

Mr. Mark Roy: Good morning, Chair, Members of the Molokai Planning Commission. Thank you for the opportunity to be here today. My name is Mark Roy. I'm representing the owner of the property, Kamehameha Schools. I'm joined today by Kalani Fronda, who's the senior asset manager for the Schools.

Just in terms of background, this is a multi-year SMA compliance process. I understand that certain members of the Commission weren't present on the Commission when the original SMA permit was approved, the after-the-fact SMA permit was approved for the aqua-culture facilities, so if you'd indulge me for a few minutes, I'd kind of like to just give a overarching background in terms of what has occurred to date so that everyone can be aware of where we are today.

This property is a 150-acre former D&J Ocean Farm property located in Keawanui - just makai of the Kamehameha V Highway. The facility is currently under lease to a new tenant, John Austin, who has been revamping the aquaculture operation since 2010 under a new name called "Keawa Nui Farms." John currently raises marine shrimp and broodstock, and produces products to sell both locally on Molokai as well as both to domestic and international markets.

The Schools has been working for quite a number of years now with the various governmental agencies to address after-the-fact permitting requirements for the improvements that were put in place by the original tenants of the property during the establishment and early phases of the operation of the shrimp farm on the land.

The overarching goal of the Schools is, and continues to be, to have an aquaculture facility that continues to operate and support Molokai's economy into the future.

Just in terms of a basic overview of the facility itself, it consist of 16 shrimp ponds that are used to raise shrimp. The broodstock is raised in the hatchery building, which sits actually in the middle of the site. If you drive along the highway and look makai towards the ocean, there's a small hatchery building in the middle of the site. That's where the broodstock is produced. Water for the aquaculture operation is provided by a brackish brown water well located in another structure, which is a small pump house closer to the shoreline. The water is then circulated into ponds where it then flows from the ponds, after use, into a closed loop system drainage ways that are referred to as "raceways," where it gradually disperses through evaporation or percolation into the underlying soils below. Access around the facility is provided by an existing dirt or gravel road, it connects the entrance driveway at the highway side to the near shore -- the shoreline areas down below.

The aquaculture facility was originally established by Ohia Shrimp Farm Corporation in 1986. Ohia operated a facility through the use of six shrimp farms for a period of five years, until 1993. After a couple of years of inactivity, D&J Ocean Farms took over the lease from 1995 to 2007, and further expanded the aquaculture operation by creating ten additional ponds as well as some related drainage improvements. As I mentioned just now, John Austin, of Keawa Nui Farms, the new tenant, took over the lease in 2010 and has been refurbishing the facility into a productive operation over the last several years.

The bulk of the improvements on the property were put in place by both Ohia Shrimp Corporation and D&J Ocean Farms over the course of about 20 years. The work consisted of various grading alterations, including the completion of the 16 shrimp ponds, ditches and drainage improvements, a storage building and hatchery, the pump house and the brackish well, a farm dwelling with accessory storage structure, and also the erection and removal of two shade cloth structures as well as improvements to the dirt gravel road that runs through the property.

The SMA application that I mentioned earlier at the beginning of the presentation was submitted to the Planning Department for processing in 2010, essentially requesting an after-the-fact approval for the improvements that were put in place by the previous tenants. The application was reviewed at the end of 2011. The Commission granted SMA approvals for the facility. The SMA minor permit issued for the project included 13 conditions of compliance, so the SMA permit actually had 13 conditions attached to it. One of the conditions required submittal of an annual compliance report for a period of five years documenting the progress of the Schools in complying with the various conditions, and these conditions really were placed on the permit based on the discussion that occurred by the Molokai Planning Commission during the review of the application. This

report is submitted to the Planning Department each years, ahead of the anniversary of the permit, and it's being presented today for your review.

As you will see in the report, we have been making quite substantial progress over the last few years. Some of the conditions certainly are not easy to immediately comply with and have required quite an extensive program of coordination and followup with the various governmental agencies, including doing various studies with technical consultants having to come onboard and do site visits and complete studies. But some of the milestones that we're happy to report to the Commission today, this is our third annual compliance report, there was the hosting of a Huikala session early on in the process, and a blessing ceremony at the site. It was attended by the members of the Commission, the current tenant, and a representative from the Place family, one of the neighbors near the site, and that was hosted by Kahu David Kaupu, and the intent of that session was really to bring the parties together following the after-the-fact SMA process and really address any remaining questions or concerns that were on people's minds and really to look forward and making sure that the facility is operated correctly into the future.

There have also been building permit applications filed with the county for the farm dwelling and the hatchery structures on the site. So the tenant actually lives on the site in a farm dwelling. The farm dwelling was constructed without permits, without building permits, and so the next phase of this compliance program has been working with the Department of Public Works to submit building permits and have those building permits processed and that process completed so that the building permits can be on record for those structures. There were building permits filed by the previous tenants, they are deficient in content, and we've since met with the Department of Public Works and the recommendation from the Department of Public Works was that we pull the building permit applications and re-file with the condition that work be done to bring the current structures up to today's building code 'cause they were put in place quite a while ago. We've had an architect come onboard and a thorough investigation of the structures, and so there are a number of improvements that need to be made as part of the new building permit applications for those structure so that those structures today comply with today's building code requirements. So those building permits are currently in process. We do have some remaining items to followup with the county, but we're certainly happy to report that they are in process and we've had a number of agency sign-offs completed to date.

We're also able to report that we have processed and completed and obtained an after-the-fact grading permit for the entire facility. This was one of the concerns, I recall, from the original Molokai Planning Commission meeting and reviews connected to the SMA permits that an after-the-fact grading permit be obtained for the parcel. That took about a year-and-a-half or just a bit more in terms of processing, but as of this last month, we've been able to actually pull the after-the-fact grading permit from the county, so that's one

of our most significant milestones this year that we're happy to report to the Commission that we do have a grading permit for the facility now.

There have been various wetland compliance reports detailing the status of compliance with the EPA approved wetland mitigation plan that was coordinated by the previous tenants on the property. That is an ongoing item of compliance with the EPA at this point. The wetland compliance report has been submitted to the Environmental Protection Agency to a lady called "Wendy Wiltse," who is the local Honolulu representative of EPA for the Pacific region, and the EPA is currently reviewing that compliance report that was put together by a qualified wetland consultant, AECOS, and so we're hoping, in the next year, when we come back to the Commission with our next annual compliance report, that we'll be in a position to be able to give you some updates on that item once the EPA completes their review of that document.

There have also been engineering reports, and also a wetland impact report assessing the impacts of the drainage improvements. This was another concern that was raised during the original Molokai Planning Commission meeting, and so we hired an engineer, or I should say Kamehameha Schools, excuse me, hired an engineer and also a wetland expert to conduct studies to assess whether or not the drainage improvements themselves that the previous tenants had put in place had any impact on the wetland that is near by the aquaculture facility itself. Both reports presented a pretty thorough analysis and confirmed that no additional work is required. The drainage improvements are sufficiently designed to provide the function that was intended originally.

One of the big items of coordination over the last year or two has been the State Historic Preservation Division issued a comment letter for the overall project after the Commission had granted the SMA approvals requiring an archaeological inventory survey be completed for the entire facility, so we've been following up with SHPD quite extensively, we've been with Morgan Davis, who's the Maui archaeologist, chief archaeologist of SHPD, and there has been a commitment from Kamehameha Schools to go ahead and do the archaeological inventory survey at this point, and it's really an after-the-fact archaeological inventory survey but it's documenting really what's there today and making a conclusion in terms of if there were likely to have been any impacts when the aquaculture facility was put in place. These days, when you go down the road of doing archaeological inventory surveys, there are a number of procedural milestones that you need to check off, one of which is the processing of an archaeological inventory survey plan, and the reason, at least from what I've seen over the past several years that SHPD is requiring archaeological inventory survey plans, is that they want to see a proposal first before an archaeologist goes and actually does the field surveys, so it defines the limits of the archaeological survey itself, it's kind of like a proposal, and we've actually had Cultural Surveys Hawaii do the archaeological inventory survey plan, that's being submitted to SHPD, we've met with Morgan Davis, and as of very recently actually, SHPD has given us the go-ahead and has

officially accepted the archaeological inventory survey plan. So the next step for the Schools is now to move forward with the archaeological inventory survey itself, so we're happy that that's moving forward. It has taken quite a lot of coordination with the state, but I think in the next year, when we come back before the Commission, we will, hopefully, have the archaeological inventory survey itself completed at that point and we'll be able to share with you the findings of that survey at that time during review of the next compliance report.

The last item I wanted to share with the Commission today because I recognize you do have a number of items on the agenda so I'm trying to skip over the more substantial milestones for the project so far is that we've also acquired shoreline -- excuse me, special management area and shoreline setback approvals for the removal of some camping related structures that dilapidated, old wooden structures that the previous tenants had actually constructed on the island that's just out beyond or connected to Keawanui itself, and so we came before the Commission last year and we were able to get those SMA permits, so the next phase for the Schools is to actually go ahead and remove those structures from the island. That was another concern that the Commission had raised during review of the original SMA permit so the intent of the Schools is really to go out and remove those camping structures.

So Kamehameha Schools feels that there has been quite substantial progress to date on our compliance program, SMA compliance program, but we all recognize that there is still work to be done and we will be coming back before the Commission for another couple of compliance reports to document the additional progress made as we move forward. What I did want to mention was, on the agenda today, we do have a couple of additional items that we've tried to coordinate the timing of so that we can before you at a single meeting, and it's really connected to the overall SMA compliance program for this project.

The first is an SMA time extension, and this is for that SMA permit that I mentioned just now for the removal of those camping structures from the island. We simply need a bit more time in order to get those improvements removed. There has been a delay in terms of working with SHPD to coordinate when those structures can actually be removed from the island itself. We now have approval of SHPD for those structures to be removed as we move forward with the archaeological inventory survey field work, so we were hoping to request the Commission's favorable consideration on that SMA time extension request. The intent really of the Kamehameha Schools is to get those structures removed as soon as they can. They have a contractor ready and waiting pretty much to go ahead and do that removal work.

The second items on the agenda is an SMA exemption request for some additional work on the property, most of which is being required by the county as part of processing the building permits that I mentioned just now for the farm dwelling and hatchery, the two main

structures on the site. You may recall, I said that the county says that we have to bring them back up to today's standards, today's building code. Now, with us having to do that, we have to go in and do some interior and exterior retrofitting to those -- to the farm dwelling, and before we can do that, as part of the building permit application process, that's an improvement, "improvement" that requires an SMA review by the Department of Planning and the Molokai Planning Commission. There is also, as part of that SMA exemption request, some fire code related improvements that have come up during the building permit process. You've heard some comments today in terms of what the Fire Department reviews as part of building permit applications. Fire access has come up on our particular building applications, and in coordination with the Fire Department, they have asked that we do just some pretty simple access improvements to the shrimp ponds themselves, a couple of shrimp ponds, and that would allow, if there was ever an emergency on this site, for the fire trucks to come in, access the water that's within the ponds, and use the water to fight whatever fire is on this site. But again, that's another action that requires review by the Planning Department and the Molokai Planning Commission, so we've wrapped that into the SMA exemption request also.

There are a couple of other items connected to that SMA exemption request. There are a couple of agricultural storage containers on the site, and also some shrimp holding ponds, they're about that high and about 12 feet across. We were hoping to request an SMA exemption for those last couple of items from the Commission today.

And then the last item connected to that SMA exemption request is just some repairs to some fencing that surrounds the property. The tenant is required to make sure that these operation is complying with all requirements in order to raise shrimp for sale, and so he would like, at this point, to just go and do some fencing repair and maintenance work just to make sure that his property is fully enclosed.

So with that, I'd like to conclude and say we will be back next year with our next compliance report and hope to be able to share some further progress on this SMA compliance program with you all. Thank you all very much for your time and allowing us to be here before you today. Kalani is with us, right there. I wonder, Kalani, maybe you want to just provide some closing remarks. Thank you very much.

Mr. Kalani Fronda: Aloha Chair, Vice-Chair, and Commissioners of the Molokai Planning Commission. As noted by Mr. Mark Roy in 2011, we were able to obtain a couple of approvals with conditions. I, on behalf of KS, would like to provide you guys a couple of assurances. First one is that we were able to establish a program with staff that's allocated to address and monitor potential compliance issues, so we do not have to face a situation like this again. Secondly, as you've seen through this year's annual report, we continue to make forward progress in mitigating the multiple issues and note that we are committed

to complete this until all of the issues are addressed and have been completed. Thank you very much.

Chair Jennings: Thank you both. It was very, very -- my first time so I -- it's nice to listen. Does anyone have any questions for these two gentlemen?

Ms. Dudoit: This is not my -- hi, Kalani. Thank you guys very much for this wonderful annual report. I just had a couple of questions. First, on condition no. 9, and I remember Commissioner Buchanan and myself talked with you in length about this, "The applicant shall work with the State Department of Transportation to grant easement as may be necessary for Kamehameha V culvert improvement project." So on your response, it says, as outlined that you are still committed and that at the appropriate time to grant easement as it may be necessary, so can you just kind of explain to me what you mean by that? What appropriate time are we waiting for and is there anything that we can do to support the culvert improvement? And just for background, it's because several community members who testified in specific response to that in adjacent properties have come forward to ask when the culverts are going to be cleaned and all that kind of stuff, so your annual report does provide us knowing that you are aware of this problem but I just wanted to know where we stand with that.

Mr. Roy: Sure. Thank you for the question. The Kamehameha Highway culvert improvement project, this was -- this is a project that the state department -- just for everyone else's benefit on the Commission, this is a State Department of Transportation project that I think came before the Commission quite some time again, definitely before 2010. The state had wanted to come in and do a repair and maintenance, so basically an upgrade project to upgrade their state-owned facility that goes underneath the highway near the location of this parcel of land, and so they had requested an SMA approval from the Commission. I'm not a hundred percent sure, but I feel like when I was reviewing the minutes from that meeting that occurred on this, there were a couple of questions or concerns that were raised by the Commission, and DOT was, I think, not able to respond to some of those concerns, and the determination had been that the state required to do -- was required to do an SMA use permit application for that project. Since that time, I've not been aware of any activity related to that project. It is somewhat beyond the control of Kamehameha Schools, but I do want to reiterate that we recognize that this concern was raised during the review of the aquaculture facility process and this condition is attached to the permit, and we've reviewed with Kamehameha Schools and, really, at such time when the State DOT is able to come back to Molokai to come back before the Molokai Planning Commission and process an SMA use permit application for that improvement, Kamehameha Schools stands committed to ensuring that whatever easements are required for the state to do that work, 'cause it may involve the use of some of the Kamehameha School's lands, that they would be fully committed to working with the state to ensure that that project could move forward. Is that correct, Kalani?

Ms. Dudoit: Wait. I have just a couple more questions. Okay, so -- and then maybe the department can jump in at anytime, so when we're reading our recommendation, it specifically says that they're requesting a time extension on the -- in regards to the two wooden camp -- removal of the two wooden -- that's all it says here, so does that mean that if we approve this, it still holds them accountable to all 13 conditions or -- because, if I'm not mistaken, didn't we approve everything altogether and the wooden structures are part of the overall permit, or how does that work? 'Cause it specifically outlines just one part of the project. Or is it because the department sees that it adequately address 13 -- well, 12 of the 13 concerns and this was just the one leftover?

Mr. Yoshida: With respect to agenda item F.2., they're asking for a time extension on that SMA minor permit condition regarding initiating removal of the wooden camping structures. The other conditions would still remain, but they're asking for additional time to start the removal ...(inaudible)...

Ms. Dudoit: So just for continuity, is there a reason that that specific -- why it wasn't just asked of us to have a time extension for the total SMA permitting as approved to just one specific condition outlined in the recommendation?

Mr. Yoshida: I believe they're just seeking additional time to initiate the steps to remove those wooden structures.

Mr. Marshall Racine: Can I ask you -- I'm new at this. Those of you that were here before, this is a five-year report, and we're getting five annual reports, does that mean that you set a five-year limit on the completion of the projects, bringing it up to code, all permitted, operating hunky-dory with everybody on the island?

Mr. Roy: I believe I can add some information unless you want to the department to respond to that question?

Mr. Racine: Yes, because they got the history. Or do you have the history?

Mr. Roy: We do. Yes. We were involved, and Kalani and myself were involved in the original SMA process, and just a couple of points of clarification. The SMA permit for the aquaculture facility, all of the improvements that were done in the past, is a separate SMA permit to the camping structures removal SMA permit. So the item on your agenda today for the SMA time extension is just in relation to that second permit that's exclusively for the removal of the camping structures.

Mr. Racine: Oh, okay. 'Cause I see it as a response to condition 7.

Mr. Roy: Yeah.

Mr. Racine: And if it can't be done by 2017, why? I mean that's within the five-year period. Okay, it's a separate issue.

Mr. Roy: Yeah.

Mr. Racine: Thank you.

Chair Jennings: Yes, Diane?

Ms. Swenson: How much time do you need?

Mr. Roy: For the removal of the camping structures? I think within the next year or so we should be able to have those structures removed.

Ms. Swenson: So if we give you one year?

Mr. Roy: I think we're requesting a couple of years. So we're requesting two years, and then it would be completed within a year of initiation. But in reality, I think we're in a pretty good position with the State Historic Preservation Division right now, and Kamehameha Schools is really committed to trying and getting those structures removed at the earliest opportunity.

Ms. Dudoit: And I just wanted to add that, in all fairness to the applicant too, I'm very familiar with the State Historic Preservation process so we can anticipate that approval will come but should anything be found, or archaeological, that can delay it even further, so I want the Commission to be abreast of that that there may be a need to extend based on the findings of the survey, yeah? Okay. So then the other question I had was on item G, you referred to it so I guess I skipping ahead, but item G.2.a., so we heard you say that in addition to --

Mr. Yoshida: Oh, sorry. Sorry. I think we should deal with item F.1.

Ms. Dudoit: Oh, okay, but -- okay, 'cause he reported on it so you don't want us to talk about it right now while he's there? No?

Mr. Roy: We'll be here for the whole day so --

Mr. Yoshida: Yeah, I think --

Ms. Dudoit: Okay. Okay. Okay, that's fine.

Chair Jennings: Okay, thank you. Now we'll ask for public testimony. Okay, seeing none, any further questions from the Commissioners?

Ms. Dudoit: Do we need to vote on the acceptance of the five-year report, or just on the extension?

Chair Jennings: Just -- I'll let Richelle handle that.

Ms. Thomson: You're just receiving the report right now, and then we'll handle the SMA extension request separately, but I believe we're probably going to go back to a different agenda item right now.

Chair Jennings: Is there a motion?

Ms. Dudoit: ...(inaudible)...

Ms. Thomson: It's actually a separate agenda item, so we're just doing F.1. right now, just the report, and so we'll come back to F.2., and they also have another item under G, Kamehameha Schools does.

Chair Jennings: Ben, please proceed.

Mr. Yoshida: Well, I guess at this point, I guess we're after 12:00, so if the Commission wants to move back to the high school item or if they want to deal with the rest of the Kamehameha Schools items.

Chair Jennings: Unless there's any objections, why don't we just go ahead and finish the rest of Kamehameha. Okay.

Mr. Yoshida read the following agenda item into the record:

- 2. KAMEHAMEHA SCHOOLS requesting a time extension on the Special Management Area (SMA) Minor Permit condition regarding the initiation of the removal of two (2) wooden camping structures and related improvements at the former D&J Ocean Farms site located at TMK: 5-6-006: 008, 024, and 034, Keawanui, Island of Molokai. (SM6 2013/0011) (SSA 2013/0027) (Valuation: \$10,000) (B. Sticka)**

The Commission may take action on this request.

Mr. Sticka: Thank you. The next item on your agenda is a time extension, as you've heard already. Just to give you a little bit of background on this. At its regularly scheduled

meeting on November 13, 2013, the Commission voted to grant approval of the SMA minor application for the removal of the two wooden camping structures and related improvements, including the concrete pads and an exposed aboveground one-inch plastic waterline. The applicant indicates, as you've heard, they requested two years to initiate the removal, of the work, would provide Kamehameha Schools and its archaeological consultant additional time to address the archaeological requirements of SHPD. A timely request for an extension was filed. Further, the scope of the project remains the same.

Pursuant to the foregoing, the department recommends approval of the time extension to condition no. 5 of the SMA minor permit application subject to the following revisions to said condition, condition no. 5: That the project shall be initiated by November 30, 2016, and shall be completed within one year of said initiation.

In consideration of the foregoing, the department recommends that the Commission adopt the department's memorandum prepared for the November 12, 2014 meeting as its findings of fact, conclusion of law, decision and order, and authorize the Director of Planning to transmit said decision and order on behalf of the Commission. Thank you.

Chair Jennings: Thank you, Ben. There's been a motion to approve, there's been a second by Doug. All those in -- oh, is there any -- any discussion?

Ms. Dudoit: I just wanted to say thank you to Kalani and Kamehameha Schools, and all of your hard work. I know that this, if you were here from the beginning, it was very contentious sometimes, and a hard issue, but I really appreciate all of your hard work and continued support. Thank you.

Chair Jennings: I made a mistake, and I know you all find that hard to believe. Is there any public testimony or anybody want to say anything? Okay, since there's been a motion and a second, I'll ask --

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

It has been moved by Commissioner Swenson, seconded by Commissioner Rogers, then unanimously

VOTED: to approve the time extension on the SMA Minor Permit.

Chair Jennings: Motion carried. Thank you.

Mr. Yoshida: The final item for Kamehameha Schools is under item G.2., under your recently passed SMA rules, whether you would waive your review or not for projected exemption for Kamehameha Schools --

Mr. Yoshida read the following agenda item into the record:

G. DIRECTOR'S REPORT

- 2. MR. WILLIAM SPENCE, Planning Director notifying the Commission pursuant to the provisions of Section 12-302-13.1(a) of the Molokai Planning Commission's Special Management Area Rules that the following proposed actions located within the special management area are not "developments" and therefore exempt from the requirements of the Molokai Planning Commission's Special Management Area Rules:**

- a. KAMEHAMEHA SCHOOLS submitting a Special Management Area Assessment (SMX) application for existing after-the-fact improvements to the farm dwelling at TMK: 5-6-006: 008, 024, and 034, Keawanui, Island of Molokai. (SMX 2014/0502) (Valuation: \$26,400)(B. Sticka)**

The Commission shall acknowledge receipt of the application. The Commission shall vote to either waive its review of the application or review the assessment application at the next available meeting after receiving notice.

Chair Jennings: If I may just say something real quickly. Sonny, we've already deferred that Chopra, so I mean if you don't want to stay, you don't have to, so I just wanted to be polite, and I know you find that hard to believe, so thanks, pal. Thanks for coming. Okay, I didn't mean to bust in. So now we're on Kamehameha Schools portion a., and you're -- Zhantell?

Ms. Dudoit: Yeah, can, I'm sorry, I totally couldn't understand what -- 'cause what you were reading is not what I have on -- can you try to explain that again?

Mr. Yoshida: Under the new special management area rules, which we had -- the Commission conducted a public hearing on in March of this year, and were enacted, signed by the Mayor, and enacted on July 27. Under section 12-302-13.1, Commission review of special management area exemptions, says, "A. The director may determine that a proposed action within the SMA is not a development and therefore exempt from the requirements of this chapter. Prior to the director's determination becoming final, the director shall notify the commission of the assessment application at the commission's next regularly scheduled meeting, receipt of which be acknowledged by the commission. Such notification shall include, but not be limited to, the name of the applicant, the location of the

subject property, and brief description of the proposed action. The commission shall vote to either review the assessment application at its next available meeting after receiving notice, or waive review of the application. 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. 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 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 the director has determined that the proposed action is not a development and is exempt from the requirements of SMA, and so they're asking for the Commission to waive its review.

Ms. Dudoit: Okay, I'm sorry.

Chair Jennings: Marshall?

Ms. Dudoit: It's just that --

Chair Jennings: Marshall?

Ms. Dudoit: No, it's just that I don't --

Chair Jennings: Could you please use your mike?

Ms. Dudoit: Oh no. He -- yeah, he was just explaining to me because when I'm reading item a., it says, "Submitting a special management area assessment," so, I'm sorry, you're asking us, the Commission, to waive that, that your recommendation is to waive that assessment?

Mr. Yoshida: No. We're asking the Commission to waive its review of the special management area assessment, which Kamehameha Schools has submitted, and so that the director can finalize its determination that the proposed action is not a development and, therefore, exempt.

Ms. Dudoit: Sorry, I just have one question. But early on, when we first -- didn't we review this already, like prior, and we determined that it was already exempt because it was single-family dwelling on the property and, thus, exempt from the project already, so wasn't that the original decision? So why would it need to come back up to us again?

Mr. Yoshida: I think as Mark Roy had presented, you know, there are some additional improvements that are being triggered by building permit, and so, therefore, they've

submitted an SMA assessment for those improvements and -- but we still feel that it's not a development and its exempt from SMA.

Ms. Dudoit: And so then my comment would be it's hard for us to determine whether or not we agree with you that it's not a development if there are no more information here to say what exactly is additional, all we heard was what he said, which had something to do with improvements in road and fencing, so there's nothing on our review that specifically says what -- so when I'm looking at this right now, it specifically pertains to the existing structure, which for me was a no-brainer 'cause we already said it's exempt, but if you're adding on things, like a roadway and all of that, then I don't know if I'm comfortable waiving an assessment of things I don't even know.

Mr. Yoshida: Well, we're crossing new territory in the implementation of your new rules, so we're just providing the information we feel that is adequate. You know, if the Commission disagrees, then they can vote not to waive.

Ms. Swenson: You know, the only thing that they're doing is what the county's requiring them to do in the building permit process, so I'm comfortable they're not going to do anything wrong and the staff can handle it, and I'll make a motion to that effect.

Ms. Dudoit: Well, so the county building permit is requiring them to put a fence and improve their road? I don't think so. I've submitted building permits before and they don't force you to put up a fence. I mean so it has very little to do with you, like I totally -- I'm just asking why it wasn't put down in our review so that we can say yes or no. I don't specifically know what additions are made to the original existing structure except for we wouldn't even have known if he didn't say something and be truthful in his report.

Mr. Roy: Thank you. And thank you for looking at this request. What we had done, just in terms of background, is we had submitted another SMA application to the Planning Department, a full SMA assessment application. Erin Mukai, is with our office, we both worked together on this application. We do have a copy of the site plan today, if that would be helpful, and if it would be helpful for the Commission, I could just have Erin come up and give a brief summary as to what the scope of work is that's listed under that SMA application because we want to, obviously, make sure that the Commission is understanding of what the full scope of work is if you are to agree to waive your review today. Would that be okay?

Chair Jennings: Commissioners, would you like to have Erin speak to us? Yeah, Erin, that would be fine.

Ms. Erin Mukai: Hi. My name is Erin Mukai. I work with Mark Roy at Munekiyo & Hiraga. So as Mark had explained a little earlier, in October, we submitted an SMA assessment

application for various work proposed at this site, some of which were -- had come about because of comments that came up during the building permit application process for the house and the hatchery. So we are proposing interior and exterior retrofitting work to the farm dwelling, so again, that came out through consultation with DSA. Another improvement is an installation of an individual wastewater system on the property, as well as installation of concrete pads for fire protection, so I think that's where, you know, we had talked about some access ways, it's access to the existing shrimp ponds to serve for fire protection services for the house and the hatchery. And then we're also asking for exemption determinations for prefabricated agricultural storage structures, three of them, and four shrimp holding tanks for John. And then again, there is an existing fence on the property so we're asking for repair of that fence. But those did not come up during the building permit process, the fence, the repair of the fence line. That's needed because John, I guess, had explained that there is really strict requirements to protect his shrimp operations to ensure that they're disease free.

Ms. Dudoit: So in any of these additional improvements do you dig further than two feet down in the ground?

Ms. Mukai: I think -- let's see --

Ms. Dudoit: 'Cause it would seem to me to put the cement fire protection slab and the fence line that there could be an issue with digging deeper than two feet down.

Ms. Mukai: So for the proposed fences where it's being repaired, you're right that it would go two feet deep. We're looking at a six-foot high fence. It'll be wood posts with barbed wire and hog wire, so that would go two feet under and expose six feet above ground. And then there is the IWS, and that will go deeper than two feet. I think the numbers that I have for the IWS tank is that it would go six feet deep, the IWS tank.

Ms. Dudoit: So would that not take it out of the exemption category that you have dig six feet down into the ground and put it under a different regulatory process? No?

Ms. Mukai: The tank would go six feet.

Ms. Dudoit: Six feet below 'cause they're doing a whole wastewater treatment -- a septic tank?

Ms. Mukai: Yes. So I think the exemption category that we listed for that specific improvement would be structural and non-structural improvements to the existing single-family residences, so that came up, the requirement of the IWS came up through consultation with Department of Health during the building permit application review process.

Ms. Dudoit: And then I'm anticipating that the reason we exempt a single-family dwelling 'cause it has nothing to do with a commercial enterprise. Correct?

Ms. Thomson: It's one of the listed exemption classes. I should say it's not -- considered not a development a single-family residence.

Ms. Dudoit: Right, so when you add on additional, whether it be prefab structures to house what we know is things associated with the business that is going on there, does that not then put it into a development category?

Ms. Thomson: You can ask the applicant which classifications those kinds of improvements, what they have submitted on the SMA assessment.

Ms. Mukai: I have some of those exemption categories. So let's see, for the interior/exterior retrofitting work to the dwelling, we're requesting an exemption due to structural and non-structural improvements to existing single-family residences. The same exemption request is being made for the IWS, the individual wastewater system. The installation of the concrete pads for fire protection, we've noted the exemption category non-structural improvements to existing commercial structures. Let's see, for the storage containers, for agricultural use, this would also include the shrimp holding tanks, there's kind of a long exemption category for that, it's use of any land for purposes of cultivating, planting, growing, and harvesting plants, crops, trees, and other agricultural, horticultural, or forestry products, or animal husbandry, or aquaculture, or maricultural plants or animals, or any other agricultural purposes. So that's the exemption category that we've requested for the ag storage containers and the shrimp holding tanks. And then the last improvement would be the repair of the fence line, and so the category for that would be repair, maintenance, interior alterations to existing structures.

Chair Jennings: There's -- thank you, honey.

Ms. Mukai: Thank you.

Chair Jennings: There's a motion on the floor, Diane has made a motion. Diane, what was your -- could you restate your motion please?

Ms. Swenson: I move that we honor their request to waive the SMA and let the staff handle the improvements.

Chair Jennings: Is there a second to Diane's motion? Doug. Okay. Any further discussion? I can't get the word out.

Ms. Dudoit: Okay. So, yeah, I going vote to oppose that simply because if the applicant went through all the trouble of including an assessment -- of doing an assessment that includes additional things that we hadn't previously been talking about, there should be no reason why the department wouldn't want us to see it as a Commission and then fully support the recommendation thereof.

Chair Jennings: Okay. Any further discussion? Seeing none.

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

It has been moved by Commissioner Swenson, seconded by Commission Rogers, then

VOTED: to waive its review of the SMA assessment application of Kamehameha Schools.

(Assenting: B. Buchanan; R. Davis; L. Lasua; M. Racine; D. Rogers; D. Swenson)

(Dissenting: Z. Dudoit)

(Absent: S. Tancayo)

Chair Jennings: Thank you. Thank you. I appreciate it. Yes?

Mr. Roy: On behalf of Kamehameha Schools, I just want to thank the Commission for allowing us to be here today and we'll see you next year for our next annual compliance report.

Chair Jennings: Well, on behalf of the Commission, I'd like to thank you for your fine report and all your time. Thank you very much.

Mr. Yoshida: Okay, at this point, we're back to item E.1.

Mr. Yoshida read the following agenda item into the record:

E. PUBLIC HEARINGS (Action to be taken after each public hearing. To begin after 12:00 p.m.)

- 1. MR. DUANE KASHIWA, Public Works Manager for the STATE DEPARTMENT OF EDUCATION requesting a Community Plan Amendment, State Land Use District Boundary Amendment, and a Change in Zoning for the Molokai High School Science Facility upgrades, the construction of a single 4,500 square foot structure with**

two science classroom labs each 1,750 square feet with 300 square feet shared teacher prep./ storeroom and rainwater harvest tank and catchment basins at 2140 Farrington Avenue, TMK: 5-2-015: 001 & 007, Hoolehua, Island of Molokai,. (CPA 2014/0001) (DBA 2014/0001) (CIZ 2014/0001) (B. Sticka)

The following land use designations are being requested:

- a. Community Plan Amendment from Agriculture to Public/ Quasi-Public for TMK: 5-2-007:001 (CPA 2014/0001)**
- b. State Land Use District Boundary Amendment from Ag. District to Urban District for TMK: 5-2-015: 001 and 5-2-007: 001 (DBA 2014/0001)**
- c. Change in Zoning from Agriculture and Interim District to P-1 Quasi-Public District for TMK: 5-2-015: 001 and 5-2-007: 001 (CIZ 2014/0001)**

Mr. Sticka: Thank you. The second item on your agenda for public hearing or the item for public hearing today is a request from Kimura International Incorporated, on behalf of the State Department of Education, requesting a community plan amendment to amend approximately 4.58 acres of the property from agriculture and public/quasi-public to public/quasi public, a land use commission district boundary change reclassification to amend approximately 5.7 acres of the property from ag to urban, and a change in zoning to rezone approximately 34.21 acres of property from ag and interim to public/quasi-public on 34.21 acres located at 2140 Farrington Avenue.

The applicant proposes to construct a 4500 square-foot single-family -- oh, I'm sorry, single, not single-family, single structure containing two science classroom labs, each 1730 square feet in size, with a 300 square-foot shared teacher prep and storage room, a rainwater harvest tank and catchment basin are also proposed, and the subject site is current developed at Molokai High School.

The applicant complies with the requirements for a community plan amendment, pursuant to Title 19, Chapter 19.510, General Application Procedures, Section 19.510.010(C) and (D). The Planning Director has determined that the application and department report meets the requirements of Section 19.510.010(D). The application also complies with the requirements pursuant to Title 19, Zoning, Chapter 19.68, State Land Use District Boundary. The application also complies with the applicable standards for a change in zoning pursuant to Title 19, Chapter 19.510, General Application Procedures, Section 19.510.010(C). The Planning Director has determined that the application and department report meets the requirements of Section 19.510.010(D).

The state land use districts are agriculture and urban, the Molokai Community Plan is agriculture and public/quasi-public, and the county zoning is agriculture and interim.

As of November 7, 2014, the department has received no letters in support or protest of the aforementioned request.

It should also be noted that on February 12, 2014, the Molokai Planning Commission reviewed in detail the environmental assessment in which agency comments were made available during their review. The Department of Education made a finding of no significant impact in accordance with the State of Hawaii, HRS, Chapter 343. Notice of the final environmental assessment was published in the March 8, 2014 edition of the Office of Environmental Quality -- the environmental notice, and the final EA can be viewed online or downloaded from the OEQC website.

A couple of concerns were raised during the EA review for the project. One concern was related to the wind turbine that was previously indicated. The applicant has since removed any references to the aforementioned wind turbine as a part of their request before you. Also, a concern was brought up related to the building's location, the road, and how students will enter the building. The applicant has confirmed that the students will enter the building from the mauka side of the proposed building, which is in fact a safe distance away from the roadway.

At this time, I'll turn over the presentation to the architect who is here, and also, representatives are also here from Kimura International, and I believe the principal is here as well, so I'll turn it over to the at this time. Thank you.

Mr. Stanford Hao: Good afternoon, Mr. Chairman and Members of the Commission. Thank you for allowing me to speak this afternoon. I just want to express, yes, from the last time that we were here, that decision to remove the experimental windmill, it wasn't at a scale that was like large or anything, but it was just to give the students an opportunity to be able to maybe find out some information on whether or not it would be beneficial to Molokai or not. But since then, it's been removed.

And on behalf of Molokai High School, I just want to express that having a science building at this time is imperative and also timely. When we look at I think how this road started, like in 2004 with the separation of the high school from the middle school, and the facilities for a science building because the science building was up on the middle school in that separation, there wasn't really a whole lot of access and the disruption to classes with the high school having to go up to the middle school. Because of the growth of the middle school, what has happened now is it's relegated us to actually having no science labs at all, which are really important to our students especially for those who are pursuing higher education.

So when we look at a science building at this time, I believe back then there was a promise and even the input from then former or late Statesman Daniel Inouye. Since then, there's also been assistance from even Senator Kalani English to further and push for a science building for Molokai High School. When I arrived in 2010, that was one of the first things that I sought after is what happened to the -- or the plans for that. Since then, we've been able to move that along and we're to this point now where we're looking for acceptance of a permit for the building construction of that.

There are a couple of things that I'm really pressing for Molokai High School, and with the state's push for strive high, and our -- the indicators and the indexes that are used for the high school is about college and career readiness. And so when you look at -- and are college going rate. When you look at science as one of those things that are important for any student going to enter higher education, when we look at Molokai High School, over the last several years, we've really built a notoriety for the science fair, and for those of you who are familiar, each year, when we travel over to Maui, Molokai High School takes the majority of the awards that are issued in the Maui state -- in the Maui Science Fair, and they actually, in the last three years, have gone on to a national competition so much so that in the last three years, them going over to the national competition, the last one that went up actually received a full ride scholarship to ...(inaudible)... college, and that was Sarah Jenkins. If you look at the last *Molokai Dispatch* last Wednesday, there are two articles that really kind of showcase and help us understand how important that is, one was the travel of our students to the East Coast to travel to New York City and visit colleges there. Of the eight students who interviewed with the dean of students that was there, seven of them were deemed by the dean as being potential real candidates to Yale University, okay. In another article that the *Dispatch* wrote was about two of our students at Molokai High School, who actually both are Maui Science Fair winners and also national -- went on to national competitions, but Sarah Jenkins was one of that, there was an article about the Nordstrom Scholarship. And when you look at last year, Molokai High School had one applicant and one winner, and that was Kilo Gonzales, who actually went on to school who is studying environmental science or -- yeah, environmental management. Sarah Jenkins is studying environmental and biological engineering. And so those three actually, and those two being in this last year, show how the science has actually have assisted them in winning national scholarships. The national scholarship was for \$10,000 and included all of the West Coast, including Las Vegas, but the only two from that entire West Coast were from Molokai.

So in addition to that, when we look at the placement of the building, Molokai High School, the vision and mission -- well, the vision of Molokai High School states this: That we honor the past and embrace future innovation, taking personal responsibility for delivering excellence. And so that was part of the reason why we selected that site as being that visual of the vision where we honor the past, which is where the majority of the school is, and embracing future innovation, specifically science. The placement of the building is

also connected to our agricultural area, which we've developed since 2010. If you come and visit the school farm now, you will see there's two types of agriculture that are taking place there: one is commercial agriculture, so you'll that rows, the rows of bananas, the rows of taro, which actually being marketed in our local markets here on the island of Molokai; the other site is perma-culture or terrace farming, which we have, in a partnership with Sustainable Molokai, which really lends itself to the Hawaiian ahupua`a system, so that entails all of our farming at his particular time, but that building is going to encroach on part of that -- part of that land that we're talking about. So for Molokai High School, very important, very important for our students' futures.

We recently also received a grant for early college high school, which allows our students to actually secure an associate in arts degree from the University of Hawaii system as they graduate from high school, so we're planning to put those things in part, and the science building is a great part of that.

I also have Mr. Glenn Miura with us here who might be able to talk to the technical aspects of the building and so forth so, Glenn?

Mr. Glenn Miura: Thank you, Stan. Members of the Commission, my name is Glenn Miura, I'm a Principal at CDS International, architects for this project, and I just wanted to expand on what Principal Hao spoke about how this addresses the 21st century, and our firm has been deeply involved in sustainable design, you know, we've done libraries across the state. The last library was at Kohala Library -- actually, Aiea Library we opened up last week with 6,000 square feet of PV panels facing south. We did North Kohala Library, and that's where the idea of the wind turbine came from, and it was something that we just thought we'll try here but, you know, it's a different community, so we understand your concerns.

But one of the things that I wanted to stress was also that we are keeping all the water on our site. The water from the roof, it goes directly into the water catchment system, and with that, we can feed the dry lo`i that is right next to it, and also the ground water is directed to the dry lo`i bed, and the dry lo`i bed is actually protected with a fence, chainlink fence, so no kids can get in there even though it's only about -- well, it's four feet high but we wanted to make sure that in case there's a flood and it floods with water will -- the kids, any young child, cannot get in there. It's about four-feet high. So with that and we're also harvesting the natural light and that's why the building looks the way it does, it doesn't -- it looks somewhat like the existing buildings on the campus but we wanted to make sure we catch all the natural light facing south but we also catch the sunlight on the roofs, and so with that and, also, we don't have any air conditioning, well, we do have air conditioning in the -- one of the computer, not the computer room, but where the monitors for the PV panels are because they run a little warm, and the fact that we don't have any air conditioning saves us a lot of energy, so with the PVs and all the energy efficient design

we have, we actually can save up to 60% of the building's energy usage compared to other buildings of the same size. So if you have any questions, please ask. Thank you very much.

Ms. Dudoit: Does the building permit that you can add additional solar panels to supplement power for the whole school eventually or would the ...(inaudible)...

Mr. Miura: That -- no, this is only for this project so the 1400 square feet of panels is dedicated to this project. Any other questions?

Chair Jennings: Any other questions? Is there any public testimony? Sir, step up to the mike, please, and state your name. Thank you.

Mr. George Aiwohi: Aloha. My name is George Aiwohi. Do you guys have this map? Please pull that out. We're going to be looking at TMK: 5-2-015:001. And I didn't forward any written complaints or anything. I really -- there's just a concern I had because if you look at that outer boundaries there, if you look to -- on the very top where you have that square portion over there, that road that comes down there goes to Lanikeha, which is the community center, right down there, just when it starts to make that angle turn here. This is Lanikeha Community Center. And on the very top, that kinda like squared off area up there is the old parking lot of the -- what used to be the rec center. There used to be parking up there. My concern is that the boundary, does that boundary go all the way and take the road that goes up into that parking lot because it looks like it's included in this, the parking lot area on the top there, that kinda square area? My concern was this: When Lanikeha holds activities for our homesteaders in this area, that top area, that parking lot area is the overflow, that's where people park, up and down that road they park. And that big parking lot, well, that big grassy area outside of that, to the left of that, is usually when they hold Makahiki and they hold all kinds of cultural events, that whole top area over there is filled up with cars as well as all on the outside of the roads there. My concern is if it is part of the land that is acquired, and that road is cutoff, that is also, for me, a lot of the people that live in that area, that's another exit out. The fire station is right there on that corner. I live in the very top corner over there of that triangle. There's a little cul-de-sac right off the picture here. That's where I live. And we have a lot of homesteaders that live up there. Right now, if there was any emergency, that road is what the firemen will use to get up to that area. If you shut that out, they have to go all the way around the school? Or they have to go all the way to Alaelua or Alaekahi Street, which is down, quite a ways down that area?

I support the school in all that they're doing. I like what they're doing. I'm just worried about that access that we use. A lot of people use that access going up and down that to that small little back parking lot area because it's a -- it's like a quick out for some people,

and that was my only -- my only concern as a person that lives in this area that is affected by that. Any questions?

Chair Jennings: Excuse me, is there anymore testimony?

Mr. Hao: So he's talking about that area that actually really isn't a road because if you look at the -- how the -- that actually belongs to the high school. It was the remnants of the old -- the old county rec center that was there. It's like a parking lot. So that's why if you look, the driveway comes up, if you look at that corner, you have the fire station, and you see that road stop because there really isn't a road that goes through. It's kinda like I guess people use it as an access. I understand where he's talking about. He's talking about where the fire station goes here. The building's down over here on the bottom though, so it's not where that is, but the property belongs to the high school. If you look at where it was, where the rec center's parking lot formally was, that land actually belongs to the high school.

Ms. Dudoit: So I just wanted to make one comment because I'm very familiar with the area. So the access road George is talking about, people confused, there's two, so one of them goes past the Molokai sustainable building, which people have made, that is not a legal road, okay. That is what people think is a legal road, but it is not. It's a veered off access that was to that Ku`u Pu`ukukui area. The actual road that starts from the fire station upward is that straight access, where George is talking about, that goes into the cul-de-sac and out through that lane, so if you check your county maps and the DHHL line, the legal road is through that parking lot that accesses the cul-de-sac right where George is talking about. So --

Mr. Aiwohi: I mean I would think if the school owned that property already, we wouldn't have to worry about that.

Ms. Dudoit: Well, that's why I'm saying, so it's listed as a legal road, the street goes through there just like Farrington Avenue doesn't necessarily go straight to Kualapuu but diverts out by Lynn DeCoite's house, that is the Farrington Avenue listed on the county map. So what I'm saying is this may be a bigger issue than -- bring to light a bigger issue than we have the jurisdiction to talk about and I think that we should research that first.

Mr. Aiwohi: That was my only concern. Thank you.

Chair Jennings: Thank you very much. Sir?

Mr. Hao: I understand what they saying but does that have any impact on the project with us?

Ms. Dudoit: It does if it's a documented county road; then that would be the county's responsibility, I would think, to find out and determine whether or not that is a taking if it's listed as a through road like is Farrington Avenue.

Chair Jennings: Clayton?

Ms. Dudoit: And you know what? It may be nothing, but I just familiar with that 'cause we built some houses there, so the through road on the county map --

Chair Jennings: Ben? Sir, go ahead?

Mr. Aiwohi: And let me also say something that happened too. My house was built back in 2000, and while it was being built, this is going to go right up to that property, and I've had times when students that ran away from school ended up in my garage sitting down on my bench, nobody's going to be there during lunchtime, you know, but just so happen I came home, and I know it's very hard to watch everybody, and so, you know, you got people right there. You're talking about a community that's right there. There's houses that's going to be built right on that property line in the back there. I know the people that's going to be building their house there, they have no clue that this is going to be right up to them. I don't want to stop anything. I just think that that road should stay there, and if you can figure out a better way so that we have that access, then I have no problem with that. I just think that that was there before, and I don't see why it should end. I mean you're talking about homesteaders, and I'm surprised they're not here.

Mr. Hao: ...(inaudible)...

Mr. Lasua: So, Mr. Hao, everything on the -- I guess you would consider it the east side of that road would be Molokai High School?

Mr. Hao: That's correct.

Ms. Dudoit: So the road that is coming up from the fire station --

Mr. Rogers: It looks like the upper end of where the existing road is right now is going through somebody's lot. I mean the one that everybody's using right now is cutting through somebody's driveway.

Mr. Hao: And that's what I think Zhantell was explaining. It's kind of like a makeshift one.

Mr. Rogers: Yeah, but this isn't going to change any property boundaries or anything ...(inaudible)...

Mr. Hao: Right, because the ownership of that is ...(inaudible)...

Mr. Rogers: You guys -- I mean the science building is way down here in the opposite end, so I mean unless you guys are planning -- you ain't going to fence it off. If anything, some of these homeowners ...(inaudible)...

Mr. Hao: Yeah, and I think that's what maybe George is saying is -- okay, so if that's the -- maybe we going to fence it off. Absolutely not so --

Mr. Rogers: No. Nobody's going to close that road, huh?

Mr. Hao: Right.

Mr. Rogers: I mean it's pretty much going to be life goes on.

Mr. Hao: Yeah, we're only concerned about the building right there at the bottom. That's why ...(inaudible)...

Mr. Rogers: Yeah, because I can't imagine jamming up this project because there's no intent to close that road.

Mr. Hao: Yeah.

Mr. Rogers: So --

Mr. Hao: And we're only focused on the building.

Mr. Rogers: I mean if you could just assure him that there's no intention of that, I don't see any reason --

Ms. Dudoit: And I think the clarification is we were looking at the lines.

Mr. Rogers: Yep. Yeah. Yeah.

Ms. Dudoit: Not at the building. When you look at this picture, it shows you the building in --

Mr. Rogers: If you look at what's happening from ...(inaudible)...

Ms. Dudoit: But when we look at the drawing he had, it shows lines that are hard to distinguish whether or not --

Mr. Rogers: Yeah, I mean this is an informal road that everybody's been using forever and it's not going to be affected by this project so -- yeah, I mean I understand your concern but --

Mr. Aiwohi: If that's the case, I'm okay with that.

Mr. Rogers: Right on, bruddah.

Mr. Aiwohi: No, 'cause I'm really saying that there needs to be a way out and if ...(inaudible)...

Mr. Rogers: Oh, I agree absolutely but --

Mr. Aiwohi: ...(inaudible)... and we have access in and out of there. I would hate to have one heart attack and they cannot come. They gotta all the way around and then I die in the last ten seconds.

Mr. Rogers: Yeah, that's not -- but it looks like -- I mean if anybody's ever going to obstruct it, it's going to be one of the people that own those lots because that's, right now, those driveways that cut over there are cutting through people's lots. That's --

Mr. Aiwohi: Yeah. Okay, thank you.

Mr. Rogers: But I mean it's doesn't -- I mean the high school, this isn't going to infringe on that.

Mr. Aiwohi: That's all anyway. Thank you.

Chair Jennings: Thank you. Do I hear a motion? There is a motion.

Mr. Yoshida: Department's recommendation.

Chair Jennings: Oh, excuse me. Excuse me.

Mr. Sticka: Thank you, Chair. Let me read the department recommendation. The application complies with the applicable standards for a community plan amendment, as found in Sections 19.510.010(C) and (D) of the same section, as listed in the accompanying department report for this project. The application also complies with the applicable standards for a change in zoning, as found in Sections 19.510.010, 19.510.040 and 050, as listed in the accompanying department report for this project.

The Maui County Planning Department recommends that the Molokai Planning Commission recommend to the Maui County Council approval of the community plan amendment from agriculture and public/quasi-public to public/quasi-public, a land use commission district boundary change reclassification from agriculture to urban, and a change in zoning from agriculture and interim to public/quasi-public.

In consideration of the foregoing, the Maui County Planning Department recommends that the Molokai Planning Commission adopts the Maui County Planning Department's report and recommendation memorandums prepared for the November 12, 2014 meeting as its findings of fact, conclusions of law, and decision and order, and further to authorize the Planning Director to transmit said recommendations to the Maui County Council. Thank you.

Chair Jennings: Thank you, Ben. Are there any testimony? Is there any -- is there any questions? Is there any motions? I mean, excuse me, a motion?

Ms. Dudoit: Move to approve.

Chair Jennings: Is there any second?

Mr. Davis: Second.

Chair Jennings: Okay, now is there any discussion? I'm sorry. Seeing none.

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 Planning Department's recommendations.

Chair Jennings: Motion carried. Thank you guys. Thank all of you.

Mr. Yoshida read the following agenda item into the record:

- E. PUBLIC HEARINGS (Action to be taken after each public hearing. To begin after 12:00 p.m.)**
 - 2. MR. WILLIAM SPENCE, Planning Director transmitting Council Resolution No. 14-40 referring to the Lanai, Maui, and Molokai Planning Commissions a proposed bill to amend Section 19.04.040 and Chapter**

19.30A, Maui County Code pertaining to Commercial Agricultural Structures in the Agricultural District. (J. Alueta)

Mr. Joseph Alueta: Good afternoon, Planning Commissioners. I take it -- I'm not sure how long we're going to be on this one so I'm not sure if you wanted to take a break, but I'm just double-checking. But anyway, again, I'm your Administrative Planning Officer.

Chair Jennings: Commissioners, do you want to take a small break? Okay, we'll take a small break.

*(A recess was called at 1:17 p.m., and the meeting reconvened at 1:30 p.m.)
(Commissioner Davis was excused from the meeting.)*

Chair Jennings: Let's get started. There's a lot of people that have places to go, so the Commission is back in session.

Mr. Alueta: Good afternoon, Commissioners. Again, my name is Joseph Alueta. I'm your Administrative Planning Officer. I pretty much handle all your -- well, one of my duties right now is to handle changes to ordinances as well as your rules. I've handled most of your Title 19 changes as well as your Molokai Planning Commission rules in the past. There are two ways in which Title 19, which is the Maui County zoning code, can be amended. One is either by director initiated, which is where a lot of times it'll be something that myself or the director have drafted and will be bringing forth before you. This has been all part of our Title 19 updated for the Maui County Code. The other methodology that can be done is by council resolution, and you see that often in some other resolutions. The two resos that we have before you and the first one is -- or the two of them that you have today deal with the agricultural district. The first one that you're going to be dealing with is coming -- is actually coming out of ag committee of the Maui County Council. I have passed out a -- the council resolution. You did receive those in your mail. It has a red line, or we found that it was simpler for us to just put in our comments where we had them, and you'll see that on the exhibits where in red that we've marked them using Adobe.

Mr. Racine: That was an ...(inaudible)...

Mr. Alueta: Huh?

Mr. Racine: It was, in fact, an irritation to me.

Mr. Alueta: It was an irritation?

Mr. Racine: ...(inaudible)...

Mr. Alueta: Yeah, I tried to modify some of the changes to move them to the side for you. Several people in our office, and I apologize, but there was so many comments and -- or where we wanted stuff inserted that we have done the alphabetical listing but it would have just been this really long list of stuff and it would have just -- sometimes that creates more confusion and you don't see where we're trying to say it fits into the context of the bill. So this was something new that we tried to make it a little easier, some people like it, some people don't, but for you, Commissioner, I'll take a note on that and maybe we'll provide you with both methodologies.

But again, when a resolution comes down to the Planning Department and is transmitted to the commissions for comments, we're only commenting on it, okay, so we do not redraft it in the way that we want to see it.

Mr. Racine: ...(inaudible)... I understand underlining is new text; strike means deleted text.

Mr. Alueta: Okay.

Mr. Racine: But the ...(inaudible)...

Mr. Alueta: Commissioner Racine, can you use the microphone? Sorry.

Mr. Racine: So there's just a few places where your comments cover the text of the ordinance and proposals that just made it difficult to read. I think it's only -- it was the first one, I guess, that set me off. The rest of them appear to be in the margins but -- oh, there's a couple of them that cover the text. If you could just avoid covering text that -- with your comments. They're greatly appreciated. And the fact that they're called out in different color, I understand that they're your recommendations rather than amendments to -- that we're voting on.

Mr. Alueta: Correct. Yeah, and I apologize. It was -- the first draft of this did cover a lot more of the text. I did move it over. So the only area, and I apologize, the only one that where the comment is covering the text is where they define a producer, and I apologize for that. But the rest of it did not. The section 3 is basically just saying section 3. There's no substantive text that's being covered by any of our comments, okay. So we did move our comments to the border as best we could so that you could still read the full text.

The things that are being underlined are being -- is new stuff added by the council, and the stuff that is in bracket is being removed by the council, okay.

Okay, I'm going to pass out -- I mean because a lot of times when these bills come down to us, if you notice, they're only taking sections of the county code, of 19.30A. They do not -- they don't provide you with the entire chapter of 19.30A because if they're not touching

it, they don't provide you that. So I'm going to pass out some copies for people to look at, and that's actually the existing 19.30A, so you have kind of a broader idea of where these amendments are being done within the overall chapter.

So what it is is this is basically -- what I handed out for some of you, I did not have enough copies for everyone, but it's just the original Title 19.30A. That's what it looks like today, okay. They do do it in the best they can. You know, like I say, underlining is new stuff, and bracketed is what's being removed. So going down the list, right, if you look at, on Exhibit 1 of the council resolution, you'll see section 2, and that's where the main -- where they're making amendments to 19.04, which is the definition section, and so which they are defining agricultural product stands, okay. The department, where it says, you know, area that is at least 25% open, and then we would like to see our comments is to add "while in operation." Our comments is only because that's where some of the existing product stands that have that requirement think that the stand has to be open all the time and cannot be secured. What we're saying is during none -- only when it's in operation, you have to -- it has to be like an open structure, and then when you're shutdown, you can, you know, board it up and have it secured for at night so no one can break in.

The next section, and this is where I'm trying to show you from what's in the existing code and what they're doing, this section of accessory uses is only -- they're only amending or they're primarily amending accessory uses within the agricultural district, okay, and that's found under 19.30A.050, you'll see where it says, "Permitted Uses," and then under that section, there's a section B called "Accessory Uses," okay. So if you look at the code, how the code reads right now, there's a 19.30A.050, and that lists all the permitted uses that are allowed within the county agricultural district, okay, and then they have, "A. Principle Uses," and so all those uses are still the same, okay. What they're adding is all under Accessory Uses, okay, B. And where you see currently, you have, you know, two farm dwellings, and then farm labor dwellings, and then you go on to where they talk about having one agricultural product stand, right, and then 3, and then 4 is farmer's market. That's where the bulk of the amendments start to come in.

The first thing the council is proposing to do is they're proposing to delete 3 and 4, so they're proposing to delete agricultural product stands and farmer's market, and in its place, they're creating, they're adding where they're saying you can have a maximum of 2 commercial agricultural structures per lot, okay. So what they're trying to do is rather than have a defined accessory use, they're just calling them "commercial agricultural structures," okay. And then our comments again is on the side as far as what that is because all it says is that's what you can have. There's no size limit. There's no percentage. There's nothing really talking about it as far as what can be allowed under Accessory Uses.

And then page 3 is just a renumbering because, obviously, when you delete something, you gotta renumber, and they're doing that on page 3.

Page 4, moving on to page 4. This is where you get into 19.30A.060, Special Uses, okay. Now, and many of you have seen this when I have -- when I came in before with Title 19 amendments, right, that one of the main goals of having Title 19 or each chapter is have a consistent flow of what is the purpose of the district, what is your permitted uses, okay, which is listed on here, each chapter will have what is your accessory uses, what can you do as being accessory to those permitted uses, and then after that, you have a -- we have a section called "Special Uses," which are uses that could be allowed within the district but needs a special use permit, and you've seen that throughout all of the amendments that I've done. The same situation, 19.30A is setup the same way. You have permitted uses, you have accessory uses, and then you have uses that are considered special uses. So right now, the council's reso is amending special uses -- I mean is amending accessory uses, and then they're also amending or, I'm sorry, they're not amending special uses, but under the special uses, the department does recommend that you add a few things in there, okay, and that's on the red line. You'll see that one is zipline and zorbing. You all know what zipline is. Zorbing is hamster balls. Basically, people get into a giant inflatable hamster ball and roll down a hill, okay. So a lot of times -- I mean and you need a lot of land to do it. It really makes no sense to do it in a commercial district because you don't have enough space to do it in a B-2 or B-3 zoning, so it's sort of an open land recreation but we, from our aspect in the agricultural district, we would not want to see it as an outright permitted use. We also don't consider zorbing an accessory to some type of agricultural activity. It's kinda hard to do an agricultural tour while rolling down a hill. So we would think that you would need to do it with a special use permit.

The other area that we're making an amendment is under L., solar energy facilities greater than 15 acres, and then we would like to add "and/or 35% of the lot," okay. Because right now you're allowed to do up to 15 acres as well as 35% of a lot, okay. But if you have a small lot, and you cover 40%, you can't do it at all, okay. But we think there should be at least a process in which someone who wants to do a larger solar facility can come before the planning commissions under the special use permit process. So that's what we're asking for.

And then again, greenwaste recycling facilities we think, in the agricultural district, greenwaste recycling facilities should be processed with a special use permit. That's pretty much how we do it now anyway but it's just we want to codify that. And greenwaste recycling, and when I say that as a special use permit, I'm not talking about you have a farm and you have a compost on the side; that's totally permitted. What we're talking about is a greenwaste facility where someone brings greenwaste and compost material onto another property to compost because that could become an issue. I mean you have a two-acre ag lot and someone's bringing in big trees, java plums or wedelia, or whatever,

to be compost on a small or -- and that could be an issue and we feel that it should have a special review of it.

Now we get down to what I refer to as kinda looks like how I was graded in high school, the papers I received back. These are kind of the red marks, and I'll try to step through this and so that we don't get too confused on what's going on. Basically, all of this is new, okay. All of this being added by the county council, okay. And what they've done is they're adding a new section to 19.30A called "Commercial agricultural structures." So what they've done is they've listed the commercial agricultural structures under Accessory Uses, okay, and then they're creating a new, whole new section to come up with the standards, okay. They're also then coming up with these new definitions that, in theory, are going to only apply to 19.30A, and that's what it states.

The first comment that we have is you have the first two definitions is you have commercial retail food establishment, and then you have commercial retail structure. Yes, Chair?

Chair Jenkins: No ...(inaudible)...

Mr. Alueta: Oh. I thought you said "question." I'm sorry. Okay. Anyway, so basically, if you read those two, right, from our, from the Planning -- the Planning Department's comments is: What's the difference? 'Cause if you read them, all the uses are exactly the same. They're just worded in different orders, okay. You can do a food -- basically, it's still retailing of the exact -- all the same uses. So we're not sure what -- all we're saying to council is: Do you need both of these? Of if you do, what is the difference? Okay. Again, this is on the very top, so they're just moving commercial agricultural structures to start with "All commercial agricultural structures," so that they apply to all commercial structures, so like if you have -- that section that they're talking about is food services. Because if you look at both of them, they both say the same thing. I wasn't sure if you're waving me down, Diane? Okay. Sorry about that.

Mr. Racine: Let me stop you there 'cause you're saying if you want to have them all defined as commercial agricultural structures, there's only two allowed per lot. If so the commercial ag structure is -- got a narrow definition. It looks like a fruit stand. Yeah. It's just a fruit stand. But above, your retail structure serves prepared food. And if you have two of one and one or the other, you're outside the new constraints of the law 'cause it says you can only have two commercial ag structures. So if you define them both as being the same, you limit -- no?

Mr. Alueta: No. Because you can have two as long as it's -- you can have a small -- a farmer's market could be -- is a -- it would be a commercial structure.

Mr. Racine: Right.

Mr. Alueta: And then agricultural retail food establishment. I guess from our aspect, if you read the two, whether you call it a "agricultural retail structure," right, so that's one structure, you could have two agricultural retail structures on the property.

Mr. Racine: Oh, okay.

Mr. Alueta: You could have two of the same structures, two types the same type, but what we're saying is that when you look at the uses that are being defined as what defines each of those structures, they both allow food.

Mr. Racine: Okay, so what you're saying is redundant. It's agricultural retail structure and farmer's market, not commercial ag structure.

Mr. Alueta: No. It says, "agricultural retail structure," and then "agricultural retail food establishment." If you look at the two types of --

Mr. Racine: Okay.

Mr. Alueta: Uses or structures, it says -- it's the exact same uses. How they're defining what uses are allowed in each one of those is basically the same so that -- and again, I don't know what the thinking is of the council, and so all I'm asking council is: Is there a difference between the two? And that's our comments to you is that do you see a difference? Planning did not. The Planning Departments says, hey, these are the same structures. Do you want -- are you trying to differentiate them in some fashion? And we didn't see it. Yes?

(Commissioner Dudoit was excused from the meeting at 1:47 p.m.)

Ms. Swenson: Joe, I have a question. In reading all through all of this, one thing that's always bugged me is we have these ag subdivisions that are really residential subdivisions, like Kawela Plantation and Papohaku Ranch Lands, and even some of the homesteads, and this whole ag thing, and they're zoned ag, and they fall into this thing, but there's like no distinction, and so has the council talked about splitting those out and giving them another name or -- I mean because it's just, I don't know, to me, it's a conflict?

Mr. Alueta: I think some of this is geared toward what we call "smaller ag lots" that are doing this as well as larger ones. I think that's -- our concern is is the smaller ag lots that are not doing ag, and under -- because under this provision, right, you could do a farmer's market or a farmer's market on a smaller Kawela lot that may or may not have that much ag going on because the products that you sale are no longer limited, are no longer -- it could be interpreted as being no longer limited to you having a farm; meaning, as long as you're selling an agricultural product grown in the State of Hawaii, you could qualify as an --

for an agricultural retail structure, and there's no limitations on it, okay, and one of the limitations is 50%, okay, and that's our concern is that what -- do you want to have a limit on the size and do you -- and we comment about that. That always came up with the others. The long-term solution, Commissioner Swenson, for some of these agricultural lots that are really not suited for ag, they may not be suited for ag; one, because of the topography, the soil makeup, and the lack of water or whatever, it may be for a district boundary amendment, and that should be handled -- that kind of question should really be handled at your community plan level, okay. Do you want to move these lots out of ag and into the rural district? I don't know. That's something that the community -- but this is dealing with ag lots. These are dealing with the agricultural -- and that's what this is all about. And the concept -- part of the concept is to allow more commercial activity and the agricultural district in realistically to help some farmers, okay, and we see the intentions. Our concern is there's also an opening here for widespread abuse of doing really non-commercial activities in an agricultural district, and we pointed this out to the other commissions is is it a real concern of the commissions? From our aspect, we feel there should be more limitations so that the person doing the agricultural activity or has an agricultural retail structure is really doing some type -- really real ag, and that the size of the non-ag related items is limited in size, okay. We normally see that limitation when you come in because they normally would have to come in for a special use permit. Under these amendments, some of these -- some things that we would normally have required a state -- or a county special use permit, would not come before you. They would just be outrightly permitted, okay. But at the same time, the token is is the risk -- is the risk of abuse worth the benefits to some of the real farmers that are out there, the real small farmers that are doing small scale coffee, small scale cacao, or small -- I mean anything, or organics where they could be able to directly -- have an easier time directly retailing their products to consumers and, yeah, maybe they have a few other non-agricultural related items that they're selling on the side, okay, 'cause we -- I mean -- but I mean the history that, you know, I've been with the county for over 20 years, and we have a history of more abuse than good, okay, and so a lot of those abuses come to mind and that's why we always think of these things, but maybe we're being too concerned with it. But we just wanted to point them out to you.

Ms. Swenson: I'm sorry. I have to leave. I've got something else. But the other one that concern me that I wanted to ask about before I go is the bed and breakfast home. I mean this, on page 3, that eliminates the homesteaders, and I know there's some homesteaders now that have bed and breakfasts, that have the ag farm programs, and then also the whole west end of the island, it would just eliminate all of those people if they wanted to apply.

Mr. Alueta: I'm sorry. Where are you looking at?

Ms. Swenson: Page 3, number [12.] 11., and under b.ii.

Mr. Alueta: Oh yeah. There's no change in that. The existing law is the existing law.

Ms. Swenson: It's like that now?

Mr. Alueta: They're only changing the number.

Ms. Swenson: Okay.

Mr. Alueta: Yeah, there's nothing on page 3 that's being added or deleted from the existing law. So if you look at the existing code that I gave you, you can compare them. You'll see that they're only renumbering the paragraphs.

(Commissioner Swenson was excused from the meeting at 1:52 p.m.)

Mr. Alueta: Other comments -- I'm sorry. Okay. Some of the other items that we had comments on, and you'll see these, is parking. We feel that, you know, in 19.36A, there should be commercial agricultural structures should establish some type of parking requirement or parking ratio, and that ratio should -- and that parking should not be required to be paved, should not, meaning we think gravel in the agricultural district should be an okay use because we do have legitimate agricultural farmers out there that need to build structures, warehouses, and when they come in, we hit them with a parking requirement as well as saying you have to pave it. You would have a warehouse in the middle of a 500-acre field, right, that they're growing, you know, corn or sugar or whatever, and all of a sudden they have to put in paved parking in the middle of a field when it's being used to store their agricultural -- so we're trying to make sure that that parking does not -- you don't run into the same problem.

We got some conflicts, I guess, between when you look at the definition of what -- for producer as well as because it requires it to be the person who's on the land, but then when you look at allowing commercial agricultural structure -- I'm sorry. When you look at farmer's market, they're saying that you can have multiple producers. So how does that work if the producer is defined as being the person who has the lease of the land? And that's different from how we currently have it, farmer's markets. We don't -- if you have a farmer's market, the whole purpose of it is some farmer has the ultimate thing, which is location, location, location; meaning, traffic-wise as well as site visibility-wise, it's a great location to have a farmer's market, other farmers are going to bring their produce to that farm stand, okay, basically. Under this definition, the only way that you could have a producer could be in the farmer's market is if they're actually producing or have a lease on that property itself. So it actually is being more restrictive, the way it's written. We read it as being more restrictive than the current definition for a farmer's market and for a commercial -- for that structure because they define "commercial agricultural structure" as

meaning stalls within a farmer's market so, theoretically, you could have maybe only two farmers? I mean two stalls? It would be kind of a really bad farmer's market.

When you look at page 6, again we talked about restrictions should be added to the definition of commercial ag structures. We think 49% seems high for structures that is supposed to be accessory -- one, accessory for commercial agricultural structure; meaning so you could do a, like I said, for the right -- for being abused is that you could have a commercial ag structure and only 51% of that ag structure has to really be associated with agriculture on that property. So you could build a 5,000 square-foot building as long as you have 2600 square feet for your ag product, you could have 2400 square feet of logo wear, art gallery, non-agricultural related items. That seems a little -- that's where we were concerned with some of the abuse that could go on and if you share that concern and should that number be something else, okay.

On farmer's market, it's limited to five acres and daylight hours, so you have to have a minimum of five acres, right, and it's limited to daylight hours; yet, the limitation does not apply to other commercial ag structures. That seems kind of weird. Why, on a farmer's market that is really going to be a farm, I mean you're going to be selling agricultural products, right, you're going to limit -- you can't do it during -- you can only do it in daylight hours and you have to have a large lot. Okay, I understand that part. But why limit -- why not have that -- why have that limitation on a farmer's market but not other commercial ag structures? So, again, my example of 5,000 square-foot building, so as long as I have 4600 square feet -- 2600, a majority, 51% of it being used for say display of my agricultural products, right, selling of that; the other 2400 can be a restaurant, and I'm serving pizza because I'm using the tomatoes I grew to make -- to put on the pizzas. Does that make -- and I can operate during the nighttime, so I can, you know, as long as Pizza Hut uses my tomatoes on their pizzas, it's okay to have a Pizza Hut, and I can do it 24/7.

So, you know, there's -- my job is to look for loopholes and that's, you know, that's pretty much our job is to make sure this is what you want because it's going to get interpreted by somebody down the line, and it may not interpreted the way you want it to be interpreted.

Several definitions use the term "parcel," "parcels;" we general use the term "lots," so you can still do "parcels." I mean we just -- we're not sure if council is aware of that or if there was a specific reason they wanted to do that. We don't have any recommendation. We're just saying that we generally use the term "lots," not "parcel."

And that's pretty much it for our comments. Hopefully, I did not thoroughly confuse you as I did on the other commissions. On Lanai, I did confuse them enough that I won't tell you what happened. And then on Maui, they did -- Maui Planning Commission did review it. They kinda agreed with the Planning -- with our comments, but they also was concerned that because they feel that the existing system that we have, which is you can have, you

know, a farm stand, and you can have certain things; anything above that, needs to come before the commission. So it's pretty well laid out; meaning, here's your allowed uses; here's what is considered accessory, and if you are beyond that, you need a special use permit, come before the planning commission, and we'll review what you're doing and set the limits. This kinda is basically establishing a third criteria or standards that is -- what some of the commissioners felt is throwing more mud in the water and it's making it harder to discern and administer the agricultural district. But that was coming from Maui. Some other concerns was there was no limitation on non-ag items, again the 49% I talked about, and how does this impact taxes, that was another thing. How does this, from Maui, they were like does this going to change someone's tax status if they do a commercial ag structure. So that was kind of the items. Okay.

Mr. Billy Buchanan: ...(inaudible)...

Mr. Alueta: Billy -- oh, sorry.

Mr. Buchanan: Anyway, getting back to the where you can have only one -- you can't have somebody else come to your locket and put their products in your stand. The concern I have is, if I'm a farmer and I only growing tomatoes, and my stand only get tomatoes, and I'd like to have somebody else come inside to give my field a better variety. Is that a problem?

Mr. Alueta: No, actually, under the existing law, right, and I guess the -- when it talks about agricultural product stands, there's two things is that under the current law is before it was limited to stuff grown in the County of Maui. So if you have an ag product stand, right, and you're selling tomatoes, you grow tomatoes on your property, you can sell anything at that agricultural product stand as long as it's grown within the County of Maui. But the state has changed it to be the State of Hawaii, so now you can sell anything that's grown within the state, and the county, the original intention of this amendment was actually just to be consistent with the state law. The state law recently changed. And so the county was a little more restrictive in a sense that we said if you sold items grown outside of the county, you needed to get a state special use permit. However, the county has always used that, once the state law changed, it was moot. You don't need it. And we've allowed it. So, yeah, so if you have a farm down in Kihei, right, and you have a farm in Kula, but you have better traffic flow, location, location, location is better in the Kula one, you can sell the stuff that you grew from on your farm or have farmers sell stuff in there. But this one makes it a little more confusing, like you can, right? Are there any other questions?

Mr. Lasua: Yeah, so based on this wording here, "and shall not operate on parcels less than five acres," if you have less than that, then you don't require a permit, a user's permit?

Mr. Alueta: You would not be allowed to have a -- as an accessory use, you would not be able to do a farmer's market. I believe that you would still be open to getting a special use permit from the county.

Mr. Lasua: Even if you're less than five acres?

Mr. Alueta: Yeah. I think that would be the default in most cases.

Mr. Lasua: Okay, I still don't get that. You're required a permit but then you're still less than the five acres.

Mr. Alueta: Under their definition, the proposed definition, do a farmer's market, you have to have greater than -- it has to be on lots greater than five acres.

Mr. Lasua: Right. I get that part.

Mr. Alueta: Okay. Okay. So if you're less than five acres, and you still wanted to do the use of a farmer's market, you would -- we, the county, would probably say you need a county special use permit, whereas under this proposed code, it's allowed as an accessory use.

Mr. Lasua: Oh, okay.

Mr. Alueta: So if it's greater than five acres, you can just go ahead and one. You don't even need permits.

Mr. Lasua: But if you're less?

Mr. Alueta: If you're less, you would need a permit.

Mr. Lasua: Okay.

Mr. Alueta: And then -- and under the county, existing county law, we do not have a -- oh, I guess they are reducing because it says here that only during daylight hours and shall not operate on parcels less than ten acres.

Mr. Lasua: They're changing it to five?

Mr. Alueta: That is correct.

Mr. Lasua: Okay. Thank you.

Ms. Thomson: So what council is looking for and what the Planning Department is looking for are your comments related to these proposed changes. You can agree with the Planning Department, you can agree with some of what they say and not others, you could, you know, offer your comments, your additional comments on this bill, you know, whether you think it's a good idea or whether you prefer the existing system where people need to go and get special use permits that vetted through the planning commissions, so it's your general comments on this bill and it'll go up to council for their information and consideration, so it's very valuable information that they get from these planning commissions.

Mr. Buchanan: How much time ...(inaudible)...

Mr. Alueta: The date has already passed that we were supposed to get comments back so we've been pushed back, so, hopefully, I can get your comments today so that I can make the transmittal.

Mr. Thomson: So the date that we were supposed to have comments back to council has passed but council has not taken this item up, so your comments would still be in the council binders.

Chair Jennings: Do we have public testimony, please? Seeing none, I'll call for a -- are there any comments? Marshall, is there any -- Billy?

Mr. Lasua: Yeah, I'm just concerned about the -- like that five-acre part of it where parcels less than five. I mean Molokai, especially homesteaders who have small parcels, some of them less than the five, they can't even sell stuff on their lot and that's my concern.

Mr. Alueta: They could sell their stuff but they just couldn't do a farmer's market. They could do, under the current law, they could still do a farm -- under the existing bill, they would still be able to do a farming stand or some type of commercial -- what is being called an "agricultural retail structure."

Mr. Lasua: Yeah, but you stated they needed a user's permit.

Mr. Alueta: Under the current bill, and under the existing law, right, under the existing law you can do a farm stand, okay, where they themselves could sell stuff that they grow. Under the current bill, the proposal, they would be able to do an agricultural retail structure, it doesn't matter how big or small the lot is, okay, as an accessory use to their farm, okay. If they wanted to do a -- what is being called a "farmer's market," right, where they have other farmers come to their site, that would be -- it has to be on lots greater than five acres.

Mr. Lasua: Okay.

Mr. Alueta: Okay.

Mr. Lasua: Alright. Thank you.

Chair Jennings: Okay, any other questions? I want to -- okay, I'm going to call for a vote. Oh, just comments?

Mr. Alueta: Yeah, I mean do you guys support --

Chair Jennings: ...(inaudible)...

Mr. Alueta: Do you support --

Chair Jennings: Support it.

Mr. Alueta: Do you support the bill as presented, the way they have it drafted?

Ms. Thomson: Just to give you some ...(inaudible)... on what you could do. You could support the bill as drafted without the Planning Department's comments; you could support the Planning Department's comments and just, you know, say the Molokai Planning Commission additionally supports the Planning Department's comments on the bill; or if you have additional concerns, you could raise those additional concerns. And since there are just five of you, it would need to be unanimous, so you could do it by motion. You could offer your thoughts and then if all of you agree. Some of the -- I was at the Maui Planning Commission as well when they considered this bill, and some of their concerns were that the existing law allows these types of uses by way of a special use permit, so it's not that they're not allowed, it's just that if somebody wants to do, as Joe said, maybe a restaurant on their ag property, they would need to come before the planning commission and make their case as to why it's an unusual and reasonable use if it's in the state ag district or in the county, if it's a small lot, in the county ag district, county ag zone, they would get a county special use permit. So there are ways to do these kinds of commercial enterprises now; what this bill does is open it up to a broader range of commercial uses on ag land.

Mr. Buchanan: ...(inaudible)...

Mr. Alueta: No. This came out of the -- the original document came out, or resolution, came out of council.

Mr. Buchanan: But you reviewed it?

Mr. Alueta: I reviewed and that's where, as well as our staff, and that's where we have some of -- the red lines are kinda like our comments and, on it, as well as -- I mean, and again, we're not -- a lot of things that we bring up here, I mean some things we want added, like, you know, having the parking ordinance amended, we would love to see that amended, we would love to have areas where we said to add it in. And again, we're not against the bill in all, in general, we just have -- we want things clarified on what council is intending, and we're all about, for our side, we have to, one, either make a call - is this an accessory to an agricultural activity? And when you leave a lot of things gray or with no percentage-wise, it makes it harder for us to approve or deny or also enforce the code. So we're just asking council to give us some clarity on some of these things. And a lot of times, just set a number, you know. We're kinda more fixed, like how big of a structure are you going to allow? In this case, there's really no limit and -- or even limitations on how much can be done, you know, percentage-wise so --

Chair Jennings: Billy, go ahead.

Mr. Buchanan: ...(inaudible)... make a motion.

Chair Jennings: Okay.

Mr. Buchanan: I move that we accept ...(inaudible)... the review of the ...(inaudible)... present those things.

Chair Jennings: Okay, there's been a motion to accept. Is there a second? Doug. Okay.

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

It has been moved by Commissioner Buchanan, seconded by Commissioner Rogers, then unanimously

VOTED: to approve the proposed resolution with the Planning Department's recommended changes.

Chair Jennings: Motion accepted.

Ms. Thomson: Thank you. And I just want to clarify, since I don't know that the microphone was working too well, that Commissioner Buchanan's motion was to approve the Planning Department's recommended changes to the bill.

Chair Jennings: Yes.

Mr. Alueta: Okay. Thank you.

Chair Jennings: Thank you.

Mr. Yoshida read the following agenda item into the record:

3. MR. WILLIAM SPENCE, Planning Director, transmitting Council Resolution No, 14-81 containing a proposed bill entitled "A Bill for an Ordinance to Allow Family Child Care Homes within the Agricultural District. (J. Alueta)

Mr. Alueta: Good afternoon, Commissioners. This is a pretty short and sweet one. Basically, as you know, the county government has its authority vested from the state under Chapter 46, and, basically, we're allowed to do zoning establishment of the county and zoning is done by the counties as granted by the state. The state withholds certain zoning provisions or powers, and they can trump us in some areas. The county -- or the state has opted to -- has trumped us about family child care homes, and there is a provision in the existing state law, and I've attached the bill in the back, where they have said that these homes shall be allowed within single-family dwellings, so that's been going on for years and years, okay. People have done these facilities. Recently, they have also said it also can be done within the agricultural designated districts provided that it's within a farm dwelling. So, basically, what they're saying is if it's in a farm dwelling, right, they can also do it and county cannot restrict that use. So the state has already passed that law, that was Act 210, and that passed on the state level. The county council has, basically, put together a resolution that would mimic what's being said, and that's on page 3 of the resolution of our exhibit, and basically they added no. 4, "Family child care homes registered pursuant to Chapter 346, Hawaii Revised Statutes, provided the family child care home is located in a farm dwelling." Okay. From our aspect, we considered this amendment moot because the state law has already trumped up, however, we feel it's good to have the language in the county ag bill just so that it's clear to everyone that, yeah, you can do it so that if we get a letter or get a, not an application, but a letter confirming that they can do this within their farm dwelling, you know, we don't have to rely on memory that, oh yeah, the state law changed and allows it out right; at least it'll be in the county code and that way somebody looking through it, they could say, yeah, it's pretty easy to see that that use is allowed provided that it's in a farm dwelling. So we are in support of the resolution and, hopefully, someone can make a motion to that effect to adopt it at the council. Thank you. Have public hearing?

Chair Jennings: Public? Seeing none, is there a motion?

Mr. Rogers: So moved.

Chair Jennings: Second by Bill.

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

It has been moved by Commissioner Rogers, seconded by Commissioner Buchanan, then unanimously

VOTED: to accept the proposed resolution.

Chair Jennings: Motion carried.

Mr. Alueta: Thank you.

G. DIRECTOR'S REPORT

1. Enactment of 2014 Molokai Planning Commission Rules

Mr. Yoshida: Okay, we're in the homestretch now. Moving to the Director's Report. Again, the Planning Commission rules, the four sets of rules, were -- are effective as of July 27, 2014, and so with that, under item 2, we're still with sort of streamlining measures that are reflected in the rules, and we're on item b, which we consider the actions not be a development and, therefore, can be exempted from the requirements of your SMA rules.

Mr. Yoshida read the following agenda item into the record:

2. MR. WILLIAM SPENCE, Planning Director notifying the Commission pursuant to the provisions of Section 12-302-13.1(a) of the Molokai Planning Commission's Special Management Area Rules that the following proposed actions located within the special management area are not "developments" and therefore exempt from the requirements of the Molokai Planning Commission's Special Management Area Rules:

- b. MS. PAMELYN FUKUOKA submitting a Special Management Area Assessment (SMX) application for interior and exterior improvements; replacing windows and doors, install new flooring, re-paint interior and exterior, replace interior and exterior siding and trim as needed; and demolition of greenhouse located at 281 Kikipua Street, TMK: 5-3-010: 005, Kaunakakai, Island of Molokai. (SMX 2014/0448) (Valuation: \$5,000) (S. Lopez)**

The Commission shall acknowledge receipt of the application. The Commission shall vote to either waive its review of the application or review the assessment application at the next available meeting after receiving notice.

Mr. Yoshida: And the question before you is to waive your review or review the application at the next available meeting.

Chair Jennings: Anybody, yeah, are there any questions? Seeing none. Go ahead, Lawrence.

Mr. Lasua: Mr. Chair, before I recuse myself whether I need to or not, I'd have to ask Richelle I guess, this is my daughter so if we don't have a quorum, and I don't have any financial benefit from this, then I assume I can go ahead and vote on this, Richelle?

Ms. Thomson: If you don't have a direct financial interest in this application, and if she's not being supported by so she's no longer a minor living in your house, that kind of thing, and if you feel that you can fairly make a decision on it, I don't think that you need to recuse yourself.

Mr. Lasua: Okay, then I won't.

Chair Jennings: Okay. Thank you. Is there any public testimony? Seeing none. May I have a motion?

Mr. Racine: I move to waive the review of the application.

Chair Jennings: Is there a second to that? Billy? Okay.

It has been moved by Commissioner Racine, seconded by Commissioner Buchanan, then unanimously

VOTED: to waive review of the SMA assessment application of Ms. Pamelyn Fukuoka.

Mr. Yoshida read the following agenda item into the record:

- c. **MR. MEL CHUNG submitting a Special Management Area Assessment (SMX) application for repair and renovations; enclose existing deck and add new bathroom to existing main dwelling above with no ground alterations located at 336 Ilio**

Road, TMK: 5-3-010: 030, Kaunakakai, Island of Molokai. (SMX 2014/0488) (Valuation: \$16,000) (S. Lopez)

The Commission shall acknowledge receipt of the application. The Commission shall vote to either waive its review of the application or review the assessment application at the next available meeting after receiving notice.

Chair Jennings: Any public testimony? Okay, seeing none. Can I have a motion?

Mr. Buchanan: ...(inaudible)...

It has been moved by Commissioner Buchanan, seconded by Commission Lasua, then unanimously

VOTED: to waive review of the SMA assessment application of Mr. Mel Chung.

Mr. Yoshida read the following agenda item into the record:

- 3. Notification of the issuance of a Special Management Area (SMA) Emergency Permit in accordance with the provisions of Section 12-302-16 of the Molokai Planning Commission's Special Management Area Rules:**

Written Special Management Area Emergency Permit by letter dated October 8, 2014 issued to MS. DIANE SWENSON to repair 4,600 square feet (sq. ft.) of clay tile roofing on the existing single family residence due to structural roof damage sustained by high winds and rain for property situated at 8794 Kamehameha V Highway, TMK: 5-7-007: 005, Pukoo, Island of Molokai. (SM3 2014/0007) (SM3 2014/0002) (B. Sticka)

This report is submitted to the Commission for review.

Mr. Yoshida: This is for your information.

Chair Jennings: Any public testimony? Seeing none.

- 4. Agenda Items for the next meeting**
- 5. Pending Molokai Applications Report generated by the Planning Department (Appendix A)**

6. Closed Molokai Applications Report generated by the Planning Department (Appendix B)

Mr. Yoshida: The next item is agenda items for your next meeting. Again, the Commission did defer on the Chopra Hale community plan amendment and zoning change. There are a few other council resolutions floating out there as they become popular, especially around election time, so they'll have to come before you sometime shortly. We have submitted our list of pending and closed Molokai application reports, so if the Commission has any question on those, we can try to answer them at this time. Okay, seeing none, then we'd like to wish all of you a Happy Thanksgiving. Our next regularly scheduled meeting is December 10. We do apologize for the -- oh sorry. Oh, we do have a question.

Chair Jennings: Hold on.

Mr. Racine: We were given information on proposed changes to short-term rentals?

Mr. Yoshida: Yes, I believe that Gina Flammer was here back in July getting your comments on the department's proposed amendments to the short-term rental home ordinance, and, basically, she summarizes what were some of the major substantive -- and then there's also the transmittal of the package, with the comments from the various Hana Advisory Committee and the three planning commissions to the county council, so now it's the county council's turn to deal with the amendments. Yeah, we do apologize again for the technical difficulties that we had today. We did have the Public Works Director and the Water Director standing by at 11:00, and we were able to hear them on our conferencing phone, however, they were not able to hear us, so it was basically a one-way communication, which is not effective. So, you know, it's just a technical glitch relative to this facility and using the conferencing phone. And the Police Department did show up at 12:00 to answer questions but, by then, we had already dealt with the matter. So we'll try to deal with those in the future, and relative to these waive of review, do you folks want to see plans or is just the description enough for you?

Mr. Racine: That was ...(inaudible)... it said you could prepare a summary and what we got was a line saying yada, yada, chapter, verse number, SMA number, you know, but, okay, we're being asked to waive review of what? We didn't know what we were being asked to waive review on.

Mr. Yoshida: Yeah, again, this is one of the streamlining measures 'cause, otherwise, the alternative was, if we didn't come up with us, or we didn't implement this, was that the staff would have to write a report, and they would have to transmit it to you --

Mr. Racine: A paragraph.

Mr. Yoshida: You would have to review it. But some of these are, you know, kind of exemptions from the beginning, like they're doing renovations to an existing condo unit. You know, we could provide some plans, but we don't necessarily want to get into doing a report because that's not streamlining.

Mr. Racine: Yeah.

Mr. Sticka: If I could offer up a suggestion. Perhaps, you're just be looking for just additional, more detail than the actual description, because I understand the first item was -- there wasn't a lot of descriptors in that to --

Mr. Racine: Yeah, we were told what we we're looking at or what we're being asked to waive, and then the next one is just nothing more than -- ...(inaudible)... right, for Kamehameha Schools. It just said existing after-the-fact improvements, but there was fencing, there was tankage, there were roofs, there's -- the scope of the project in two sentences would have been sufficient and an explanation that this is why we grant the exemption, not a full-on report, I don't need graphs and -- it would, yeah, it would have suffice to have just a brief description and reason for exemption, why we're not looking at it.

Mr. Sticka: Understood.

Mr. Yoshida: Okay, with that, we thank you for your perseverance. This is one of our longer meetings in a while, and we're down to a bare quorum, but again, we wish you all a Happy Thanksgiving.

H. NEXT SCHEDULE D MEETING DATE: December 10, 2014

I. ADJOURNMENT

Chair Jennings: And I'd like to wish all of you a Happy Thanksgiving, and we'll see you all December 10.

There being no further business brought before the Commission, the meeting was adjourned at 2:27 p.m.

Respectfully submitted by,

SUZETTE L. ESMERALDA
Secretary to Boards & Commissions

RECORD OF ATTENDANCE

Present

Michael Jennings, Chairperson
Douglas Rogers, Vice-Chairperson
Billy Buchanan
Ron Davis
Zhantell Dudoit
Lawrence Lasua
Marshall Racine
Diane Swenson

Excused

Sherry Tancayo

Others

Clayton Yoshida, Planning Program Administrator
Joseph Alueta, Administrative Planning Officer
Benjamin Sticka, Molokai Staff Planner
Sybil Lopez, Staff Planner
Richelle Thomson, Deputy Corporation Counsel