

TRANSCRIPT OF PROCEEDINGS
BEFORE THE MOLOKAI PLANNING COMMISSION
COUNTY OF MAUI
STATE OF HAWAI'I

The above-entitled matter came on for public hearing on March 27, 2019, at the Mitchell Pauole Center, 90 Ainoa Street, Kaunakakai, Molokai, Hawai'i.

PRESENT:

Lori Buchanan, Chairperson
Lawrence Lasua, Vice-Chairperson
Leonora Espaniola
John Pele
John Perez, III
Laakea Poepoe
John Sprinzel

EXCUSED:

William Moore

OTHERS PRESENT:

Jeffrey Dack, Current Division Supervisor, Department of Planning
Sybil Lopez, Staff Planner, Molokai, Current Division, Department of Planning
Mimi Desjardins, Deputy Corporation Counsel, Department of Corporation Counsel
Suzette Esmeralda, Secretary to Boards & Commissions II, Current Division, Department of Planning

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1 CHAIRMAN BUCHANAN: Good morning. Aloha, everyone, and
2 welcome to the March 27th, 2019, meeting of the Molokai Planning
3 Commission. I would like to call this meeting to order.
4 Commissioners, I always ask the question. Are there any requests
5 for amendments to the agenda? Seeing none, we're going to move
6 into Item B on the agenda, public testimony.

7 And you can see that if it's -- it's a courtesy for
8 people who will not be here during the agenda item and want to
9 testify now, because they have to leave, or some other public item,
10 or just testimony to this Commission, if not I would ask you to
11 wait until the agenda item, and then you have an opportunity to
12 testify.

13 So, if there is anyone in the public wishing to testify
14 at this time, come up and state your name for the record. Come up?
15 Go ahead. Thank you.

16 MS. DIZON: Aloha. Aloha, my name is -- can you hear me?

17 CHAIR BUCHANAN: Yes.

18 MS. DIZON: Okay. My name is Madonna Dizon, and I
19 actually wanted to address the Scott Wehner on the agenda. I feel
20 that he was out of compliance from the very start with his -- he's
21 actually asking for more than what he actually deserves. And he --
22 they said graded and grubbed land, but what I feel was he more
23 raped and pillaged, than graded and grubbed. I don't think he
24 should be allowed to do things without impunity because another
25 thing that he did was he destroyed a bird sanctuary, which is in

1 the testimony of the long thing that was actually shared actually
2 online.

3 And that was -- I mean he's supposed to be not treating
4 the land as his empire, but he should be a steward of the land, and
5 a steward does not do these kinds of things. He should be held
6 accountable for what he did, and it's pointed out in the
7 documentation that's actually in front of you, all of the things
8 that he did. And it seems that he is of the mind that money talks
9 and bullshit walks. In other words, I can do things with impunity,
10 then I can come back and get my wrist slapped, pay a little fine,
11 and I'll be fine. I can do what I want. And that should not be
12 so.

13 If it was my call as a steward of the land, I would put
14 him a mile out and have him swim back to shore, all the time
15 contemplating what he needs to do in order to take care of the land
16 for generations yet unborn. He is looking at it as an empire
17 rather than as a stewardship. Mahalo.

18 CHAIR BUCHANAN: Thank you, Madonna. Commissioners, any
19 questions for the testifier? Okay. Seeing none, anyone else in
20 the public wishing to testify? And then, again, I would caution
21 you if are testifying on the only agenda item we have today, then
22 maybe you would like to wait. It is at the discretion of the
23 Chair, and it's around three minutes, but we would give you an
24 opportunity to also finish up your testimony.

25 So, if anybody else in the public wishing to testify at

1 this time. State your name for the record. Thank you.

2 MS. POEPOE: Hi, my name is Mahina Poepoe. I do have a
3 lengthy testimony, I'll just let you know beforehand. And if you
4 need me to stop, I can come back and finish up at the next item,
5 but I want to make sure I get to say it all.

6 CHAIR BUCHANAN: Okay. Well, I believe Suzie is timing
7 the three minutes. So, if you go past that, then you can -- we'll
8 give you an opportunity to come back and finish up.

9 MS. POEPOE: Okay. Thank you. I am here today to ask
10 that you deny the after-the-fact permit and pursue the maximum
11 fines, and penalties, and remediation. This is not an exemption.
12 This is a minor permit, and the Commission has the power to deny
13 it.

14 This project, first of all, is incomplete. It only
15 addresses the after-the-fact SMA and does not address the
16 conservation's own violation. So, would that violation be coming
17 up at a consequent meeting or are we going to sweep it under the
18 rug, like no one notices? The County of Maui also has an ownership
19 stake in the conservation buffer parcel that was affected, which
20 means that the public has even more so of a right to demand action.

21 This project is not in compliance with the Papohaku Dune
22 Preservation Plan, which states that developments, excavation, and
23 grading in the dunes should be carefully looked at and kept to an
24 absolute minimum in order to protect sites and environment. This
25 project denied the County, State, and community the opportunity for

1 due diligence and process that would be required in order to be
2 compliant.

3 The subject parcel is located in a known and documented
4 'Ua'u Kani nesting habitat as well as Koa'i nesting habitat, hence
5 the name Pu'u Koa'i. The after-the-fact nature, again, denied the
6 opportunity for comments and implementing BMPs to protect and
7 mitigate harm to nature -- native wildlife, which indicates that
8 the project will, in fact, have and has already had adverse
9 environmental and ecological effects.

10 The Planning Department admits that based -- "Based upon
11 the after-the-fact activities, the Department acknowledges that
12 there may or may not have been historical properties affected."
13 Yet, in their finding of facts states that, "The project will not
14 have impact on historical site, site remnants, or archaeological
15 cultural significance." This is contradicting. How can they
16 definitively state, in good conscience, this as a fact when they
17 literally just said they had no idea. This is unacceptable, and
18 the statement of fact is false.

19 Had SHPD been consulted prior to illegal grubbing and
20 grading, they would have been able to provide meaningful insight
21 and recommendations, again, because after-the-fact, the Applicant
22 circumvented this process, intentionally, and that would have
23 allowed for provisions and protections, and we never -- will never
24 know what was really there, because we weren't given that chance.

25 The scope of this project, again, after-the-fact nature,

1 resulted in SHPD recommending that you deny the permit. That is a
2 State recommendation to deny the permit, which is a pretty major
3 thing, and I ask that you concur with the State.

4 This project violates our Community Plan in 30 or more
5 ways.

6 MS. ESMERALDA: Three minutes.

7 CHAIR BUCHANAN: I'll give you another minute, and then
8 you can come back, and we'll finish up.

9 MS. POEPOE: I'll just finish this paragraph.

10 CHAIR BUCHANAN: Okay.

11 MS. POEPOE: This project violates our Molokai Community
12 Plan in like 30 or more different ways, including, by claiming
13 compliance with things that they aren't compliant with. For
14 example, Chapter 3.2, Heritage Resources, Policy 14, says: To
15 ensure that permits for any project that may affect historical
16 properties are provided to SHPD for review and that SHPD's
17 recommendations are implemented as conditions.

18 First of all, SHPD's recommendation is for denial, and it
19 is not listed as a condition. That's the first violation of the
20 policy. Secondly, by the time SHPD got this application it was
21 meaningless, so, again, claiming compliance with something they
22 aren't compliant with. And, also, I can come back and go point for
23 point through the Community Plan with you, if you want, but that's
24 all for now.

25 CHAIR BUCHANAN: Thank you, Mahina. We would appreciate

1 that, I'm sure, but I also would ask that you submit your written
2 testimony, what you testifying on today, to this Planning
3 Commission for the record. Okay.

4 MS. POEPOE: Okay.

5 CHAIR BUCHANAN: Thank you very much. Commissioners, any
6 questions for the testifier? Okay. Seeing none, anyone else in
7 the public wishing to testify at this time? Okay.

8 UNIDENTIFIED SPEAKER: (Inaudible).

9 CHAIR BUCHANAN: You can testify during the agenda item.
10 Okay. So, seeing none, we're going to close public testimony, and
11 we're going to move on to Agenda Item C, Resolutions for Outgoing
12 Commission Members Lori Buchanan and Lawrence Lasua. Is that kind
13 of moot or what? Thank you.

14 MR. DACK: Yes. Good morning, Commissioners. You were
15 probably expecting to see Clayton Yoshida here today. He,
16 unfortunately, is on extended leave. I'm here in his place today.
17 Again, my name is Jeff Dack. I have met a few of you, but I
18 haven't had the pleasure to meet all, I'm sorry, until now, but I'm
19 happy to meet you today.

20 I am Sybil's direct supervisor and have been the
21 supervisor for your various Molokai planners over the years. I
22 just don't make it here very often, and I regret that, but I'm
23 happy to be able to be here today in Clayton's place. And it's --
24 and we do appreciate the service of all the Commissioners, and we
25 have a resolution here I would like to read. A Resolution of the

1 Molokai Planning Commission.

2 Whereas, Lawrence Lasua has served the County of Maui
3 since April 2014, as a member of the Molokai Planning Commission.

4 And, whereas, Mr. Lasua has served as Vice-Chairperson
5 for the Molokai Planning Commission from April 2017 to September
6 2017, and from April 2018 to March 2019, and has served as the
7 Chairperson of the Molokai Planning Commission from September 2017
8 to January 2018.

9 And, whereas, Mr. Lasua's term of service has -- expires
10 as of March 31st, 2019.

11 And, whereas, Mr. Lasua has served with distinction and
12 has performed his duties in the highest professional manner with
13 the Molokai Planning Commission.

14 Therefore, we resolve the Molokai Planning Commission
15 hereby commends Mr. Lasua for his dedication and tiring -- and
16 untiring public service to the people of Maui, especially, the
17 people of Molokai and express their sincere appreciation for Mr.
18 Lasua's service and extend their best wishes in his future
19 endeavors.

20 And, furthermore, be it resolved that copies of this
21 resolution be transmitted to the Honorable Michael P. Victorino,
22 Mayor of the County of Maui, and the Honorable Kelly T. King,
23 Council Chair of the Maui County Council.

24 I would like to pass this around for Commissioners to be
25 able to sign it.

1 CHAIR BUCHANAN: Thank you, Lawrence. Thank you,
2 Lawrence.

3 MR. DACK: And then on behalf of Mayor Victorino's office
4 -- I'm not from his office, but we are from the Administration,
5 Mayor Victorino also has a resolution I would like to read.

6 Be it resolved by the office of the Mayor that it hereby
7 extends its warmest appreciation to Lawrence Lasua, Molokai
8 Planning Commission. Mahalo for your dedication, commitment and
9 contributions to the County of Maui's Boards, Commissions, and
10 Committees. Your loyalty and honorable public service is
11 recognized and truly valued by all of its residents. Signed,
12 Michael P. Victorino, Mayor. Thank you, again.

13 CHAIR BUCHANAN: Okay. I just wanted to say something
14 really fast to Lawrence. Lawrence, Lawrence I really, really
15 appreciate serving with you. This is not the first time I had the
16 opportunity to do that, but I really appreciate Lawrence's input,
17 and neutrality, and his leading when the Chair is not here and as
18 the Chair in the past, and all that he does for this community that
19 he had time to serve on this Commission, which is very, very
20 important and shows his commitment to this community. So,
21 Lawrence, I just wanted to really mahalo you and thank you. I
22 really appreciate you. Love you. Thank you.

23 COMMISSIONER LASUA: Thank you.

24 MS. DESJARDINS: So, I just want to say that because one
25 of the resolutions was for -- also for Chair Buchanan in that she

1 has been reappointed. So, that's why we're not going through that
2 for her.

3 CHAIR BUCHANAN: Thank you. And everybody was like
4 wondering about that. Okay. Thank you very much for my applause.

5 We're going to move on to Item D, Special Management Area
6 Minor Permit, Item number 1, Mr. Scott. How do we pronounce his
7 last name? Wehner.

8 UNIDENTIFIED SPEAKER: Wehner.

9 CHAIR BUCHANAN: Okay. Mr. Scott Wehner seeking a
10 Special Management Area Minor Permit for the after-the-fact
11 grubbing of 8,000 square feet and grading of 4,000 square feet,
12 comprising 45 cubic yards on a 5.65 acre parcel located at 0 Kaula
13 Lii -- or Ili Way, Kaluakoi, TMK 5-1-007:030.

14 And before we start, I would like to disclose that if you
15 folks saw in your report that in June of 2017, the Chair -- which I
16 don't think I was Chair then. I don't really know where I was, to
17 be honest. But if you see under RFS Information, I believe that
18 there was three RFS requests, you will see that dated on 6/21/2017,
19 on page 104 of this RFS 170000773, the requestor was myself -- was
20 Lori Buchanan.

21 So, I actually, by KivaNet, through the internet, put in
22 an RFS for this -- for what we're hearing today. So, I want to
23 disclose that on the record just so everybody is sure. And what I
24 had planned to do is to recuse myself from any voting on this --
25 the subject matter today. However, I do have questions for staff

1 on the information -- the paraphernalia that was given us today,
2 and I will ask those questions, but I am recusing myself from
3 voting on this item.

4 Okay. With that, we'll go into Item D, number 1. Staff.

5 MS. LOPEZ: Thank you, everyone. Thank you, Chair. I'm
6 Sybil Lopez, the staff planner to this project that is before you.
7 This matter arises from an application for an SMA assessment
8 originally filed on June 25th, 2018, on behalf of the -- Scott
9 Wehner, Wehner Molokai LLC is the Applicant. And he has, today,
10 Mr. Luigi Manera, the Consultant on this project. So, he is here
11 today if you have any questions for the Consultant. If there are
12 questions here for me, I can try and help answer those questions
13 accordingly.

14 But the project is for an after-the-fact grading and
15 grubbing on the 5.65 acre parcel located in the West Papohaku
16 Ranchlands Subdivision in the Kaluakoi Ahupua'a, Kona District, on
17 the west side of Molokai. It was 8,000 square feet of area was
18 grubbed and 4,000 square feet of area was graded. So, the total
19 volume of the cut and fill was 45 cubic yards, including areas of
20 the Conservation District, the Papohaku Dune System, and within the
21 SMA.

22 So, on March 15, 2017, in your exhibit, the Applicant did
23 receive a grubbing permit from the Department of Public Works for
24 three acres. However, the Applicant graded and grubbed beyond the
25 permit given. They were told that they would have to also come in

1 for an after-the-fact SMA permit, which is what is in front of you
2 today.

3 So, after, I guess, rigorous consultant (sic) going back
4 -- consulting going back and forth with the Department and the
5 Consultant itself, the Department finally determined to process a
6 report and to have it in front of the Planning Commission today.

7 So, if there's any questions, unless you want me to dive
8 more deep into the report itself, but it's pretty explanatory what
9 you have in front of you today. So, thank you, Commissioners.

10 CHAIR BUCHANAN: Commissioners, anybody wanting staff to
11 dive deeper or we want to jump into questions? I see Commissioner
12 Pele already has one. What is the purview? You guys --

13 COMMISSIONER PELE: I just wanted to ask a question.

14 CHAIR BUCHANAN: Okay. Well, go ahead then, Commissioner
15 Pele.

16 COMMISSIONER PELE: And I don't know if this is for
17 staff. Did he give a reason why he over graded? I mean, I don't
18 see a reason. And did you guys ask him why he did it or he just
19 did it? Like -- is there like -- or is that something Luigi? I
20 can ask Luigi later on.

21 CHAIR BUCHANAN: Oh.

22 COMMISSIONER PELE: And do we know exactly the area --
23 square footage of the over grade and the over grub? Like, I know
24 it was -- you explained how much was given for the permit, but how
25 much did he actually go over?

1 MS. LOPEZ: So, Exhibit 4, actually shows you the permit
2 itself --

3 COMMISSIONER PELE: Yeah.

4 MS. LOPEZ: -- that he was permitted for with the
5 grading.

6 COMMISSIONER PELE: Uh-huh.

7 MS. LOPEZ: And Exhibit 3, actually shows you the
8 approximate cut and fill. If you're familiar with the Pu'u -- Pu'u
9 Koa'i, as how the testifier before explained that the --

10 COMMISSIONER PELE: Uh-huh.

11 MS. LOPEZ: -- hill. So, it's pretty hilly. So, it kind
12 of comes up from the bottom, and it kind of goes up onto the Pu'u.
13 So, this is the Pu'u, and this is where he graded.

14 COMMISSIONER PELE: Well, we don't have an actual --

15 MS. LOPEZ: But you want --

16 COMMISSIONER PELE: -- square footage or --

17 MS. LOPEZ: Well, the square footage that was provided
18 was 4,000. As far as what --

19 COMMISSIONER PELE: And that's what he went over? He
20 went over?

21 MS. LOPEZ: That was total --

22 COMMISSIONER PELE: Yeah.

23 MS. LOPEZ: -- but what was permitted was just for three
24 acres.

25 COMMISSIONER PELE: All right. I can ask Luigi my other

1 question.

2 MS. LOPEZ: So, if you want me to explain the grading
3 part -- well, I cannot really explain for the Public Works, but
4 just looking at what the map is and where the SMA line has been, he
5 came in for those that was outside of the SMA.

6 COMMISSIONER PELE: Right. Right.

7 MS. LOPEZ: Yeah.

8 COMMISSIONER PELE: I just wanted to know if we had -- I
9 just was looking for an actual number that he went over.

10 MS. LOPEZ: Oh, okay.

11 COMMISSIONER PELE: Square footage. Just for my own
12 knowledge. My point is, if you go over by a lot -- well, never
13 mind. I'll keep my opinions to myself.

14 CHAIR BUCHANAN: Okay. Go ahead, Commissioner Lasua.

15 COMMISSIONER LASUA: Question, Sybil. In doing what he
16 did, did it do any damage to the environment as far as outside of
17 the permitted area?

18 MS. LOPEZ: So, your question is if he did any damage to
19 the property or to --

20 COMMISSIONER LASUA: The property outside of what was
21 permitted?

22 MS. LOPEZ: So, he went beyond his property line --

23 COMMISSIONER LASUA: Okay.

24 MS. LOPEZ: -- a bit, and he went into the Conservation
25 District area.

1 COMMISSIONER LASUA: Okay. So, what kind of damage did
2 he do?

3 MS. LOPEZ: He actually removed a lot of the kiawe trees.
4 So, basically, he just -- he went with an -- an equipment,
5 bulldozed up for the -- to create a roadway to take out the kiawes
6 within that area --

7 COMMISSIONER LASUA: Okay.

8 MS. LOPEZ: -- as he was moving along on the top of the
9 hill. But, Mr. Manera, if you want to add to the question.

10 MR. MANERA: Mr. Chairman, Members of the Commission,
11 Luigi Manera. What is the question again?

12 COMMISSIONER LASUA: What kind of damage did it do
13 outside of the area when he dozed?

14 MR. MANERA: Okay. What he did, he got a little bit too
15 excited during grading. He decided to go on top of the dune with
16 the dozer. The only damage he did, he only removed kiawe tree,
17 nothing else. He never went over the hill, he never go inside the
18 property on the top, only at the bottom. He went to the
19 Conservation, but not on the top dune. I think he probably grade,
20 let's say, in between all the road and whatever, 4,000 square feet
21 or 5,000 square feet, but he only removed kiawe tree. Only the
22 plan. No nothing.

23 COMMISSIONER LASUA: Was there any groundcover within the
24 kiawe tree area?

25 MR. MANERA: No.

1 COMMISSIONER LASUA: No.

2 MR. MANERA: We left everything alone on the slope facing
3 the ocean because that was -- we know about that, so he never went
4 over.

5 COMMISSIONER LASUA: Okay. Now, in your conversation
6 with Mr. Wehner, did he realize what he was doing?

7 MR. MANERA: Well, like I say, when he call me, and I
8 went down and take a look and say, well, I think we in trouble.
9 You not supposed to go beyond this point. And he say, what I
10 should do. Well, I think you better stop, let's apply for the
11 permit and see what happened.

12 In the meantime, we have a couple phone call from the
13 County in regard of Lori Buchanan, a couple other people, they make
14 a complaint, but we already stop at the time anyhow. We never went
15 farther than -- than what is -- than what we did.

16 On the other hand, if you have to go down and take a look
17 now, I say probably -- it's probably the best thing he ever did
18 because right now there's all the grown -- all the native growing
19 -- plant growing back. They cover the whole -- the whole dune.
20 It's just incredible how the native vegetation growing back.

21 COMMISSIONER LASUA: Okay. Thank you, Luigi. Sybil, in
22 regards to that area, is there any type of life sanctuary for the
23 birds or anything like that?

24 MS. LOPEZ: Well, based upon the report that -- based
25 upon the report that is in front of you, I'll kind of try to answer

1 the previous question, and then go into your second question.

2 COMMISSIONER LASUA: Okay. Thank you.

3 MS. LOPEZ: Damages is undetermined. I mean, if you've
4 noticed on the exhibits, constitute from the State Historic
5 Preservations and the Agency comments that was received. So, if
6 you read the Exhibit 7, regarding the Shearwater birds, and so when
7 you specifically talking about living sanctuary, so these -- this
8 is what was commented. So, the -- I was hoping that she was going
9 to be here today to explain her comment, but one of the agency
10 transmittals -- one of the agencies that the Department
11 requested --

12 COMMISSIONER SPRINZEL: Sybil, she is here.

13 MS. LOPEZ: Oh, she's wearing a black hat, and I couldn't
14 see her. But I don't know if you want to hear from her to explain
15 her letter, but just wanting to let you know why her letter is in
16 here is that the Department felt that she would be one of the
17 experts living on Molokai to explain any habitat around that area.

18 And so, this was the -- one of -- I'm hoping that's the
19 answer to your question as a living sanctuary would be Exhibit 7 in
20 your report. And it is also mentioned in the report itself.

21 CHAIR BUCHANAN: You have one more question, Lawrence?
22 Go ahead.

23 COMMISSIONER LASUA: No, I don't, but I would like to
24 hear her response from the -- from Patricia Crandall in her letter.

25 CHAIR BUCHANAN: My understanding is Patricia is not

1 here, and she dropped off her testimony prior to this meeting. If
2 this Commission wants to take two minutes to read that information
3 that was just presented to us before the meeting, then I'm inclined
4 to take that couple of minutes for everybody to read Patricia
5 Crandall's testimony, but if not -- I mean, at some point, I can
6 take five minute recess to read the testimony, but I think since we
7 have staff, if anyone has more questions for staff.

8 COMMISSIONER LASUA: No.

9 CHAIR BUCHANAN: Yeah. Lawrence, there's Ahupua'a
10 Natives' testimony submitted by Arleone Dibben-Young, and it is
11 Exhibit 7. And it clearly talks about the area and what they found
12 there prior to -- you have that copy? Okay. Okay.

13 COMMISSIONER LASUA: So, I'm okay with this.

14 CHAIR BUCHANAN: Yeah, I believe that the person -- I
15 don't see her, and I'm hoping she's going to testify later, but --
16 so, is there any more questions for Sybil from Commissioners?
17 Pele?

18 COMMISSIONER PELE: No, not from Sybil. Luigi. Question
19 for Luigi.

20 CHAIR BUCHANAN: Sure. The Applicant. Fine. Luigi,
21 Commissioner Pele has a question for you. And, Commissioners,
22 we're still on the staff report, yeah.

23 MR. MANERA: Luigi Manera.

24 COMMISSIONER PELE: Yeah. So --

25 MR. MANERA: Yes, sir.

1 COMMISSIONER PELE: So, were you hired by the Applicant
2 from the beginning of the project?

3 MR. MANERA: Yes.

4 COMMISSIONER PELE: So, you don't go down there and
5 determine where he's going to grub and grade? You don't mark it
6 off? You don't talk to him about it, you don't do a site visit,
7 you just -- he just does what he does? I'm trying to find out why
8 he did it and the reason he gave for doing it. If you were hired
9 from the beginning, my assumption is you go down there, and mark it
10 off, and line it off, and say --

11 MR. MANERA: I show him where he supposed to grade.

12 COMMISSIONER PELE: And he just went past it on his own?

13 MR. MANERA: He just -- like I said, he got a little bit
14 too excited, he went up and take a look how the hill had look like
15 from the top.

16 COMMISSIONER PELE: Okay.

17 MR. MANERA: And then he called me. The same day he
18 called me back to tell me, oh, man, I like it up there. I said,
19 well, what you mean with that? Oh, I went up on the top of the
20 dune. And I said, well, that's not the right thing to do. I think
21 you better stop work --

22 COMMISSIONER PELE: Okay. So, he just --

23 MR. MANERA: -- because we have a problem.

24 COMMISSIONER PELE: -- he just did it -- took it upon
25 himself like --

1 MR. MANERA: That's correct.

2 COMMISSIONER PELE: -- like just --

3 MR. MANERA: You know --

4 COMMISSIONER PELE: -- wanted the view.

5 MR. MANERA: Yeah, that's basically it.

6 COMMISSIONER PELE: Okay. Thanks.

7 CHAIR BUCHANAN: Anyone else has questions for Mr. Manera
8 since he there? If not, we can go staff and ask him to come back.
9 Thank you, Luigi.

10 MR. MANERA: Yeah.

11 CHAIR BUCHANAN: Appreciate it. Commissioners, any more
12 questions for the staff and staff report? Nobody has questions for
13 the staff report? Okay. If not, then I guess I have questions for
14 the staff report. Thank you, Sybil.

15 MS. LOPEZ: You're welcome, Chair.

16 CHAIR BUCHANAN: On page 1 of the staff report, on the
17 application, can you please define for me grading and grubbing?
18 What is grading and what is grubbing?

19 MS. LOPEZ: Good questions. Grading. Let me see, 205.
20 Okay. Okay. I will have to get back to you on the correct
21 definitions, because it is in the Maui County Code definition, and
22 they do have specific definition for both grading and grubbing.
23 So, I would have to look that up, unless --

24 CHAIR BUCHANAN: Okay. Thank you. What was the protocol
25 -- the process by which the Department came up with the total

1 volume of the cut and fill at 45 cubic yards? And can you please
2 give me a visual quantification of what 45 cubic yards look like?

3 MS. LOPEZ: So, that was submitted by the Consultant
4 himself after the work had been done. The request from the
5 Department was the total area or how much -- how much was actually
6 -- thank you -- how much was actually graded and grubbed.

7 CHAIR BUCHANAN: Okay. Okay. Because I believe at one
8 point when Tri-Isle came in for a permit to traverse up and down
9 Hale O Lono Road to haul cinders, we did a quantification of what
10 one load would look like, one trailer full, and we were able to
11 visually quantify what cubic cards would fill. And so, that's what
12 I was kind of looking for.

13 And then also, is it also Public Works that we need to
14 talk to, to figure out the 4,000 square feet of area that was
15 grubbed, pending the definition of grubbed, and also the 8,000
16 square feet of area grubbed, and the 4,000 square feet of area that
17 was graded, pending the definition of graded? So, that's the
18 questions I have for that.

19 And then on the second page, which is -- it looks like a
20 cut and paste out of the Papohaku Sand Dune System Cultural and
21 Natural Resource Preservation Plan Report, Exhibit 6, and page 18,
22 I don't know what that means. So, I read that page 18 excerpt,
23 Exhibit 6, that said, Section 2, and the southern part of Section 3
24 represent the terminal depositional area. I wanted to know what is
25 a terminal depositional area for the Papohaku Dune System.

1 MS. LOPEZ: So, we also had our geologist, if you're
2 familiar with her, Tara Owens. So, we actually had a shoreline
3 team that was able to walk Mr. Manera through this Papohaku process
4 of these dunes. And so, this was, actually, recommended by her.

5 UNIDENTIFIED SPEAKER: Is Tara --

6 CHAIR BUCHANAN: I'm sorry, is Tara here today to answer
7 the question?

8 MS. LOPEZ: No, she is not available to --

9 CHAIR BUCHANAN: Okay. So --

10 MS. LOPEZ: So, she -- it was recommended by her that --
11 that excerpts from the dune -- the Papohaku Dunes Cultural and
12 Natural Resource Preservation Plan be incorporated with this
13 project itself.

14 CHAIR BUCHANAN: And I think that's awesome. I just
15 wanted to understand it. So, should I hold all of my questions for
16 Exhibit 6, for Tara or the Department when they can answer them,
17 along with the definitions of grading, grubbing, the cubic yards,
18 and that other questions for staff?

19 MS. LOPEZ: So, with -- thank you for all those
20 questions, because all those questions are valid, but -- so the
21 grading and grubbing permit comes from the Department of Public
22 Works. And so, the permit that you have before you is strictly
23 just for the special management area and how -- the Planning
24 Department reviews -- your specific permit is under the SMA Rules,
25 but your questions are valid for the Grading and Permit section,

1 and I will get that information for you.

2 CHAIR BUCHANAN: Okay. Thank you very much.

3 MS. LOPEZ: Uh-huh.

4 CHAIR BUCHANAN: Because it's a big part of the Public
5 Works report is relevant. So, should I just hold off on that --
6 the Exhibit 6?

7 MS. LOPEZ: Exhibit 6, that's to -- regarding the
8 Preservation Plan and, also, with the grading and permit questions.
9 And as part of the grading and permit -- the grading and grubbing
10 questions, as it relates to Public Works, because they also are
11 responsible for any dunes. Unfortunately, Planning Department is
12 not responsible for the dunes, but it's responsible under the SMA.
13 So, anything to do with the dune system, it's under the purview of
14 the grading and grubbing permit, which sits with Department of
15 Public Works.

16 CHAIR BUCHANAN: So, the Department of Public Works
17 should have been here today to answer these questions, because this
18 Exhibit 6, it has input to the Department's findings of facts, and
19 conclusions of law, and suggested remediation.

20 So, there's a direct tie from the exhibits offered by
21 Public Works and whoever in this report that is clearly tied to the
22 Department's suggestions of remediation and mitigation. So, that's
23 why it's relevant.

24 MS. LOPEZ: So, Planning Department did request,
25 formally, for agency comments from Public Works, which --

1 CHAIR BUCHANAN: I saw that.

2 MS. LOPEZ: Exhibit 10. And after Public Works provided
3 a no comment, I personally requested, again, through email with the
4 deputy to expand their comments, and the only expansion of comments
5 that you receive is in Exhibit 9, under the RFS, that it shows that
6 the Public Works Department closed that complaint -- the request
7 for service. And that should be on page 2 of 4, which provides --
8 which provides the inspector that came to inspect the property and
9 his comments.

10 CHAIR BUCHANAN: I'm sorry. John, go ahead.

11 COMMISSIONER SPRINZEL: I don't see how we can discuss
12 this or make any decisions unless we hear from the Department of
13 Works.

14 CHAIR BUCHANAN: I agree. So, what are you suggesting?

15 COMMISSIONER SPRINZEL: Well, we'll have to delay it, I
16 guess, until somebody can turn up. I wanted to just say that you
17 and I were on various committees when this part of the world was
18 examined, and we had two of the biggest problems we've ever had on
19 the Molokai planning, which cost a fortune in legal fees and took
20 us, what, two years to satisfy, if indeed they were satisfied.

21 So, I think we have to be very careful in what we say
22 without really knowing all the facts. Thank you.

23 CHAIR BUCHANAN: Commissioner Sprinzel, do you have a
24 suggestion how we should proceed?

25 COMMISSIONER SPRINZEL: I think we should postpone this

1 matter. Defer this matter.

2 CHAIR BUCHANAN: Commissioners, you heard a comment from
3 Commissioner Sprinzel. So -- and you heard my earlier testimony of
4 my recusal and that my questions are only for defining the scope of
5 the report. So, I'll say that I do have more questions, and I
6 think it would be helpful. And then maybe Corp Counsel has --
7 like, to at least give direction to staff on what we would be
8 looking for in the future, if we defer.

9 MS. DESJARDINS: Thank you. Thank you, Chair. Can I
10 suggest that if the Commission is considering a possible deferral
11 of this item, we have folks from the public here that could
12 testify. If there are further questions, then Ms. Lopez could be
13 writing those down so that she is better able to respond to them at
14 a subsequent meeting.

15 So, we could certainly -- you folks could certainly
16 continue with this process right now, and then defer after at least
17 hearing from folks there might -- there may be more questions that
18 come up.

19 CHAIR BUCHANAN: Thank you for that suggestion. Does
20 that sound good to you, Commissioner Sprinzel?

21 COMMISSIONER SPRINZEL: Sounds fine, but I want to just
22 point out one thing. When people testify in the early public
23 testimony period, they cannot testify again. And those are the
24 rules. So, if you think about it next time, please wait until the
25 item comes up, because if you testify at the start, it's for people

1 who are leaving, who have to go back to work, not for just
2 additional testimony. And those are the rules, and I didn't make
3 them, but there you go.

4 CHAIR BUCHANAN: Okay. Based on that, Commissioner
5 Sprinzel, then I would have to make a public apology because that's
6 not the instructions I gave to this -- to the community at the
7 beginning of this meeting. And then I would ask in the meantime if
8 Corp Counsel could indeed validate that that is our rules. I was
9 not aware of that rules. I could be wrong.

10 So, under Robert's Rules, I do have a bit of leeway and
11 authority as the Chair. So, I would ask -- in the meantime, we'll
12 check on that, but I will hold true to what I said in the
13 beginning. And there was only two testifiers anyway.

14 So, in order for the rest of the Commission to give
15 questions to staff, if you guys have more questions, I'll spend
16 just a few more minutes finishing up my questions, so Sybil is
17 aware of the type of questions that I feel is relevant and needed
18 to be answered in order to finish this application. Is that okay
19 with you, Sybil?

20 MS. LOPEZ: Yes.

21 CHAIR BUCHANAN: Okay. So, the Exhibit 6, yeah. And
22 then --

23 MS. LOPEZ: So, regarding Exhibit 6, Chair --

24 CHAIR BUCHANAN: -- I just want an explanation because --
25 and I will give you a copy of this, the parts where the natural

1 dune line explanation would have been much further mauka -- that's
2 about in the middle -- due to the disbursing of the sand. So, you
3 talking about the mechanics of the dune. And if we talking
4 remediation and mitigation, then it's relevant.

5 And then I didn't understand the last section about the
6 dune topography. So, if Tara can expand on that, that would be
7 great because if we asking -- if the Department suggesting is
8 remediation, then I think it's relevant, because we're not experts,
9 so we cannot determine what the remediation is.

10 And then on the spreadsheet, the consistency with
11 Community Plan and Zoning. Planner Sybil, it's -- it talks that
12 the project is consistent with the Molokai Island Community Plan.
13 And then the last paragraph is all actions included in this report
14 reflect the aspirational desires of the new MICP. I didn't
15 understand what was meant by aspirational desires.

16 And the effective date of the Community Plan is December
17 24, 2018, so I don't know if the violations occurred prior to 2018,
18 if that was relevant. And I don't know the -- in this report, why
19 the asterisks are there and why we are to look at it as
20 aspirational desires.

21 Okay. And then -- I think that's it. Almost done,
22 people. Under special management area assessments, findings of
23 fact by the Department, Item number 4, the property does not lie
24 adjacent to the shoreline area; therefore, it is not subject to the
25 Molokai Shoreline rules. I have a question about that.

1 First of all, what is the shoreline rules? And if a dune
2 is not part of a shoreline, then I would need the definition to
3 discern what is shoreline, what is dune, what is part of a dune
4 system, and how is this not in the shoreline area? Okay. And that
5 is highly relevant.

6 And then number 5, in that same SMA findings of fact.
7 And here is the tie for the relevance to the finding of facts.
8 Number 5. Due to the cause and nature of the after-the-fact
9 permit, it's not anticipated that the project will affect the
10 environmentally sensitive area, such as flood -- blah, blah, blah
11 -- geological hazard. So, if that is a fact, then how is Exhibit
12 6, Section 2 and 3 of the Papohaku Dune Plan not relevant, it's
13 contradictory?

14 And under your recommendations of the staff report, under
15 Item number 3, every time -- it says that within the area from
16 which kiawe debris is removed, it goes on, following a revegetation
17 plan approved by the Department. It should be the Department and
18 the Molokai Planning Commission. And that's just -- okay.

19 Well, we not there yet, but -- and one more question I
20 had is where is the report from Zoning Inspector Tammy Osurman? It
21 was not included in the staff report. The only things that are
22 included in the staff report are the RFS Information. It looks
23 like it was taken right off the KivaNet, and the few comments is
24 not sufficient. Well, I'm not going to say it's not sufficient,
25 but I wish there was the actual comments of the inspector that

1 actually came out to inspect the property and that goes to validate
2 the 45 cubic yards, 8,000 square feet, and 4,000 grading and
3 grubbing, which is yet to be defined.

4 And the discussion -- yeah, I'm going to leave it at
5 that. I want to see the zoning inspection report. And then I'm
6 going to leave the rest for later, if we coming back to that.
7 Thank you very much for indulging me, Commissioners, for questions
8 for the staff report.

9 Okay. Go ahead, Commissioner Pele -- or Commissioner
10 Poepoe, you had questions for staff, because after this we going
11 open up for public testimony.

12 MS. LOPEZ: So, Chair, before Commissioner speaks, do you
13 want me to answer those questions now or have public testimony, so
14 I can have time to answer those questions? How would you want me
15 to proceed?

16 CHAIR BUCHANAN: I not sure if you able to table the
17 questions. That would be fine, and we can do them after. I just
18 thought most of them was Public Works and the report from the
19 zoning inspector is absent. So, I don't know if we can just do
20 that later.

21 MS. LOPEZ: I can do some --

22 CHAIR BUCHANAN: Okay.

23 MS. LOPEZ: -- and then those that I cannot answer at the
24 moment, you can have public testimony while I look for the
25 answers --

1 CHAIR BUCHANAN: Oh, okay.

2 MS. LOPEZ: -- but is that okay, Commissioner, or do you
3 want to ask your question first?

4 CHAIR BUCHANAN: No, I going let the Commissioners ask
5 their questions first, if they have, and then public testimony.
6 Commissioner Poepoe or Pele, you guys had one question?

7 COMMISSIONER PELE: Yeah, I did write something down
8 here, and it might be a nitpicky point, but it goes to the
9 consistency with the Community Plan and Zoning. And I don't know
10 if this is a question more than a statement, but I would like to
11 see where it says -- I understand maybe the original permit is
12 consistent, but I wrote here what does -- is there an ignorance
13 clause in our Molokai Community Plan when people do this?

14 I mean, this is what we're dealing with here. We're not
15 dealing with the original permit. We're dealing with the -- and I
16 asked the question of the representative here, and my conclusion is
17 he was just ignorant to the fact. Ignorance doesn't mean -- is
18 always not a negative term. It just means that he didn't know.

19 CHAIR BUCHANAN: Uh-huh.

20 COMMISSIONER PELE: So, I want to know is there -- in our
21 Community Plan and Zoning, is it consistent that people commonly
22 over grub and over grade their permits due to ignorance, because
23 that's what we're dealing with here? That's what I'm looking --
24 I'm not looking at his original permit, I'm looking at the fact
25 that he ignorantly over graded and over grubbed, and we can toss

1 around all the opinions we want.

2 I think I have an opinion, looking at some of these
3 pictures, of what the view of the ocean looks like. I think you
4 should put it back the way -- or somebody should put it back. It
5 should be -- but I just want to know if that's a clause in the
6 Molokai Community Plan that that type of behavior is consistent
7 with the plan. I'm sorry, I'm a little bit angry.

8 CHAIR BUCHANAN: Okay.

9 COMMISSIONER PELE: When I start to shake that means I'm
10 angry.

11 CHAIR BUCHANAN: Did you want an answer --

12 COMMISSIONER PELE: Yeah.

13 CHAIR BUCHANAN: -- that question?

14 COMMISSIONER PELE: Yeah, I just -- I don't know if that
15 -- I just had written that down.

16 CHAIR BUCHANAN: Okay. Planner Lopez are you prepared --

17 MS. LOPEZ: Thank you.

18 CHAIR BUCHANAN: -- to answer that question?

19 MS. LOPEZ: Yes. Thank you, Chair and Commissioner Pele
20 for those questions. So, I would align your answer with the same
21 concern that the Chair had in regards to the consistency with the
22 Community Plan and Zoning.

23 So, at the time the grading and grubbing occurred was
24 back during the weekend of late May into June of 2017. So, that
25 was during the process of the Molokai Island Community Plan. So,

1 they were going through the process.

2 Like the report said, the plan did not get adopted until
3 December 24, 2018, and so the report was created after the December
4 24th, 2018, and its effective date for the Molokai Island Community
5 Plan. And so, now -- so, since the occurrence was during the 2001
6 Molokai Plan, but the effective date of the Molokai Island
7 Community Plan comes into effect, that the report was created after
8 the effective date so, therefore, the consistency has to come with
9 the new Community Plan.

10 So, we are kind of in that transitional phase of
11 providing information and that, you know, so we've been consulting
12 within the Department and the Department felt that we can provide
13 everything that you guys can see that came out of the new plan.

14 And as for the aspirational desires of the new MIC Plan,
15 it is indirect. So, it indirectly affects -- well, my supervisor
16 can help me tag team on these answers, but it indirectly affects
17 the project itself because as for say 3.1, Natural Resources
18 Objectives and Policies, number 16. It says support traditional
19 ecological knowledge as a tool or resource strategy.

20 So, how will this -- when we review this -- the project
21 based upon the plan, how will this project support traditional
22 ecological knowledge as a tool or resource strategy. So, that's
23 how it's indicated as an aspirational desire of the Molokai Island
24 Community Plan, but we want you guys -- we want the Department to
25 acknowledge that, you know, we recognize this being in the plan, so

1 that is why we feel the need to put it in the report so that the
2 Commission has that purview of making that the determination,
3 because the Department cannot do that.

4 So, because it's a community owned plan and not a
5 department owned plan, the Commission's -- I wouldn't want to say
6 Commission's responsibility, but it's where you guys provide that
7 specificity within this Community Plan to help work with the
8 Department and the projects that are before you. I hope that kind
9 of makes sense.

10 So, you will see some asterisks within this report,
11 because we're in the transitional period of having this new plan in
12 place. And how the Department will address it will be in
13 partnership with how the Commission helps us, helps you in these --
14 you know, in these aspirational desires, because will the project
15 be the sole responsibility to encourage the education of property
16 owners regarding the need to prevent damage to or destruction of?

17 So, then you would have to go back and look at your
18 Community Plan and how it is tailored, especially with the actions,
19 because the actions actually had lead agencies or lead groups that
20 will help be responsible to see this action further. So, it's kind
21 of a partnership with the Commission to help the Department define
22 these policies, objectives with the help of the community, because
23 it's a community owned plan, to provide this as how we going move
24 forward when you see projects like this that come in front of you.
25 So, Mr. Dack, would you want to help me out?

1 MR. DACK: I might try to summarize it. The Community
2 Plan, as most plans that will have two basic kinds of goals,
3 objectives, and policies, one of which are direct -- can be used as
4 filters to help guide bodies such as yourself when you're
5 considering a project because there's policies that are actionable
6 with relationship to projects. Those are the normal kinds of
7 policies and procedures that -- not procedures, but policies and
8 actions that you have seen before you in Commission staff reports
9 usually.

10 In this case, since you have a new Community Plan, as I
11 understand it, Sybil wanted to include these other things that are
12 aspirational, that are more generalized. They don't apply to a
13 specific piece of property. They say -- they call for programs --
14 kinds of things that the Committee would like to see carried out
15 that you can't, of course, lay at the foot of any one property
16 owners, but it provides a flavor for the kinds of things and kinds
17 of directions, additional studies and works you would like see have
18 done -- see have occurring on the island and the levels of interest
19 in those same policy areas that would affect the properties.

20 So, again, it's not anywhere as near a direct
21 relationship, but, again, provides a broader scope of things that
22 you would like to see happening in the future, compared to the ones
23 without asterisks, which are directly applicable at this time. I
24 hope that helped.

25 CHAIR BUCHANAN: No, it didn't help. No.

1 MS. LOPEZ: Now we know.

2 CHAIR BUCHANAN: So, Sybil, the -- you took that out of
3 the Community Plan, right?

4 MS. LOPEZ: Correct.

5 CHAIR BUCHANAN: Okay. So, it's in the Community Plan --

6 MS. LOPEZ: Yes.

7 CHAIR BUCHANAN: -- is that correct? Okay. So, since it
8 is a Community Plan, I would like the interpretation to come from
9 my community --

10 MS. LOPEZ: Thank you.

11 CHAIR BUCHANAN: -- and not the Department. I think when
12 the Department defines for this Commission these types of
13 interpretations and flavor saying that there -- it diminishes what
14 the thought patterns of this Commission would be. So, I personally
15 would not -- I don't appreciate that, and I think unless I
16 specifically ask staff to expound on definitions if this Commission
17 is having a difficult time comprehending what we're reading from
18 the Community Plan, then I think at that point we can have those
19 types of additional information and explanation.

20 So, that's -- I would like to state that on the record,
21 so it doesn't lead the Commission Members to diminish their
22 thoughts on the Community Plan. Commissioner Pele.

23 MS. LOPEZ: Thank you.

24 COMMISSIONER PELE: Yeah. And that's --

25 MS. LOPEZ: So, noted.

1 COMMISSIONER PELE: And, believe me, I feel bad for you
2 guys when -- because I know it's nothing that you guys did. You
3 know, we're all here because this gentleman decided to do what he
4 did, but to say that it's not specific to this project, I'm fine
5 with that, but it says this proposed -- this proposed project is
6 consistent with the 2018 Molokai Island Community Plan, and it
7 might have been when he originally applied for his permit.

8 That's not what we're listening to. We're listening to
9 an after-the-fact grading and grubbing permit in the SMA District.
10 That's the specificity with which we're dealing with. And I don't
11 believe that that's consistent with the Molokai Community Plan that
12 people are allowed to ignorantly do things like this gentleman did.
13 So, to say it's in here, I just wanted some confirmation that it
14 actually says it.

15 You know, we can say it's flavor. Anybody who cooks
16 knows that you can over season stuff, and it tastes like crap. So,
17 I'm just saying that I have a problem with it saying this proposed
18 project is consistent with the 2018 Molokai Community Plan, because
19 we're not -- we're not hearing the proposed project, we're hearing
20 the specific action that this gentleman did, and I don't think that
21 action is consistent with the Molokai Community Plan. That's the
22 only point I'm trying to make.

23 CHAIR BUCHANAN: Thank you, Commissioner Pele. So,
24 Commissioners, if there's really no pressing questions, unless you
25 want to ask one, then I'm going to open it for members of the

1 public to testify, because poor thing, I think they waited long
2 enough, and it seems like we heading to one direction.

3 So, Commissioner Poepoe, questions for staff.

4 COMMISSIONER POEPOE: Questions for staff. When the
5 report is put together who decides on who is involved with the
6 participation for reviewing agencies? Is there a default list that
7 you contact?

8 MS. LOPEZ: Yes.

9 COMMISSIONER POEPOE: How would it be possible to include
10 more agencies on this default list such as akiole (phonetic)?

11 MS. LOPEZ: If the Commissions feels -- so that it should
12 be sent to them. So, on page 3 and 4 of your report, it does say
13 the reviewing agencies. We do have a generic list. And so, the
14 list is broken down per project and what relevance would that
15 agency provide commenting and reviewing the project and what type
16 of comments -- well, not what type of comments, but the type of
17 comments pertaining to the project itself.

18 So, you see county agencies, you see the state agencies,
19 and federal agencies, and would be other. Like, for example, the
20 Exhibit 7 where we requested for the Nene O Molokai/Ahupua'a
21 Natives to be a part of that agency -- agent to provide comments
22 regarding this project.

23 And so, if you feel that the need to add, we are open to
24 adding on the list as relevant to the project itself. Uh-huh.

25 COMMISSIONER POEPOE: Under Other Hawai'i Agencies, who

1 is -- would you be able to identify who the Maui County Cultural
2 Planner for Molokai is?

3 MS. LOPEZ: Yes, the Maui County Cultural Planner is
4 Annalise Kehler. So, she sits in our Long Range Division in the
5 Planning Department. And so, she is the Maui County Cultural
6 Planner for the Planning Department.

7 Okay. So, can I proceed to answering the rest of your
8 questions, Chair, or would you want public testimony, because I can
9 provide the questions regarding after the Molokai Island Plan, you
10 had questions regarding the findings of fact on number 4 and number
11 5 --

12 CHAIR BUCHANAN: Uh-huh.

13 MS. LOPEZ: -- and the Public Works and the enforcement.
14 So, for --

15 CHAIR BUCHANAN: Sybil we can -- we can hold off. I
16 going take public testimony, and then if we get more questions,
17 then we can add that to the list.

18 MS. LOPEZ: Okay. I just -- because maybe some of those
19 questions they would have the same if you want to hear the answers
20 prior to -- it's your preference.

21 CHAIR BUCHANAN: Okay. I think we going take public
22 testimony.

23 COMMISSIONER ESPANIOLA: Chair.

24 CHAIR BUCHANAN: Yes.

25 COMMISSIONER ESPANIOLA: Before we do, can I say

1 something?

2 CHAIR BUCHANAN: Okay. Sure.

3 COMMISSIONER ESPANIOLA: So, at this point, I believe the
4 Commissioners are responding to the justification of
5 recommendations made by the Department. And so, we're going into
6 the details of why we believe that that should get answers. And
7 all the questions Chair gave you is what is not being answered.
8 But as far as what's been said so far, based on Consultant's
9 statement that the -- what is his name -- the owner went ahead and
10 said that he likes it up here. Sounds to me it was an intentional
11 disregard.

12 Based on public testifier from Mahina that she pointed
13 out the points of violation for the Community Plan, the
14 Conservation permit, and -- which definitions -- also, the Chair
15 made -- the questions that were made. I think going into the
16 details will just take longer for us to find out and get the
17 answers from you. I mean, I can draw my conclusions already based
18 on testimony that has already been shared. So -- there you go.

19 So, if we're going to have public testimony, which is
20 good, I think it will just go ahead and support the disregard,
21 again, for the owner to intentionally violate the permit limits.
22 And so, I just thought I would say that, because I know we're going
23 to be drawn into all of the questions that was answered, and going
24 into the details of that, and we just got to be ready for that.
25 So, yeah, that's all I have to say.

1 CHAIR BUCHANAN: Thank you, Commissioner Leonora. At
2 this point, I do want to caution Commission Members and remind
3 everyone that this is a contested case hearing. Every hearing and
4 permit of the Molokai Planning Commission is a possible contested
5 case hearing, and in that you should be -- have the responsibility
6 of taking in all of the information, and then asking questions of
7 staff at public hearing. So, at this time -- and the Commission
8 Members have questions to ask after, as well, of staff, after
9 hearing testimony. You can also question the testifiers at this
10 time, because it's -- we're on the agenda item.

11 So, I would like to -- Commissioners, you guys need a
12 break before we go jump right into public testimony? Okay. At
13 this time, I would like to open up for public testimony. And
14 anyone wishing to testify on this agenda item, please come up,
15 state your name for the record. You have three minutes. And then
16 I'll give you -- after everyone is done testifying, another minute
17 to wrap up. But at the end of everybody else's testimony. So,
18 three minutes. Thank you.

19 MR. RITTE: Thank you, Madam -- hello, hello. Okay. I'm
20 here today because this is an extremely important issue that we're
21 dealing with today. There --

22 CHAIR BUCHANAN: Who are you?

23 MR. RITTE: Oh, I'm sorry. My name is Walter Ritter from
24 Ho'olehua. On the Island of Maui, there's some tremendous battles
25 going on regarding sand, tremendous battles. All Hawaiians inside

1 of them know that if you're going to find burials, you're going to
2 find them in the sand areas. So, this is really a critical thing
3 for us, as Hawaiians to talk about.

4 This area is the Papohaku Sand Dunes. It's not just any
5 area where somebody is going to put up a house. So, the other area
6 that has our sand dunes, everybody knows is Mo'omomi, and millions
7 of dollars have been spent to protect that area, and there's lots
8 of burials in that area. So, this is the second most significant
9 sand dunes on Molokai. It's at the end of Papohaku beach. So, all
10 of that sand that blows, it's on those dunes.

11 So, anybody who's putting buildings up in that area
12 should not be ignorant of this fact. In fact, Mr. Manera should be
13 telling all of them these things. Maybe he should be taking some
14 classes about the importance of these dunes.

15 It's really disheartening to hear how this thing is being
16 approached. The Department is saying, that's okay, a little slap
17 on the wrist, and we continue, 1,000 fine and everything going be
18 okay. And we going make them do certain things. They gotta go
19 clean up little bit. And if you read the responses from Mr.
20 Manera, he's say, ahh-ahh, nah, no need worry the thing coming back
21 naturally.

22 So, they trying to get away from this thing. The picture
23 that upsets me the most that -- in your report, is this picture
24 right here. It's two pages of this picture. This is the top of
25 the dunes. He went all the way to the top of the dunes. I mean,

1 he's like way down below where he supposed to be working. He went
2 up in the corner, plow up the side of the dunes, came across the
3 dunes, all the way to the top of the dunes, and he cut the dunes
4 right in half. And if you look, that place is all flat. I went
5 over there yesterday to go look. And that's perfect place for put
6 his house, so he can see over the dunes, and he can see all the
7 ocean.

8 If we don't do something to this guy that is
9 significantly outrageous, besides slapping him on the wrist,
10 everybody is going to think that the ignorance clause applies. I'm
11 going to say I'm ignorant, so I no need pay -- I just pay one
12 little fine, and I going have my house on top the dunes.

13 MS. ESMERALDA: Three minutes.

14 MR. RITTE: I just wanted to get to you guys that this
15 thing should be denied, this permit. This after-the-fact permit
16 should be denied. There should be a substantial fine, a
17 substantial fine, \$100,000 or more fine on this guy for what he
18 did. Those monies should go to the restoration of what he did.
19 This damage that he did to these dunes. Significant damage --
20 Arleone saw it. Not only the birds over there, there are burials
21 over there, and we cannot have people coming to this island -- he's
22 not even here today. How important is this to him, coming to this
23 Island and doing these kinds of things to our cultural sites?

24 CHAIR BUCHANAN: You can wrap it up or you can come back
25 and testify at the end.

1 MR. RITTE: Five hundred thousand dollar fine.

2 CHAIR BUCHANAN: Okay. Thank you. Hang on.

3 Commissioners, you guys have any questions for the testifier?

4 Okay. Thank you. Next testifier, state your name for the record.

5 MS. LINDO: Hi, my name is Zhantell Lindo. I just would
6 like to say that I'm here testifying as a community citizen. And I
7 did take my lunchbreak to be able to participate in that, because I
8 am a staff member of the Office of Council Services.

9 The question was asked by the Commissioner, what damage
10 did he do over there that was outside of what he was supposed to
11 have done. And I think for me the answer to that question, just by
12 reading the report and looking at what was done, is he compromised
13 the integrity of process. He compromised the integrity of our
14 people's ability to say what can and cannot be done. He
15 compromised the quality of life that not just preserves and
16 protects our birds, our beaches, our shoreline, and our people, but
17 it -- when we allow things like this to be done, it tears apart the
18 very fiber by which this Commission and the rest of our laws are
19 supposed to help perpetuate and move our community forward.

20 I, for one, cannot stand after-the-fact permits. I think
21 it should be banned. And if you cannot ban 'em, I would be one
22 proponent to say we should make it so outrageously expensive to
23 have to come back for an after-the-fact permit, that people will
24 never want to step outside the lines and just be ignorant. And
25 after-the-fact permits give too much leeway and loopholes for

1 people to politic their way into what they need at one certain
2 time.

3 And so, I just -- I feel like -- I wish the Commission --
4 I hope the Commission can look at this and say, are we the best
5 body right now to make a determination. If you cannot deny this or
6 -- I think that we should look at should the Cultural Resource
7 Commission be the people looking at what happened. I think the
8 fine should be absolutely stiff for an infraction such as this.

9 And I also would like to talk about how we address
10 situations like this going forward. You know, plenty of the things
11 refer to our Community Plan. And I just want to make the statement
12 that as somebody who was intimately involved in the Community Plan
13 process, because of the time limitations, plenty of those sections
14 are not clearly defined, and I think that's both one hindrance in
15 some occasions, but it's also one great opportunity for this
16 Commission to be able to detail and get the community's input at
17 one more lengthier discussion, so we can make good decisions.

18 And so, that's about all I get to say right now. I just
19 want to always advocate that I think after-the-fact permits just
20 raise up one whole bunch of can of worms that you no need for
21 address. And we need to make it so that people think and are
22 responsible. Everybody get consequences for the things that they
23 do, and I think this is one way of -- this example right here is
24 one way in which the Commission can say that we not going to stand
25 for lowering the integrity of our process.

1 CHAIR BUCHANAN: Oh, you good, yeah. You know was three
2 minutes. Commissioners, you guys get questions for --

3 COMMISSIONER SPRINZEL: Not exactly a question --

4 CHAIR BUCHANAN: Okay.

5 COMMISSIONER SPRINZEL: -- but thank you for that. In
6 the years I've been involved with planning, I hate these after, and
7 I've always said so, because it's a con. They do this stuff, and
8 they say, ahh-ahh, I can come back, and they'll give me a little
9 fine. So, I couldn't agree more. Thank you.

10 CHAIR BUCHANAN: Commissioners, questions? Commissioner
11 Poepoe.

12 COMMISSIONER POEPOE: Based on all the information that
13 was provided in the packet, can you make clear your position on the
14 recommendation? What your position is, or if you want to?

15 MS. LINDO: Yeah.

16 COMMISSIONER POEPOE: You can decline if you like --

17 MS. LINDO: Okay. And I just like state for the record,
18 again, I am not working right now. So, I'm a total -- this is
19 totally just my own personal thoughts on this matter.

20 I don't think at this point, this body -- if I were in
21 your seat, what would seem to make sense to me is one denial, but
22 that's just because I think that you don't have the capacity to
23 encourage or enforce the things that need to be done, especially on
24 the remediation.

25 So, when we talk about burials and stuff like that, and

1 significant things that probably happened when all this infraction
2 were caused, I would probably suggest that at some point the
3 Cultural Resource Commission or somebody is being forced to look at
4 this who can make enforcement decisions and has the capacity and
5 resource to do that.

6 CHAIR BUCHANAN: Commissioners, any more questions for
7 the testifier? Seeing none, thank you very much, Zhantell. Anyone
8 else in the community wanted to testify? Please state your name
9 for the record. And if you have testified, and you have not
10 submitted written testimony, please do so, so we can put that on
11 the record. Thank you.

12 MS. MOWAT: Aloha, my name is Bridget Mowat, and I live
13 in Kapaakea. Hello, Commissioners. I am just here to testify in
14 support of the denial of the after-the-fact permit. When you
15 receive a permit, you know already what you're allowed to do. You
16 know how -- what area, because that's part of the permit; is it
17 not?

18 So, I really believe that he knew what he was doing. He
19 didn't -- Mr. Manera didn't say, oh, Scott didn't know. He said he
20 got excited. So, to me, he just went ahead and did what he wanted
21 to do. And what gets me is that we'll never be able to see what
22 the damage was done, and how much, because it's gone. I mean, we
23 don't know how many, you know, birds that had nests there, or how
24 much the trees added to prevent erosion. They're all gone now.
25 So, it's -- the fact is, it's gone.

1 So, I think the penalty -- I agree with the previous
2 testifier that the penalty should be higher because this will set
3 precedent for others that they better pay attention to what they're
4 doing because if they don't live here, they're not raised here,
5 they don't know the significance of what we cherish. You know,
6 they not going care what they do. They just look at sand -- a
7 mound of sand as a mound of sand. We don't know -- they don't know
8 what's -- what we value.

9 So, I think there has to be some kind of bigger fine,
10 punishment, so that would deter others from doing the same thing
11 and saying, oh, I got excited, you know. So, I think he knew. So,
12 thank you.

13 CHAIR BUCHANAN: Thank you, Bridget. Commissioners, any
14 questions for the testifier? Seeing none, thank you. Anyone else
15 in the community wishing to testify? Please come up and state your
16 name for the record.

17 MS. ALBINO: Ho'o Mai Kakou. I am Louella Opuulani
18 Wallace Albino, and I am a Cultural Commissioner for the Island of
19 Molokai on the Cultural Commission on Maui. And when I first found
20 out about this issue -- I'm wondering in my conversation with some
21 of our people here, I'm wondering why this issue never went to the
22 Cultural Commission. I believe that this issue should have been
23 heard before any action was taken by this developer.

24 I'm one of the last kupuna on Molokai with culture and
25 traditional knowledge. And this is the worse thing you can do to

1 iwi kupuna. Worst. I don't know how he's going to be able to
2 sleep there, even live there with desecration of significant,
3 significant cultural burial grounds and without any input from the
4 community, without even consultation. This is horrible, horrible.

5 I suggest that we have a cultural say in this before
6 permits are given, especially, with the development going on at the
7 west end of Molokai. I'm aware of desecration up in the Na'iwa
8 area. Thank you, Walter, for posting those pictures. We were
9 waiting for some kind of dialogue with the people who are leasing
10 the property. However, no dialogue was made.

11 And so, as a representative of Molokai, and I believe our
12 community should have a say before these things happen. I'm in
13 favor of denying this permit. This was desecration. And I think
14 that the Commission -- our Planning Commission should be in touch
15 with the Culture Commission because everything that happens on
16 Molokai is connected to culture and tradition. Everyplace has
17 stories. And we don't call them myths or legends, they are
18 mo'olelo. They are stories that connect us to our aina, and all of
19 Molokai belongs to us.

20 And so, I want this issue to go to the Cultural
21 Commission, and have it heard, and have us vote on it also. And
22 this should be part of the process. Thank you.

23 CHAIR BUCHANAN: Thank you, Opuulani. Commissioners, any
24 questions for the testifier? Cultural Commissioner Poepoe.

25 COMMISSIONER POEPOE: Cultural -- yeah, I forgot I am.

1 The Maui County Culture Commission is under the Maui County
2 Cultural Planner. I think this one question --

3 MS. ALBINO: Yes, Annalise.

4 COMMISSIONER POEPOE: Annalise.

5 MS. ALBINO: Uh-huh.

6 COMMISSIONER POEPOE: And Annalise wasn't consulted?

7 MS. ALBINO: I don't know.

8 COMMISSIONER POEPOE: Okay. Uncle is --

9 MS. ALBINO: It never came up before our Commission.

10 COMMISSIONER POEPOE: Oh, it doesn't get --

11 MS. ALBINO: The Council.

12 COMMISSIONER POEPOE: You never hear anything from --

13 MS. ALBINO: No. No, I didn't.

14 COMMISSIONER POEPOE: So, you're not sure if Annalise got
15 contacted?

16 MS. ALBINO: I'm not sure, but I would have said
17 something. Definitely would have had a hearing brought back to
18 Molokai like we did the update of the directory. I would have
19 asked for them to come to Molokai. I would, personally, give my
20 input, but I know that Molokai -- there are many voices that have
21 not been heard, and we all pretty much feel the same.

22 If you put a process in front of us and expect us to
23 follow, then you, whoever it is, whether you're educated or not,
24 should consult with the community and follow whatever plan is put
25 in place. Not just for us here on Molokai, but anyone. To give

1 proper respect to the people who live there in that community.

2 So much desecration has already happened we cannot put
3 back. Those ewe are there. And we had a situation years back
4 where the Molokai Ranch, and Collette, as well as Stacey asked us
5 to help repatriate, spiritually, iwi that was desecrated. So, I
6 have personal knowledge of that and how it happened, and how it's
7 still happening. And I want that to change.

8 There are not many kupuna left who will come in and speak
9 as I can. And I love them, and I miss them. They're not here, so
10 I feel very responsible to bring this issue to you, and I hope you
11 consider favorably to deny this permit. Thank you.

12 CHAIR BUCHANAN: Thank you, Opuulani. Commissioners, any
13 more questions for the testifier? Commissioner Poepoe and then
14 Commissioner Nora.

15 COMMISSIONER POEPOE: I'll go after -- I had a question
16 for Sybil.

17 CHAIR BUCHANAN: Nora.

18 COMMISSIONER ESPANIOLA: Yeah, I do too. I'm looking at
19 the letters that were sent out reviewing agencies, and I see that
20 Maui County Cultural Planner, is that your organization?

21 MS. ALBINO: Yes.

22 COMMISSIONER ESPANIOLA: So, I see that there was a no
23 response -- or there's no exhibit. So, there was a no response
24 from your cultural planner, so, I don't know, Sybil.

25 MS. ALBINO: Okay. I don't know when the permit request

1 went in. I became a commissioner in August of 2018.

2 COMMISSIONER ESPANIOLA: Okay.

3 MS. ALBINO: So, that might have passed me -- before my
4 time as a commissioner.

5 COMMISSIONER ESPANIOLA: Okay. Well, Sybil, you can
6 answer the question?

7 MS. ALBINO: Thank you.

8 CHAIR BUCHANAN: Okay. If there's no more questions for
9 Louella? Thank you, Louella, for testifying.

10 MS. LOPEZ: Chair, would you want me to answer their
11 question?

12 CHAIR BUCHANAN: Sure.

13 MS. LOPEZ: So, at the time when we requested the
14 comments, yes, it was a no response, because she wanted to leave it
15 up to everyone else to make that determination, but I brought it up
16 to her again recently, Ms. Annalise Kehler, and she supports the
17 idea of having it go back to the Cultural -- to actually go to the
18 Cultural Resources Commission.

19 So, she provided me some information on the powers and
20 duties of the Cultural Resources Commission's purview. That the
21 Cultural Resource Commission shall advise and assist federal,
22 state, and county government agencies in carrying out their
23 historic preservation responsibilities. That the Commission shall
24 have the authority to review and comment on archaeological reports
25 and cultural impact assessment, if submitted by the Department for

1 review, as part of development proposals to various county
2 agencies. And that body -- that Commission body can recommend new
3 ordinances establishing historic and archaeological district.

4 So, just kind of answering the -- both of the
5 Commissioners question that it would legitimize that as being your
6 second experts regarding this project. So, they're both relevant.
7 Thank you.

8 CHAIR BUCHANAN: Commissioner Poepoe, you still had one
9 question for staff or you going wait until after? She answered it.
10 Okay. Great. Anyone else in the public wishing to testify on this
11 agenda item? Please come up, state your name for the record.

12 MS. POEPOE: Mahina Poepoe. Before I start, I wanted to
13 read the paragraph under public testimony that allows me to
14 continue my testimony.

15 It says that individuals who cannot be present when the
16 agenda item is discussed may testify at the beginning of the
17 meeting instead and will not be allowed to testify again unless new
18 or additional information will be offered. And that's what I am
19 going to offer.

20 Okay. So, where I left off. Based on my review of the
21 documents, it seems as though the Applicant decided for themselves
22 what remediation actions would be, and that the Department accepted
23 it, but it is not for the Applicant to consider mitigation
24 matters. It is for the Department to set them and for the
25 Applicant to comply.

1 I thought the conversations that took place were
2 inappropriate based on the documents and clearly biased. And I
3 think it should warrant a further investigation. Did the Planning
4 Director come here and look at the property before agreeing to the
5 Applicant's terms, because the pictures really do no justice? Were
6 cultural practitioners consulted that might know more about the
7 significance of the area?

8 According to the West End Policy Statement, Chapter 11 of
9 our Plan, it says that the West End has a very high concentration
10 of cultural sites and historic uses are well known. Koa were found
11 in abundance along the entire coastline, including the rich ocean
12 -- indicating rich ocean resources. Papohaku Beach and the area
13 surrounding are historically significant and the dunes serve as
14 burial grounds. Lastly, to the south of Papohaku is Pu'u Koa'i,
15 the area where bodies were prepared for burial.

16 So, this is a really significant piece of information in
17 our plan that wasn't included in the application documents. I do
18 believe, like everyone else -- what most everyone said that this is
19 careless and reckless behavior and must be met with consequences if
20 we're going to set precedents for future occurrences.

21 Furthermore, sending a message to the Planning Department
22 to stop acting like developers. We need a full archaeological
23 study of the entire lot and the conservation lot. We need to sift
24 through everything that got moved to figure out what -- try and
25 figure out what was affected. I'm asking you to be bold, and to

1 stand up and not get bulldozed by the Department. Do not be
2 complicit.

3 I'm asking you to deny this permit and pursue maximum
4 fines up to \$100,000 and \$10,000 a day that the violation persists
5 in accordance with H.R.S. 205A-32, relating to SMA violations, and
6 pursuant to H.A.R. 13-5-6, 13-5-2, H.R.S. 183C-7, relating to
7 violations in conservation, seek the maximum fines of \$15,000 per
8 violation in addition to administrative costs and costs associated
9 with land or habitat damages to public land or natural resources,
10 or any combination thereof.

11 I just want to make clear though that what was
12 potentially destroyed and altered is priceless. Connection to
13 culture is priceless. Protecting our iwi and the remnants of our
14 artifacts is priceless.

15 MS. ESMERALDA: Three minutes.

16 MS. POEPOE: Insuring natural processes and environmental
17 integrity is priceless. These fines and remediation actions don't
18 come close to rendering and resolving the destruction, but we got
19 to play the American way, which is money.

20 So, I support the previous testifiers in deferring this
21 to the Cultural Committee for review and enforcement, because they
22 can enforce the fines, and they can change ordinances. And then my
23 understanding, it would still come back to the Commission for the
24 denial of the SMA permit as well, from what I understand. Thank
25 you.

1 CHAIR BUCHANAN: Questions for the testifier? Thank you.

2 COMMISSIONER PELE: Yeah, I have a question. You was
3 going kind of fast. You can give me the --

4 MS. POEPOE: I was trying to get it --

5 COMMISSIONER PELE: -- Hawaii Revised Statutes again,
6 since you already looked them up? The SMA ones. The H.R.S. dash
7 205.

8 MS. POEPOE: H.R.S. dash 205AA-32, H.A.R. 13-5-6, H.A.R.
9 13-5-2, H.R.S. 183C-7.

10 COMMISSIONER PELE: Thank you.

11 MS. POEPOE: You're welcome.

12 CHAIR BUCHANAN: Any -- Commissioner Sprinzel.

13 COMMISSIONER SPRINZEL: Yes, I agree with practically
14 everything you said, but that public testimony at the start, you're
15 twisting it. It says: Individuals who cannot be present. In
16 other words, you've got a job to go to or --

17 MS. POEPOE: I wasn't sure if I --

18 COMMISSIONER SPRINZEL: -- kids to go to.

19 MS. POEPOE: -- wasn't sure if I was going to be able to
20 be present.

21 COMMISSIONER SPRINZEL: Well, you're always present at
22 every meeting. Come on, don't give me that.

23 MS. POEPOE: I do have --

24 COMMISSIONER SPRINZEL: Anyway, I do support you. Don't
25 worry.

1 MS. POEPOE: Thank you.

2 COMMISSIONER SPRINZEL: But I would like to add one
3 thing. Why on earth the Maui County people didn't even bother to
4 reply? When I applied for Planning Commission from this very
5 Committee many, many years ago, I had to pay for an inspector from
6 Oahu to check my land and this is in the heights where there aren't
7 actually a lot of burial grounds. So, how burial grounds on the
8 sand dunes, which are very strictly defined in all the regulations,
9 how nobody came over for that, I just cannot understand. Somebody
10 explain that to me. Thank you.

11 CHAIR BUCHANAN: Okay. I don't think that was a question
12 for you. More like a question for staff, but before we can ask
13 staff that question, if Commissioner wants to ask that of staff,
14 does anyone else have questions for the testifier? No. Okay.
15 Thank you. Really appreciate all your diligence and hard work all
16 the time. Anyone else in the public wishing to testify on this
17 matter? Okay. Go ahead. Just please state your name for the
18 record. Mahalo.

19 MS. DIBBEN-YOUNG: Aloha mai. My name is Arleone Dibben-
20 Young, and I'm also known on the island as the bird lady. I was
21 contacted by the planner here to comment on the seabirds from my
22 documentation. So, I believe, I -- my letter is Exhibit 7.

23 I personally did not see any burrows at that site prior
24 to the grading, because I was not at that site prior to the
25 grading. It takes decades for grading such as this -- when a

1 colony is destroyed, it takes decades to come back. So, as far as
2 what's happened there, I have no idea. There's no evidence left of
3 anything.

4 So, I'm just here today especially -- not really to
5 testify, but in case anybody has any questions about the birds at
6 that location and the data that I supplied. Anything? Okay. The
7 letter is self-explanatory. Okay. Thank you.

8 CHAIR BUCHANAN: I have a question for you --

9 MS. DIBBEN-YOUNG: Yeah.

10 CHAIR BUCHANAN: -- Arleone. You just testified that it
11 takes decades for recovery.

12 MS. DIBBEN-YOUNG: Decades for recovery.

13 CHAIR BUCHANAN: Decades.

14 MS. DIBBEN-YOUNG: So, if there were -- it appears, at
15 least -- I wasn't there, so I did not see the grading, but it
16 appears that the grading took place during the breeding season.
17 May and June are critical for the wedgetail shearwaters. That's
18 when the adults are there. You have eggs in the burrows.

19 So, if there was any grading at that time or ground
20 disturbance, it would have just been disturbed and wiped out. And
21 if there was an adult in the nest, I have no idea what would happen
22 to it, but it probably wouldn't have been good. The nest can crush
23 very easily, so.

24 CHAIR BUCHANAN: In your expertise and your work on the
25 west end, are you familiar with the recommendations offered by the

1 Department for remediation for this project?

2 MS. DIBBEN-YOUNG: No, I'm not.

3 CHAIR BUCHANAN: Okay. So, maybe that would be another
4 question for consulting because just based on your testimony, I
5 would -- I guess I would have difficulty in understanding if the
6 remediation would have -- would be sufficient or have anything -- I
7 would have to come back to your expertise on the nesting site.

8 MS. DIBBEN-YOUNG: Well, with what I understand from
9 Luigi, the vegetation, which in that area is 'aki'aki grass, it's
10 starting to come back, that will attract seabirds in again. That
11 entire area there, there's about a half-mile long on that beach
12 where there are intermittent burrows. The area, sadly, does have a
13 lot of predators in it. It's got cats -- feral cats, dogs. And
14 so, when you walk into the vegetation along through the kiawe
15 lines, that's where you find the shearwater leg, shearwater wings,
16 the occasional head. Those are from the predators.

17 However, the colony has existed for years, and I first
18 visited the colony in 1993. I heard about it from two people from
19 the Nature Conservancy on Oahu, and I was just coming over for the
20 weekend. I was living on Maui at the time. I was just coming over
21 for the weekend, and I asked where there would be some good seabird
22 viewing, and they actually told me about that location. So, it's
23 well known. Not even -- I mean, not only on this island, but on
24 other islands and to other birders as well.

25 CHAIR BUCHANAN: Okay. You know, it kind of struck me

1 too when recommendations and remediation is offered up, kind of
2 like for experts to be giving comments. So, I appreciate your
3 letter.

4 MS. DIBBEN-YOUNG: So --

5 CHAIR BUCHANAN: Thank you very much.

6 MS. DIBBEN-YOUNG: So, my -- you know, my mitigation
7 would be simply no ground disturbing activities in that area. This
8 is for the seabirds only, not for na iwi, but it would be during
9 the breeding season, which is March through November, and no
10 driving up there at any time.

11 CHAIR BUCHANAN: Okay. Thank you very much.
12 Commissioners, any more questions --

13 MS. DIBBEN-YOUNG: Any questions?

14 CHAIR BUCHANAN: -- for the testifier? Commissioner
15 Poepoe.

16 COMMISSIONER POEPOE: Would you recommend, in your
17 opinion, to leave the bulldozed area as is or would you -- oh, you
18 get one answer. Okay.

19 MS. DIBBEN-YOUNG: If the kiawe were removed, I would do
20 it by hand, personally, during the non-breeding season. It just
21 makes it easier for the birds to move around. They have very --
22 they're difficult on land. They're feet are very far back on their
23 bodies, and they kind of move forward slowly. They don't walk well
24 on land.

25 I would leave the sand as it is. I have no problem with

1 the kiawe being removed, but certainly it would be done by hand,
2 not any equipment. And over time, seabirds will come back to that
3 area. There may be other seabirds there now in burrows that I
4 don't know about, because I did not walk around when I visited a
5 few months ago. So, I don't know if there are other active burrows
6 right now.

7 It's getting close to the season again. I know that
8 there are active burrows at Mo'omomi, so that should be a timer for
9 us that if they're there, they're elsewhere on the island as well,
10 beginning their nesting season.

11 COMMISSIONER POEPOE: From your observation, would you
12 notice if the 'ua'u kani either prefer or not flat areas of sand?

13 MS. DIBBEN-YOUNG: They will nest in the flat area that's
14 up there now as soon as it's covered up with the 'aki'aki grass.
15 They will also go on the side of the hill there, of the dune. The
16 'aki'aki grass is great. It's got really long -- a very long root
17 system, and it holds the burrows in place. So, the shearwaters
18 tend to burrow into the 'aki'aki grass dunes.

19 They will burrow in, in areas where the dune and the
20 'aki'aki grass comes up to the kiawe. So, they will be right at
21 the base of the kiawe there. They do like a little launch pad to
22 get up off the ground. Like as I mentioned, you know, they don't
23 walk well on ground. So, they always want to face the wind and be
24 on a dune that they can have a good takeoff.

25 CHAIR BUCHANAN: Thank you, Arleone. That was very

1 informational. Okay. Commissioners -- okay. So, I see you
2 handing up your hand. Do you have any new information that you
3 want to testify, because I'm going to close public testimony?
4 Okay. Come up. Your time is short. Yeah, and please submit
5 whatever you're testifying to today, in writing.

6 MR. RITTE: Yeah. Walter Ritte from Ho'olehua. Just two
7 things I wanted to put on the record as far as coming from myself,
8 is that when I read the report, what I really liked was DLNR's
9 position, and their position was to decline this permit, because
10 they have the jurisdiction over this area, and they didn't say
11 much, but what they did say was to decline this permit.

12 And the thing that worries me the most from Luigi's
13 response, which really hit me right between the eyes, was that he
14 said that after he was thinking about it, he said that what
15 happened was the best thing that his guy ever did. And I hope
16 that's on the record because that goes right into the face of
17 everything we've been saying about whatever he was doing there was
18 a bad thing. And if Luigi is going around as a consultant telling
19 people that it's the best thing that this guy ever did, I don't
20 know. You know, it's like, yeah, we should fine this guy for what
21 he did, but we should send Luigi to some classes of some sort or
22 take away his permit for doing whatever he's doing, consulting
23 these people on West Molokai.

24 CHAIR BUCHANAN: Thank you for your testimony.
25 Commissioners, I think Sybil would be grateful to put on the record

1 the answer to the questions that you have earlier. I said that I
2 would let you -- we could do that. So, if you could do that right
3 now. If there's anybody else in the public wishing to testify
4 because -- okay. Hang on, Jeffrey, we have one more testifier.
5 Please state your name for the record.

6 MS. RITTE: Aloha, my name is Loretta Ritte from
7 Ho'olehua, Molokai. And I'm reading from the Department of
8 Planning, page 2. It says here: "Any development between Kaluakoi
9 Road and the shoreline should be carefully viewed to ensure that
10 grading or excavation is kept to an absolute minimum to preserve
11 the unique physical and cultural characteristics of this area.
12 This is especially important as the dune line has ben modified to
13 accommodate existing development. And as such, much of the dune
14 has been left out of the designated dune area, but still warrants
15 careful development review."

16 And what was really offensive was modified and
17 accommodate. We're always accommodating. People who come, don't
18 know the place. We give up as a community a lot of our cultural
19 rights. And to come and to desecrate that can never be replaced,
20 maybe except for the birds that would recuperate in many years to
21 come we suffer the losses as a people.

22 So, I say, deny this permit. We need stricter rules, so
23 this doesn't happen. And I don't even know why they're allowing
24 people to even build in that area. That's a sand dune area, it's
25 sacred. Going there for the past few years to pick hinahina, I've

1 seen what Mr. Patterson has done taking the sand. And that's all
2 sand. So, to, you know, say that it's okay to go build in sand is
3 not right. So, I say deny. Mahalo.

4 CHAIR BUCHANAN: Thank you, Loretta. Any questions for
5 the testifier? No, but thank you. I appreciated that. That was
6 part of the Exhibit 6, part of all my questions as well. Thank
7 you. Anyone else in the public wishing to testify? If not we're
8 going to close public testimony, and then ask staff to answer a few
9 more questions. And then I'll be looking for a motion or
10 suggestions from the Commission.

11 MR. DACK: Jeff Dack again. I'm sorry, I won't be
12 answering the questions, specifically, but I wanted to provide a
13 little bit more information on some of your bigger options at this
14 point and allow you to think about that.

15 One thing that I've heard from -- such as, I think,
16 particularly, Commissioner Espinoza (sic), she didn't feel like she
17 really needed more questions answered, she feel she could make her
18 own conclusions. And I'm hearing that there's probably interest
19 among some Commissioners in denial.

20 So, I would like to explore that a little bit as one
21 option. One kind of bigger option you're going to do. You can
22 still ask your questions, have those answered, but if this -- and,
23 you know, Corporation Counsel may help me out here, but, again, we
24 had nothing in our staff report about the implications of denial.

25 So, we talked, actually, a little bit before the meeting

1 and thought it would be a service to you to at least have some
2 discussion on the record before you go too far in your
3 deliberations on what might be an option should you deny.

4 If should you deny -- should you wish to deny at this or
5 some subsequent meeting, we would need you to be giving indications
6 of the reasons for your denial, so that we could prepare a decision
7 order to bring back to you at a subsequent meeting. I think some
8 recent statements have already been made to that effect. For
9 example, inconsistency with the Community Plan. That was one clear
10 statement I heard. There's others that you could easily find.

11 Should you ultimately deny, this -- let me back up. As
12 far as the enforcement side is concerned, this has just gone to a
13 notice of warning so far, which is the first stage in the
14 enforcement process that's pursued by the Planning Department and
15 under the Molokai Rules for the SMA Rules for your Commission.

16 Should you deny, I expect the next step would be that the
17 Department of Planning would actually file a notice of violation,
18 which would then have associated with it -- and I'll read from your
19 rules. "A notice of violation may require one or more of the
20 following." Again, this is from the SMA Rules of Molokai Planning
21 Commission.

22 "That the violation cease, that the development be
23 removed, that an initial civil fine not exceeding \$100,000 for
24 violation be paid, and that a civil fine not exceeding \$10,000 per
25 day, for each day in which the violation persists, be paid."

1 Those are options of what the Department could pursue.
2 It doesn't require any of those, in particular. I anticipate that
3 if the Commission had particular interest in any of those, that
4 would be probably information that would be helpful to the
5 enforcement folks in the Department in coming to a conclusion of
6 how they would like to -- how they would like to draft a notice of
7 violation.

8 One of the key things -- well, beyond fines -- much of it
9 deals with fines, and -- but another one says the -- the second one
10 I read says the development shall be removed. That's an option the
11 Department can require. Well, we can't really remove something
12 that's already been removed. So, what would -- in that case, we
13 would have to look at what kind of things, if any, would be done to
14 the site to attempt to remediate.

15 You have recommendations in your current report now about
16 remediation, which basically is just removal of the kiawe trees,
17 and then replanting in that area. There's other things you could
18 do. You could -- you could, if you felt that that kind of -- the
19 kind of remediation that we've recommended is not adequate. You
20 could make further suggestions here. You could refer this to the
21 Cultural Resources Commission for their recommendations for what
22 kind of remediation would be adequate.

23 And then, ultimately, any remediation that would occur on
24 the site would actually need to come back to you again at a
25 subsequent meeting through a permit and/or if it turns out there is

1 a notice of violation that's issued, and it happens to be appealed
2 to you, then you are the hearing body for that appeal. That's in
3 the rules for SMA. It's in the rules for SMA. And then, also, if
4 there was a settlement agreement, that would have to come back to
5 you too.

6 So, those are kind of some of the possible implications
7 of where things could go if you were to deny, but, again, I would
8 suggest if you're going the direction of denial, and you want to
9 act at this meeting, please be sure to be clear on what your
10 reasons are and then, further, please provide us any particular
11 guidance that you can about how you would like to see the next
12 steps occur along the lines of what I mentioned.

13 Other options, of course, you could be -- you can
14 continue to get more questions answered by Sybil, you can defer for
15 more questions, you could do a site visit at a subsequent meeting,
16 if you want to. Those are all a variety of things, but I wanted to
17 particularly mention the possible implications after -- of
18 enforcement after denial would occur.

19 Okay. Any -- that completes what I wanted to present
20 now.

21 CHAIR BUCHANAN: Okay. Thank you.

22 MR. DACK: Any questions?

23 CHAIR BUCHANAN: I can see Commissioner Pele really wants
24 to ask you questions.

25 COMMISSIONER PELE: Yeah, quick question. So, any of the

1 things you discussed as far as the fine schedule, remediation, from
2 this body they're only recommendations? We don't set any
3 precedent. Do we set -- we set the amounts or does the Enforcement
4 Division set the amounts --

5 MR. DACK: You would --

6 COMMISSIONER PELE: -- based on what our recommendations
7 are?

8 MR. DACK: It's actually up to the Department to make
9 those decisions. If it turns out there were to be a settlement
10 agreement --

11 COMMISSIONER PELE: Right.

12 MR. DACK: -- then that would have to come back to you,
13 but at least the initial notice of warning -- notice of violation
14 and what is to be done with that actually is within the purview of
15 the Department.

16 COMMISSIONER PELE: Okay. So, we just can recommend --

17 MR. DACK: You can recommend, sure.

18 COMMISSIONER PELE: -- what the fine say.

19 MR. DACK: Right.

20 COMMISSIONER PELE: The same people who wrote this report
21 are going to make the decision.

22 MR. DACK: Pardon me?

23 COMMISSIONER PELE: The same people who gave us these
24 reports are the ones who makes the decisions?

25 MR. DACK: A little bit different people --

1 COMMISSIONER PELE: Oh.

2 MR. DACK: -- same Department.

3 COMMISSIONER PELE: Okay. You guys all eat lunch
4 together? No, just kidding.

5 CHAIR BUCHANAN: Commissioner Sprinzel.

6 COMMISSIONER SPRINZEL: Steve and I were on the
7 subcommittee that arranged all these fines, which were a bit
8 ludicrous before in the old rules. So, we do have the right to
9 fine. That's the whole point of it. And the Committee okayed
10 every single page of our reviews.

11 CHAIR BUCHANAN: Okay. Commissioner --

12 COMMISSIONER SPRINZEL: We do have that space to do -- to
13 recommend fines. We do. Okay. Thank you.

14 CHAIR BUCHANAN: Any more questions for Mr. Dack on what
15 he just shared with the Commission? Commissioner Pele, hang on.

16 COMMISSIONER PELE: Yeah, not to you, but I wanted -- he
17 -- Commissioner Sprinzel said we have the control of the fines. Is
18 that what I heard, that you sat on the committees? I'm sorry.

19 COMMISSIONER SPRINZEL: We did set higher fines.

20 COMMISSIONER PELE: Oh, okay.

21 COMMISSIONER SPRINZEL: The procedure for them is that we
22 pass it --

23 COMMISSIONER PELE: Right. Right. Right.

24 COMMISSIONER SPRINZEL: -- and then the Planning
25 Commission --

1 COMMISSIONER PELE: Yeah.

2 COMMISSIONER SPRINZEL: -- the Planning Department has to
3 okay them, and then we --

4 COMMISSIONER PELE: Correct. The Enforcement Division --

5 COMMISSIONER SPRINZEL: -- okay what they say.

6 COMMISSIONER PELE: -- sets the actual amount.

7 COMMISSIONER SPRINZEL: The usual.

8 COMMISSIONER PELE: But you did authorize a higher amount
9 in future -- previous changes to the rule. That does sound -- that
10 makes sense. That fits. Thank you.

11 MS. DESJARDINS: And I just want to add also that 205A-
12 32, which is the Hawaii Revised Statute, also sets forth the civil
13 fine not to exceed 100,000, and also imposes the civil fine of
14 10,000.

15 So, our rule -- our ordinance is tailored by the --

16 COMMISSIONER PELE: Right.

17 MS. DESJARDINS: -- Hawaii Revised Statutes. So, you're
18 exactly right. You approved the upping from the ordinance for that
19 amount, but I also wanted to just say that in order for this body
20 to take any action, what we really need to be focusing on is what
21 law do you apply. Okay. And when you look at 205A-26, okay, the
22 -- when you're looking at these SMA minor permit procedures, the
23 Commission looks at the elements and makes findings of facts based
24 on the evidence before you that are laid out in Hawaii Revised
25 Statute, 205A-26-2.

1 Okay. And in order to approve an SMA minor permit
2 application, the Commission must make the following findings of
3 fact based on the evidence. And there are three findings that you
4 must be able to make to approve this.

5 The first one is that the development -- we know this is
6 a development because it's -- it's an SMA application, will not
7 have any substantial adverse environmental or ecological effect
8 except, however, where the substantial adverse effect is
9 practicably minimized and clearly outweighed by public health,
10 safety, or compelling public interest. That's number one. You
11 also have to find that it is consistent with the objectives, and
12 policies, and guidelines under 205A-26, which is much more
13 involved, but is outlined in the report that was written by the
14 Planning Department. And, number three, you have to find that the
15 development is consistent with the County General Plan and Zoning.
16 Okay.

17 Now, the first one, which is it will not have any
18 substantial adverse environmental or ecological effect, in order to
19 determine what is a substantial adverse environmental and
20 ecological effect, there are numerous elements that are laid out in
21 your Molokai Planning Commission Rules. It's Rule 12-303-12E,
22 okay. And it's a long -- I'm not going to read it out loud, but I
23 urge you to review it because it will give you an outline, okay, of
24 whether or not a substantial adverse effect is present.

25 If you find that a substantial adverse effect exists,

1 that's not the end of the story, then you go on to say, but can
2 that effect be practically minimized? Okay. So, you found there
3 was substantial impact, can it be minimized. And then you're
4 required, under 205A-26(2)(b), to determine whether that effect can
5 be practically minimized, okay. And then you can -- in order to
6 practically minimize it, you can impose reasonable conditions to
7 minimize the effect. If the minimized effect clearly is outweighed
8 by public health safety or compelling public interest, which I
9 don't see here, then you can go ahead and grab the permits subject
10 to conditions. But if the development cannot be made to conform
11 with everything that I just talked about, then you can deny the
12 permit.

13 The Planning Department has gone through this statute
14 that I just explained to you, and they have made -- I'm sorry to
15 turn my back on you -- they have made a determination that they
16 feel that it can be substantial -- the substantial adverse effect
17 can be minimally practically minimized by the conditions that they
18 have requested, okay.

19 Your choices here, you can deny it. You make findings on
20 the record to support your denial. You can grant the permit with
21 conditions. You can the permit with the conditions that they're
22 asking for plus more conditions. You can make up other conditions,
23 you can have no conditions, but that's basically what your
24 authority is here. We don't have the authority here to fine, but
25 Mr. Dack is right, if this permit were to be denied, the next step

1 would be to send out a notice of violation. A notice of violation
2 is where a person is then given the amount of fine, which is a
3 maximum of \$100,000, and then the \$10,000 for each violation.

4 And then there are -- once the notice of violation goes
5 out, if it's not remedied in time, then the fine can accrue on a
6 daily basis, okay. And I just wanted to kind of lay that out for
7 you, so that you kind of have a guideline as to where you need to
8 be going with the discussion.

9 COMMISSIONER SPRINZEL: But, he exceeded his permit. He
10 had a permit to do -- not our permit, the Work Department permit to
11 do a certain amount of stuff, which he exceeded and by exceeding
12 it, he damaged burial grounds, bird grounds, all sorts of stuff for
13 which I'm sure he can be fined. It's not a question of finding a
14 reason to not give him a permit. He had a permit, which he
15 exceeded, and we don't approve of that. We've never really
16 approved of after-the-fact. Thank you.

17 MS. DESJARDINS: So, just one clarification. You're
18 absolutely correct, he exceeded the boundaries of the permit that
19 he received, so he's here asking for an SMA permit, an after-the-
20 fact permit. So, if you grant the after-the-fact permit, then he's
21 not in violation, because you've given him a permit. And correct
22 me if I'm wrong, Planning, but is that your understanding of how
23 this will go?

24 So, if you grant the permit with one million conditions,
25 or one condition, or no conditions, you're going back in time and

1 saying it's okay for you to do what you've done. So, there isn't
2 going to be a violation. A notice of violation hasn't been issued,
3 it's just a notice of warning.

4 COMMISSIONER PELE: I don't under -- so the process is
5 the Planning Department has made the decision? Well, basically, we
6 have to go against the report that says we should approve it
7 because of these reasons, and we have to come up with contradictory
8 reasons to the Planning -- I've never seen the Planning Department
9 -- maybe they have -- since I've been on here say deny this because
10 it's always approve it, and then we got to fight against -- I mean,
11 I'm just trying to -- because I'm going to go home and start
12 reading. I'm coming out, because I like read now. I never used to
13 like to read, but now I like to read. But it seems like that's
14 what I have to do. Like the Planning Department has already given
15 a recommendation that we should approve it based on these
16 conditions. It's not their fault, but it's just the way it is.

17 And the second question I have for staff is why did David
18 Goode, who I understand is -- maybe that's why he's not here, but
19 -- I mean in our County, but he had no comment, Public Works. Did
20 they give a reason for that? Like they had, like, no comment on
21 this matter. That's something that's weird to me, because they're
22 the ones who gave the grading and grubbing permit, correct, yet
23 they had no comment?

24 So, I've got a lot of -- it's kind of weird, but --

25 COMMISSIONER SPRINZEL: Sir --

1 COMMISSIONER PELE: -- I'm trying to figure out -- that's
2 what you're telling me, right? They've given a recommendation to
3 approve with these conditions, and we have to disprove this --
4 their recommendation Hawaii Revised Statutes that I've read.

5 COMMISSIONER SPRINZEL: That's why I wanted to hear from
6 this guy -- from the Department of Works, and I wanted to hear from
7 the Hawaiian Commission people. You know, the relics people.

8 MS. DESJARDINS: Quick comment on that and Sybil can
9 chime in, but what's being presented to you is the Planning
10 Department's position. You are independent of the Planning
11 Department in terms of your decision making. You're the ultimate
12 decisionmaker. Whether you hear from David Goode or any of these
13 other people that you're suggesting is really up to the discretion
14 of the Planning Department whether to bring them before you or not,
15 but whether you will take that into consideration and whether you
16 have sufficient evidence to support their findings, is relevant,
17 but I don't know that you can -- you have any authority to tell
18 them you shall bring these people forward, but you can certainly
19 take into consideration that, in coming up with your own findings
20 -- independent findings about how to apply the law to the facts of
21 this case. Does that make sense?

22 COMMISSIONER PELE: Yeah, it's just frustrating. The
23 sentence in this packet given to us; however, the Applicant granted
24 -- graded and grubbed beyond his permit given. What more do you
25 need to say? But I'll go home and read, do my homework.

1 COMMISSIONER ESPINOZA: I think if I may. Zhantell made
2 a very profound statement that we have to politic our way through
3 this and really that's why -- the Commissioner does. That's what
4 we got to do. That's what I see now. We got to politic our way
5 through this, make sure it's -- support why we're denying it, and
6 we're good.

7 So, and I think we have enough HRs to support the denial
8 if that's where we're going to go with this. And just, again, not
9 compromise the integrity of the process. You know, we just gotta
10 go through the process.

11 COMMISSIONER PELE: (Indiscernible) integrity of the
12 property. He's the owner.

13 COMMISSIONER ESPANIOLA: Yes, that's why I'm saying he
14 compromised the integrity of the process, and so we have to go
15 through the process.

16 COMMISSIONER PELE: Is that (indiscernible).

17 CHAIR BUCHANAN: At this point, I'm going to take a
18 recess, because we haven't had a recess. So, we'll take a ten
19 minute recess, bathroom break, and we'll come right back. So, only
20 in recess, and we're going to resume right where we left off in the
21 questioning. Thank you.

22 MS. LOPEZ: Five minutes. Five minute, Chair?

23 CHAIR BUCHANAN: Yeah, five minutes is good.

24 MS. LOPEZ: Thank you.

25 (Recess)

1 CHAIR BUCHANAN: Back from recess and to resume where we
2 left off.

3 Thank you, everyone. I think where we left off was
4 trying to answer more questions. Thank you, Sybil.

5 MS. LOPEZ: Thank you, Chair. And just to leave where we
6 -- start where we left off in regards to Commissioner Pele's
7 question in regards to how, you know, the permit and, you know, why
8 did -- how does the Department determine recommending approval on
9 such, I guess clear cut -- as how Commissioners would look at it as
10 a clear-cut denial.

11 So, SMA permits come -- SMA applications comes in. The
12 Planning Department reviews it. So, just kind of giving you a
13 history on how this particular project came in as. So, it came in
14 as an after-the-fact, and so we do a review process. So, even if
15 before it hits the Commission, we got to make sure, based on the
16 information or seek out information that we need to make a
17 determination. We request for agency comments to get expert advice
18 on certain parts of this project. And based on the expert advice,
19 and agency comments, and what is in front of us, then we can make a
20 determination or a recommendation.

21 So, we craft the report. And it's, yes, for SMA permits.
22 We always have to come to a conclusion of recommending approval
23 based on all of these things that they've already -- the Applicant
24 been through and in order to meet the -- you know, the standard or
25 the minimal requirements, enough -- or enough evidence to provide

1 to the Department that they can be comfortable with recommending
2 the approval to the Commission, but let it be known, that we are
3 not the authority to make that decision. We can only provide you
4 the information that was given to us during our review, so that you
5 guys can make that decision.

6 So, it's basically -- it's okay that you go against the
7 Department, because it's us providing the information based on
8 these expertise, and the information that is so far in front of us
9 that, you know, the Department feels comfortable with recommending
10 to the Commission an approval, but the Commission makes that final
11 authority to say whether or not they want to approve the permit.

12 But in all SMA cases, at one given point whether you deny
13 this project, the Applicant will still have to come back for an SMA
14 application in order to get a permit because the job has already
15 been -- the job has been done in this special management area. So,
16 they would -- even though you deny it, they have to come up with
17 something that would be comfortable with the Commission, and they
18 would have to come back with a new application in order to get a
19 permit.

20 So, that doesn't subside them from not coming in with the
21 permit because the job is done within the SMA and that's part of
22 the law. That's part of the law that they would have to still
23 comply with SMA rules in the chapter.

24 So, that's why you guys have a decision to make, whether
25 it's deferral, because you don't have enough information, that you

1 need to be provided enough information to make your decision, or we
2 can go with the recommendations that is made by the Department with
3 these conditions. And, just to let you know, the conditions come
4 from these experts that we've been talking to.

5 And, yes, it's an after-the-fact, and it's a very hard --
6 like what Commissioner Sprinzel explained, type of application
7 because the job already has been done. So, the information that is
8 being provided or has been provided to the Department is based on,
9 you know, oh, this may or may not have happened. This -- you know,
10 if you look at the report and the findings of what, you know, the
11 testimonies that you've heard and the Agency's comments, because
12 the job has been done, you know, SHPD cannot provide that fact,
13 because we -- they don't know what existed. And, you know, and
14 based upon that, you know, what can we do to mitigate the
15 situation.

16 So, talking to our geologists, looking at the -- and I'm
17 so fortunate that we actually have a Papohaku Sand Dunes
18 Preservation Plan because if it wasn't for this we would have not
19 known where to -- where to go and be directed. So, some of the
20 conditions actually comes from this plan. Like what the testifier
21 said, Ms. Dibben-Young, we provided two of those conditions that
22 actually came from her that's within this -- the recommendations
23 from the Planning Department. And being able to visit the site
24 itself, and you actually can see the natural habitation of what the
25 sand dunes -- and how they actually worked to actually come back.

1 And so, it's kind of really looking at the information
2 you have in front of you and just trying to make the best possible
3 decision. And I will not be offended if you are -- if you are
4 doing deny, because that is your job. That's your job. You speak
5 on behalf of the community, and we rely heavily on what -- the
6 decisions that you make because, you know, the Department may not
7 see what you guys can see, whether it speaks -- it resonates to the
8 Molokai Island Plan, whether it resonates from what the community
9 spoke.

10 And like the Chair said, this is a contested case
11 hearing, so this is the opportunity to where community members can
12 come here to voice their concern that you guys can include that in
13 your findings of facts. So, just kind of wanting to make you guys
14 feel more comfortable in the decision that you guys have without us
15 taking offense to it.

16 So, I don't know if you want me to proceed with the rest
17 of the answers with the questions that you guys had. Like, for
18 example, the -- I mean, like for what you asked about how the
19 property does not lie adjacent to the shoreline, therefore, it's
20 not subject to the Molokai Shoreline Rules.

21 So, as a findings of fact -- so, in front of -- if you
22 look in the map -- and the map will show that there's another
23 parcel in front of this parcel. So, that parcel -- I don't want to
24 say the -- that parcel kind of takes it out of the Shoreline Rules
25 because there's actually -- and it's the conservation parcel. So,

1 this conservation parcel that 56 owners alongside of this shoreline
2 is owner to, is actually in the shoreline, which constitutes that
3 making this parcel 30 outside of the Molokai Shoreline Rules.

4 So, therefore, as part of the finding of facts the
5 Department rules out that the Molokai Shoreline Rules is
6 applicable, so that -- that answers that question.

7 And so, the grading and grubbing definition comes -- oh,
8 go ahead.

9 CHAIR BUCHANAN: Can we stop right there?

10 MS. LOPEZ: Sure.

11 CHAIR BUCHANAN: Can I ask Corporation Counsel for a
12 comment on that determination?

13 MS. DESJARDINS: Can you clarify what you're asking me to
14 determine, sorry?

15 CHAIR BUCHANAN: The Department has determined that
16 because of that little sliver of conservation ownership that
17 divides the conservation -- the shoreline or whatever, I'm looking
18 at a little sliver of land that is owned by 56 owners and that,
19 technically, makes it not a shoreline. Are you aware of any cases
20 where the same issue has been in litigation for that determination
21 of shoreline?

22 MS. DESJARDINS: Yeah, thank you. No, I would not be
23 able to answer that question right now. I would have to look into
24 that. I'm just looking at whether something is a shoreline is
25 based on the definitions that are contained both in Hawai'i Revised

1 States 205A, as well as in your Shoreline Management Rules for the
2 Molokai -- shoreline area rules for Molokai Planning Commission.
3 And those define what they are.

4 If there's a specific case or something, I would defer to
5 the Department of Planning for that, or I would have to look at
6 into it.

7 CHAIR BUCHANAN: Are there any ramifications that would
8 come if this determination by the Department would be moot or found
9 not valid? What would then apply, in enforcement or other
10 actionable items if this was, indeed, on the shoreline?

11 MS. DESJARDINS: In order to answer that I need a
12 clarification from the Department. A Shoreline Management Permit,
13 SMA permit is different and would be treated differently by your
14 Department than if it was found that this parcel did fall under the
15 purview of the Shoreline Area Rules; is that correct, Sybil?

16 MS. LOPEZ: Correct.

17 MS. DESJARDINS: Okay. So, if someone were to challenge
18 the Department's finding that the shoreline rules did not apply,
19 then I guess it would get unraveled in the sense that a shoreline
20 permit would have to have been sought, which has a whole another
21 ramification, other than an SMA permit.

22 MS. LOPEZ: Correct.

23 MS. DESJARDINS: Okay. Yeah. So, I don't know that that
24 -- the determination that this is not in a shoreline setback area
25 would have any ramifications on your decision whether to grant an

1 SMA permit, because they are two separate permits.

2 MS. LOPEZ: Correct.

3 MS. DESJARDINS: You're just not going forward with
4 asking them to get a shoreline setback permit, because you don't
5 feel it's in the shoreline setback area.

6 MS. LOPEZ: Correct.

7 MS. DESJARDINS: But if they -- if you thought it was,
8 then they would have to apply for two separate permits, correct?

9 MS. LOPEZ: Yes.

10 MS. DESJARDINS: Okay.

11 MS. LOPEZ: And that shoreline setback application would
12 be an administratively approved permit, so it wouldn't go in front
13 of the Planning Commission.

14 MS. DESJARDINS: So, to get to the bottom of the Chair's
15 question then, the Department has already made a finding or
16 determination that this is not in the shoreline setback area?

17 MS. LOPEZ: Correct, based on the Molokai rules.

18 MS. DESJARDINS: So, in order for that to be challenged,
19 administratively, you would have to have somebody, for example,
20 from the public who would say I believe that this violates that
21 rule, correct?

22 MS. LOPEZ: Yeah, like a surveyor --

23 MS. DESJARDINS: Yeah, I mean somebody who's --

24 MS. LOPEZ: -- to make that determination.

25 MS. DESJARDINS: Right.

1 MS. LOPEZ: Yeah.

2 MS. DESJARDINS: And if you look at your rules there is a
3 definition of a shoreline, shoreline area, shoreline setback line.
4 And those would all be what you would look at in order to determine
5 whether or not this guy should get a permit, correct?

6 MS. LOPEZ: Correct. And it's in your 12-304-6, and the
7 establishment of a shoreline setback line according to the Molokai
8 Rules. So, based upon that. And --

9 MS. DESJARDINS: So, I'm sorry to interrupt, but just to
10 be clear, so what you're quoting says: That all lots that abut the
11 shoreline shall have a shoreline setback of 40 feet, et cetera, but
12 from there you have to go and look at what's the definition of
13 shoreline?

14 MS. LOPEZ: Correct.

15 MS. DESJARDINS: And that's the upper reaches of the wash
16 of the waves, usually, evidenced by the edge of the vegetation
17 growth. And then it gets into a definition the of what is a
18 shoreline area. And all these definitions are consistent then with
19 the rules that are established under 12-304-6?

20 MS. LOPEZ: Correct.

21 MS. DESJARDINS: Okay.

22 MS. LOPEZ: And the way it's geologically located, if you
23 look in your Exhibit 5, you can see the map of the conservation
24 parcel in front of it, and then you can see the corner of Parcel
25 30, which is the proposed project. And if people know that area,

1 it's on that hill. So, the highest wave mark would only be right
2 there because of the rockiness of it. So, it would not -- the
3 waves would not even come up into the area because of the hilly
4 location where it comes up.

5 So, the actual shoreline ends by the rocks. And so, that
6 was the determination that it was inside of that -- the parcel
7 before that constitutes the shoreline setback.

8 CHAIR BUCHANAN: So, from the hilly rocks. If I -- and I
9 could be wrong because it's been a while -- as in the other issues
10 we had around the state, what is the setback?

11 MS. LOPEZ: It's 150 feet from the rocky cliff would be
12 the shoreline setback. It actually says in your rules, lying 40
13 feet from the shoreline, except as further provided by Section 1
14 through 4. And so, because Molokai doesn't have an erosion rate
15 -- so, you either go by an erosion rate calculation or an average
16 lot depth calculation. You would actually go -- we would actually
17 calculate through an average lot depth calculation. And usually
18 the highest -- it's either calculated by a quarter of the parcel or
19 whichever is more, like you said, 160 feet, being that it's a 5.65
20 acre parcel.

21 MS. DESJARDINS: So, a shoreline setback line is defined
22 -- that's what you're talking about, right -- is defined as the
23 line established by this chapter running inland from and parallel
24 to the shoreline at a horizontal plane. Okay. Then the shoreline
25 -- you know, you folks know what the definition of a shoreline is,

1 the upper reaches of the wash of the waves. That's -- so the
2 setback line is the line established running inland from the
3 parallel to the shoreline at a horizontal plane.

4 And a shoreline area shall include all of the land area
5 between the shoreline and the shoreline setback line. Those are
6 your definitions.

7 MS. LOPEZ: Thank you.

8 CHAIR BUCHANAN: So, the reason why I raise is that I'm
9 in disagreement with the Planning Department's assessment as a
10 finding of fact within this packet that you gave us today. I would
11 like to have that determination in writing. And if that is the
12 case, I also have a question about the Department of Land and
13 Natural Resources Office of Coastal and Conservation Lands'
14 determination within the Conservation District. Were they
15 contacted? What was their feedback? And if they're pursuing any
16 remediation within that portion of Conservation District.

17 MS. LOPEZ: Thank you for the question. Yeah, we did
18 notify OCCL. DOCARE was also contacted. So, they were aware of
19 what was going on at the time.

20 CHAIR BUCHANAN: So, they have a valid DOCARE response
21 case number, yeah?

22 MS. LOPEZ: Yes.

23 CHAIR BUCHANAN: Okay. Thank you. Go ahead.

24 MS. LOPEZ: Okay. So, continue to the next question or
25 you wanted --

1 CHAIR BUCHANAN: No, no, no. I wanted to know how come
2 DLNR is -- there's nothing from DLNR within this report on the
3 Conservation District?

4 MS. LOPEZ: Oh, okay. Oh, because they never provided a
5 response. So, it was a no comment. Because the actual parcel that
6 we were talking about when I addressed to OCCL, they said because
7 that specific parcel is not in Conservation District, they have no
8 comment.

9 CHAIR BUCHANAN: But that's not true. It is -- you mean
10 the parcel, but the impacted area is in the Conservation District.

11 MS. LOPEZ: Yes, and we made that aware to them, but the
12 subject parcel was Parcel 30 and not the conservation parcel. But
13 I don't know if the Consultant want to speak on that, because I
14 know that the Applicant themselves and the Consultant dealt with
15 DOCARE and OCCL at that time because what was approached to the
16 Department was that they remedied the situation on their own with
17 the Applicant themself.

18 CHAIR BUCHANAN: Then that is -- there's no place in this
19 report that has that statement.

20 MS. LOPEZ: Correct. Because when the Department request
21 for the comment, the agency sent back that response saying that
22 there's no comment because the -- like I said, again, the parcel is
23 not in Conservation District. I don't know if --

24 CHAIR BUCHANAN: Okay.

25 MS. LOPEZ: -- I don't know if you want to hear from

1 the --

2 CHAIR BUCHANAN: Well, I was just wondering if there's a
3 violation also of a Conservation District Use Permit. Thank you,
4 Luigi.

5 MR. MANERA: Okay. The parcel itself is not in
6 conservation at all, but the first violation he did not on the
7 south side of the property, not on the dune, but the bottom he
8 enter the conservation 400 square foot. So, I told him to stop,
9 because he went a little bit too far beyond the line, and he got
10 fined by DLNR about a couple thousand dollar and that was the end
11 with all the violation.

12 But when he did the dune -- on the dune it's not
13 conservation at all. It's outside the property the conservation.
14 On those lot they all Ag land.

15 CHAIR BUCHANAN: Okay. Commissioner Pele.

16 COMMISSIONER PELE: Yeah, I'm trying to understand it.
17 So, I know you guys keep saying the lot is not -- the lot is not in
18 the Conservation District, but if he graded 400 square feet of
19 Conservation District, did he not -- you know what I mean, how can
20 you grade 400 square feet -- you said 400 square feet, right?

21 MR. MANERA: Four hundred square foot.

22 COMMISSIONER PELE: In the Conservation District. So,
23 did he not now just subject himself to a violation of the
24 Conservation District Code, and he just got fined?

25 MR. MANERA: Yeah, that's it. He went beyond -- he went

1 outside the lot.

2 COMMISSIONER PELE: I think --

3 MR. MANERA: He went outside.

4 COMMISSIONER PELE: -- that's why I'm not understanding
5 is they keep saying -- I understand that the lot is not on, but he
6 impacted the Conservation --

7 MR. MANERA: Yeah, he --

8 COMMISSIONER PELE: -- zone.

9 MR. MANERA: Yes. He got caught. He had to pay a fine
10 of \$2,000.

11 COMMISSIONER PELE: Oh, he got caught. Oh, that's an
12 admission of guilt. Don't tell me that.

13 MR. MANERA: Well, he got caught. He had to -- he passed
14 the boundary. He went over. I mean what the hell. I mean, I'm
15 not the one who operated the machine. I don't know why he --

16 CHAIR BUCHANAN: Okay.

17 MR. MANERA: Well, he's fine with seeing anyhow, because
18 it's in front of him. Without the kiawe tree it's almost
19 impossible to see, you know, a straight line on the property.
20 That's, basically, the reason why. If you had to go take a look
21 you know what I'm talking about.

22 CHAIR BUCHANAN: Thank you, Luigi.

23 COMMISSIONER PELE: Can I ask him one more question?

24 CHAIR BUCHANAN: Yes, go ahead.

25 COMMISSIONER PELE: You said something like if we deny

1 the permit he still has to come back for another SMA permit because
2 the work is done. Is that what you said or did I -- was I
3 spazzing?

4 MS. LOPEZ: So, because he already had work within SMA --

5 COMMISSIONER PELE: Right.

6 MS. LOPEZ: -- so we have to constitute some type of
7 permit because it was an SMA --

8 COMMISSIONER PELE: So, if we deny it -- I mean --

9 MS. LOPEZ: He would still have to come back. I mean,
10 depends on the -- depends on the --

11 COMMISSIONER PELE: To us, right?

12 MS. LOPEZ: -- depends on the denial, yeah, because our
13 SMA goes through the Planning Commission. It depends on the type
14 of denial what -- you know, how you guys formulate this denial is
15 that he would still have to come up with a new permit, because he
16 still has an outstanding -- well, if it turns out to be a
17 violation, that might be something different, but he still have to
18 remedy what he's done --

19 COMMISSIONER PELE: Via an approved permit.

20 MS. LOPEZ: Yeah.

21 COMMISSIONER PELE: So, this could keep going on until we
22 approve a permit for him to either put it back the way it was, or
23 some kind of permit has to be approved; is that what you're telling
24 me?

25 MS. LOPEZ: Well, according to the rules. According to

1 the SMA Rules, that all activities being done in SMA needs to have
2 a permit. So, that's part of the SMA Rules. Whether you guys deny
3 it, you know, until they come back up with -- he gotta come up with
4 a new permit. And --

5 COMMISSIONER PELE: And if we deny that one, what would
6 happen?

7 MS. LOPEZ: Well, but it's comfortable to what you're --
8 what the Commission --

9 COMMISSIONER PELE: Right. Okay.

10 MS. LOPEZ: -- is comfortable with.

11 COMMISSIONER PELE: All right. Okay.

12 MS. LOPEZ: And it kind of depends how you're going to
13 formulate the denial. I mean, Corp Counsel can help me on this
14 one, but it depends how you guys formulate the denial on the
15 violation. If the violation -- if you guys seeking a violation and
16 that's it with the violation, and you're done with it, then I don't
17 know, it's the way that you guys will formulate this denial. And
18 that is why Corp Counsel is providing this type of information, so
19 that you guys abide by the HRS, the Chapter 205A, with your
20 findings of facts to make that determination. I'm just
21 anticipating that, you know, as far as what the Molokai SMA Rules
22 state that they all work done within the special management area
23 constitutes a permit.

24 CHAIR BUCHANAN: Planner Sybil, hang on. Commissioner
25 Pele and other Commissioners, don't get confused.

1 MS. LOPEZ: Yeah.

2 CHAIR BUCHANAN: This properly lies in a special
3 management area. Anything you do on Molokai in a special
4 management area requires an action. That action can be one
5 assessment, that action can be one permit -- one permit determined.
6 So, now if you say, no, it goes to notice of violation. Notice of
7 violation says, eh, we going do this and, by the way, you guys
8 gotta make one recommendation to the notice of violation.

9 Then if part of that remediation and violation says put
10 the grass back, he has to come to this Commission again, because
11 he's proposing an action in the SMA, we going have to give him one
12 SMA permit for these actions.

13 COMMISSIONER PELE: (Indiscernible).

14 CHAIR BUCHANAN: Yes, that is correct. So, don't get
15 confused --

16 MS. LOPEZ: Right.

17 CHAIR BUCHANAN: -- by throwing all the 205A. Just know
18 that any place on Molokai, SMA requires an action --

19 MS. LOPEZ: Thank you for that clarification.

20 CHAIR BUCHANAN: -- whether it's after the fact, before
21 the fact. Actually, we like them all before fact.

22 COMMISSIONER PELE: Before the fact. Right. Right.

23 CHAIR BUCHANAN: We only get this problem, because it's
24 after the fact. So, if -- you heard today, we give the permit,
25 then fine, you meet all the conditions. You like throw in extra,

1 then that's fine too. Or we can defer. You can defer pending more
2 information needed, you can defer you want a site visit. I want to
3 see what happened. Site visit, come back, boom, talk again at the
4 meeting and decide what you guys like do. You can defer site visit
5 and then approve or defer site visit not -- and deny.

6 So, that's what you guys gotta -- we gotta do today. So,
7 right now all I doing is finding out facts. I trying to determine
8 in here. So, already I said, hey, you know what, I don't agree
9 with the Department's determination of shoreline, based on what I
10 heard today. And I want it in writing. I want the determination
11 by the Department to come to this Planning Commission in writing,
12 because what I'm going to do, is I going turn around and check the
13 H.R.S., and see if it's what it is.

14 So, I sorry, for the kind -- you was getting to the
15 grading and grubbing now. The definition.

16 MS. LOPEZ: Yes, Chair.

17 CHAIR BUCHANAN: Awesome.

18 MS. LOPEZ: Thank you for that clarification. Sometimes
19 we need that. So, grading and grubbing. So, grading and grubbing
20 definition actually comes out of Chapter 20.

21 And so, the grading means temporary storage of soil,
22 sand, gravel, rock, or any similar material, and excavation, or
23 fill, or any combination thereof. And grubbing means, any act by
24 which vegetation, including trees, timber, shrubbery, and plants is
25 uprooted and removed from the surface of the ground. And there is

1 -- the information is in the grading permit -- I thought I had one
2 -- on how it constitutes different types of grading. You have,
3 like, grading volume from 0 to 500. So, they have minor grading
4 permits to major grading permits.

5 So, the minor graded area is under one acre, maximum of
6 excavation or fill is under 15 feet, and anything over that
7 constitutes a major grading permit. And they also explain the
8 grubbing portion of it. And this is from the Department of Public
9 Works.

10 CHAIR BUCHANAN: Okay. Planner Sybil --

11 MS. LOPEZ: Yes.

12 CHAIR BUCHANAN: -- the Public Works, what are the
13 conditions or the protocols in order to get a grading and grubbing
14 permits in consideration of historical sites and Section 6E? What
15 is on that application when I actually walk into the office, and I
16 ask for a grading and grubbing permit? What is notified to me and
17 what is required of me, as the Applicant, to the Public Works?

18 In other words, for Public Works to be satisfied that I
19 can give you a grading and grubbing permit knowing that you are
20 well aware that it's under these conditions.

21 MS. LOPEZ: So, I don't know that question, because I'm
22 not in Public Works, but I only going read from what the permit
23 information states. So, as far as grading and grubbing work on
24 shoreline property, what they have to submit is the limits of a
25 coastal dune. So, this has to be determined by a coastal

1 scientist. They need a copy of their SMA permit. So, they have to
2 get an SMA. And limits of shoreline setback area and what we've
3 talked about with shoreline setback. So, they would also have to
4 get a determination made by the Department of Planning.

5 The following statements shall be placed on the plan.

6 All constructions, related conditions that is put upon the SMA
7 permit that the importation and placement of soil is prohibited
8 within the shoreline area and that grading of the coastal dune is
9 prohibited. So, this is in the permit information that I read word
10 for word.

11 CHAIR BUCHANAN: So, what I say to that is B-I-N-G-O,
12 bingo. That is why it is important that the shoreline
13 determination is consistent and valid. Now, without that, is the
14 grading and grubbing permit, what are the exemptions?

15 So, if the person got an SMA permit, which we know they
16 did, how does all the rest of that stuff get exempted or where are
17 the copies? Would Public Works have copies of all of the limits of
18 coastal dunes, limits of shoreline setback? We already probably
19 know there was no shoreline setback because DLNR issued a \$2,000
20 violation fine.

21 So, I kind of tracking -- trying to find out what's going
22 on. That's what I trying to find out. Would you know?

23 MS. LOPEZ: I -- the only thing that we actually had that
24 is in the report from Department of Public Works, when the
25 inspector did come out, he did report -- so, this probably would

1 answer the other question that you had with the inspectors.

2 So, it is actually in your exhibit. It is in Exhibit
3 number 9. And this is -- it would be like the last page. So, it
4 will be the last page of the Exhibit 9, second to the last page.

5 And so, the inspector provided his report, as well as the
6 -- our inspector. So, Public Works Inspector and Planning
7 Inspector, they go out, and their report is actually in the RFS.
8 And so, on August 12th, 2018, the inspector entered his finding,
9 and he complete -- so, he said, I was in contact with the requestor
10 on the day that she called with concerns. I spoke with her on the
11 phone.

12 CHAIR BUCHANAN: Hang on, Sybil. Is everybody there?

13 MS. LOPEZ: Oh, I'm sorry. Is everybody there? Okay.

14 CHAIR BUCHANAN: This is on page 2 of 3 --

15 MS. LOPEZ: Three.

16 CHAIR BUCHANAN: -- RFS Information for 17-0000859. This
17 is important. This is the report. Okay.

18 MS. LOPEZ: So, this is the report that was made by the
19 Department of Public Works. So, usually, they put the report in
20 the RFS, so that they would have to close it or deem it that it's
21 completed or done. So, that's how that inspector's process is.
22 So, you'll find -- like I said, the Department of Public Works
23 Inspector's report, as well as the Planning Inspector's report in
24 here.

25 And on October 17th, he entered and completed it saying

1 the status is done and that on inspection I found a small area on
2 the top of the hill, next to the ocean that had been grubbed.
3 Sybil Lopez says that the area was a sand dune and should be
4 considered grading as well. Using the satellite images that I have
5 access to; I cannot confirm or deny that the property owner graded
6 a sand dune. The area is all sand and is mostly stabilized. I'm
7 sending this RFS to close. That is the report.

8 CHAIR BUCHANAN: Who is reporting this?

9 MS. LOPEZ: The inspector Chris Oana. That is from the
10 Department of Public Works.

11 And so, therefore, that is how Public Works Director
12 David Goode was able to issue a no comment in regarding this
13 project.

14 CHAIR BUCHANAN: So, Chris came out on 8/12/2018, and
15 this is his report. On inspection, I found a small area on the top
16 of the hill, yeah? That's him?

17 MS. LOPEZ: Yes. Yes.

18 CHAIR BUCHANAN: That's his report?

19 MS. LOPEZ: Yes.

20 CHAIR BUCHANAN: Five lines. That's his report. Okay.

21 MS. LOPEZ: Yes.

22 CHAIR BUCHANAN: So, Chris is a zoning inspector?

23 MS. LOPEZ: That's for Public Works. I don't know the
24 exact position he's called, but he was the inspector from Public
25 Works that came out.

1 CHAIR BUCHANAN: Okay. You know what, I going leave
2 Chris alone for right now, because he telling me he when use
3 satellite images. GIS, you know, I'm assuming. Guess what, I use
4 'em too, all the time. Every week, in fact, in my job. But he's
5 saying he cannot -- so, I'm just wondering what is his expertise in
6 making a determination that allowed the Director of Planning to
7 close this RFS, saying that a grading violation could not be
8 determined. So, that's another question I have. So, it gets back
9 to Public Works again, yeah?

10 MS. LOPEZ: Yeah, not Planning.

11 CHAIR BUCHANAN: Okay.

12 MS. LOPEZ: Public Works. So, Public Works closed out
13 their own RFS.

14 CHAIR BUCHANAN: Okay. I was kind of looking for --

15 MS. LOPEZ: Yeah.

16 CHAIR BUCHANAN: -- more than that, but thank you very
17 much.

18 MS. LOPEZ: And so, the Planning --

19 CHAIR BUCHANAN: You answered my question.

20 MS. LOPEZ: -- yeah, so the Planning Inspector's report
21 is two pages -- one, two -- two pages prior to that, and it's page
22 3 of 4. You notice that the pending was -- the status is done, so
23 she closed that out stating that the RFS is pending approval of an
24 SMA application. Advise Consultant to apply for grading permit for
25 SMA area. And she provided the email that was -- was from me

1 addressing to the Consultant and her constituting the closure.

2 CHAIR BUCHANAN: Wow. Okay. Okay. Thank you. So --

3 MS. LOPEZ: Uh-huh.

4 CHAIR BUCHANAN: -- so, again, getting back to how and
5 who determined how many square feet of area was grubbed and, by
6 definition, the vegetation and whatever, and how 4,000 square feet
7 of area was graded, and that the volume of cut and fill was 45
8 cubic yards. Who made that determination, because it's not in the
9 report? The report says exact opposite of this. It says, I cannot
10 make one determination. Based on satellite and whatever I came
11 out, I don't know. So, who made that? And then I would have to go
12 back to the drawing -- the exhibit.

13 MS. LOPEZ: So, the only person who could actually
14 constitute the appropriate approximate area of work would be the
15 Applicant himself, because he did it.

16 CHAIR BUCHANAN: Okay.

17 MS. LOPEZ: And so, Exhibit 3, that the Applicant or the
18 Consultant provided the Department provides the description of the
19 location of the approximate area of work. And the next one would
20 be area grubbed, how much; area graded, how much; and the volume of
21 the cut and fill within the location of that area, including the
22 SMA boundary line.

23 CHAIR BUCHANAN: Who provided Exhibit 3, which I'm
24 assuming is one, two, three pages?

25 MS. LOPEZ: Mr. Manera, the Consultant.

1 CHAIR BUCHANAN: Okay. Thank you. That answers my
2 question. Okay. You had other questions from me? I mean that I
3 when ask?

4 MS. LOPEZ: Yes.

5 CHAIR BUCHANAN: Okay.

6 MS. LOPEZ: Yes.

7 CHAIR BUCHANAN: Thank you.

8 MS. LOPEZ: Yeah. Yes.

9 CHAIR BUCHANAN: Appreciate it, Sybil.

10 MS. LOPEZ: Oh, I'm sorry, Commissioner.

11 CHAIR BUCHANAN: You have one question. Commissioner
12 Pele.

13 COMMISSIONER PELE: If the guy from Public Works said the
14 grading violation could not be determined, why are we here? Like
15 if -- like, why are we here then? Why did I sit here for -- I
16 mean, somebody determined that a violation --

17 CHAIR BUCHANAN: Because --

18 COMMISSIONER PELE: -- occurred.

19 CHAIR BUCHANAN: -- because there was more than one
20 request for service, that's why.

21 COMMISSIONER PELE: Oh. So, that was your question,
22 right? Who gave the violation? Who --

23 CHAIR BUCHANAN: No, I'm asking who determined the actual
24 amounts, cause -- because dependent on the amounts that was -- now
25 we know on the record, was supplied by the Applicant, it goes all

1 to remediation, right? Because --

2 COMMISSIONER PELE: Yeah, I just -- I'm just -- when
3 Public Works tells me a grading violation could not be determined,
4 I'm lost. Forgive me for my inability to grasp this, but,
5 obviously, there was a violation, because we're dealing with it
6 right now. So, how -- I'll get over it. Sorry.

7 CHAIR BUCHANAN: No. No worries. Okay. Thank you.

8 MS. LOPEZ: So --

9 CHAIR BUCHANAN: Sybil, if we could continue?

10 MS. LOPEZ: Okay. So, whether or not he violated
11 grading, he's still in the SMA and that's why we're here. Yeah.
12 So -- and Public Works determined the permits for grading and
13 grubbing. Yeah. Thank you.

14 So, the number 5 of findings of facts, when you asked the
15 relevance of that paragraph. And so, due to the cause and nature
16 of the after-the-fact permit. So, the Department made the
17 determination that it is not anticipated that the project will
18 affect an environmentally sensitive area such as flood plains,
19 shorelines, tsunami zone, erosion prone area, geologically
20 hazardous land, estuaries, fresh waters, or coastal waters based on
21 the evidence and the information that was provided to the
22 Department.

23 CHAIR BUCHANAN: Okay. Here we talking about the
24 shoreline again. Okay. So, we already heard that in order to get
25 one grading and grubbing permit, they had to submit all kind

1 paperwork, which is not in evidence today and which was permitted
2 by the Department -- under the Department that is not here today,
3 and we don't have that information.

4 So, again, we already heard that I adverse to the
5 determination that is not on the shoreline, and I think it's gray
6 and vague because of the Conservation District. So, that's why
7 that question is there. And then you have question number 5?
8 Answer for question 5?

9 MS. LOPEZ: Yes. It's just based upon the information
10 that was provided to the Department and the evidence seen that the
11 Department stated the findings of facts as it's not anticipated
12 that the project will affect due to the cause and the nature of the
13 after-the-fact permit. And it's provided evidence in your report.

14 CHAIR BUCHANAN: So, for several hours now we heard
15 testimony on -- that does not agree with that assessment of number
16 5. That it is, indeed, an environmentally sensitive area. The
17 Department's own Exhibit number 6 eludes to that, and so, I think
18 it's misplaced. And then you had -- oh, for number 6, what is the
19 definition of "significant"? The project will have no significant
20 adverse.

21 MS. LOPEZ: So, the significant adverse environmental or
22 ecological effect is based upon Chapter 343. So, hold on. Sorry,
23 as I try to find -- within the SMA application, the Applicant has
24 to fill out a Chapter 343 form and determine how the proposed
25 activity has no adverse effect on these environmental and

1 ecological resources. And so, that's part of the application while
2 they -- that the Applicant fills that responsibility regarding
3 Chapter 343.

4 CHAIR BUCHANAN: Okay. So, would the Department
5 consider --

6 MS. DESJARDINS: It's actually Chapter 205-26 --

7 CHAIR BUCHANAN: Oh.

8 MS. DESJARDINS: -- no significant adverse --

9 CHAIR BUCHANAN: Okay. You want to clarify -- she has a
10 clarification for the record. Thank you.

11 MS. DESJARDINS: So, the finding of no significant
12 adverse environmental or ecological effect comes from one of those
13 findings under Chapter 205A-26, that needs to be satisfied in order
14 to grant the SMA permit.

15 I think -- are you referring to like whether an
16 environmental assessment needs to take place? Chapter 343 --

17 MS. LOPEZ: You're correct, but it does both Chapter 205
18 and Chapter 343 compliance.

19 MS. DESJARDINS: Okay. All right.

20 MS. LOPEZ: So, they have to comply with both. Yes.

21 MS. DESJARDINS: Okay. Thank you.

22 MS. LOPEZ: Thank you for that clarification.

23 CHAIR BUCHANAN: So, then my --

24 MS. LOPEZ: Okay. And it also states in your rules under
25 -- let me make sure I give you the correct area or location of it.

1 It's actually on page 302-10, under E. So, it follows that: In
2 considering the significance of potential environmental and
3 ecological effects, the Director shall evaluate on -- wow -- two
4 criterias.

5 The sum of those effects that adversely affect the
6 quality of the environment and the ecology, and the overall and
7 cumulative adverse effects of the proposed action. And so, every
8 phase of the proposed action, its expected primary and secondary
9 consequences, and its cumulative and short or long-term effects. A
10 proposed action may have a significant adverse effect on the
11 environment when -- yeah, so, when the following -- when the
12 proposed action -- one, two, three, four, five, six, seven, eight,
13 nine, ten -- so, there's ten. So, there's ten proposed actions
14 that are being proposed.

15 CHAIR BUCHANAN: Thank you. So, the Department -- we
16 heard testimony by the Department's own expert called to testify on
17 this SMA after-the-fact permit, that -- and I quote, "It would take
18 decades for birds to reestablish themselves in the area that was
19 known to have that type of flora and fauna." So, I don't see how
20 saying that on the record is not significant, nor does it the sum
21 of effects on the ecological like removing a dune is not
22 significant.

23 So, I think that Item 6 is misplaced as well as Item 5.
24 And then if we can move on to Item 7.

25 MS. LOPEZ: Okay.

1 CHAIR BUCHANAN: I think that whole Item 7 is also moot
2 and should not even be there. That the project will not impact
3 historic sites and/or sites remnants or archaeological. We just
4 heard testimony that is adverse to that. And, also, that the
5 Department entered to the Papohaku Dune Plan, within that plan
6 there's also testimony -- not testimony, but it does say about the
7 archaeological and cultural significance of Papohaku.

8 And you heard the cultural expert that is serving as a
9 Cultural Committee person also testify to that. And it's moot
10 because DLNR, State Historic Preservation Division said it's moot.
11 By their own admission, in writing.

12 This Section 7 goes on to say: In the event that
13 historic properties including concentrations of artifacts, human
14 skeletal remains, cultural deposit, on and on, and on, and on. If
15 you -- the vicinity of find must cease and DLNR contacted. Well,
16 that is all moot because by its own admission, it was foreclosed on
17 by the Applicant when he did not take that into consideration. So,
18 that should not also be in there.

19 MS. LOPEZ: And number 8.

20 CHAIR BUCHANAN: Number 8 -- okay. It's just -- yeah.
21 Yeah. It's -- I don't know what -- too conclusory. Yeah, number 8
22 is too conclusory, if there's such a word. Sorry.

23 And then if we can move on to the recommendation by the
24 Department, then we can have a discussion, but maybe not. Hang on.
25 Did I ask any other questions that --

1 MS. LOPEZ: I think that was the last one, other than you
2 already -- you had some questions regarding the recommendations
3 anyway.

4 CHAIR BUCHANAN: Yeah. And then I have --

5 MS. LOPEZ: To include the Planning Commission.

6 CHAIR BUCHANAN: -- I have a question, Planner Lopez. At
7 the time -- oh, I write too much pages. I sorry. I'm so sorry.
8 Hang on guys, we almost there. My question is at the time of the
9 report where this report was written for considerations of finding
10 of facts to this Commission, did the Department have knowledge of
11 the violation issued by the Department of Land and Natural
12 Resources to the Applicant?

13 MS. LOPEZ: Yes, the Department was aware of the DLNR.

14 CHAIR BUCHANAN: If the Department was aware of the
15 violation why did they not report it to this Commission?

16 MS. LOPEZ: We did request through Agency comments, and
17 we got a no response. And so, therefore, there's nothing that was
18 reported in your report.

19 CHAIR BUCHANAN: But the Agency --

20 MS. LOPEZ: Regarding this property.

21 CHAIR BUCHANAN: Okay. But the Department -- but you
22 guys knew -- but you saying that the Department knew. The
23 Department of Planning knew that there was a violation, there was a
24 fine that was incurred or whatever they want to call it, by the
25 Department of Land and Natural Resources to the Applicant, within

1 the Conservation District, so I'm -- and we don't have any report
2 of that, we don't know what the violation was, we don't know if
3 impacted shoreline rules, and we don't know if there was a
4 Conservation District Use Permit that was supposed to have occurred
5 that didn't. So, we don't know none of that, but yet the
6 Department knew that -- that DLNR did issue fines to this
7 Applicant, but it's not in this report.

8 MS. LOPEZ: Correct, because --

9 CHAIR BUCHANAN: Okay. That's it. That's all I like
10 know. Thank you very much. Commissioners, you guys get any
11 questions? While I zoom through this, you guys want to take a
12 minute -- did everybody have a minute to read Pat Crandall's
13 testimony? If you didn't already do that, I can give you a minute
14 to read it. I should have asked you to read it while we was on
15 break.

16 I have a question for Corp Counsel. In the
17 recommendations -- because I have questions about the
18 recommendations. Should I ask them now?

19 MS. DESJARDINS: As opposed to when?

20 CHAIR BUCHANAN: No, I mean, I have questions on
21 recommendations. Maybe it would be good to talk about it now,
22 because we holistically know we get about three options and this
23 might not be done today. Maybe we can go into the recommendations
24 then?

25 MS. LOPEZ: Yes, to put it on the record.

1 CHAIR BUCHANAN: Okay. Great.

2 MS. LOPEZ: That -- when Chair is ready to -- for the
3 Department's recommendations.

4 CHAIR BUCHANAN: Okay. So, on Item 1, it clearly states
5 that the after-the-fact grading, and grubbing is made according
6 to --

7 MS. LOPEZ: I'm sorry, Chair, would you want me to put it
8 on record?

9 CHAIR BUCHANAN: Oh, yeah, please.

10 MS. LOPEZ: Okay. Okay. Okay. So, pursuant to the
11 aforementioned, the Department recommends approval of the SMA Minor
12 Permit, subject to the following nine conditions. In consideration
13 of the foregoing, the Department recommends that the Commission
14 adopt the Department's memorandum to the Commission for its March
15 27th, 2019 meeting as its findings of facts, conclusions of law,
16 and decisions and order, and authorize the Director to transmit
17 said written decisions and order on behalf of the Commission.
18 Okay. Now, you can discuss.

19 CHAIR BUCHANAN: Okay. On Item 1, the after-the-fact
20 grading, and grubbing is made according to the revised SMX
21 application. And this is important, because I have it underlined.
22 And representations made to the Department prepared by
23 Architectural Drafting Service. So, the Applicant. And then that
24 the Applicant shall remove kiawe debris and -- caused by the
25 grading and grubbing, or whatever by the grading.

1 When we start doing this type of specific recommendations
2 by persons that does not have expertise in shoreline restoration,
3 or remediation, or cultural expertise, I am really cautious about
4 me taking on that responsibility and authority in an area of which
5 we are not experts. And it eludes to the fact that we still need
6 more information from the cultural perspective, as well as
7 remediation of coastal dunes.

8 So, right away that's one red flag to me. So, Item 3 is
9 the same thing. We just heard from our expert that these protected
10 species of birds like 'aki'aki grass, but it's not in Item 3, but
11 it is in other places. So, all those conditions can be together.

12 And then this is really in the recommendations what
13 concerns me is number 4. The Applicant shall ensure BMPs, and then
14 it goes into Items A through F. And they are all items that really
15 need to seek cultural expertise as practitioners. And so, again,
16 I'm really uncomfortable going down that specific without getting
17 cultural input.

18 And then number 5, 6, and 7, I think is repetitive of law
19 that is already in the books, and I don't see just to build up like
20 we making them do plenty stuff, but, no, it's already in law. Item
21 5, 6, and 7, you supposed to be doing anyway. It's in law.

22 And then the time, yeah, on number 8, that the project
23 shall be initiated by March 31st, 2020. So, I'm assuming if this
24 Commission, at some point, goes by that earlier discussion on
25 penalties or fees and violation fines, besides the initial fine,

1 the additional fines would not kick in until April 1, 2022. And I
2 could be wrong, but I don't think so.

3 So, you would not be having that additional \$10,000 fine
4 until an inspection is done on April 1st, 2022. I don't know who's
5 inspecting the remediation. I don't know if that come under Public
6 Works. All of this is really vague. And, logistically, I want to
7 know how this will be monitored. There's no monitoring. And then
8 that's it. That's my feedback on the finding of facts and the
9 recommendations. And so, if any of the other Commissioners have
10 any feedback on my longwinded stuff.

11 COMMISSIONER POEPOE: This question pertains to the fines
12 and penalties. Whatever the day, eventually, when the penalties --
13 the fines accrue, the fines, at which point is somebody legally
14 required to -- I mean, like, you either pay 'em, or you go jail, or
15 something, you know. Because I can think of one analogy where --
16 and this might sound ridiculous, but when neighborhood store used
17 to have videos, and if you keep 'em over the late fee, then you
18 gotta accrue all that -- the additional days, so people would just
19 not -- I mean, they would just not shop at the store anymore. So,
20 look --

21 UNIDENTIFIED SPEAKER: I can relate to that.

22 COMMISSIONER POEPOE: Yeah, I mean, what if somebody just
23 decides not to pay the fines for that whole time? Like what
24 happens? Does it go into -- is assessed through the property tax
25 or, like -- I don't know if that's my -- yeah, if that's my kuleana

1 for be asking that type of stuff, but I really curious, because --
2 okay.

3 CHAIR BUCHANAN: Go ahead.

4 COMMISSIONER POEPOE: Thank you, Mimi.

5 MS. DESJARDINS: So, basically, what happens is, is that
6 if fines accrue, and sometimes they accrue into the millions of
7 dollars because people don't pay them, and they continue to accrue,
8 and they're still in violation, then it comes to Corp Counsel, and
9 then we initiate a lawsuit for a lien against the property or we
10 try to, you know, come up with a compromise or a settlement just to
11 figure out why this is still lingering. But, yeah, so, basically,
12 ultimately it ends up in court if they don't pay.

13 CHAIR BUCHANAN: Any more questions? Let's not forget
14 that in June of 2017, from the time the first request for service
15 went in, it's been 22 months -- two months short of two years, for
16 it come here. For us to even review. So, for 22 months, we've
17 been asking -- I know I've been asking, eh, by the way, what
18 happened to da kine.

19 So, you can see how this can turn into something that can
20 go on and on, and on forever, but with that, Commissioners, what do
21 you guys want to do?

22 MS. LOPEZ: Chair, can I have -- can I answer his
23 question as well?

24 CHAIR BUCHANAN: Go ahead.

25 MS. LOPEZ: So, I guess, that's what Mr. Dack was kind of

1 explaining about the denial process too, that enforcement would
2 come in and, you know, your legal question regarding what type of
3 -- what would hold them to the -- to it would be how it would even
4 be issued is through the notice of violation.

5 And so, right now even though you see -- if you look at
6 the request for service, it's a notice of warning. And in these
7 notice of warnings, they show you days. And so, if you actually
8 look on that exhibit, like for this one, for instance, it says 551
9 days from the time it started it was entered into the -- see
10 duration.

11 So, they have -- explains to you received date, completed
12 date, duration days. So, that's what you're kind of alluding to in
13 regards to days of how, you know, the notice of warning is issued.
14 But how to even enforce the fines would come in where the notice of
15 violation would trigger those fines that was stated by the
16 testifier and also stated by Corp Counsel in -- both in your rules
17 on the issuance of notice of violation and order.

18 And so, Chapter 12-302-24, would kind of answer your
19 questions in regards to the process, and the steps, and how -- if
20 it gets accrued and how it's going to be determined. So, that
21 would be that process.

22 COMMISSIONER POEPOE: Thank you, Mimi.

23 MS. LOPEZ: Yeah.

24 COMMISSIONER POEPOE: I like your explanation better.

25 Sorry. Sorry.

1 MS. LOPEZ: Yeah, so she kind of --

2 COMMISSIONER POEPOE: I get one other question.

3 MS. LOPEZ: -- she kind of already said it, better than I
4 did.

5 COMMISSIONER POEPOE: Is this subject to a default
6 judgment based on time?

7 MS. LOPEZ: Oh, good answer (sic). I think that's more
8 of a Corp Counsel question, but that's a good answer (sic) -- I
9 mean, good question. It's regarding of time.

10 MS. DESJARDINS: So, ask it again. What about a default
11 judgment?

12 COMMISSIONER POEPOE: Is this subject to the -- we going
13 start the clock and -- oh, what did I ask? I forget already.

14 MS. LOPEZ: Default based on time.

15 COMMISSIONER POEPOE: In favor of the Applicant.

16 MS. DESJARDINS: So, the fines just keep going, and
17 going, and going. And sometimes the judge asks how come you let it
18 get so big and there's --

19 COMMISSIONER POEPOE: No, sorry.

20 MS. DESJARDINS: Okay.

21 COMMISSIONER POEPOE: I was meaning if there's --

22 MS. LOPEZ: Statute of limitations.

23 COMMISSIONER POEPOE: Yeah.

24 MS. LOPEZ: Like 120 days period.

25 COMMISSIONER POEPOE: For us to make a decision regarding

1 a permit -- to approve a permit or deny 'em.

2 MS. DESJARDINS: So, you can defer today. For example,
3 let's say --

4 COMMISSIONER POEPOE: Yeah.

5 MS. DESJARDINS: -- you decide to do that.

6 COMMISSIONER POEPOE: Yeah.

7 MS. DESJARDINS: You find you're still in your contested
8 case, it's going along. It's only when you make your final
9 decision then the timelines for decisions and orders under your
10 rules kick in.

11 COMMISSIONER POEPOE: How long is that?

12 MS. DESJARDINS: It depends.

13 COMMISSIONER ESPANIOLA: Chair, is this a time that we
14 can make a motion or we going have to go through the next session?

15 CHAIR BUCHANAN: This Commission can do whatever they
16 want. We already discussed our options. So, it's -- the only
17 thing that really bothers me is in the old days, and I think John
18 will -- in the old days, our planners, I think, working with our
19 Corporation Counsels really helped this Commission Members based
20 along. Based on our testimony on the record, they would help us to
21 write-up our findings of facts and conclusions of law. Since my
22 third term on this Planning Commission -- yeah, we old -- that has
23 since changed. And the onus of the legal ramifications of findings
24 and facts, and conclusions of law has been punted to the
25 Commissioners.

1 My response to that has been that we are not legally
2 trained. We act as volunteers in an unpaid position. And, on top
3 of that, being in our position here on Molokai, we hardly have any
4 trainings, and we haven't had a lot of legal trainings. So, why
5 the Department in the past couple of years have put the onus on
6 these Commissioners to come up with the findings of fact and
7 conclusions of law, even when it's adverse to what the Department
8 recommendations have been, that has been a real concern for me,
9 because it puts the onus of possible contested case hearings on
10 people with no legal training background.

11 So, I don't know what the Planning Director -- how he
12 feels about that, but I'll just say it on the record that I think
13 that's inappropriate of the County to do to people who are acting
14 in an advisory capacity. And we are trying to carry out the wishes
15 of our community plan and our community members, because we're the
16 best people that know what this community needs and wants.

17 So, with that, that's the only thing bother me today is
18 if we have enough information for lay people to come up and say --
19 that's how come I talk so long, by the way, and sometimes, yeah.
20 Is just laying the groundwork for findings of facts, because we've
21 all been -- thank you, Jeffrey. You can help us out.

22 MR. DACK: Yes, Chair. You laid out a lot of concerns
23 relative to the findings of fact that were proposed by the
24 Commission -- proposed by the Department in the recommendation. If
25 the other -- and the Chair has to recuse herself from voting, but

1 if, for example, the Commissioners felt that many of the concerns
2 expressed by the Chair were valid concerns that you would like to
3 have be part of the findings of fact, should you choose to support
4 a denial, that would be helpful to us.

5 Any other things -- I remember Commissioner, I think,
6 Poepoe, mentioned early on that he felt that the project was
7 inconsistent with the Community Plan. That's helpful. We're
8 asking for your guidance. We're not asking you to write the
9 decision and order. Sybil even has a hard time doing that. We're
10 not legal attorneys either.

11 But to the extent that you can provide us reasons why you
12 denied, then we can take that, and we can put a draft together, and
13 then the Corp Counsel can help us. So, just -- the guidance that I
14 mentioned should be adequate, correct me if I'm wrong, Sybil.

15 MS. LOPEZ: Correct.

16 MR. DACK: Sybil agrees with that. Thank you.

17 CHAIR BUCHANAN: Thank you.

18 MS. LOPEZ: And so, just like how an example, because you
19 guys already seen decisions and orders in short-term rentals, so
20 that is somewhat the type of process that, you know, we do the
21 decision and order, the Department presents the decision and order
22 to the Planning Commission, and the Planning Commission decides the
23 decision and orders. So, that would probably be something similar
24 that you guys had experience within the past couple years in
25 regards to decisions and orders.

1 But if you want me to elaborate more on the
2 recommendations from the Department, from 1 to 9, so that you guys
3 can have a better understanding of how these conditions or where
4 these conditions came from --

5 CHAIR BUCHANAN: Commissioners --

6 MS. LOPEZ: -- if that would help --

7 CHAIR BUCHANAN: Okay. Commissioners, you guys need
8 that? If not, then I would be willing to entertain a motion. You
9 guys need more explanation of the recommendations by staff? No?
10 Commissioner Poepoe.

11 COMMISSIONER POEPOE: I like submit one motion to deny.

12 CHAIR BUCHANAN: Okay. There's a motion on the floor by
13 Commissioner Poepoe to deny this after-the-fact SMA permit. Is
14 there a second? There's a second.

15 So, it's been moved and seconded. Is there any
16 discussion?

17 COMMISSIONER POEPOE: I wanted to ask if any other
18 Commissioners feel like would be really helpful to include more
19 information from other organizations and agencies that would aid
20 with their own decisions on this matter.

21 COMMISSIONER ESPANIOLA: Yes, I think rather than deny, I
22 think we should defer the item, so we can give Commissioners times
23 to formulate our conclusions, facts, and findings, so that when we
24 do present our denial we have all the legal support for it.

25 COMMISSIONER PELE: Yeah, I want to ask Corp Counsel,

1 because I know you're going to say we can defer -- and I seconded
2 the motion for discussion. We can defer based on new information.
3 I just -- I got like six hours of new information I just received,
4 and it's not -- you know, I need to kind of digest some of these
5 things that Chairman Buchanan was asking. It's just a lot of
6 information that -- a lot of questions that we still have, and I'm
7 wondering if that is just cause under that deferment as -- or do we
8 set the tone as far as new information? Because that's really what
9 you're going to tell me, right? You can defer to request new
10 information.

11 You know, I'm trying to digest a lot of the questions
12 that were asked today, the conservation zone, the DLNR report that
13 wasn't given, the Planning (sic) Department that's not here that we
14 wanted to asked questions to. I just want to see some kind of --
15 I'm just wondering if my justifications are just.

16 MS. DESJARDINS: So, you could do two things. You could
17 take the motion that's on the table under advisement, defer to the
18 next hearing. The cleaner thing to do might be to withdraw the
19 motion at this point and just leave it the way it is, and then get
20 your new information, and then see where it's at, but you don't
21 have to. You've made a motion, it's been seconded.

22 COMMISSIONER PELE: But our time --

23 MS. DESJARDINS: You want to --

24 COMMISSIONER PELE: -- our time starts, right, if we make
25 a decision today?

1 MS. DESJARDINS: No. You have not made a decision on
2 anything yet. You would be taking the motion under advisement, and
3 you would be deferring to the next meeting. And in what I've heard
4 today was you do need more information.

5 So, if you specifically want to ask the Planning
6 Department, for example, we want to defer this until we hear from
7 the Cultural Resource Commission what they think. And then, I
8 guess, the Planning Department would come back and say either we're
9 not going to send it to the Cultural Resource Commission, you just
10 have to make your decision based on what you have, or we're happy
11 to do that. That's up to them to do that.

12 So -- but practically speaking, there's a motion on the
13 table. You can decide --

14 COMMISSIONER PELE: To deny though, right? Our motion is
15 to deny --

16 MS. DESJARDINS: Right.

17 COMMISSIONER PELE: -- not to defer.

18 MS. DESJARDINS: So, if you hear more information, you
19 may decide not to vote for that motion or to support that motion.
20 I mean, it's just a motion. It's on the table. You could have
21 just deferred without there being a motion on the table as well.

22 CHAIR BUCHANAN: I wanted to answer -- reply to
23 Commissioner Poepoe's question. I believe if your motion fails,
24 then it would open up for the second -- then it would be an
25 appropriate time to ask that question. So, there's a motion on the

1 floor, there's a second. We're in discussion. Your discussion was
2 if you think people needed more information. I think that question
3 is premature based on your motion.

4 So, if your motion fails then that question may be
5 appropriate. So, is there any more discussion on the motion and
6 the second to deny? Is there any more discussion? I would suggest
7 that you move forward with your motion and if it fails, then we'll
8 go to option B, C, D, and whatever if we have to.

9 COMMISSIONER POEPOE: Yeah, I wanted for explain why I
10 went motion for deny was based on --

11 CHAIR BUCHANAN: Oh, yeah, go ahead.

12 COMMISSIONER POEPOE: -- how sloppy this -- the report
13 came in. So, get so much inconsistencies that no way we can be
14 able for -- we would be able to approve anything that contradicts
15 itself, and does not have public support, and does not appear to
16 have Commission support, thus far.

17 So, based on that, I would submit one motion to deny.
18 What I going do, since I already when ask one question that wasn't
19 appropriate for the motion is -- wait, what do I do now? Do I
20 withdraw or do I -- we going vote on it? Amend?

21 CHAIR BUCHANAN: We are still in discussion. If there is
22 no more discussion, I can call for the vote --

23 COMMISSIONER POEPOE: Okay. Yeah.

24 CHAIR BUCHANAN: -- for the motion on the floor.

25 COMMISSIONER POEPOE: Okay.

1 CHAIR BUCHANAN: Nora has discussion.

2 COMMISSIONER ESPANIOLA: Yeah, so I got a question. I
3 mean that's really exactly what you should have -- that was said,
4 your justification for -- I want to ask Corp Counsel a question.
5 Will that hold up against if we was to have -- you know, we not
6 satisfied -- for us when we make the decision.

7 MS. DESJARDINS: So, what I read to you earlier is the
8 law on what you're going to do if -- now, there's a motion to deny
9 on the table and an order to deny. What you have to do, is you
10 have to make findings, which I agree with Chair Buchanan that's
11 what you guys have been doing all day.

12 Okay. So, don't worry about the Planning Department.
13 Corp Counsel will take your findings. The question is do you feel
14 satisfied that you have enough evidence to support a denial. And
15 if you don't feel that you do, at this point, then you're going to
16 say, on the record, I don't feel like I have enough. I have other
17 inquiries, or you're going to be able to say -- answer the
18 questions. Will the development have any substantial adverse
19 environmental ecological effect? Is it consistent with objectives,
20 policies, and guidelines, and is it consistent with the County
21 General Plan?

22 Okay. And then you're going to look at this issue about
23 substantial adverse environmental or ecological effect. And if you
24 feel like you have enough information based on the testimony that
25 went down today, then you're ready to vote. Okay.

1 COMMISSIONER ESPANIOLA: Thank you.

2 CHAIR BUCHANAN: Just -- we in discussion. So,
3 discussion on the motion. As we heard earlier that was explained
4 by Corp Counsel, and then again by Planning staff, that if there is
5 a motion to deny, this Planning Commission along with that motion
6 to deny can give recommendations to Public Works, which would be
7 the enforcement arm of this -- with the denial, they would have to
8 send out a notice of violation.

9 With that notice of violation comes recommendations of
10 what that violation should be. We've already heard that the
11 Molokai Planning Commission Rules have a cap that the state -- they
12 have a cap and the cap is \$100,000, and that there's the additional
13 10,000 or whatever that would come into play on April 1st, 2020, if
14 we ever get there, or whatever the conditions are in the notice of
15 violation.

16 And so, my only discussion would be that this Commission
17 should, either by separate motion or the similar motion, if it
18 passes, make that recommendation to Public Works.

19 MS. LOPEZ: Public Works or Planning?

20 CHAIR BUCHANAN: Whoever.

21 MS. DESJARDINS: Okay. So, I guess, I have to
22 respectfully disagree. I think this Commission can either grant
23 the permit, grant the permit with conditions, or deny the permit
24 period. If you want to make recommendations, you really -- I don't
25 know that you can make recommendations to the Department of Public

1 Works, because that's where the notice of violation is going to
2 come from, not from --

3 CHAIR BUCHANAN: From Planning.

4 MS. DESJARDINS: -- well, it's going to come from
5 Planning, I'm sorry --

6 CHAIR BUCHANAN: Yes.

7 MS. DESJARDINS: -- because it's an SMA violation because
8 there is no SMA plan.

9 COMMISSIONER PELE: So, the recommendations would come,
10 when they come back to us for their SMA permit?

11 MS. DESJARDINS: Right. Right.

12 COMMISSIONER PELE: That's when we would address --

13 MS. DESJARDINS: Then you would address that --

14 COMMISSIONER PELE: -- whatever concern --

15 MS. DESJARDINS: Yeah.

16 COMMISSIONER PELE: -- or recommendations, not --

17 MS. DESJARDINS: But as far as denial, you just deny it,
18 or you grant it with conditions or no conditions.

19 CHAIR BUCHANAN: Mr. Dack, is that -- so, who figures out
20 the notice of violation fee?

21 MS. LOPEZ: That would be Enforcement.

22 MR. DACK: Yes.

23 MS. LOPEZ: That would be Enforcement. So, the notice of
24 violation would come from Enforcement in our Planning Department,
25 and they have a formality and a process that they go through

1 abiding by the laws of the ordinances that is set forth within the
2 Molokai Planning Rules and SMA Rules.

3 MR. DACK: And it wouldn't have to wait for two years to
4 have the daily fines accrue.

5 CHAIR BUCHANAN: Yeah. Yeah.

6 MR. DACK: That would -- that would start, basically,
7 once the notice of violation is issued.

8 CHAIR BUCHANAN: So, I just -- I'm hoping that the people
9 who going do the notice of violation -- and, actually, have a
10 protocol to follow our -- cognizant of the cultural ramifications
11 of how this -- this -- the desecration has occurred and how you can
12 place a dollar value on the spirituality and sacredness of the
13 environment.

14 So, how does that dollar amount within that -- so, at
15 some point in time, I would like to understand how the Department
16 can culturally answer that dollar amount to culture and
17 spirituality of place. Exactly, what Zhantell Dudoit had testified
18 to in her testimony. Thank you.

19 MS. LOPEZ: Okay. Relative to that, the enforcement --
20 so, Enforcement would issue the notice of violation. From the time
21 that they issue the violation, say ten days. If they don't remedy
22 it in ten days, then they start the clock of the daily fines. So,
23 that's how the daily fines would occur is because the -- the
24 issuance of notice of violation got to come out first and the
25 accruing would come out after the issuance of the violation.

1 So, it wouldn't come -- it wouldn't come from what was
2 done back in 2017 to -- from the notice of warning all the way to
3 the duration of the days. So, it's just an example on how
4 Enforcement would look at it. So, it's starting from the notice of
5 violation moving forward on how they gonna -- how the Applicant
6 will be able to remedy that within the enforcement.

7 And as far as the testifier goes, for example, what you
8 wanna have a cost to the spiritual and cultural, as far as what
9 I've heard from the testifiers is that you don't have substantial
10 evidence, enough to say that there was some cultural violation
11 because the request was being made to go to the Cultural Resource
12 Commission for that review. I mean, I don't know what that --
13 because how would you cost factor that if the request is to go to
14 the Cultural Resource Commission to make that determination? Is
15 that correct, as what I was trying to figure that out? Because you
16 want to pout a cost to that.

17 CHAIR BUCHANAN: No, it was a question about protocol --

18 MS. LOPEZ: Oh, okay.

19 CHAIR BUCHANAN: -- within the Department.

20 MS. LOPEZ: I don't think --

21 CHAIR BUCHANAN: And I want the Department to --

22 MS. LOPEZ: Oh.

23 CHAIR BUCHANAN: -- to comment on the cultural aspects of
24 this discussion. Thank you. So, we have a motion on the floor, we
25 have it seconded. Is there any more discussion on the motion? If

1 not, I'm going to call for the vote.

2 All those in favor of the motion to deny the after-the-
3 fact permit, please raise your right hand. Motion carried
4 unanimous. For the record, the Chair is not voting, and the Chair
5 has recused herself. Motion carried. Thank you.

6 MS. LOPEZ: Thank you.

7 CHAIR BUCHANAN: So, we're moving on so we can finish up.
8 Thank you everybody -- Commission Members for being so attentive.
9 I really appreciate your guys help.

10 Director's Report, Item E, Items 1, and 2, and 3. Staff.

11 MR. DACK: Just -- you have pending Molokai Applications
12 Report. Do you happen to have any questions on that? It is
13 included as Appendix A right behind -- attached to the agenda
14 itself. If you have no questions on that, do you have any
15 questions on the Closed Molokai Applications Report?

16 CHAIR BUCHANAN: Mr. Dack, I just have one question on
17 the STMO Application on page 4 of 4. The Applicant name is Jason
18 Quan -- Chuan. What is the status of that STMO?

19 MS. LOPEZ: So, we are scheduling for public hearing, and
20 so we are just waiting on a confirmed date when the Applicant want
21 to move forward with the public hearing date. Mind you that we do
22 have 45-day notification and notices that would have to go out.

23 So, we're still trying to secure a date. Our previous
24 date that we -- that the Department recommended the Applicant was
25 for June 8th. So, we surpassed the notification date, so we're

1 just looking for a scheduled hearing. Most likely, it might be in
2 July/August.

3 CHAIR BUCHANAN: Thank you, Sybil. The Reef House
4 Waialua S Short-Term Rental.

5 MS. LOPEZ: That was -- it's supposed to be a withdrawal,
6 and it's supposed to be closed. The owner sold that property, so
7 it's just the process.

8 CHAIR BUCHANAN: Thank you very much.

9 MS. LOPEZ: Uh-huh.

10 CHAIR BUCHANAN: Thank you, Jeffrey. I appreciate it.
11 Thank you. Okay. Do we have Item 3, agenda items for April 10th?
12 I saw one email that we might not have an April 10th.

13 MR. DACK: We do not have any items for April 10th. We
14 do anticipate a meeting on the 24th.

15 CHAIR BUCHANAN: Okay. Everybody got that. We are not
16 having an April 10 meeting, right?

17 MS. LOPEZ: Correct.

18 CHAIR BUCHANAN: Okay.

19 MS. LOPEZ: And so, we are having an April 24th meeting.
20 So, that would be the first phase of our training that the
21 Commission will have training on, like the planning framework.
22 Kind of similar what we had last year, but there's been rule
23 changes and new ordinances that we're going to incorporate it for
24 the next training.

25 So, April 24th is training, and you will also see a draft

1 environmental assessment DEA that is wanting to have comments.
2 Because the Planning Department is not the accepting agency, the
3 State Department of -- the UH College System is -- they're going to
4 expand on the Molokai Ed Center. So, that is the DEA that you will
5 be looking forward to on April 24th.

6 CHAIR BUCHANAN: We going have paper copies of that prior
7 to the meeting?

8 MS. LOPEZ: Yes. Are you requesting hard copies?

9 CHAIR BUCHANAN: I am requesting if we have an EA, and we
10 need to provide comments that I have a paper copy of it in
11 sufficient time based on the volume of the document, in order to
12 read it and provide comment.

13 MS. LOPEZ: Okay.

14 CHAIR BUCHANAN: Thank you.

15 MS. LOPEZ: And you will see an SMA forthcoming because
16 it is an SMA, and it's an SMA Major Permit.

17 CHAIR BUCHANAN: Awesome.

18 MS. LOPEZ: Thank you.

19 CHAIR BUCHANAN: Thank you so much for all your help and
20 hard work, Sybil. Appreciate it. Thank you, staff, Susie,
21 Jeffrey, Corp Counsel. Okay. With that we are adjourned.

22 (Meeting adjourned at 1:57 p.m.)
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24
25

CERTIFICATE

I, Jessica B. Cahill, court approved transcriber, do hereby certify that the foregoing is a complete, true, and correct transcript from the official electronic sound recording of the proceedings in the above-entitled matter.

Dated: April 11, 2019



Jessica B. Cahill, CER/CET-708