

MOLOKAI PLANNING COMMISSION  
REGULAR MINUTES  
AUGUST 14, 2019

**A. CALL TO ORDER**

The regular meeting of the Molokai Planning Commission was called to order by Chairperson Lori Buchanan at approximately 11:05 a.m., Wednesday, August 14, 2019, at Mitchell Pauole Center, 90 Ainoa Street, Kaunakakai, Island of Molokai.

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

Chair Buchanan: Aloha everyone. It's still morning, so good morning. Welcome to the August 14, 2019 meeting of the Molokai Planning Commission. We might be kinda rusty because we never meet for a while, so bear with me, so we're going to call the meeting to order, and before I go into the agenda and item B, are there any request from the Commissioners to amend the agenda or move any of the items up? Seeing none, we're going to move right into item B, which is Public Testimony, and it's there for people who need to testify that cannot be here at the time that the agenda item come up or on other items of concern to the community, and it's just offering testimony and -- but it does not have a follow-up discussion really, and so if anyone wants to take advantage of testifying at this time, for the public, now's your chance and you will have a chance later on the agenda item as well. Anyone in the public wishing to testify, just come up, state your name for the record. Thank you very much.

**B. PUBLIC TESTIMONY** - At the discretion of the Chair, public testimony may also be taken when each agenda item is discussed, except for contested cases under Chapter 91, HRS. Individuals who cannot be present when the agenda item is discussed may testify at the beginning of the meeting instead and will not be allowed to testify again when the agenda item is discussed unless new or additional information will be offered. **Testimony will be limited to a maximum of three (3) minutes, with 30 seconds to conclude.**

Ms. Lindo: Aloha. My name is Zhantell Lindo, and I am a resident of Molokai, and I am also the Council Aide for Member Rawlins-Fernandez, so I just wanted to give a testimony. In light of that you guys do have one after-the-fact permit to review, I just wanted to use that as the basis of being able to testify this morning. Our office is currently, in -- in lieu of the conversation of after-the-fact permits, our office is currently writing up legislation to strongly disapprove any new construction of after-the-fact permits, and that was an overwhelming consensus of the Council, and that's strictly for new construction, but I wanted to bring that up because it seems, just from our radar in our office, that all off a sudden an influx of after-the-fact permits have been flooding and questioning and coming up, and I think one of the problems with that is what we -- we reviewed with a current applicant which is because the after-the-fact fine is only a thousand dollars, people are almost encouraged to go do what you need to do, come back pay the thousand dollars, and then there's no clear policy of mitigation or correction, and even if the

Department hands out implementation for corrective action, there's no enforcement. So I wanted to testify today to encourage the Commission to seek out whatever rules you can find within your body and your context to help motivate things in that direction. I did recently testify at the OHA commission meeting asking them to take an active role in helping to create legislation statewide that would help give direction to commissions and county bodies to -- to have one clear consensus of what does that cost and how do we implement those costs, and I think it's -- what's happening now is that even though legislation on the county side will help to say there's no after-the-fact permits for new construction, what it doesn't cover is the cultural impact and traditional impacts, so there's no dollar value placed on that, and so I think I wanna encourage the Commission to really move forward to the extent by which you have that authority to implement policies and practices that we can work with the Department of Planning on to make sure that we are moving in a consistent and -- and cohesive direction as the Council is and -- and make sure that our, in light of all the things going on right now, the community is taking an active role in ensuring that our traditional and cultural lands are not being just wasted away. So thank you.

Chair Buchanan: Thank you. Zhantell, so, I sorry, just to make sure, on the record, you was testifying on behalf of the council woman's office, yeah?

Ms. Lindo: So I testifying on behalf of our Molokai District office --

Chair Buchanan: Okay. Alright.

Ms. Lindo: And I was given the approval to disclose what our office is doing officially to approach this -- this matter of after-the-fact.

Chair Buchanan: Okay. Thank you. Commissioners, anybody need clarification on the comments that was made through -- okay, thank you, Zhan. Anyone else in the public wishing to testify at this time? Okay, seeing none, I'm going to close item B, Public Testimony, and we're going to move into item C, Waiver or Non-Waiver of Special Management Area Assessment Review, and if we going need reminding of what is being asked for us, we can ask our attorney, but we going move into item 1, C.1.:

*Chair Buchanan read the following agenda item description into the record:*

**C. WAIVER OR NON-WAIVER OF SPECIAL MANAGEMENT AREA (SMA) ASSESSMENT REVIEW**

- 1. MS. MICHELE MCLEAN, Planning Director, notifying the Commission pursuant to the provisions of Section 12-302-13.1(a) of the Molokai Planning Commission's Special Management Area Rules that the**

**following proposed action located within the Special Management Area is not a “development” and therefore exempt from the requirements of the Molokai Planning Commission’s Special Management Area Rules:**

- a. MR. IAN SIMMS’s after-the-fact addition of an approximately 672 sq. ft. open deck on a single-family dwelling, located in Kilohana Kai subdivision, 'Ualapu'e, Molokai, TMK (2) 5-6-002:007-0011; (SMX 2019/0225) (Valuation: \$2,500) (S. Lopez)**

**The Commission may act to waive or not waive its review.**

Chair Buchanan: Planner Sybil?

Ms. Lopez: Thank you, Chair. Thank you, Molokai Planning Commission Commissioners. I am Sybil Lopez, the project planner on the project in front of you, which is SMA 2019/0225, on behalf of Mr. Ian Simm’s, and we do have the consultant here today, which is Mr. Luigi Manera, so in your commission packet that you received last week, we did include the application for you to review, the zoning and confirmation form, what’s included in the application checklist, the HRS 343, Chapter 205A-2, so I can let you know if you have any questions regarding the -- what the packet that you’ve received. The ownership from the Maui Real Property Tax, the drawing plans, as well as photos that were taken, so this is all part of the submittal of the SMA application that was submitted by the consultant, Luigi Manera. So if you don’t have any questions, I can turn the time over to Mr. Luigi if he wants to add anything to this project, which is located in Kilohana Kai subdivision.

Chair Buchanan: Thank you, Planner Sybil. Commissioners, you guys have any questions for the staff report for Planner Lopez? Commissioners? I have one question, Sybil, on page 4 of 10, on the SMA Assessment Application Checklist, item number 13, it asks, and this is the yes or no checklist, will there be any ground alteration, excavation, or digging associated with the proposed project, and the applicant checked the no box, so I just was wondering if the applicant is in for an after-the-fact permit of a 672 square-foot lanai, how did he do it without any digging?

Ms. Lopez: Can I revert the question back to Mr. Manera so he can answer that?

Chair Buchanan: Okay.

Ms. Lopez: And Mr. Manera also has bigger copies--

Chair Buchanan: Right.

Ms. Lopez: If you needed to see a bigger plan, so Mr. Manera.

Chair Buchanan: Okay. Thank you.

Ms. Lopez: You're welcome.

Mr. Manera: Hi. Luigi Manera, for Mr. Ian.

Chair Buchanan: Good morning.

Mr. Manera: Good morning. They used footing stone, the one you buy at the store, so, basically, they just dig about six of 'em, maybe 16 by 16, about 3, 4 inches, and they left it there, that's I why I put down zero, but they never touch the ground. That was done long time ago during the development of the subdivision.

Chair Buchanan: Okay, so in order to build the deck, there was no digging at all?

Mr. Manera: Yeah, they just --

Chair Buchanan: They just set stone and put --

Mr. Manera: Maybe they -- I think it went down maybe five inch, six inch --

Chair Buchanan: Okay.

Mr. Manera: Square.

Chair Buchanan: Oh, okay. Interesting. Thank you. Hang on then. Let me see if I had one other question. Oh, I know what was. Yeah, we couldn't really -- I couldn't really see the -- the plan 'cause was so small, and when the plans is that small, you really cannot tell, but, currently, there's nothing except the porch and it's covered, yeah?

Mr. Manera: Covered. Yeah.

Chair Buchanan: It's covered. Okay, thank you.

Mr. Manera: Thank you.

Mr. Poepoe: Chair? Question.

Chair Buchanan: Oh, sorry. Commissioner Poepoe.

Mr. Poepoe: Question for the consultant. I just wanted to know if -- so I going ask if the purchase of the houses in the -- the subdivision is under CPR?

Mr. Manera: Yes.

Mr. Poepoe: And these come with CCR or some kind of explanation of what comes with the purchase, like explaining how to go through the procedures to get permitting, is that included in the purchase, the explanation of anything?

Mr. Manera: No. Not that I know. There's no special requirements. It's a CPR, like one lot with two homes. The only restriction is you cannot have more than five bedrooms in both houses.

Mr. Poepoe: So would be left to the owner's diligent -- to conduct their own diligence in accordance with what permitting would be required for new construction?

Mr. Manera: No. You can have a carport; you can have a deck; those things is part of the -- of the regular, you know, houses submittal, but the only restriction we have you cannot build more than five bedrooms; that's a restriction on the property, each lot.

Ms. Espaniola: I had a question. So were they or were they not aware that a permit was required to -- before they constructed the -- the decking?

Mr. Manera: Well, they require permit for everything. I mean I'm pretty sure. I mean too bad he's not over to answer that. We all required to have a permit to build anything.

Ms. Espaniola: So how -- how old is the construction?

Mr. Manera: The new addition?

Ms. Espaniola: Yes, the addition.

Mr. Manera: I say two, three years.

Ms. Espaniola: Two, three years. Okay. Thank you.

Mr. Manera: Roughly, yeah. I mean --

Ms. Lopez: So just to add -- so just to add some information to your question. So the house was actually built in 1995 during the type -- the time when the subdivision was open. Mr. Simms is one of the newest owners there, he just purchased that property in

2014, so at the time when he purchased the property, he figured he could add the deck and cover the deck at that time. So I hope that kinda gives you a little bit more information to that.

Chair Buchanan: I don't know how pertinent it is, but, Planner Sybil or the consultant, why did the applicant come in now for an after-the-fact permit, and does the applicant work in construction?

Ms. Lopez: I -- I don't -- I don't know that if he works for construction, but I know I spoke -- oh, he called and when he called at one point asking questions, he didn't know at that time that he needed, and so I -- I told him to seek consultation outside if -- if he need any help going through the process 'cause I think he works for the State, if I'm not mistaken, I don't know if he does construction, but Highways, so he was just asking question and it to led to him, personally, on his home and then he consulted with Mr. Manera.

Chair Buchanan: So there was no request for service?

Ms. Lopez: No.

Chair Buchanan: Okay.

Ms. Lopez: No. There were no request for service. He came out on his own asking questions personally.

Chair Buchanan: Okay. Thank you very much. Commissioners, anymore questions for the staff report?

Ms. Mowat: Hi. I'm just wondering. Does he own any other property? Do you know?

Ms. Lopez: Not -- no. Not that I know of.

Ms. Mowat: Okay.

Ms. Lopez: Yeah.

Chair Buchanan: Okay, thank you very much. If there's no more questions, I'm going to open the -- this agenda item for public testimony. Anyone in the public wishing to testify at this time please come up, state your name for record, and that's it. So if there's no one in the public wishing to testify on this matter, is there someone in the public wishing to testify? Okay, I see --

Ms. Lindo: Hi. My name is Zhantell Lindo. I'm testifying as a public citizen for this purpose. I just -- I --

Chair Buchanan: No, it's not illegal. I'm sorry. There's some question as to whether you should be able to testify again. As the Chair, I think you have that authority to testify again, but you supposed to submit new testimony that you never submit prior to in the opening comments, and then again, let me refer to my corporate -- my Corporation Counsel to give me advice on that.

Ms. Desjardins: So I understand that the testifier initially came in and testified on behalf of Council Member Rawlins-Fernandez's office, and what she is saying now is that she's testifying on her own behalf.

Ms. Lindo: Yes.

Ms. Desjardins: So I guess, in that sense, she has the right to testify again.

Ms. Lindo: Thank you. So I'm testifying as a community resident, and in -- for this item, shucks, I don't know the number, but the one you guys was just talking about. So one of the things that I'm having a hard time understanding, and first, and foremost, I would like to give credit to Mr. Simms for being the person to come in, I think that's one really honorable thing that somebody was coming in. I have one problem with the way that the SMA assessment was done. I think that anybody who has even the slightest knowledge about building anything knows that in order to level off something, because ground not going be completely level and I pretty sure we not going build one 600-foot deck with -- without leveling off everything, that it's absolutely not true that you didn't have to dig something, and I've been in construction too for a little bit, managing construction projects, maybe not the best and most experienced, but I do know that footing stones, the intention of that is to give a solid footing and grounding, so I, while this conversation was going on, I asked the inspector at what point does this project now, after-the-fact, if he's granted this, come under review of the County to see whether or not it meets code because if it's true that he didn't dig and all of this stuff, so he -- he told me that it usually comes afterwards when he applies now for a building permit. So I guess, as a community resident, it's -- it would be helpful if there was clarification on why the process works this way, why they not totally in conjunction as part of the packet of the after-the fact. How do we know that they actually going for one building permit after, and if the enforcement of this is done by the Department, in what timeline and does the Commission get to see the complete action or corrective action after that's done? Thank you.

Chair Buchanan: Thank you, Zhantell. Commissioners, you guys get any questions for the testifier? No. I just was -- that's -- that's some really good questions. Thank you very much. Anyone else in the public? Can somebody take the mike to Aunty Judy, if we can

reach, so she no have to stand up? Thank you. We want to make accommodations for our kupuna. No, no, no. No apologies. We really need to accommodate everyone. Thank you very much for coming, Aunty.

Ms. Caparida: Aloha everybody. I'm so thankful I get to come to a meeting and see you guys again, and I oppose it because it's always a lot of them now days they're always after-the-fact. They don't do it right the first time, and then, for us, oh boy, they'd be on our case, you know, for those that they got money, they let 'em go. So I'm against it, and I hope that, you know, do everything pono first, and then we don't have to come over here and give this kinda discussion. Thank you.

Chair Buchanan: Thank you, Aunty Judy. Anyone from the Commission have a question for Aunty Judy? Seeing none, thank you very much, Aunty Judy. Anyone else in the public wishing to testify on this agenda item? Okay, seeing none, I'm going to close public testimony. Commissioners, any last questions for staff? I have one. If, Commission, you have question? No? Okay. Commissioner Bridget.

Ms. Mowat: The -- you know, I was just, on that number 13, apparently, there was ground alteration, right? So it -- if it was a yes, if it should have been a yes, then there should have been a scaled map identifying so, in a sense, this is kinda like incomplete, to me, so that was just a comment I wanted to make, that's what it looks like to me.

Chair Buchanan: Okay. You needed one -- you wanted -- she was just one comment. Yeah.

Ms. Lopez: On the drawing plans, it shows on --

Chair Buchanan: Yeah.

Ms. Lopez: In here, on page -- so if you can see the middle drawing, it actually shows the footings, but we do have a bigger plan, Mr. Manera has a bigger plan if you needed to see it more in-depthly.

Chair Buchanan: Sybil, it's -- that's okay because the question before this Commission today is to waive or not waive the review, and so we don't need to -- to go off onto the deep ends because this is not the time or place. The decision before the Commission today is to waive or not waive, so if you choose to waive, then the after-the-fact permit is granted; if you choose not to waive, then that means the applicant has to come back. I notice that the applicant is not here today, however, his representative is here, and our decisions are based on the representations made on the record, which will later be findings of fact. I would hope that there was testimony that no ground alteration was made, and we heard that maybe it was not made, we can only determine that by one site

inspection, but, again, back to basics, you want to waive or not waive further review of this application. I do have -- the question I wanted to ask Sybil, which was really good question came up, is about process, so what is the process on after-the-fact permits that the applicant has to go through? So this is just one SMA assessment, and then from there, I would assume that they would need one building permit or do you get an after-the-fact building permit? 'Cause at some point, the homeowner wants to convey improvements on their lot in order to get properly taxed in order to have it conveyed in the Bureau of Conveyances so their land is -- their project is worth more money and so if they wanna resell, it has to be conveyed, it should be conveyed, so what is the process, Sybil?

Ms. Lopez: So thank you, Chair, for the question. I can only answer towards the SMA 'cause that would be under my purview, but you do have the application checklist in front of you and this is the process that they would go through. If you notice on number two, we do straight out ask them if there has any work already been started or completed for this project, and they would include in the application what type of the -- describe the proposed action. So if you asking the process in which the applicant goes through, the checklist would give you an example of what the applicant goes through; what the Department goes through is the full review, requesting for agency transmittals and whatnot. As far as any other after-the-facts, that's determined per the Department of Public Works, DSA. If they're in flood, it goes down to our zoning and flood division, and they take care of that. If this -- which this project is not in. I think it's in X. Hold on. Yeah, so it's in zone X. If it was not in zone X, they would need an -- a flood development permit, so that would maybe require an after-the-fact as well. So that's the only thing I can answer is to the SMA application. But I have my supervisor, Jeff Dack, that could elaborate more on your -- the answer to your question. Thank you.

Mr. Dack: As -- as one of the testifiers mentioned, I think they had spoken with an inspector who indicated that the -- the building permit process would -- would be able to go ahead only after the SMA action was taken, and that's -- that certainly fits my understanding. As a standard procedure, when building permits that could be in the SMA are requested, they will send a request for comments to the Planning Department, and only after the Planning Department has, either through commission action or by its own - - by -- as administrative action, approved an SMA will the Planning Department give the building department an okay to issue a building permit from at least our standpoint. The building department still, of course, will check with fire and with other agencies to make sure that all regulations that they're aware of are taken care of. So I certainly expect the next part of the process for the applicant would be, if they haven't already, to apply for a building permit, and once it's issued, again from the Department's standpoint, we could say yes it's okay. Now, we are very careful to include the final approved plans with the record of the Department's action on approval, such as this, or a minor permit, so that then when the building -- building plans are being checked, the folks in the -- actually, it's our planners in zoning will take a look at what is submitted with the building -- building

permit application, they'll compare it to the plans that have been approved for the SMA, and make sure that they're the same thing. So only after they confirm that the building permit plans are consistent with any SMA approved plans will they give the permission to the building -- Development Service Administration to issue a building permit, so it's -- it's we're very careful to try to keep them all aligned and linked together. I hope that helps.

Chair Buchanan: It does help to make me realize it's convoluted, and complex -- layers that have to come all together and hold hands. Wow. Okay. And at the end, even if we do issue an after-the-fact permit, this Commission has no authority to -- to advise or to issue fines for the after-the-fact fees or fines associated with the project. Is that correct? That's correct. Sorry.

Ms. Lopez: Yes, Chair, thank you for the question. The applicant did pay a thousand dollars for the after-the-fact fee, but it is up to the Director, and if Jeff wants to elaborate on that, or we good? Yeah.

Chair Buchanan: Okay, thank you. Okay, let's not go down the rabbit hole, Lori, because the whole fee schedule thing is difficult 'cause -- so they already paid a fee, it's an after-the-fact fee, so even if -- that's okay. I trying to compare it to other cases where we've not issued after-the-fact permits and the fees are still up in the air of how fee assessment going be because it's pretty arbitrary within the Department of how that is scheduled or figured out, so I think, yeah, I think we gotta --

Ms. Lopez: Yeah.

Chair Buchanan: Work on it. It's really difficult. So, Commissioners, wait, Bridget having that look on her face. You have one question? And then we going ask --

Ms. Mowat: Because I'm new and, you know, I'm not familiar with after-the-fact, if we approve the thing -- waive -- if we waive, then the fee is paid and everything pau. If we -

Ms. Desjardins: No, I'm sorry. I was just going to clarify the law and -- and really what your responsibility is initially today is, under the Molokai rules, the Director, Planning Director makes a determination whether or not this is a development as defined by Hawaii Revised Statutes 205A-22, and one of the things that could make this a development would be if there is grading, removing, dredging, mining, or extraction of any materials, that would be, based on this conversation, the most relevant, you know, trigger for what is a development. So at this point, the Planning Department has determined that this is not a development and that the requirements of the SMA, you know, going through an EA and all of that, do not apply, so then the next step is they then let this Commission know, and this Commission's a little unique because the Maui Planning Commission, they just make a determination to waive and then they just let the Commission know, but your

Commission, they have to give you notice that there's been a waiver, and then it's on the agenda because you then can say, okay, we are satisfied that the waiver is appropriate, or you can say no, we're not satisfied that the waiver was appropriately done and we would like to review this project, so what you're doing here today is just to determine does this -- is there enough evidence here to say this is not a development, do you agree with the SMA assessment application and the Director's decision, and if you do, then you can vote to waive; if you have questions or you're not clear on whether this is in fact a development, you can ask for a contested case and have those folks come in and look to determine whether you're going grant an after-the-fact permit. But everybody who ask for an after-the-fact permit, under the rules, goes in and gets a thousand dollar fine because that's the application fee or punishment, so to speak, for not getting the permit ahead of time. It's a thousand dollars, okay. So I hope that clarifies kind of what you're looking at here today, so it seem like all the issues and questions had to do with this grading, grubbing, etcetera thing, and you have to determine whether you're satisfied with the Director's decision to waive that or not.

Ms. Lopez: And, Chair, can I add on to that? So the fees, just to let you know, is approved by Council, so it's part of their budget and it's how they wanna schedule the fees, and so the Department is there to, not enforcement, but to implement the fees that were approved by Council, so the thousand dollars were approved by Council the way the after-the-fact fees go with the addition for the application fee itself. So they pay the after-the-fact fee and the application fee according the Council-approved fee schedule.

Chair Buchanan: Thank you, Sybil. And I also, for Commission members, wanted to add onto what you just heard from both testimony was that there's also two more questions on top of that and it's -- it's those the bigger vision kinda questions that you heard testimony earlier that setting precedence by continuing to offer after-the-fact permits has opened up a floodgate of applicants who see that it's easier to just come in for an after-the-fact permit than to try and jump through the hoops and process beforehand, which is really what the Commission promotes is the process, and so that aside, question was asked of the applicant's representative did the applicant know, well, the applicant is not here to answer that question either whether it's relevant or not relevant, we've asked that question of every after-the-fact application that this Commission has heard from grading and grubbing elsewhere to removal of structures and historical sites, and so that's why setting precedent of always approving after-the-fact permits is not a good thing because it -- it becomes normalized and it shouldn't be normalized, and so I'm really happy that we have a progressive Council that is looking into amending the laws that will help to close these types of actions that are not -- that have adverse impacts. So with that, if there's no more questions by Commissioners, then I'd like to entertain a motion because we closed public testimony already on whether to waive or not waive further review of this application. The floor is open.

Ms. Mowat: I -- I so move that we vote on whether we should waive or not waive.

Chair Buchanan: Okay, so do -- do I have a motion?

Ms. Mowat: Yes.

Chair Buchanan: Okay. What is -- you wanna make a motion to waive or not waive?

Ms. Mowat: To not waive.

Chair Buchanan: Okay. There's a motion on the floor to not waive. Do I have a second? There is a second by Commissioner Bill. Any further discussion? Sure.

Ms. Desjardins: So in conjunction with the motion to not waive, what I suggest is to put on the record why you have questions about whether this is or is not a development under Hawaii Revised Statutes 205A-22 because that would be your reason to not waive.

Ms. Mowat: Well, I -- I think it would be on the 13 whether it was grading, whether the earth was moved, whether -- so I would find this incomplete in a sense.

Chair Buchanan: Okay, any further discussion on the motion to not waive? Bill? You have your mike? Give him one mike.

Mr. Moore: The Planning Director has already said that it's not a development so in my opinion that means that the hierarchy has already said that this is not in violation of any of the SMA, but that's just my opinion.

Chair Buchanan: Okay, Commissioner Bill, so maybe your second of her motion is -- is not matching because she's -- her motion is to not waive, so she wants further review of the project. Your understanding is that they -- they -- that you would like him to get his after-the-fact permit and waive because the Planning Director says it's not a development. Is that correct?

Mr. Moore: Well, I misunderstood what the counsel said. I thought the counsel said if you -- if you move to waive, that means that you're going to review it, but it's the other way around.

Chair Buchanan: Yeah.

Ms. Desjardins: Yeah, it's the other way around so you seconded a motion to not waive. You want it to come before the committee, but, you know, for argument, you know, for discussion purposes, I don't think it's -- it's inaccurate for somebody to second a motion

they don't agree with. You're just putting it out there for discussion, but you don't have to agree with the motion. It's up to you. But let's be real clear. If you move -- if you vote to waive, that means you're -- you're okay with what the Planning Director's determination is that this is not a development, and he's going to move on and do his thing. If you're saying not to waive, that means you'd like that to come before you for a more thorough examination whether or not to grant an after-the-fact SMA permit.

Chair Buchanan: Okay. We clear? Clear now? Yeah? Okay, good, good, good. So, Commissioners, anymore discussion on the motion to not waive? Commissioner Poepoe.

Mr. Poepoe: I actually satisfied with the information provided but I will support any other member who went require more information for their own personal -- to make a -- render a clear decision.

Chair Buchanan: Okay, that's a nice neutral position, okay, very good. So, Commissioners, if you guys have no more questions on the waive/not waive, I'm going to call for a vote. So all those in favor of not waiving this agenda item, please raise your right hand? Okay. One, two, three, four, five. Okay. Okay, all those members -- we have one, two, three, four, five ayes for not waive so -- but for the record, I wanted any no votes? Okay, we have Commissioner Sprinzel. Any abstentions? That would be your Chair. Okay. So you got that, Suzie? Okay, thank you very much. So motion carried for further review of this application and agenda item. Thank you very much.

**It has been moved by Commissioner Bridget Mowat, seconded by Commissioner William Moore, then**

**VOTED: to not waive review of item C.1.a.**

(Assenting: J. Bicoy; L. Buchanan-Abstain; L. Espaniola; W. Moore; B. Mowat;  
L. Poepoe)

(Dissenting: J. Sprinzel)

(Absent: J. Perez)

(Excused: J. Pele)

Chair Buchanan: Anyone need a break or we going just power on? Power on. Okay, we moving on to item, hang on, b, C, number b:

*Chair Buchanan read the following agenda item description into the record:*

- b. MR. MARK BONGOLAN proposing the construction of an approximately 2,940 sq. ft. two-story single-family dwelling, located at 8051 Kamehameha V Highway, Kalua'aha, Molokai,**

**TMK (2) 5-7-008:083; (SMX 2019/0192) (Valuation: \$150,00)  
(S.Lopez)**

**The Commission may act to waive or not waive its review.**

Chair Buchanan: Sybil?

Ms. Lopez: Thank you, Chair. Sybil Lopez, the project planner working on the SMA 2019/0192, which is the property is located in Kaluaaha, right past the Lady of Sorrows Church, actually right next to the Lady of Sorrows Church, two -- two houses down, and so you do have the application in front of you, like I said earlier, there's the checklist, the application, the zoning confirmation, the Chapter 343, the Chapter 205, the real property, the drawings plans, and the photos that are all included in the submittal, and I do have actually the applicant here today, the owner and applicant, which is Mr. Mark Bongolan, here today as well the consultant, Mr. Luigi Manera, if they wanna add anything or if you have any questions for the applicant or the consultant, they are here today to address the Commission.

Chair Buchanan: Okay, thank you, Sybil. Commissioners, any questions for the applicant or the staff report? We being asked to do the same thing to waive or not waive the review of this new single-family dwelling at Kaluaaha. Any questions? If not, I have a question maybe of the applicant or, yeah, his representative. Thank you, Mr. Manera.

Mr. Manera: Thank you. Chairman, thank you.

Chair Buchanan: I have a question. Is there an existing structure on the lot where the --

Mr. Manera: Yeah.

Chair Buchanan: It is?

Mr. Manera: Yeah. Yes.

Chair Buchanan: What's going to happen to that structure?

Mr. Manera: Well, it already collapse so we need to -- Mark, he planning to get somebody to remove the house, and since it's more than 50-year old, we waiting from the SHPD to give us the okay. It look like everything alright. I mean we also meet everything, everything okay to go. We just waiting for the paper. And the new house will be in the same location of the old house.

Chair Buchanan: Okay, okay.

Mr. Manera: Same.

Chair Buchanan: I was kinda wondering about that.

Mr. Manera: Yeah, remove one, and build a new one. Same place.

Chair Buchanan: Okay. And so for septic, the septic is leach field?

Mr. Manera: Yes.

Chair Buchanan: My concern for that is the proximity to the fishpond, yeah?

Mr. Manera: Yeah.

Chair Buchanan: Okay. So that's a great thing, and also I'm always happy when I see Molokai people being able to construct a home, yeah, so congratulations, Mark.

Mr. Manera: There's an old cesspool on the property --

Chair Buchanan: There is an old cesspool?

Mr. Manera: But we're gonna -- we're gonna remove everything --

Chair Buchanan: You're going to close that?

Mr. Manera: Fill --

Chair Buchanan: Okay.

Mr. Manera: And install a new septic in the back. Yes.

Chair Buchanan: And since there is an existing dwelling there, which you have to get permitted, not only from SHPD, but I guess from other stuffs, you know, paint that might be prior to 1975 --

Mr. Manera: Yes. Yes.

Chair Buchanan: And stuff like that, so that's a whole other process. I'm happy that you getting a leach field, and we not septic, and since it was a lot, it's going to be on the County water system?

Mr. Manera: Yes.

Chair Buchanan: Okay.

Mr. Manera: They have -- they have already existing water meter.

Chair Buchanan: Right.

Mr. Manera: Yes.

Chair Buchanan: Okay, that's the great thing about it. And it looks fairly flat to me so it's already been previously graded to accommodate the -- the old house that is there now?

Mr. Manera: Correct.

Chair Buchanan: Okay. And I see that the whole bottom floor is all open.

Mr. Manera: Yeah.

Chair Buchanan: It's a open floor, bottom floor with -- except for the --

Mr. Manera: Laundry.

Chair Buchanan: The laundry and -- and a restroom, yeah --

Mr. Manera: Yeah.

Chair Buchanan: A full bath?

Mr. Manera: Yeah, when they say the house is 2,000-something square feet, the actual house is actually 880 square-foot. Why it become 2,000-something because they count the bottom --

Chair Buchanan: The bottom.

Mr. Manera: And the top, and the deck.

Chair Buchanan: Right.

Mr. Manera: That's --

Chair Buchanan: That's why it looks the --

Mr. Manera: That's why it looks so big.

Chair Buchanan: The square-footage looks large, yeah.

Mr. Manera: But it's actually 870 square-foot, something like that.

Chair Buchanan: Yeah. And is it a correct assumption that -- that flow -- because what was the flood zoning in that area 'cause I know it's -- it's open to flooding at times?

Mr. Manera: Yeah, that's one of the reason why we came up --

Chair Buchanan: That's why the -- of the extra, okay, story.

Mr. Manera: And, yeah, we -- we have to come up by law because of the flood, two-and-a-half feet, so we decide to go higher and forget about it.

Chair Buchanan: Okay. Okay, that satisfy my questions. Thank you very much.

Mr. Manera: Thank you.

Chair Buchanan: Okay, Commissioners, if you guys don't have any questions for the applicant or the staff report, I'm going to open up to public testimony. Okay, seeing none, we're in public testimony on agenda item C, b, the waive or not waive on the Bongolan single-family dwelling. Thank you. Just state your name for the record. Mahalo.

Ms. Poepoe: Hi. My name is Mahina Poepoe. I'm testifying on behalf of myself, but I am a member of the Molokai Climate Change Adaptation Task Force, Pane Huli Au, a citizens group of volunteers. I just wanna encourage all of you to take the time to do your due diligence and research and really exhaust your resources when reviewing these applications and empower yourselves with as much information as you possibly can especially on -- in areas where development is being proposed that is going to be impacted by sea level rise, climate change very soon if it's not already being impacted. So the waive and not waive things has been frustration point of mine since I first started coming to meetings. I don't think that that should be an option. I think the Commission needs to take their power back and be the -- be the determining party instead of the Planning Director because according to the rules right now, a 7500 square-foot single-family house is not a development, and that's humongous, that's like I don't know if it's bigger than this, but it's huge. So I don't really -- I don't really pay much attention to what the Department defines as development. I think the Commission should define it for themselves. So there's so many resources out there. We have our Molokai plan that I haven't seen -- I would like to see like how on a minor permit, how they go through each

point in the community plan and say how it's in agreement with the plan or not; East End Policy Statement; there's sea level rise plans and maps out there; cultural resource plans; site visits that you could do; just -- I'm just encouraging you to seek more information in general for all of these applications that come across whether it's after-the-fact, before the fact, waive, not waive, major, minor permit, and based on the fact that you just didn't waive a deck, like I don't know how you could waive this. I think you have to review it. Thank you.

Chair Buchanan: Thank you, Mahina. Any questions for the testifier on this agenda item? And, by the way, I agree and, yeah, I'm not happy that, at some point in time, that expired our ability to see every project and make that decision and -- and waive that to the Planning Director. Anyone else in the public wishing to testify on this matter? Thank you.

Ms. Pritchard: Hi. My name is Cheryl Pritchard, and I also am a member of Pane Huli Au. I'm not here, per se, specifically for this permit, but permitting any kind of construction in the flood zone is something that's going to keep coming up, and I'm here to encourage you to start thinking about the fact that we are in a plan in emergency and I don't know if we will find our way out of utter chaos. I do know that the reef is protecting this island as well as feeding this island. Craig Downs, in studying reefs, realizes that agricultural runoff, sediment, and sewage outflow are compromising the health of reefs and reefs are what protects us. Right now, septic systems are compromised because of sea level rise. At some point, we need to stop permitting in the flood zone of sea rise. There are other ways to affectively remediate sewage. I know for a fact that it has been done on ships. In fact, it has been done a 40-foot boat. They just had an incinolet installed and it -- it was taking care of, in a 40-foot boat, to ash, so it's not saying you can't do it, I'm just trying to protect our reefs as you're going forward with permitting to even to our sewage system that is already at a hundred percent. When -- when are we going to be able to stop this train from running? We're not in utter chaos now, but if we don't stop and start thinking about what we're doing, we will be in utter chaos. Thank you.

Chair Buchanan: Thank you very much, Cheryl. Commissioners, any questions for the testifier? Okay, seeing not. I agree too. Next testifier?

Ms. Lindo: Hi. My name is Zhantell Lindo, and I'm testifying as a public citizen and one keiki o ka aina of Manae. I, too, would like to congratulate Mr. Bongolan and I am very supportive of local people coming home to live and build. Two of my concerns, I think, one is for him is whether not the applicant is aware that that strip of road is probably the most controversial and -- and looked at place right now because there is need to be able to move that road in the very immediate future, and so I don't know if he knows that but some of the -- the conversation between the State and the government entities has been to move the road up and talk to owners within that area about moving the roadway up that way, and so nothing has been set in stone but that makes a big difference and

somebody in his position, who's spending his money to have a house so close to the edge where we're looking at development or moving the road, I think he needs to -- the residence there need to be aware of what the future plans are in the very immediate future. The second is I would like to reiterate what Mahina said. This whole thing about waiving or not waiving, I believe that the Commission's most valuable part to this community is its opportunity to have the resource at their fingertips and the ability to speak more than three minutes on a topic to the powers that be. When you waive that ability, you give up this community's right to look at every single project and the impact that it has on, not just that person, but, and it's nothing against the applicant, but on the surrounding areas, and with climate change going on right now, one of my biggest concerns is we already gotta deal, as government agencies, on how do we extract all that stuff that's going to be falling into the ocean pretty soon, and so I think permitting things and -- and stuff next -- next to the ocean or near the shore or where it's going to be impacted in the next 10, 20, 30 years, that that warrants one huge conversation and for the applicants too, it's our -- it's the Department's and, to me, the government's responsibility who are handing out these permits and requiring people to get 'em, it's our responsibility to notify the applicant of how serious this issue is and -- and what we looking at on how to improve for the betterment of this community. I also would like to say that one of the things I saw missing from this waiver and the SMA checklist is where does our community plan rest in approvals for SMA permitting? We do -- our whole community has a process and this plan is supposed dictate and guide what goes on on our island yet there's very little conversation about how administration uses these or cites any of these policies in our community plan to support -- to support their recommendations, and so I would encourage that the Commission has this opportunity to now say, well, maybe you forgot this and how do we implement this so whether your support or don't support or waive or don't waive, it is your opportunity, as a Commission, to be able to utilize our community plans if the administration has not yet found a way to do so and I just -- I just am thankful for you guys and I'm encouraged by Mr. Bongolan the opportunity to be able to build. Thank you.

Chair Buchanan: Yep. I agree. The applicant wants to testify? I mean the representative?

Mr. Manera: Hi. Luigi Manera. I wanna clear something in regard of what the previous testifier say about the shoreline, next to the ocean. She don't know, but there's another lot in front of Bongolan. There's already hundred something feet, and his house is 300 feet back, not from the ocean, but from the edge of the road on the north. I no think -- if something happen for 300 feet, I think the many more homes there they're going to go in the ocean. So just -- just to make sure. He's not near, close the shoreline. Thanks.

Chair Buchanan: Thank you. And I also realize that there's another TMK behind of Mr. Bongolan with his contiguous with the large Dunham landownership. I also know that it's

-- that is a highly sensitive historical district. One of the most high historical district that we have on Molokai next to Kilohana, and so that's my reason for asking about the prior grading and grubbing and the siting of the home site, so that's why I asked that question. Commissioners, any -- wait. Wait. We in public testimony. Anyone else in the public wishing to testify on this agenda item, the Mark Bongolan single-family dwelling? If you do, please come up and state your name for the record. Aloha. Nice to see not on the mauna. You're home.

Mr. Ritte: Yes. Yeah, I don't know much about the --

Chair Buchanan: What is your name?

Mr. Ritte: Aloha. My name is Walter Ritte, from Hoolehua. I'm not really well versed about this project, but I just wanted to make some comments about when we're building next to fishponds. Fishponds, throughout the years, have been misused for many, many, many generations, been used for things that shouldn't be used for, but now that we've done our community planning, we're beginning to realize that these fishponds are going to be critical for our economic growth, for food security. These fishponds can produce enough protein, not only for us on Molokai, but to actually stock many of the reefs in Hawaii. So whenever there's a project that comes close that might have a negative impact on fishponds, we should treat it with the most -- utmost care including human waste. I don't know what kinds of things that we can do, but one of 'em that's being used by the National Park Service throughout the United States is composting toilets. They're becoming very, very good, and it's much better than us digging into the ground, it's even better than the latest technology that we're using, and I think Maui County is in a battle over human waste that is impacting the whole nation because of the injection wells, so my concern actually is impacts. I've been involved with fishponds for many years. I've seen fishponds where people who wanted to put their home actually filled in springs and actually killed the ability for the fishpond to -- to produce fish, so we need to go into the exact opposite direction, so I'm hoping you guys be really tough on people who are building next to fishponds. Mahalo.

Chair Buchanan: Thank you. Questions from Commission Members for the testifier? Thank you, and -- and I agree with that too. Good testimony today. I agree with everybody's testimony. That's why we formed that temporary investigative group is to try and start to chip away at trying to be more compliant and in line with our community plan. So anyone else in the public wishing to testify on this agenda item? Seeing none, we're going to close public testimony, and then get back to the Commission. Commissioners, you guys have any final questions for the staff report? Commissioner Leonora.

Ms. Espaniola: I have a question. So I noticed the tax class is agricultural so it's not a residential lot, yeah? It's not a residential?

Chair Buchanan: Go ahead, Sybil.

Ms. Espaniola: So do they have the --

Ms. Lopez: So thank you, Commissioner Espaniola, for the question. Are you looking at the Real Property Tax --

Ms. Espaniola: Yes, I am.

Ms. Lopez: 'Cause that's their tax classification.

Ms. Espaniola: Okay.

Ms. Lopez: So when they have to pay property tax, that they are taxed under that tax class, but if you asking about the zoning, that's why we include the zoning confirmation form right in the back, and so their zoning is actually rural, so their State district is rural, their community plan is rural, and their County zoning is rural 0.5 in the rural district. Their zoning is eight feet with the AE on the flood hazard, and that's the reason why the consultant explained the -- why they built it to that height.

Ms. Espaniola: Okay. Thank you.

Chair Buchanan: Yeah, good question, Commissioner. Commissioners, anymore questions? Commissioner Poepoe.

Mr. Poepoe: Has the -- the lot undergone flood assessment study as - what is it called? I kinda thinking that if the thing just going be footings on soil, all that soil is wetland, so I not sure how deep of one footing you going have to dig into the ground to make sure that the house not going continue for sink. If the consultant can answer that.

Ms. Lopez: Okay. I can answer it before --

Mr. Poepoe: Okay. Yeah.

Ms. Lopez: The consultant comes. They are required to do a flood development hazard permit, so before we can even issue the approval of the SMA, they would have to have issued the flood development permit, and so all of that engineering and certification goes through that permit regards to flooding, but the consultant can answer.

Mr. Poepoe: I thinking that that going have to be done to determine the depth of the footing.

Mr. Manera: Hi. Luigi Manera. Well, they're two different thing. Flood zone, it determine the height where the floor of the house has to be. In this case, we're going to be ten feet. No matter what, we have to do the flood study. As far as determining the footing, it's already done to a point in the ...(inaudible)... long time ago, the old way was to drive piling, we don't do that anymore. They -- the new styling is they better make footing wider and not deep, that make the house much more stable, so the footing of that -- of those style house is not going to be more than two feet or two-and-a-half feet, but the width will be the three or four feet wide. That's to answer the engineering part. But we don't go down anymore. That's long time gone unless you have water under the house; that's a different story. Not in this case.

Mr. Poepoe: So I understand that's why the house in the front has a concrete pad under it.

Ms. Lopez: So in A-5 and A-6 in the plans, that show the footing plan.

Ms. Mowat: You know the road, yeah, and I notice that number 13 it says there's going - - is there ground alteration, excavation, and I'm thinking about all that, are you needing heavy equipment to do in there, and will it, you know, that's going to affect the traffic and, right now, it's -- it's like it -- like the testifier said earlier, it was a very controversial part of the -- that road, so how will all your equipment go in and out?

Mr. Manera: Hi. Luigi Manera. The biggest equipment he needs for this house is just a backhoe. I think there's at least ten backhoe everyday passing by the road. I don't see any problem with this one. I mean there's nothing to excavate except for -- for the septic; other than that, it's just a minor excavation. Thank you.

Chair Buchanan: Okay, great questions, Commissioners. Do we wanna make a motion and then we can also have discussion after the motion is made? So I'm going to open the floor up for Commissioners to entertain a motion on the waive and not waive and further discussion. Do I have a motion?

Ms. Espaniola: So I make a motion to waive the applicant.

Chair Buchanan: It's been moved to waive, Commissioner Leonora, and seconded by Commissioner Sprinzel. So now we are open to discussion. Commissioners, discussion? And maybe Commissioner Leonora, if you wanna expound on the waive -- to waive the application?

Ms. Espaniola: Do I find the assessment application complete. I'm satisfied with the information provided for the application, the applicant. That'll be my findings.

Ms. Desjardins: Because this project's a little bit different than the other one, I just wanted to clarify what the law is on this aspect because, again, we're not withstanding testimony about, you know, wishing rules were changed in the future, you're dealing with the rules you have, which allows waiver or not waiver, review or not. I also -- the special management area rules are -- are governed by the Hawaii Revised Statutes, not by County law, so we have to follow that. And under Hawaii Revised Statutes 205A-22, development does not include the following, and I think I'm not going to read all of them 'cause there's a bunch, but the one that seems to be most relevant here is the construction or reconstruction of a single-family residence that is less than 7,500 square feet of floor area and is not part of a larger development. I don't mean to turn my back to you, sorry. So that would not be considered a development. So I think although generally development does include construction, reconstruction, demolition, or alteration of the size of any structure, the State law excludes single-family residences that are less than 7500 square feet, so that's not something that's dictated by Maui County, that's dictated by the State, and so I just wanted to clarify that. And, again, though grading, removing, dredging, mining, or extracting of any materials is considered a development. You're just going to rely on the testimony that you've heard today about that.

Chair Buchanan: Thank you for that information. That's why the six o'clock news you see the mac-mansions on Oahu because the State says that it's permissible, so you see all those mini-hotels coming up in residential areas that are zero lot and stuff, so they gotta address that in the future 'cause that -- that's density, that's a whole other subject. But any discussion on the waive/not waive? No? Okay. Oh, okay, go ahead, Commissioner.

Ms. Bicoy: Julie Bicoy. I'm just concerned about the flood zone area. I mean I live in that area and I cross through it just about every day, and that is probably my biggest concern is -- is the flood area, and that's just my comment. I just wanted to bring that up so that everyone knows, and the other fact that, you know, there is a lot of, like Mr. Ritte said, there is a lot of freshwater springs out there that will be affected, so that's another one of my concerns is -- is the flood zone and the freshwater springs that are out there. Thank you.

Chair Buchanan: Very good points. And that whole flood thing, I don't know if we had training on it, but if we didn't have already, we should have because it really is a big issue the standards by which flood insurance rates go. Anymore discussion? Commissioner Poepoe.

Mr. Poepoe: Yeah, I gotta agree with the previous Commissioner when she said that the flooding does -- if you not looking at -- 'cause I was -- I looking at Commissioner Mowat's check, this is what they look at in the -- in the office, they not looking at the actual ground

that they checking the boxes for, so all this is when the high tides come up, the thing push up the freshwater lens, the water table is at the soil, so any additional rainwater going -- the surface water going puddle and 3.2 for the next 50 years going become -- that going include the -- the parcel we talking about. I just frustrated that we not going be allowed to review this.

Chair Buchanan: Okay, hang on. Corp Counsel.

Ms. Desjardins: Sorry. So I -- I think the Planning Department, at this point, should clarify for the Commission Members even if an SMA permit is granted in this case, there are still hurdles that have to be gone through regarding flooding, that's not part of whether this is a development or not, which is all we're here to talk about, but that doesn't mean you're giving them the green light. If there is in fact issues with flooding and they can't meet those issues, my understanding is is that a building permit will not be issued. Is that correct, Planning Department? Can you comment on that?

Mr. Dack: I believe, in this case, and Mr. Manera can probably correct me if I'm wrong, but I believe in this case a flood development permit is necessary because it is in the zone AE, so before the -- should you choose to waive your review, the Planning Department will hold up on issuing the exemption until the flood development permit, if one is necessary, has actually been issued, so we'll be sure those flooding issues have - - have been addressed at least as are -- as are they're codified in the -- the Title 19 relative to flood hazards for the -- in the zoning code, and that includes implementation of the -- the FEMA flood zones and FEMA flood mapping, so, yeah again, flood development permit would -- would hold up the issuance of the SMA but even -- even if you were to waive it.

Chair Buchanan: Okay, thank you very much. Anymore questions on the waive/not waive? Bridget. Commissioner Bridget.

Ms. Mowat: I -- I just wanted to try understand but -- but I think this -- your corporate counsel and what they -- what you explained is that we are here just to talk about whether they're a development or not a development, and the other things -- then the testifiers, they didn't know that either than because a lot of them did bring up points that is concerning, so for -- for myself, I -- I'm excited for Mr. Bongolan and happy for him and I don't want him to -- to misunderstand where I'm coming from as far as a concern on the issues of flooding, of further desecration to the fishponds, and at a point is the -- the sea level rise doesn't just come from the sea, it also comes from underground and up, so it's not just going to come one way, it's going up, so these are real big concerns and I just wanted to make that and put that into the record where I coming from. Thank you.

Chair Buchanan: Okay, thank you. Anyone else have discussion? So -- no. Thank you, Commissioners, all really good discussion. All of that I agree with, all of the concerns, mostly agree with I think it's super awesome that Mark has a -- Mr. Bongolan has a chance to build a home, but Commissioner Poepoe's testimony earlier really struck a nerve with me, which because we never have meetings so long, and it hasn't been at the forefront, is when you waive and not waive, when you waive, you give up your ability to mitigate or to condition a project, when you not waive, when you review the project, you have that ability to offer comments, mitigation, concerns, and for the applicant to meet those, and so in the past, the standard that this Commissioner always followed was in the SMA, if you're going to be disturbing the ground or digging more than surface, more than two, two-and-a-half feet that especially in areas of high concentration of known historical sites, that the State laws for protection of iwi kupuna are -- are really in place and that this Commission has to take seriously the position of protecting iwi kupuna in developments, and so is this a development or not a development, well, the State says single-family is not a development, so I've always disagreed with that premise, that blanket coverage of any home especially when a home can be one mini hotel, and sometimes your footings within a flood or whatever would exceed that type of digging, so I've always asked if we could put a condition on a waive/not waive, and the answer from the Department is an affirmative no. You either waive or you not waive your review. So if I was to say that I agree that we not waive the review, my biggest concern would be, hey, to the project developer that when you are excavating or you digging that you have someone there to follow some type of archaeological monitoring plan, which is pretty standard for developments, and that's just the -- the pono thing I think to do because if the developer is not familiar with iwi kupuna and -- and what should be done for inadvertent finds, then you should have somebody there that does know, and it should be included in your plans for your development or your project, so that is my two cents and my concerns on that. And so having said that, does any other Commissioner have any other concerns? If not -- oh, Commissioner Poepoe, 'cause you started.

Mr. Poepoe: I'll just include additional information with regards to iwi kupuna as I am the -- the island rep on the Burial Council for West Molokai, just to disclose that. That place does have significance for ancient burials. With regards to the location, the property is adjacent to Hakawai, which is a traditional imu area for kanaka, so what happened is the imu is located on kinda lower down, the burials would be taken up the hill or in the surrounding area, and we cannot determine anymore where it is because it's kind of like the alii would have pohaku stacked on top, but the commoners, the makaainana wouldn't, they'll just be buried in place, the iwi would be buried in place. Mahina's grandma and grandpa is buried about 150 feet away from the parcel in the -- the Lady of Sorrows Church yard, so it is considered both modern and ancient burial grounds within that area. What else can I share? So that's just to include more information in regards to iwi kupuna.

Chair Buchanan: Thank you, Commissioner. I so happy you on the burial commission. Awesome. I like expertise. So with that, I also going assume what the Commissioner testified earlier about going along with however this Commission feels, we do have a motion on the floor, if there's no further testimony, the Planning Department wants to add something before we call for a vote?

Ms. Lopez: Okay, so just to let you know that the agencies had time to comment and we did send it out to State Historic Preservations which they did not comment knowing that there are already prior structure already built with a single-family and knowing that the -- the applicant or the owner that just bought this property will be utilizing the same footprint, and so knowing that they'll be utilizing the same footprint that was -- that already had an existing dwelling structure that no other -- that they would not go beyond but what was already existed that the Department felt that we could move forward with this application knowing that and that the State Historic Preservations we did allow them to comment, which we had no response, and figured that it won't be held because of no properties -- no historic properties will be affected based upon what historically with that property which was associated with, and I think -- yeah, you can add.

Mr. Dack: And just to add one -- one other comment. I wanted to clarify that the applicant indicated there's existing -- I guess there's an -- some remains of the old structure, I don't know whether to refer to it as debris or whatever it may be, but since we're now aware of that, I just wanted to let you know that should we actually -- should you waive this review and the Department issue the exemption, we would want to add to the scope to allow for the removal of that debris. It would just be a slight modification of the scope and make you aware of that.

Ms. Lopez: Sorry, and -- and knowing that, sorry, to include that with during the flood -- the flood development permit, which zoning takes care of, they do have implications regarding the sea level rise, and so they are including it into their review, which I don't review, somebody else reviews, but just to kinda give you that comfort zone and letting you guys know that Chapter 205, which is located in this submittal, Chapter 205, right here, A-2, with the Hawaii Revised Statutes, this is the Coastal Zone Management Plan and Program, and within this, I would say one, two, three, four, five, six, seven, eight, nine, ten, eleven, twelve notations which they address, community plans, the State plans, and the general county plans, that each application would have to go against this -- the coding, so you do have Chapter 205A-2 and Chapter 343 that they would have to review under, which is a part of the SMA application knowing and reiterating what Corp Counsel said, which SMA constitute a development or not development. Thank you.

Ms. Desjardins: So I -- I just need a little clarification to make sure we're on the same page legally. In looking at 12-302-13.1, it says that the director may determine that a proposed action within the special management area is not a development and is

therefore exempt from the requirements of this chapter. Prior to the director's determination becoming final, the director shall notify the commission, and then we get into whether that you're going to waive but then this Commission has the right to say not waive, so what it says that the director's determination is not final, I guess, Mr. Dack, my question is does that mean there are other conditions that could be put on this or are -- that you're thinking about putting on this 'cause what I think, as a matter law, I don't see in this assessment is any comments from SHPD, so I'm not -- I'm a little bit unclear, legally, where those are coming in?

Mr. Dack: I don't anticipate adding any -- well, we -- there can be no conditions added to 'cause there's no conditions as a -- possible to be added to an exemption, as your Chair so clearly -- as the Chair so clearly indicated. Relative to the SHPD review, we do not -- I haven't been here when the Commission has requested certain pieces of information to be provided to them. Agency comments, I don't believe has been one that the Commission has requested to see, but Sybil has agency comments in her file, and so we were, on the behalf of the director or for the director, we comfortable making the recommendation for waiver and also include in the consideration of possible effect on historic properties because we had communication with SHPD, so that just came out as a point of discussion. Since the Commission was expressing concern about that matter, that's why we brought up that that is something that we had explicitly addressed, but, again, we haven't been directed to provide, you know, agency comments so the Commission, that's not something we've been giving the Commission. Again, we responded to it in response to concerns being expressed by the Commission. I hope that's adequate.

Ms. Desjardins: Okay, just one more clarification then. When -- as far as the law goes, when it says, "Prior to the director's determination becoming final," this process goes through, can you explain to the Commission, from the Planning Department's point of view, what else is going to occur, for example, if there's a waiver today, which is what the motion is right now, what is the next step inside the Planning Department that you will follow, and we know if they don't waive, then it's going to come here and they'll have a chance to review it, but what will be the process now if they do in fact vote to waive? Thank you.

Mr. Dack: I am aware, as I indicated previously, that there, again, I haven't head anything to make me believe there's not a flood development permit required, presuming there is a flood development permit required, the department, Planning Department would wait until that is been approved. Then, unless Sybil is aware of anything else that she has pending, I believe the Department would issue the exemption after a flood development permit had been approved.

Chair Buchanan: Director Dack, did I hear you say previous to this that you wanted to add the demolition or the -- of the existing into this waive today?

Mr. Dack: That should actually be, yeah, in order to be able to -- to do pretty much anything on a piece of property, any kind of action including debris removal, that needs SMA approval, and so the -- it probably would have been best to have been part of the scope earlier, but it came to light today. It's a good -- considered a fairly modest thing but since it came to light today, it's on the record. I'm suggesting that we all be clear that -- that when we would -- when the Department would issue an exemption, we would want to be including that as a scope and, therefore, suggest that you issue -- consider your waive or not waive in light of -- of that being part of the overall project.

Chair Buchanan: Okay, thank you, director. So with me being such a stickler about process, I would -- I would like this Commission to understand that this waive or not waive would also include the demolition of existing structures on the property where the future project is to go and since it was introduced at this point in time, during our review today on the agenda, I would like either a friendly amendment or if you need more discussion, to be added to the motion, and so it would be, the motion would be to waive the SMA review as well as including the demolition of the existing structure. So we -- I heard testimony prior and it is my understanding, just from being on the Commission, that demolition was a separate act with its own review, and we heard earlier that State Historic Preservation Division, being that the structure was in excess of 50 years, would have that review, which they did not return comments on, my understanding is they did not return comments either on the new structure or on the demolition. The demolition is not anywhere in writing on this action today so that does not afford the public comment, a time to comment on a separate action other than the construction of a single-family dwelling. So either how you guys feel about it, we have a person who used to do housing in here and I learned something from that person that with older demolitions, prior to the 1970s and early '70s, that the type of paint that was used on home construction during those times contained lead-based paint, which is a carcinogen and a hazard, and has to be treated in its own way as hazardous waste, so I don't know if that exist, but I would have thought that as part of a demolition permit, demolition and removal permit, that that determination would be made by the Department at some point in time, so with the Department adding that demolition would be part of this waive/not waive, I wanna make it very clear on the record that that is what would be introduced at this time on your decision-making process. You guys have any questions?

Ms. Espaniola: So do I modify or withdraw my motion to waive based on the SMA approval or suggestion that what I based on, the completeness of the application for SMA?

Ms. Desjardins: So it's up to you which way -- what you wanna do. You have to determine whether you want to withdraw your motion to -- to waive or you can -- I don't, you know, honestly, I don't think it's a friendly amendment to include the language that the Chair, respectfully, to the Chair, I don't it's a friendly amendment. I think, at this point, you either stick with your -- your satisfied that you still wanna move forward on a motion to waive knowing, you know, the information --

Ms. Espaniola: Yes.

Ms. Desjardins: That's been provided to you.

Ms. Espaniola: Because this new information.

Ms. Desjardins: Or you withdraw it and then another -- perhaps another motion will be brought forward to not waive by somebody else or yourself, but that's up to you which way you want to do it.

Ms. Espaniola: Is it possible to waive with conditions?

Ms. Desjardins: No.

Ms. Espaniola: Okay. Okay, I'll stick -- I'll stick by mine then. I'll stick -- yeah. I'll stick to waive.

Chair Buchanan: Okay, so I have a question for Corporation Counsel. So the motion on the floor is to waive review, and since all the discussion is on the record, is it the understanding that we moving forward, if you vote in the affirmative to waive the review, that it would also include the demolition of the current structure that is there. Is that correct?

Ms. Desjardins: It's going to waive your review of anything that occurs at this point forward with regard to a special management area permit, so if there is something that occurs in the meantime and it -- it's up to the Planning Department I suppose to say, well, this is information we weren't aware of, we think this needs an SMA permit, maybe they'll redo the SMA permit, I'm not sure. I don't know at this point what the Planning Department's intending on doing, but it sounds like this is maybe something that wasn't - - they weren't aware of at the time, but if you waive today, you're waiving this permit, and then they're going to make a determination of what they need to do with regard to this permit.

Mr. Poepoe: Is that a violation of public notice to include something right away with this?

Ms. Desjardins: It's not a violation of public notice, but it -- it's going to I would think affect your decision whether -- when you're waiving, you're saying we're satisfied this isn't a development and is allowed an exemption, so in your discussion, you have to determine whether the information that's been given to you today is enough to satisfy you that a waiver is appropriate. If you are not sure that a waiver is appropriate, really what you would be looking at is this a development. If it comes before you, you're going to determine whether this is a development as defined by law. So if the information you've been given today doesn't satisfy you one way or the other on whether to waive or not waive, that's up to you individually. I can't -- I'm not going to give you advice about what to do. That's your job. I just tell you what the law is.

Chair Buchanan: She tell us what the law is and your Chair is here to help guide the process. So with that, the Chair's concern is as follows: In order to be really clean about stuff and not convoluted or misguided even though this is on Akaku and it's -- it's going to be out for the public, I really wish that -- I don't like it when multiple actions are included in one especially on a waive/not waive because it's multiple actions that all has its own reactions, and albeit the end product will go might be the same, it still eludes of the process by which you come to that conclusion, and so my recommendation moving forward would -- would -- to be to either defer pending more information or inclusion of other actions within the ask of this Commission to waive and not waive, or if this Commission finds that they do want to waive, that they do it with eyes wide open that if it's fully inclusive of the demolition of the current structure, demolition and removal of current structure, and that's my -- end of my discussion. Anyone else have anymore discussion?

Ms. Espaniola: Can I ask one more question? I mean how big is this structure that the - - that they gotta demolish? Can I -- can I ask them a question? No? The --

Chair Buchanan: The applicant?

Ms. Espaniola: Yes.

Chair Buchanan: Does the applicant know the square footage of --

Ms. Espaniola: So how much demolition is there needed?

Mr. Manera: You asking --

Ms. Espaniola: Is it a big structure that needs to be demolished?

Mr. Manera: No, it's halfway demolished already, and the square foot of the existing property is about 760 square-foot. It's almost the same size of --

Ms. Espaniola: The house.

Mr. Manera: The actual home except for the deck.

Ms. Espaniola: Okay.

Mr. Moore: I have a question. There's pictures showing dead tree limbs and rubbish, you're going to remove that?

Mr. Manera: Sorry. Can you repeat that? I'm sorry.

Mr. Moore: There's pictures showing --

Mr. Manera: Yeah.

Mr. Moore: Looks like coconuts on the ground and -- and a lot of dead tree limbs and rubbish, you're going to remove that?

Mr. Manera: I'm pretty sure. I mean, actually, the owner is over here. You can probably -- he can answer --

Mr. Moore: Are you going to cut down -- are you going to cut down any trees?

Mr. Bongolan: Yes.

Mr. Moore: Okay.

Mr. Manera: You're going to cut down any trees?

Mr. Moore: See -- see that's new information.

Mr. Manera: Yes.

Mr. Moore: Thank you.

Chair Buchanan: Thank you, Luigi. Okay, Commissioners --

Ms. Espaniola: Thank you, Luigi.

Chair Buchanan: You have more discussion? Okay, so, Commissioners, we do have a motion on the floor, and now that we know that it is fully inclusive of the demolition of an

existing structure, which may or may not -- I think it's pre-1970, so if you have anymore discussion on that, and if the motion is not being withdrawn, then we're going to -- I'm going to call for a vote on the motion to waive. So seeing no amendments to the motion or withdrawal, all those in favor of waiving this review, raise your right hand? Waiving the review? Okay. Motion fails. Oh, go ahead. Commissioner Sprinzel.

Mr. Sprinzel: It's a bit puzzling all this waive and not waive because when our subcommittee, on which Steve Chaikin and I and one of the legal people wrote all this stuff, our intention was that when people just added a tiny little porch or a small thing, it shouldn't necessarily come to us. It never ever was intended that a new house would be built, a complete new house. So I was a little confused originally, but to hear that has all this demolition and -- no. I wouldn't support that. But that was what we intended that small items, which there are lots of, I mean people are putting -- repainting a house or that's what we didn't want. Okay?

Chair Buchanan: I agree. I think we the oldest that been here forever, the relics, and that was always our attention and what prompted it was the type of interior remodeling and stuff by Wavecrest and condominiums and that -- that type of small scale same footprint type of exemptions that was clearly to be exempted and it -- and it turned into this whole giving the authority over to the Planning Director, which -- which I thought was never a great idea, but so our motion has failed --

Ms. Desjardins: Sorry, our minutes handler just reminded me that you need to put the opposed votes on the record.

Chair Buchanan: Oh, okay. Thank you. Yeah, I thought briefly about it but, okay, so all those in favor, sorry, we're going to go back because we had one vote in favor to waive, all those in favor of not waiving the review -- oh, all those opposed of the motion to waive, please raise your right hand? Six, and one abstention again. And so is that clear, Suzie? Five, and then me abstaining.

**It has been moved by Commissioner Leonora Espaniola, seconded by Commissioner John Sprinzel, then**

**VOTED: to waive review of item C.1.b.**

(Assenting: L. Buchanan-Abstain; L. Espaniola)  
(Dissenting: J. Bicoy; W. Moore; B. Mowat; L. Poepoe; J. Sprinzel)  
(Absent: J. Perez)  
(Excused: J. Pele)

**MOTION FAILED**

Chair Buchanan: And my abstaining has to do with giving direction, now that the motion has failed, and it's clear that we probably not, at this time, I would hope that we would either ask for a deferral so the applicant has time and either we can, again, see that we going waive or not -- or if we want to entertain a motion, another motion, our options moving forward is for them to defer that we be very clear in what we want to see the next time to make us comfortable that we're okay with waiving further review or to not waive and they come back with a full SMA review. Is it going to -- it's a minor, yeah, SMA? No. Oh, okay. So I don't know if -- does anyone on this Commission wanna make a motion, a different motion?

Mr. Poepoe: I feel like we kinda stuck with not being able to fully justify a non-waiver, so I'll go ahead and ask for a deferral, a motion to defer for additional information.

Chair Buchanan: Okay, is there a second for deferral?

Ms. Bicoy: I second.

Chair Buchanan: Okay.

Ms. Bicoy: Second the deferral.

Chair Buchanan: It's been moved and seconded, now for discussion. Like I just said a little while ago, we going be stuck again 'cause it's -- this project is going to come back as a waive/not waive, so we need to give direction to the Planning Department as to what information we would like to see that would help us to waive or not waive the next time this project comes back. So if it is to -- that we don't want to include the demolition or -- and -- and state that, or we need more information on the construction or flooding or the -- the committee report, the Planning Department's report, I think we should give them some direction if we going defer, and if we feel we cannot do that, then maybe deferral is not the right motion. Any thoughts, Commissioners?

Ms. Bicoy: I'd like to continue with a more complete -- see if we can get a feedback from the flood zones, and if we are including the demolition, to include that in a better understanding so that we can review it.

Chair Buchanan: Anymore comments? And then, after you two, then Corp Counsel has a comment.

Ms. Mowat: I don't know if Julie covered this part, but I wanna -- I wanna have the experts or the other agencies comments. I'd like to see their comments.

Chair Buchanan: Commissioner Bill.

Mr. Moore: Since this turned into a package deal for -- for the whole property, when we started out, it was just about building the structure, but now it's turned into everything that affects the flood zone, so if we hear this again, then I would like to know exactly what is going to be done to everything that affects the flood zone because this property is right on the ocean, and one of the things that's been affecting the reefs is the destruction of vegetation by feral animals in the mountains, and so every time you take up some vegetation, and it rains, that's more mud washing down, and that's what affects the flood zone. Now I don't care if we cut down trees or don't cut down trees, but I think we should be told how it's going to affect the area that's going to be constructed or deconstructed. But tearing down the building, it hasn't been assessed of any asbestos in that building, which could have been in floor tiles, there's a lot of hazardous material in old buildings. There's a lot of contamination ...(inaudible)... by rats. So there's a lot of things involved with tearing down a building. I used to work for a demolition company, and so I know a little bit about what will be encountered. And if you're going to tear down the building, are you're going to use the same slab or you going to take up that slab, or the footings, or whatever it was? So that's why I would defer to get more pertinent and complete information on exactly what's going to be done.

Chair Buchanan: Corporation Counsel.

Ms. Desjardins: So on page 8 of 10, of the SMA application, assessment application, there is A through L, provide a description of any anticipated impacts as follows, and these really follow the SMA Hawaii Revised Statute analysis of whether or not there are impacts, so perhaps what I'm hearing in terms of your deferral, one of the things that you might consider as a matter of law is to ask them to provide more solid information here for you to consider in whether to waive or not to waive because what's in here right now are, basically, sort of conclusory statements about it's not going to have an impact, it's not going to do that, but if there are concerns about that that you would like to see, then that would be something that you could pinpoint in this application that you'd ask to be sort of embellished or added to in order to assist. But again, if you defer, the question on the table is this a development or not, so the other thing that I would suggest, as a matter of law, is that the Planning Department be asked, under 205A-22, definition of development, whether or not subsection 5, a development is defined as something that involves construction, reconstruction, demolition, or alteration of the size of any structure, whether the Planning Department believes that that applies because then if you look at what is not a development, subsection 7, says a development is not demolition or removal of structures except if it's located on any historic site as designated in the National or State Registers, which I haven't seen any evidence that this is, but it's a little bit unclear to me which one they're depending on there, so that might be another good place to get pinpointed information in moving forward.

Chair Buchanan: Well, that was a konani move. Stalemate. Planning Department going come back and determine, you know what? It is a development. Here's the SMA permit. We coming back, oh, it's defer but based on all this other information that we like review, and sometimes maybe we was thinking maybe we should have just done one review, so you guys heard my position, so what -- what you -- anymore discussion? Commissioner Poepoe.

Mr. Poepoe: On the SMA Assessment Application Checklist, number 12 is inaccurate.

Chair Buchanan: So noted. If you guys have your SMA Assessment Application Checklist, page 4 of 10, number 12, Commissioner Poepoe is pointing out that he believes the no answer is an incorrect answer because there are all of that. That might have just been one oversight on the applicant's part. I'm sure. Maybe. But, yeah, that's a good point. You are correct. So having heard this Commission's dilemma, does the Planning Department want to comment? No? Okay. Alright, Commissioners, the ball is in your court. Did we have a -- there is a motion to defer, and it's been seconded, and then there's been discussion. So I'm going to call for the vote if there's no discussion. All those in -- one discussion.

Mr. Poepoe: Hold the vote.

Chair Buchanan: Huh?

Mr. Poepoe: I get one -- one more question.

Chair Buchanan: Okay.

Mr. Poepoe: So this going be included in the correction upon successful deferral, the correction of number 12?

Ms. Desjardins: Sorry, Commissioner Poepoe, let me -- let me clarify. I'm sorry. A motion to defer was made, you've had a discussion now about things that you would like to see, so let's perhaps summarize and wrap up because that's part of your motion, so you all should be clear what you're actually voting on. Motion to defer, and then including in that a reexamination of number 12 is what I heard, and also a question about what parts of 205A-22 apply and don't apply, plus a deeper analysis of the factors contained on page 8 of 10, that would be part of your deferral, from what I understand the conversation is. If you guys wanna add more to that motion, that's up to you or not.

Mr. Poepoe: Okay. So I wanted to make clear that I pretty sure I made a statement rather than a question, so I guess the statement kinda implied that it be corrected. Is that true?

Ms. Desjardins: Or that it be looked at more closely.

Mr. Poepoe: Yeah.

Ms. Desjardins: More closely. Yeah --

Mr. Poepoe: I posing it as a statement rather than a question.

Ms. Desjardins: I think that would be -- that -- yeah, yeah, yeah. Exactly.

Mr. Poepoe: Yeah.

Ms. Desjardins: Yeah.

Chair Buchanan: Okay, remember, every time we do one decision, we need to validate the reasons why we make those decisions 'cause every decision that this board hears or every agenda item is a contested case, potential contested case hearing. So with that, and all what we just went over that will be included as direction and comments to the Department on the deferral, we're going to call for the motion. All those in favor of deferring this matter, raise your right hand? Okay, all those in favor of -- or all those opposed? I'm opposed. All those abstaining?

Ms. Desjardins: So an abstention then would count as a in favor of deferral.

Chair Buchanan: Okay. So motion carried to defer.

Ms. Lopez: With those --

Chair Buchanan: Yeah. Are you clear, Suzie, on what the motion -- which Commissioners voted? Okay. Alright. Thank you very much.

**It has been moved by Commissioner Laakea Poepoe, seconded by Commissioner Julie-Ann Bicoy, then**

**VOTED: to defer item C.1.b. for additional information.**

(Assenting: J. Bicoy; L. Espaniola-Abstain; W. Moore; B. Mowat; L. Poepoe;  
J. Sprinzel)

(Dissenting: L. Buchanan)

(Absent: J. Perez)

(Excused: J. Pele)

Ms. Lopez: Chair, I just have a -- I wanna ask that the Commission, can you guys do the same thing you guys did to the first one 'cause it was unclear as to the non-waiver and if you guys would wanna include that as well? If not, the Planning Department will move forward with their own review. Where you guys requested on what you guys want the Department to look at, like what you guys just did with the Bongolan's; if not, we would just continue with our own review with the Simms 'cause you guys requested to further review and not waive the review of the Ian Simms, so we will conduct our review -- the Department will conduct the review the same.

Ms. Desjardins: So without waiving, then what will happen is that you will --

Ms. Lopez: Correct. We'll come out --

Ms. Desjardins: Do your -- your work --

Ms. Lopez: With the report.

Ms. Desjardins: And you will present an SMA application.

Ms. Lopez: With what was -- with the information that was received, we will conduct the report as if it was a full fledged report but I figure if, you know, you guys had that opportunity to -- to let the Department know what -- what clearly you guys would wanna look into 'cause I know one of the reason was that it was incomplete and so --

Ms. Desjardins: So the rules only allows for waiver or not waive.

Ms. Lopez: Right.

Ms. Desjardins: Right, so there's no waive or not waive with these concerns.

Ms. Lopez: Okay. I got it.

Ms. Desjardins: Yeah.

Ms. Lopez: Just -- just kinda clarifying.

Ms. Desjardins: That's -- that's --

Ms. Lopez: Okay.

Ms. Desjardins: But the deferral's a little bit different.

Ms. Lopez: Sure. Thank you for the clarification, Corp Counsel.

Chair Buchanan: Yes, Commissioner Sprinzel?

Mr. Sprinzel: If you look at the -- our b, it just says proposing the construction of, etcetera, it doesn't say anything about demolition, it doesn't say anything else, so that's what we were really looking at originally; all this other stuff, we didn't know about. And if I just may comment, the after-the-fact things, which we also discussed in that subcommittee, we were widely against all these people filing afterwards, having done something and then just paying a small fine, and as you know, you've been on plenty of committees, commissions, where we were really upset with the person who came before us, so that's another thing. We really don't like after-the-fact applications. And the fines should be much higher.

Chair Buchanan: Yeah. Thank you, Commissioner Sprinzel. I agree. So -- so, Planner Sybil, thank you. I know what you was asking, and I know there's people in the public wanting to testify and I going see that we went open part of that, so we just -- the first, we did not waive review; the second project, we deferred. So the Planning Department, seeing our deferral and our questions, was asking because it gives her direction on what exactly it was of the first project that we wanted more information on because we did not waive it, and so it's going to come back, like Corp Counsel said, it's going to come back 'cause it has -- was not waived, it was not deferred, it was not waived, so it has to come back. So I guess, in that sense, yeah, we're done with that, but if you guys wanted to expound and give them little bit more direction than other that was offered on the record.

Ms. Desjardins: I wouldn't do that.

Chair Buchanan: You wouldn't do that 'cause we already closed. Okay. We going get in trouble with that. Okay. Okay, hang on a second. We are at 1:00, which we're doing really well on time, and before we go into the Director's Report, I going take one five-minute break, okay? I sorry. Thank you very much.

*(A recess was called at approximately 1:00 p.m., and the meeting was reconvened at approximately 1:20 p.m.)*

Chair Buchanan: I call this meeting back to order. Thank you, Suzie. She giving me the eye. Nah.

Ms. Desjardins: We got a 3:15 flight.

Chair Buchanan: Yeah, I understand your guys' flight is sooner than later, so thank you for that break. Gave us time to refocus what we supposed to be doing. So we're going -

- we're on item D, Director's Report, and, under D, items 1, 2, and 3. So if the -- Sybil or director Dack wants to --

#### **D. DIRECTOR'S REPORT**

- 1. Pending Molokai Applications Report generated by the Planning Department with the August 14, 2019 Agenda Packet (Appendix-A)**
- 2. Closed Molokai Applications Report generated by the Planning Department with the August 14, 2019 Agenda Packet (Appendix-B)**

Ms. Lopez: Thank you. Thank you, Chair. So Director's Report, D.1., pending Molokai applications report generated by the Planning Department with the August 14 agenda packet, which is the Appendix-A, and you have Appendix-B. Where was Appendix-A? And Appendix-A. So if you look through and you have any questions, I can answer 'em. So Appendix-A includes the pending and, D.2., Appendix-B includes the closed applications.

Chair Buchanan: Sybil, the writing was kinda small and it printed out the -- the side that is not usually being so just let me ask you off the top of -- there's a development occurring at the Kaunakakai Pier, and I put one call into the harbor master to find out what it was but he never get back to me yet, and then there's a proposed action, I notice that there's scoping going out but I don't think I see it on here for an AT&T telecommunications new structure at Kaunakakai Pier, and then maybe I wasn't on the Planning Commission when there was a review of what the new structure that is being built next to the -- it's inside the Maersk next to the new bathrooms that nobody can use and you gotta go use the porta-potties instead of the brand new facility that's now two years or five years -- three years old. Did anybody come to you about that?

Ms. Lopez: So it did come in with a request for comments. I don't know if you notice on page 2 of 5, it's a flood development permit that SOH DOT-Harbors Division, permit name is a FDP for a new office storage building Molokai, because it was on State, I guess they exempted themselves from County and so it came out that they are building the DOT office, it's an office and it's a storage structure in their -- on their property. If you know Harley Tancayo, that's for his new office.

Chair Buchanan: Okay, so they never do one EA for that then, yeah? Okay.

Ms. Lopez: No.

Chair Buchanan: Alright. I sent one email to Carly, the engineer. Okay, thank you. I just wanted to know.

Ms. Lopez: And as far as the one that you bringing up, thank you for bringing it up, the AT&T, so it's actually in pre-consultation phase so they just -- we just received it this week to comment, and I think we're scheduling to meet with them, but it's all pre-consultation. I think that they are doing community outreach, I not too sure, but it's all in their pre-consultation phase right now.

Chair Buchanan: Okay, so any new commercial or any new projects for construction at the pier would not be -- in the SMA would not come before this Commission even though the EA came to this Commission for harbor improvements, which included the hardening of the sites and the new ferry structures?

Ms. Lopez: Yeah, State exempts themselves, they've been exempting, but with the AT&T, that's private, and so, on State property, and so they -- they've been doing a lot of improvements, doing the harboring, the catwalk, they did all of that.

Chair Buchanan: I just was wondering why they felt that they needed to come to this Commission for an SMA permit for prior construction and harbor improvements and now they feel that they don't have to, so I'm going to contact DLNR and the Office of Coastal and Conservation Lands and find out because if there's a trigger for Section 106 and NEPA stuff, then -- then I'd like to know about it. Thank you.

Ms. Lopez: Well, for the -- for the AT&T, our cultural resource planner and I been working on that that we are pushing that forward as a Section 106 review and requesting as what the Molokai Island Community Plan has stated to include groups, such as the Aha Kiole, to be involved, and we felt that the canoe clubs in that area should be involved because they will one that would be impacted as well. I mean if you have any other recommendations within the vicinity of that area, please recommend it to me and then I can push it forward to the cultural resources planner, which she's been doing much of the review in regards to cultural and historical affected areas.

Chair Buchanan: Okay, thank you. Okay, alright. No, I just was going ask for an update for other stuff but it's not on the agenda. Commissioners, you guys get any question on the pending and open projects? No? Okay, sorry, you can move on.

### **3. Agenda Items for the August 28, 2019 meeting**

Ms. Lopez: Okay, the next one would be for the next agenda, so we -- we are still pending maybe more SMA exemptions and more after-the-fact SMA to waive or not to waive that you'll be seeing if not in the -- the next August meeting, but would be in the next few -- a few agendas. And I do have an announcement if you -- that's about it for the agenda.

Chair Buchanan: Can I speak to the agenda as well?

Ms. Lopez: Sure.

Chair Buchanan: I think there was some confusion on the agenda where it was giving direction, and I think I argued about this in the past, giving Commissioners direction and the public thoughts that you going waive, not waive, or defer, so sometimes I think it would help because we still -- we not legalese people, we're just makaainana, we're trying to help our community that if it -- that we add that onto the agenda as well, the options, even though I know, as the Chair, that is an option, but that would help, and the community was also confused about the option to defer versus waive or not waive, and I only know because Robert's Rules, so if it could be agendized as such, that would I think be helpful. Anymore comments on the agenda? No?

Ms. Lopez: We can work that out with Corp Counsel and our SBC.

Chair Buchanan: Okay. Thank you, Suzie

**E. NEXT SCHEDULED REGULAR MEETING DATE: AUGUST 28, 2019**

Mr. Poepoe: Are we having a -- what is it - 28 meeting? Do you know?

Ms. Lopez: Sorry, can you repeat that?

Mr. Poepoe: Would you know if we're going to have a meeting by the next round?

Ms. Lopez: So the next -- the next meeting that would be scheduled would be August 28 and we are pending SMA exemptions to come to your purview which some is after-the-fact, and so it's pending, so it may or may not be -- we may or may not have a meeting, but I know September is HCPO so you actually only have one meeting, which is the September 25<sup>th</sup>, so pending if we don't have an August meeting, everything will be rolled over into the September 25<sup>th</sup>, and I believe we do have a public hearing on September 25<sup>th</sup> for the asphalt batching plant located Manawainui.

Mr. Poepoe: I was asking to make sure if I should show up to work or call in for vacation for come here.

Ms. Lopez: Oh, for the August 28<sup>th</sup>?

Mr. Poepoe: Yeah. Yeah.

Ms. Lopez: Yeah, sorry, we still working on our pending, two pending projects. Announcement? Okay, so just wanna make an announcement that the Hawaii Ocean Resources Management Plan will be on Molokai. The State Hawaii Office of Planning, Coastal Zone Management Program that does special management area, SMAs, Chapter 205A-22, invites you to participate, it's an information sharing section across the islands, so they will be here on Molokai on Monday, August 26, 5:30 to 7:30 p.m., here at Mitchell Pauole Center. So if you have a lot more questions regarding SMAs and what we've already discussed through the projects that you see, these are the -- the best sessions to go to 'cause you actually have the experts here on the island that you can either kinda talk to them, ask your questions, so they're -- they're going to be one of your best resources here and they're going to be available on Monday, again, August 26, from 5:30 to 7:30 here, so I -- I highly recommend that. I don't know if it's a Sunshine Law thing that only certain people can attend.

Ms. Desjardins: Yeah, less than a quorum, and then there has to be a report, so if more than two of you attend, you need to report back to the -- so make sure you let Sybil know that that needs to be agendized at the next available meeting.

Chair Buchanan: Okay, Sybil, please agendize that 'cause, as long as I'm on island, I am planning to attend because I was a past member of the Marine and Coastal Zone Advisory Council, and I also participated in the ORMP planning and it does include items that -- that support stuff like CVSFN and other things on the island of Molokai so I would strongly advise, and then I'm willing to give testimony if I am in attendance of that meeting and there's one or more of us. But we would, of course, not having any discussion.

Ms. Lopez: So, Corp Counsel, just to satisfy the law to agendize the topic of reporting that -- that this board will report back on our next agendized -- and agendize it on our next meeting.

Ms. Desjardins: Correct.

Ms. Lopez: Okay. Thank you. And -- and speaking of that, sorry, I forgot to mention, on your next agenda item, I know you guys requested for the final report for the MECO, we did receive the final report from MECO regarding their investigation with their SM1 and it'll be provided to you as a communications item and will not be on the agenda, but just letting you know that you will have the paraphernalia as requested in your next packet. Thank you.

Chair Buchanan: Awesome. Thank you.

Ms. Lopez: Thank you.

Chair Buchanan: Commissioner Poepoe, you have a question for staff?

Mr. Poepoe: Will that be public information, the -- the findings?

Ms. Lopez: All I know is that they did hold a public meeting and I --

Mr. Poepoe: Okay.

Ms. Lopez: And I don't know if it went on OEQC, I don't think it did, but I know they did that public meeting. I don't if that's public.

Mr. Poepoe: Thank you for the hard copy.

Ms. Lopez: Yeah, you're welcome.

Mr. Poepoe: That's pretty good.

Ms. Lopez: It's pretty thick.

## **F. ADJOURNMENT**

Chair Buchanan: Okay, thank you very much. So that is it if Commissioners have no more concerns, then we are adjourned. Thank you very much for coming.

**The meeting adjourned at approximately 1:30 p.m.**

Submitted by,

SUZETTE ESMERALDA  
Secretary to Boards & Commissions II

## **RECORD OF ATTENDANCE**

### **Present:**

Lori Buchanan, Chairperson  
Laakea Poepoe, Vice-Chairperson  
Julie-Ann Bicoy  
Leonora Espaniola  
William Moore  
Bridget Mowat  
John Sprinzel

**Absent:**

John Perez, III

**Excused:**

John Pele

**Others:**

Jefferey Dack, Current Planning Supervisor, Current Division, Dept. of Planning

Sybil Lopez, Staff Planner, Molokai, Current Division, Dept. of Planning

Mimi Desjardins, Deputy Corporation Counsel, Dept. of the Corporation Counsel

Suzette Esmeralda, Secretary to Boards & Commissions II, Current Division, Dept. of Planning