

(APPROVED: 08/22/07)

**MOLOKAI PLANNING COMMISSION
REGULAR MEETING
JULY 11, 2007**

A. CALL TO ORDER

The regular meeting of the Molokai Planning Commission (Commission) was called to order by Chairman DeGray Vanderbilt at approximately, 12:45 p.m., Wednesday, July 11, 2007, Mitchell Pauole Center, Kaunakakai, Molokai, Hawaii.

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

Mr. DeGray Vanderbilt: I'll call the July 11, 2007, Molokai Planning Commission meeting to order at this time. We have with us today, from the Commission, we have Commissioner Kip Dunbar to my far right. Next to him is Commissioner Bill Feeter. Next to him is Commissioner Joe Kalipi and Commissioner Steve Chaikin, and my name is DeGray Vanderbilt. And coming in the door right now is Commissioner Lynn DeCoite. And with us from the County of Maui we have Lesli Otani with Subdivisions. We have Suzie Esmeralda who will be taking notes. We have Francis Cerizo here from Planning, Clayton Yoshida from Planning. This is Michael Hopper who's Deputy Corp. Counsel and gives us all the legal advice. And we have Ralph Nagamine sitting in the front of the middle table here who's Land Use Subdivisions Administration. I don't know, but he's got a hard title, but anyhow -- oh, and then we have our own Molokai Planner, Nancy McPherson, over there by the microphone and Thorne Abbott from SMA. And, Kaimana, what's your last name, Kaimana? Lee, Kaimana Lee who is working just this summer, right? Working on the shoreline management area program with Thorne Abbott.

So with that, let's get started. If there are no objections, I would like to move a couple of items up on the agenda, and I don't think any of them will take that long, but I'd like to move -- if you look on page 2, I'd like to move E.1, Unfinished Business, which should be D.1, where it says "Discussion on how the process could be streamlined for special management area assessment," I'd like to move that up right after the two special management assessment applications that we look at. Then, I'd also like to move up the Chairperson's Report on the draft letter for the Feeter vacation rental, the OHA resolution and, from the Director's Report, the concerns raised by Molokai residents, and Lloyd Inouye, and the responses to that, and then we'll go into the workshop after those, and then complete the agenda. Are there any objections? Thank you.

B. PUBLIC TESTIMONY ON ANY AGENDA ITEM FOR THOSE WHO HAVE TO GET BACK TO WORK OR HAVE OTHER SCHEDULING CONFLICTS

Public testimony will also be taken when the agenda item comes up before the Molokai Planning Commission. A person testifying at the beginning of the meeting will not be allowed to testify again when the agenda item comes up before the Commission, unless you are able to offer new or additional information. Maximum time limits on individual testimony may be established by the Commission.

Mr. Vanderbilt: Okay. Now, as we do all the time, anybody who has to leave can come up and testify on any agenda or any matter that they feel is related to Planning on Molokai. And if it's something that's not on the agenda, we can't really discuss it, but -- or you can wait until the item comes up on the agenda. Speaking of the devil: we have the former Chairman of the Planning Commission, Lori Buchanan. Lori?

Ms. Lori Buchanan: Hello. Thank you. It's just in case you run too long and people gotta run to their plane. But thank you and good morning, Commissioners. I just wanted for tell you guys -- I love you guys. I love you guys. And congratulations, Kip, on your recent stuff with the Maui Coastal Land. Maika'i. I'm so happy it's a win-win situation. I was really happy to read that. Right on.

Real fast. Wait. I cannot see. I was going try be fast. Agenda items. I wanted to -- it is an agended item. It's under Unfinished Business, Item 2, Discussion on the Papohaku Dunes Preservation Plan.

I wanted to strongly encourage the Commission to adopt this dune restoration plan, and strongly request that you do that today. I think it's imperative to adopt the plan. And I wanted and I hope that all the Commissioners are clear that in adopting this plan, you're not writing anything into stone. You're not changing any laws right away. All you're simply doing is directing the Department to start to look at it.

It's not going to be like the SMA at all, because the SMA needed to be done from scratch, okay? Here, you have a well-written plan almost as -- well, I don't know if as long as the Laau EIS, but with over a hundred thousand dollars already invested in a well written plan; why would you need to sit on it anymore? Okay? The time is now to at least adopt the plan in part or wholly. And I would hope that you would adopt it wholly. And always remember, it's going to come back, that's why, for approval. Not only to this Commission but to the Council. If there's any biggies in here that might be bugging you about not adopting this plan today, that can be resolved later. Okay? The main thing is to get it on the books, charge the Department with the responsibility, and adopt this plan. So that's the first thing I wanted to encourage you guys to do.

And the reason is simple: it would give direction to the Planning Department on what needs to be done on our shoreline. Okay? Right now, you get people riding ATVs over very few native plants that we get at Papohaku right now. And when you call coastal

enforcement, all they tell you is they cannot do nothing, or they gotta go stake out, they gotta do this. So what you going do? You gotta adopt one plan that the County can at least enforce. Okay? So that's my reason why.

The second thing is, if anybody been to Lanai, Manele Beach? Have you guys ever stopped at the restrooms to read the long list of what you can and cannot do at Manele Beach? Guess what? At the bottom, it's signed by these guys: the Planning Department. I couldn't believe it. You cannot camp, if you not one resident. You cannot camp on the beach. I don't care who you are. If you not one resident of Lanai, you cannot camp on the beach. How's that? That's unbelievable. So if you ever go to Lanai, stop by the bathroom, and load it off the website, and read about what you can and cannot do at Manele. People come off the boat during the day, use the beach, and boom, they're gone on that boat: the Expedition at four o'clock. Okay? That's just an example. I'm just trying to get your guys' minds thinking.

The second thing that was on the agenda was I assume Lloyd Inouye came with some discussion about problems with the Planning Department. And lo and behold, I actually had to do one permit recently. And I found out, wow, no wonder everybody come and grumble. But anyway, I was hoping that the Planning Commission would direct the Department of Planning or task them with the ability for us on Molokai to receive applications at our office here, be able to timestamp that application here on Molokai, and take the fee for that application. That sounds simple, but we not doing that right now. The Department needs to direct our Planning person here on Molokai, as well as Nina, who's our clerk, and that's part of her job description that they're able to do that. Right now, if you come over here, Nancy, take my application, she gotta turn around, mail it to Maui, and then, oh, one word wrong, mail it back to the -- You know, if this came to the office, and she said, let me look at it, or you know what? Fix this. Give me ten dollars, and let me stamp this. That would streamline everything. Unreal. So that's what I asking the Commission to ask the Planning Department to do is to direct them to do here.

Also, that this office here should confirm zoning. That's another thing that they not able to do now that would really be a big help: the flood zones, confirming zoning. I happen to know that Nancy is more than capable of doing that, but she needs to be directed to do that. Okay? So that's what I asking for help with. And I think with very little training, Nina should be able to do that also with no problem. And if you guys do that, what I promise to do, as a community member, is go to the next budget and hearing meeting for the County, and actually ask them for money for an enforcement officer for Molokai, somebody who can do minor permits, and SMA, and stuff like that. And I going ask them and push them for that so we try to meet each other halfway. And that's a biggie. Sound simple, but it's a big deal. Okay?

And I think that's it that I going ask you guys for now. It's just those two things. And I think if you guys did that, Lloyd's problems would be solved, I mean, would help with whatever he was grumbling about, which I not sure what he was grumbling about, but just that ability would be great.

Mr. Vanderbilt: Thank you, Lori. Are there any questions for Lori at this time? No, just to let you know, Lori, we are following up with some of that to try to get the efficiencies increased here on Molokai, but thank you for your input. Yeah, Commissioner Chaikin?

Mr. Steven Chaikin: Yeah, Lori, we went over that Papohaku, you know, Study, I think it was last session, and one of the things that I guess our Corp. Counsel was telling us is he really cautioned us against adopting the whole study in its entirety because that would mean that we have all read that and thoroughly understand every part of it. So what we had kind of agreed to do, I guess, was that Nancy was going to condense some bullet parts, some really important things that are within that study that would be easier for us as a body to digest and then accept. And so that's just -- I just wanted to bring you an update on where we're headed with that.

Mr. Vanderbilt: Okay. Is there anybody else who would like to testify? Okay. If not, we'll move on to Item C, Communications, and these are two communications where our Commission is being asked to concur with the Planning Department, the Planning Director's decision to exempt them from SMA permits or applications, and they're very minor things, and there's a whole list of things that are sort of exempt, and it seems like these fit that. I hope all the Commissioners have reviewed these. And, Nancy, if you could give us just a very short presentation on each of them. Thank you.

C. PUBLIC HEARING (Action to be taken after public hearing.)

1. **MR. JEFFREY S. HUNT, Planning Director, requesting concurrence from the Molokai Planning Commission pursuant to their Special Management Area Rules, as amended, that Special Management Area exemptions can be issued for the following:**
 - a. **MR. MILTON ARAKAWA, Director, Department of Public Works submitting a Special Management Area Assessment application for Kolapa Street Sidewalk Improvements project from the Cooke Memorial Pool driveway on Kolapa Street to the existing sidewalk north of the Kaunakakai Ball Park at TMK: 5-3-002 (roadway parcel), Kaunakakai, Island of Molokai (SMX 2006/0615) (N. McPherson)**

The project involves grading along the roadway of approximately 4,700 square feet, installation of approximately 325 lineal feet of concrete sidewalk, 25 lineal feet of curb and gutter, and relocation of one fire hydrant and one telephone pole.

- b. MR. ALAN F. HALL submitting a Special Management Area Assessment application for the interior-only repair and maintenance to an existing single-family home consisting of repair to walls, repair to plumbing, repair to electrical, and painting at 369 Ala Malama Street, TMK: 5-3-011: 017, Kaunakakai, Island of Molokai. (SMX 2007/0171) (N. McPherson)**

The Commission may act on whether or not to concur with the Planning Director's determinations that SMA exemptions be issued.

Ms. Nancy McPherson: Thank you, Chair Vanderbilt. Good afternoon, Commissioners. Nancy McPherson, Staff Planner, Molokai.

These are two exemptions that came across my desk. One is for interior alterations to a home in the SMA, and so that was exempted based on the fact that it is interior work only. The second exemption was for the grading and sidewalk work on Kolapa Street, which was a request for that. Those improvements were brought to this Commission a while back. It's going to improve access along Kolapa Street, basically, from Home Pumehana down to Ala Malama to make it even, and to help out the folks over at Home Pumehana who want to get back and forth to town along that route. There's also kids and, you know, the swimming pool's up there.

So based on our SMA rules, and our -- also Chapter 343, it's also exempt under Chapter 343, Environmental Review, because -- there's going to be minor excavation, but Public Works uses best management practices and so this is a County project. They are going to relocate a power pole and a fire hydrant. But because this is already a roadway; it's already been graded many years ago; there's a little -- there's a place where the culvert had a little bridge made over it, there's a photograph of that that I gave you, that's not historic, I checked on that, so the impacts are going to be really, really minimal, so that's why we're recommending exemption.

Mr. Vanderbilt: Thank you, Nancy. Are there any other questions for Nancy? Kip?

Mr. Kip Dunbar: Nancy, I know that this application was given to the Department December 27, '06, and we're now seven months away from that looking for an approval. What would the process have been if we weren't even looking at this? I mean are we

talking two months saved, three months saved, five months saved? You know, I mean is it --

Ms. McPherson: Well, I really don't know. It would've been by ZAED Division. And I think, until fairly recently, they had quite a backlog too. I've had a backlog coming over to Molokai and setting up a new office, but I'm on the way to catching up on that backlog. So the processing time should start getting shorter. Also, if there's a way for us to simplify the paperwork, which I think we're going to discuss after these two exemptions, that might help also. Less to prepare as far as a letter, that sort of thing. On Maui, they just do the SM5, the one sheet exemption form.

Mr. Vanderbilt: Nancy, we're going to get into that a little later.

Ms. McPherson: Okay. And an assessment. So I'm basically doing one extra thing because it's the Molokai Planning Commission. And then we have to bring it to the Commission also.

Mr. Dunbar: Okay. So we don't know, then?

Ms. McPherson: No, I don't know. Clayton, do you want to give a shot? How long would it take ZAED to do one of these? They also have more people.

Mr. Clayton Yoshida: Good afternoon, Mr. Chair, members of the Commission. I believe if it's an outright exemption, not in a sensitive area, not excavating any vacant land that may involve State Historic Preservation Review, I believe the Zoning Division could do it in a couple of days or less. You know Francis probably can speak --

Mr. Vanderbilt: Commissioner Dunbar, okay. We're going to discuss this after this about simplifying, but go ahead and ask.

Mr. Dunbar: Well, I mean, the point I'm getting at is that we have the Home Pumehana area in that area, we have a lot of people walking on that crosswalk -- I mean, on that sidewalk coming all the way down here, and for something that takes seven months to get an approval on is ridiculous.

Mr. Vanderbilt: Well, it's not going to take seven months or this Commission just isn't going to deal with them.

Mr. Dunbar: It's already taken seven months. If they applied December 27, then we're already talking July.

Mr. Vanderbilt: We're in a transition period, Commissioner Dunbar, and we're trying to get the efficiencies. We've got a lot of backlogs for Molokai. They have to prepare everything. They could do this in two days, and put it on our next agenda, period, and it would be another ten days. I mean, there's no reason it should be sitting somewhere for six months. That six months wasn't because we had to review it, you know, if --

Mr. Dunbar: I'm not getting at whether or not it's us, or them, or ours, or theirs. I'm saying seven months is ridiculous for the process to take whether it be our problem, or their problem, or Akua's problem. I have no idea. I'm just saying seven months is too long to have something as simple as this not begin being worked on.

Mr. Vanderbilt: And that's why I hope we can approve these, and then talk about the process going forward from here. So instead of six months, it might take two weeks. Are there any other questions for Nancy? If not, I'd entertain a motion to concur with the Planning Director's findings to exempt the Kolapa Street Sidewalk, TMK: 5-3-002, and the interior renovations to the single-family residential home at TMK: 5-3-011, parcel 17. Yes?

Mr. Joseph Kalipi: Okay. I'll make a motion to concur with the Planning Department's exemption for both of the proposed exemption permits.

Mr. Vanderbilt: Is there a second? Second by Commissioner Feeter. Any discussion?

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

It has been moved by Mr. Kalipi, seconded by Mr. Feeter, then unanimously

VOTED: To concur with the Planning Director's exemptions for both assessments.

Mr. Vanderbilt: Motion carried.

We moved up Item, I guess it's E.1, the Discussion on how the process can be streamlined, the Special Management Area Assessment process for the interior remodeling of single-family and multi-family units, and I think we can bring up some of the concerns Commissioner Dunbar just reached as to why it would take very long, and what the process is right now, and we can use -- let's just use the single-family residential application, the Hall alteration. That was one of the two that we just approved. And, Nancy, I guess, you could just give us a brief -- what would you do to shorten the process? Just say what you want to say. It doesn't matter if Maui's here. Just say what you want to say

E. UNFINISHED BUSINESS

- 1. Discussion on how the process can be streamline the Special Management Area Assessment process for the interior remodeling of single-family and multi-family units. (N. McPherson)**

The Commission may act to authorize a change in the processing of these types of applications for interior remodels. (Deferred from the June 27 meeting)

Ms. McPherson: Well, we also have our coastal and shoreline planner here, Thorne Abbott, and he's much more skilled in SMA than I am, I'm learning from him actually, but one thing is we have to do the assessment. So that's basically depending on how much information needs to go into it. That's four pages.

Mr. Vanderbilt: Excuse me, Nancy. When you say you have to do the assessment, on Maui, or Molokai, or Lanai, they all have to go through the same assessment? It has nothing to do with our Planning Commission? That's just something that has to be done right now?

Ms. McPherson: Right. Correct.

Mr. Vanderbilt: For everybody?

Ms. McPherson: Yes.

Mr. Vanderbilt: Okay.

Ms. McPherson: That's how we are implementing the coastal zone management program.

Mr. Vanderbilt: And on a simple item, it might take them two days, according to Clayton, to do that.

Ms. McPherson: Or less. Yeah.

Mr. Vanderbilt: Or less. Okay. Okay.

Ms. McPherson: And this one kinda -- the other one got stuck at the bottom of the pile.

Mr. Vanderbilt: All right. Now, we're moving along. We got that. Now, what else do we have to do?

Ms. McPherson: Well, we have to do -- I have been doing the SM5 exemption form as an example to the Commission. Currently, what --

Mr. Vanderbilt: Excuse me, Nancy, which form is that?

Ms. McPherson: The SM5 is the one with the shaded kind of square in the middle of it. The SMA, Special Management Area Exemption Form, SM5, normally that's all that the applicant gets on Maui. But because of your rules, we are actually also doing this cover letter. So, actually, instead of the SM5 form, I'm doing this cover letter that outlines all of these items, there's seven items for the Hall alteration, but discusses -- This is what's normally done for an SMA assessment that isn't in a really minor kind of thing that isn't on this list of -- on the SM5 form, there's a list of 16 things that are considered exemptable in Chapter 205A. So that pretty much comes straight out of Chapter 205A.

Mr. Vanderbilt: Why do you have to do this letter?

Ms. McPherson: Well, I'm just currently being directed to do that letter.

Mr. Vanderbilt: By who?

Ms. McPherson: My Department.

Mr. Vanderbilt: By who?

Ms. McPherson: Well, I think Clayton and I agreed that -- that's how we should do it this way.

Mr. Vanderbilt: Clayton, do you --? Can you tell her --? Can you come up and ask why you gotta do this letter so we can --? I mean, I'm just trying to get -- there seems like there's a lot of extra work being done on very minor permits that doesn't have to be done on Maui. Is there any need for this letter, Clayton?

Mr. Yoshida: By the letter, you mean the one -- the assessment?

Mr. Vanderbilt: Well, the July 3rd letter, "Dear Mr. Hall." Is that something you would send to -- would you send the applicant a letter saying that they've been approved? Or do you just send them a copy of the SM5 with the Director's signature approving it?

Mr. Yoshida: Well, I believe, ultimately, the Department could just send the exemption form with the Director's signature, but because of the rules of the Commission, in this case, we did notify the applicant that the Department is recommending an exemption, and that

the matter -- review and concurrence by the Molokai Planning Commission will be on July 11th.

Mr. Vanderbilt: Thank you. Now, one other thing, Clayton and Nancy, on the back of the Hall SM5 is a four-page, lengthy, special management assessment. Is that something that's done on Maui? And is it something that has to be done on Molokai?

Mr. Yoshida: It is something that is done on Maui relative to the review of the application to the SMA criteria. However, there are certain items on the list where it may -- they may not necessarily do that extensive an analysis such as for interior alterations or non structure improvements to existing commercial structures.

Mr. Vanderbilt: You're saying on Maui, for an interior alteration like the Hall's, they wouldn't do a four-page assessment?

Mr. Yoshida: No, I believe the Department Director has previously written a memo saying that those items are -- could be outright exempted.

Mr. Vanderbilt: Why, then, do we have to do an assessment for Molokai on an interior?

Mr. Yoshida: Because by the rule change that took effect on December 23rd of last year, the Commission has to concur with any exemption determination on SMA.

Mr. Vanderbilt: Okay. Now, wait. Just hold it right there. We're concurring -- the Director signs off on this SM5 on Maui, right?

Mr. Yoshida: Well, the Director does the analysis, or the Department does the analysis and determines that the proposed action recommends that an exemption be given.

Mr. Vanderbilt: Okay. So why don't we do the same thing here recommending an exemption be given? He signs his paper, and you just forward it to us, and we either concur or we don't concur.

Mr. Yoshida: On Maui and Lanai, the Director is -- has been given the authority to give the exemption outright. On Molokai, the Commission has to concur with or not concur with the Director's determination that an exemption be given, and that's according to your rules.

Mr. Vanderbilt: Can't we look at this and say that the Hall -- just read the top of this SM5 and said it's interior renovations and the proposed construction was determined to be exempt because of 6, repair and maintenance of interior alterations? And can't we, as the Commissioners, with some common sense agree that -- we either agree or we don't agree with his decision to exempt it? Why do we need all this extra paperwork?

Mr. Yoshida: I guess it's, you know basically, the Commission -- I mean, the Commission makes the final determination on whether it concurs or not with the Director's decision. If for certain items, it just wants to see the, you know, they can just check the box or check the item, then they can so specify. They may want to see some analysis for other types of items listed here, which could be exempted, but they want to see an assessment relative to the criteria on those.

Mr. Vanderbilt: Are there any questions from the Commissioners? Commissioner Chaikin?

Mr. Chaikin: Thank you. Yeah, Clayton, I think, you know, you've been here at the last meeting, and you've been here today. The last two meetings we've heard, basically, what amounts to complaints to the Planning Department on how long the whole paperwork process takes and so it's, for this Commission, I think we can go out and look and see what everybody's doing wrong, but I think we gotta look in the mirror and see us, as the Commission, how are we making this whole process longer. And we change the rules to take a look at all the assessments. Now, we never, ever did want to take a look at all the interior renovations and stuff, and try to micro manage the whole planning process. That was never the intent.

So I think Nancy has put together a form here for us where, for instance, interior renovations, she can just check a few things, and be very quickly move through that process, and then the Director can maybe write at the bottom that we recommend, you know, exemption; that could come here to this Commission, and we can either concur or not concur, and it would be very simple, and it won't be a bunch of people wasting a bunch of time on things that may not be necessary. So that's what we're trying to achieve is cut down all of the paperwork, and try to get the whole thing to flow smoother, because as you're aware, there's a lot of people complaining about the process right now.

Mr. Dunbar: Mr. Chair?

Mr. Vanderbilt: Commissioner Dunbar?

Mr. Dunbar: Yeah, unfortunately, I think we put our own selves in the soup by passing the fact that we wanted to take a look at these. And I think Mike can probably defend this is that if we're going to either concur with or not concur with the Director's decision, we have to have law and finding of fact in order not to concur or to concur. So you can't do that just by not having the assessment. You gotta have the paperwork on the back so you know what you're agreeing to or not agreeing to, which is why all the paperwork is there, which is why the process is lengthy, and which I think why the process doesn't work now. If it's a straight out exemption, we should've been able to just have the Director sign off on it, and not come to us. But when we wanted to exempt some of these 16 out, we had to take them as a whole, and not do them just with seven or eight that we thought were no-brainers. So

if we're going to concur or not concur, we need the paperwork to say why we are either going to concur with it or not concur with it.

Ms. McPherson: Chair ...(inaudible)...

Mr. Vanderbilt: Thank you. Nancy, can I ask you a question? On the Hall exemption, there's diagrams of what the interior renovations are going to be. Is that something he would've had to supply?

Ms. McPherson: Yes, in order to do an SMA assessment, you have to complete an assessment application -- everybody does no matter whether it's interior or whatever -- and you have to supply a site plan, diagrams, you know, the main thing --

Mr. Vanderbilt: Whether it was here -- whether we reviewing it, or whether it was done on Maui?

Ms. McPherson: Yes, because we need to know, okay, how far you're going to be from the shoreline --

Mr. Vanderbilt: Let me ask you one other question: How long would it take you when you get the SMA application? It goes to Maui, right? Or the assessment goes to Maui, the Director approves it, and sends it back to you?

Ms. McPherson: Yes.

Mr. Vanderbilt: How long would it take you to do this cover letter and this, which looks like it could be almost a broiler plate situation, the assessment?

Ms. McPherson: I actually did both of these in one day.

Mr. Vanderbilt: Okay. So that's not a problem.

Ms. McPherson: It's just getting to them. That's the problem. That's what's difficult.

Mr. Vanderbilt: Now, how many of these do you get in a month?

Ms. McPherson: I'm not really sure.

Mr. Vanderbilt: But you had a backlog before you got here, right?

Ms. McPherson: Well, I've been -- we've been going through this process with the rule change, with trying to figure out how to do deal with the rule change, and so that slowed

us down a little bit. But the reason I drafted these two forms, they're two different choices, basically. The one that just has one line on it that says, "The proposed construction was determined to be interior only, repair and maintenance, or alterations to existing structures with no change in footprint," I believe Commissioner Kalipi asked for that, and so we provided that. So the only things that would be exempted with minimal review and just run by you, you Commissioners, very quickly for concurrence would be things that fell into this -- projects that fell into this category.

Now, I also did another alternative one where based on the original letter that came from Joe Alueta, which was submitted to you at the last meeting that discussed the kinds of things that this Commission really didn't want to spend a lot of time looking at or reviewing, I came up with this list of seven. So the question is, if the Commission is still comfortable with the seven, then they could consider requesting that this be done for projects that fall under these seven categories. I've had some discussions with our Corp. Counsel about doing this. And the last thing I remember was that it was stated that we -- how you review these things is really kind of up to you. You can get the whole ball of wax, or you cannot get the whole ball of wax. But if you don't concur, and correct me if I'm wrong, Mike, if you don't concur, then I will -- it'll have to come to the next meeting, I will have to provide additional information, and then you will have to do findings of fact. Is that correct?

Mr. Michael Hopper: Well, that's the problem we're getting at here. Under the rules, you have to see everything right now, the way the rules are written. The type of analysis Nancy has to do isn't necessarily specified in the rules. However, if she comes to you with an analysis that's simply a one-page form with a line checked off, she would run the risk that in that particular case, she wouldn't be able to answer questions, or you wouldn't have enough information for you to make your finding. And if you disagree with the finding, you would have to have your findings and conclusions. And I would recommend trying to avoid that, if possible, because you've got a 30-day time period to review these, and concur or not concur with the exemption under the rules, that leaves you with very little time after the first meeting, if you decide for whatever reason you need more analysis done for you to get that decision in within that 30-day time period.

So you could certainly tell them -- if it's things that you are, basically, 100 percent sure that you would not be -- that you would not issue -- that you would not disagree with the exemption, such as interior renovations or whatever else, you could dictate to Nancy the form that you want her to use for the exemption. Just understand that, you know, when you review them, you're not going to have a whole lot of information in front of you. And I would recommend you could look at cutting those types of renovations, those types of not development exemptions in 205A out of your review process. I think that that was something in the past that the Planning Department recommended against. I don't know if the Planning Department has a different view of that, but I reviewed it legally, and there's actually no legal restrictions where you're only reviewing certain types of exemptions and

not reviewing others. You would just have to very clearly state what type of exemptions you would want to review. So I don't see a legal issue with it. I'm not sure what the Planning Department's opinion is on that approach, though.

Mr. Vanderbilt: Commissioners, if you don't mind, I'd move that we defer this. And I will get with Corporation Counsel and Planning, and just see where everything stands, and write a memo to this Commission, because it seems like we were told one thing; now, we're saying we can do something else. And I'll just try to get some kind of summary document after meeting with Corp. Counsel and the Planning Department so we can focus in on this a little bit. Is there any problem with that? Okay. Thank you. Nancy?

Ms. McPherson: Chair, in my own defense, I'd just like to say that one of the things that needs to happen on Molokai is that folks need to get more educated about what an SMA assessment is, and what they need to submit in order to have a complete application, because what I'm having to do is go back repeatedly and get additional information. And it's clearly on the form what you are supposed to submit. So I see that as an educational process that's gotta happen.

Mr. Vanderbilt: Whose responsibility is it to let people know they need a special management assessment? Say there's a project going at the intersection down there for a new type of restaurant. They haven't come to us for an SMA assessment, have they?

Ms. McPherson: Well, I'm not sure. Some people are still sending everything to Maui, and then it gets routed through Maui. So I may not see it for whatever reason.

Mr. Vanderbilt: So that's another thing we need to talk to about the process and maybe you could --

Ms. McPherson: But if anyone comes to my office, and talks to me, and asks me, am I in the SMA? Do I need an assessment? I will try to give them an answer on the spot, if I can.

Mr. Vanderbilt: Well, maybe you could sit in on that meeting so we can get it --

Ms. McPherson: Okay.

Mr. Vanderbilt: Thank you very much, Nancy. Okay, with that, that took a little longer than expected, so I'd like to go right into the workshop on the subdivision process, and this came -- this workshop came out of a letter that was sent to us by Glenn Teves who has been -- he's with the U.H. Extension Service, and we also got some testimony from Alton Arakaki, who's also with the Extension Service, about concerns over the ag ordinance, concerns over resubdivision of ag, the concerns about water for residential subdivisions in ag. And, out of that, Commissioner Chaikin had said, well, if we're going

to review those things in the ag ordinance, let's also try to understand how the subdivision process works on Molokai because, right now, we have a community plan, but anybody can come in and buy up a thousand acres up there, and put a subdivision in, and there's no community review of our community plan or anything else. It just is approved over in Maui. So we need to better understand the whole process. And if there's things that need to be changed, we have to understand where we have to go in order to make those appropriate changes so that our community planning process isn't compromised after-the-fact by a bunch of subdivisions that are approved administratively on Maui.

So with that, we have two people. Lesli Otani is going to present first, the subdivision and general processing. She'll tell you how her Department, and where they fit in the subdivision process, which is sort of outside of this whole ag subdivision, I think, somewhere. And then Francis Cerizo, who is overseeing any ag subdivisions whether they be new ag subdivisions or resubdivisions of existing ag lots like at Papohaku, he can explain that whole process to us and the ag ordinance. But Lesli is going to start off and give us an overview of the process. And I believe in our packet, we got a pamphlet, and I don't know if this is the one that you're going to use that covers the subdivision process. So, Lesli, could you introduce yourself and what your title is?

D. Workshop on the Subdivision Process conducted by Lesli Otani, Development Services Administration, Department of Public Works - The subdivision process as it applies to existing, proposed, and future subdivisions on Molokai.

Ms. Lesli Otani: Yeah. Good afternoon, everyone. Thank you for having me here today to discuss the subdivision process within Public Works. My name is Lesli Otani, and I work as a civil engineer with the Department of Public Works within the Development Services Administration. There are two people in our office: myself and a subdivision clerk, and we do the processing for all of Maui County.

So my main role within the department is to assist others with initiating the subdivision process. I also coordinate the review process for other agencies that review our subdivision applications, as well as enforcing certain requirements within Title 18 of the Maui County Code. So Title 18 is the Subdivision Ordinance. The County Code is available on the County of Maui website if you have -- if you care to review it.

So I'll begin with a general explanation of the process. If you have any questions, feel free to get my attention . . . what your interests are, and what types of concerns you have.

Mr. Vanderbilt: Excuse me, Lesli. Before we get started, could you just verify whether or not there is any review process for the community regarding subdivisions that the process you follow has to come back?

Ms. Otani: The process that we use in Title 18 for Public Works does not have a public review process within what is mandated to us. So it's just an administrative process. So again, I'm a civil engineer. The plats are submitted. And we go through and we check that there's minimal compliance with Title 18 of the County Code for the things we enforce. And if all those minimal requirements are met, then final approval is granted. So again, for our process, it's administrative. It's within Public Works.

Now, I handed out -- I had two handouts that I gave to Planning for you. One is the subdivision processing guidelines. And this is our informational pamphlet that we have on the web and that we give to people that gives general information of the process. The other thing was our subdivision application. So the start of the subdivision process would be submittal of this application, a properly completed application, to our office. We need maps that are prepared by a licensed land surveyor or a civil engineer licensed in the State of Hawaii. The preliminary plats, the plats for submittal, can be prepared by either the land surveyor or the civil engineer, but the final plat must be done by a land surveyor licensed in the State.

If you look on this sheet, it's towards the end, there's a checklist that the consultant must follow. And this lists the types of things we generally look for with the preliminary plat. These things are mandated by the code. So in the front we have the code section, and then the corresponding items, kind of a checklist for them to check.

We also require ten copies of the completed application. Again, 15 copies of the plat. The plat has to show the land as it is now, and it's structures, drainageways, things of that nature, and then the lots that are being proposed, the new developable lots, roadway lots, drainage lots, things that are proposed with the subdivision.

We also need two copies of the current ownership documents. Typically, we would take conveyance documents, so deeds that the person may have or a title report on the property. Part of that is that all owners of the property have to subdivide. So we vary from other reviews where sometimes just one owner needs to apply for a permit. But for us, all the owners have to sign this form authorizing the subdivision to occur, and also, you know, granting us the ability to access the property. They usually assign an agent to process the subdivision for them. So the agent is typically, maybe their professional consultant, or an attorney, or a planner, or one of the property owners, but all owners must authorize the subdivision.

When we get this document, we check it for completeness for things that are of our concern: so that the application is complete; that the land that they're showing is consistent with the records we have; that the ownership documents reflect the ownership, you know, sometimes we get deeds for other properties. So we try to make sure that everything is consistent to meet our minimal requirements for processing. That typically occurs within

five days. So from receipt of our application, within five days or so, we'll either send them a letter saying that we accepted their application and we are processing for preliminary approval; or we send a letter listing the items that are missing or inconsistent that we need resolved before we will process.

If the application is complete, by code, we have 45 days to grant preliminary approval. So once the application is in, then we go and we send the plat, the application, and any other pertinent information we may have to some, sometimes all, sometimes just some of the agencies listed in our subdivision guidelines. So these agencies are listed here and we have a checklist. So let's say the subdivision, proposed subdivision, is along a State highway, typically then, we'll send it to the State Department of Transportation, things of that nature.

So we send it out. Sometimes we get comments from all the agencies. At times we don't. But at the end of 45 days, we issue a letter. And the letter will list all the agencies that need compliance, as well as the sections of the code that Public Works or that DSA, in our case, mandates. So I'll have my standard comments that say provide access to the subdivision; improve the roadways to our standards. And with each one of those items, we list the code and the general requirements. So 45 days, they get this long letter, several pages long, that lists all the things you need to do in order to get final subdivision approval.

When all those items are completed, that is when we will issue final approval. So one item may be comply with Planning requirements. Another item may be comply with the Department of Supply Water. And the list will go on and on. During that time, between the preliminary approval and the final approval, sometimes construction plans are needed. So the construction review of a project, if they have to do new roads, or new sewer lines, or something of that nature, that is also submitted to our department. It goes to another section that's adjacent to us, the Development Services Engineering Plans Review Section, and they do a similar process to what we do. They take in the plans and then they send them out to the other agencies for comments. And they also have their own things that they check for such as grading and things of that nature.

So when all the items are completed, there's two ways to get final subdivision approval. The first is our standard final subdivision approval, which is that you complied with all the requirements in the letter, you obtained construction plan approval, and did the improvements, or did not need construction plan approval, but you did everything. And then, we'll issue final approval. So that's typically, we stamp the final plat approved, our Director signs it, and then we send them a letter.

The other way to obtain final subdivision approval is with a bonded final. And in that case, you've complied with all the non-construction requirements, you received plan approval for your construction plans, and submitted a cost estimate that was approved by the applicable

departments for the cost of the work, and that amount is bonded with a surety, or cash, or what have you. So if that bond is accepted by our department and all the other items are addressed properly, then we will grant final subdivision approval with the condition that all the bonded construction improvements must be done within a timeframe. And once the improvements are done, then we release the bond. So those are the two ways.

Mr. Vanderbilt: Are there any -- Commissioner Dunbar?

Mr. Dunbar: Lesli, I want to ask a question, and it has to do with what we talked about earlier, which is there are many lots especially large acreages on Molokai where you will have two, three, four, sometimes more either kuleanas or separate land grants through land commission awards or -- so do you still have to go through this process in order to take or get another tax map key on one of these parcels? Is this the process one would follow to do that?

Ms. Otani: Okay. That --

Mr. Dunbar: Or is that off base? Is this not part of --

Ms. Otani: Oh, but I don't mind answering. That's a separate process. We also have a more informal process in our office, and it's called the separate lot determination process. So what has been sometimes the case in the past is that some landowners, sometimes major landowners, sometimes small property landowners may have owned in a simple case, two lots: Lot A and Lot B. And these lots are side-by-side. And then, Real Property whose purpose is to tax property, so the TMK is not the definition, per se, of a lot. It may be the lot. It may not be. But the purpose of the tax key is that's the property to be taxed. So Real Property, sometimes in order to save time, they would assign one TMK to two properties. So maybe these properties are side-by-side. And, in our case, maybe it was something like Wailuku Sugar who owned a lot of land. So Real Property would send one bill for several lots.

Now, if someone later in time wants to come and see if they have separate lots within this tax key, they go through this process with us. It can be a lengthy process. We go back and we look at old map tax records, deeds, conveyances, title reports, sometimes it books of information, but in that -- essentially, the owner has to prove to us that these were separate lots that for some reason were sharing a tax map key. So it's separate from the subdivision process in that in the subdivision process, you're moving property lines or creating additional lots. In this process, we're looking back and seeing whether there are separate lots that already exist that just happen to share a tax map key. Okay, and that goes to actually, my supervisor in the Development Services Administration, and at times, I assist him.

Mr. Vanderbilt: Thank you. Any other questions at this time? I had a question, Lesli. On the application it says, regarding water, subdivision will connect to the Department of Water Supply or subdivision will utilize a private water system. Now, why do you distinguish -- is there any reason for distinguishing that? Do you require that they have the water available to them?

Ms. Otani: This item that's listed is within the section of the code refers to, 18.08.080, and that 18.08 has to deal with the preliminary plat submittals. So within the County Code, we require a statement on the type of water to be provided. So if it's a public water system, such as the Department of Water Supply, they can check -- you know, that gets checked off and that's adequate. If they're proposing to use a private water system, then we need to know the source, quality, and quantity of the water. So typically, I'm not going to process the application unless this is properly completed. And if someone comes in and they say, catchment, I'll send it back and say, well, that might be your source, but what's your quality and quantity? Now, other than that statement, I have no requirements that I enforce. So once this application is completed, then we send to the Fire Department, the Department of Fire and Public Safety, the Department of Water Supply, the Department of Health, so other agencies that may have requirements. But for Public Works, other than the statement, we don't have additional requirements on water.

Mr. Vanderbilt: So then -- so you say on here for private water system statement of source, quality, and quantity, you don't really care if that's available or not, do you?

Ms. Otani: Well, it's not about caring. I mean, I'm biased in my job but --

Mr. Vanderbilt: I mean no, no, no, but I mean --

Ms. Otani: I'm not checking to see that -- I'm not verifying.

Mr. Vanderbilt: You're not requiring it be available in order to get subdivision approval.

Ms. Otani: No, I am checking for the statement. I'm not verifying that, you know, that they do have a catchment out there with, you know, a ten thousand-gallon tank.

Mr. Vanderbilt: So if you had a brand-new subdivision, and it was planning to drill a well or something in the future but it had to get permits for that, which they may or may not get, that doesn't come into your processing of the subdivision. You would go ahead and give them -- you could give them preliminary or final without them getting approval for the water.

Ms. Otani: Well, other than the statement, I continue on.

Mr. Vanderbilt: Okay.

Ms. Otani: So --

Mr. Dunbar: Lesli, I think if you're going to say you need to source, quality, and quantity, you have no idea what the quality is or the quantity unless the well's already drilled.

Ms. Otani: Well, again, I'm checking for the statement. So I mean that compliance with the --

Mr. Dunbar: Yeah, so that's going to come from a driller, or that's going to come from somebody who's already tested the quality and the quantity where you have no idea what it is.

Ms. Otani: Yeah, I wouldn't, because I'm just checking that they stated in the application, and then I send it out to the agencies. So it's the same thing for sewage disposal. I'm not checking if they actually have a sewer line installed, or if their IWS meets the Department of Health requirements. I'm just checking for the statement, and then we send it on to all the other applicable agencies.

Mr. Vanderbilt: But in the case of a -- let's just take the Kaluakoi Resort, and we'll get into the resubdivision of existing lots out there, but we were told by the PUC Molokai Ranch provides that water and if the County approves a resubdivision of one of the existing ag lots into another legal TMK, the Ranch is mandated to provide them water because they're in their service area. And so it just seems like if you approve subdivisions and there isn't any identified water source, you're just making the matter worse because somebody is, eventually, going to have to provide them water, aren't they?

Ms. Otani: Well, my place is to enforce the codes as they're written by County Council.

Mr. Vanderbilt: Okay.

Ms. Otani: So it's not for me to add requirements that aren't on the code just as it isn't my place to push to the side requirements that are on the code.

Mr. Vanderbilt: So that means there needs to be a change in the code regarding water. And are you familiar with this bill for an ordinance amending Chapter 14 of the Maui County Code relating to water? And it says in here that the provisions of this chapter shall apply to all requests or applications for land use entitlements governed by Chapter 18 and Chapter 19 of the code where they're going to require that before you get any land entitlements or subdivision entitlements, you have to show that you have a well drilled and you can show the quality and the quantity. Are you familiar with this?

Ms. Otani: That, I did review that, but I've seen quite a few bills come through so I'm not, you know, quite --

Mr. Vanderbilt: Okay. Well, there's -- okay.

Ms. Otani: I'm not familiar with it off the top.

Mr. Vanderbilt: So if there wanted to be more teeth in that as far as subdivision process goes about water availability, that's going to require some type of change in Title 18 probably, right?

Ms. Otani: Or with, you know, whichever agency is administering it.

Mr. Vanderbilt: Ralph, maybe you could --

Mr. Ralph Nagamine: Yeah, let me try and explain this a little bit. All Lesli's trying to say is that she's just requiring a statement. And the statement, along with all the other information, gets passed on to Department of Water Supply, Department of Health, and it's up to them to analyze the statement that's being made.

Mr. Vanderbilt: But --

Mr. Nagamine: What we're saying is that we're not analyzing the statement.

Mr. Vanderbilt: So when you send this to the Department of Water, and it's a private water system, they say we have no comments, we have nothing to do with that?

Mr. Nagamine: That's correct.

Mr. Vanderbilt: So then it just dies. You don't go to the private water system and try to --

Mr. Nagamine: Right.

Mr. Vanderbilt: Do you send it to them for a comment?

Mr. Nagamine: Well, whoever has jurisdiction over this private water system will then make comments relative to that statement.

Mr. Vanderbilt: And they usually do?

Mr. Nagamine: And, in this case, I believe it's going to be the Health Department.

Mr. Vanderbilt: For potable water source, just say the west end, that's Molokai Ranch's water service company.

Mr. Nagamine: At Kaluakoi, I believe it's a private water system and I believe that the State Department of Health has jurisdiction over that water system.

Mr. Vanderbilt: So they comment on the availability of water?

Mr. Nagamine: I'm not saying that they do. I'm just saying that they would have jurisdiction over that water system.

Mr. Vanderbilt: Alright. Thank you. Are there any other questions of Lesli? Steve? Commissioner Chaikin?

Mr. Chaikin: Yeah, what are some of the typical comments that you would get back from the Water Department because here we have this subdivision that's going to require a bunch more water? Do they make any commitment that they're actually going to supply that water to those lots? Or what kind of languages comes back from these comments from the Water Department?

Ms. Otani: Well, the Water Department, they typically -- it would depend, usually, on what type of system it is; if it's going to be their system or not. And, you know, I really hate to speak on behalf of another department because, you know, it's not quite appropriate. But, generally, if it's private, they have a comment that, as Ralph said, that they don't have jurisdiction over the private water. And if it's the County system, then they list their, you know, list of requirements of all the things they want done similar to what we do if it's going to be a road dedicated to the County and Public Works has an interest in it. Water Department, they usually have their standard comments about, you know, referring to their code and based on how much services there is. And then the Fire Department has their standard comments for fire protection.

Now once the preliminary comments are given to us, and the letter is issued, I'm not involved with the review that the applicant does with each agency. So once I send out a letter, if Planning, or Water Department, or Fire, or any of those agencies have comments, then the applicant has to deal individually with each of those agencies. And the next time I'll basically hear from them is when they're recommending or not recommending final subdivision approval.

Mr. Vanderbilt: Lesli, before we move on, can you explain to us how recently the subdivision process changed a little bit regarding ag subdivisions?

Ms. Otani: Well, for ag -- I'm sorry?

Mr. Vanderbilt: As far as the Planning Department, and their comment, and the ag assessment, and everything.

Ms. Otani: Well, probably, Francis would be better able to tell you because as far as the subdivision application, we await the zoning form from Planning, and then we treat them as we treat all the other agencies as a reviewing agency. So I'm not familiar with their -- how they assess the properties and the use.

Mr. Vanderbilt: Okay. I was just of the understanding that they did their assessment during -- saomebody applied, and you send it out for comments, they did their assessment at that time, but now they're doing it in advance.

Ms. Otani: Oh, well, my understanding is that they have a new procedure for how -- prior to issuing the zoning form. So maybe again, Francis --

Mr. Vanderbilt: We'll get Francis on that, but thank you. Are there any other questions of Lesli? Commissioner Chaikin?

Mr. Chaikin: Yeah, on the CC&Rs, is that an option for the developer either to make a set of CC&Rs or not have a set?

Ms. Otani: Yeah, for us, for our department, it's a statement. It's the code requirement that they let us know if they have CC&Rs or not. So, typically, they'll check it off and/or they'll submit the CC&Rs to our office as part of it. Most don't have CC&Rs.

Mr. Chaikin: And then how does it work with like originally, when they have this one parcel or multiple parcels that they're going to subdivide, they have a deed, or they have a deed that says they own that property. What happens when it's subdivided? They still have that one deed? Or is it all of the sudden they get deeds for all these new parcels? Or how does that work?

Ms. Otani: Okay. Well, let's say I own a piece of property. I own five acres and I subdivide into two lots. Once the County of Maui issues that letter, and stamps the final plat as approved, then legally, by the County Code, I have the option of conveying the property. You're not supposed to sell or convey lots unless you go through this, you know, the County recognizes it as a separate lot through the subdivision process. Then it's up to the person. So I could, you know, keep it as it is, or I could deed off maybe Lot A to my child, and Lot B to my other child, or what have you, but we're not involved with the conveyance after the final approval.

There's -- the only instance where we really check the conveyance, and I think this was a topic of interest to the group, is during the family subdivision process. So that is allowed

within the County Code that you can come in and go through a separate process, which is the family subdivision process. Typically, that process, and you can read the code in greater detail, it's land that is to be conveyed or separated between children, land they received from their parents or grandparents. So it's not that I'm going to subdivide and deed something to my mother. It's actually to convey, you know, down a generation to either children or grandchildren. In that instance, we do require proof of the relationship prior to accepting the application. So usually we get birth certificates, marriage certificates, and such. And during the process, they have to do deeds. And the conveyance has to occur because the intent of it is to pass the land through.

With the family subdivision process, it's not an exemption from our code requirements. It's a deferral. So when you go through, it's not that you no longer have to provide improvements, or do adjacent roadway improvements, things of that nature. You're still going to be required to do it. It's that we grant final, and you have to do those things before you obtain a building permit or, if applicable, a water meter. So it's not a deferral -- I mean, it's not an exemption. It's just a deferral. So usually we don't process too many because people would rather go through the regular process and have it done at one time because it's not -- you're not getting away from anything. It's more so that, I guess, to aide if someone wants to convey the property quickly to their descendants. It's the process to help do that, and most people just go through the normal process.

Mr. Vanderbilt: Lesli --

Mr. Chaikin: I got one more question.

Mr. Vanderbilt: Commissioner Chaikin.

Mr. Chaikin: When you have your final -- you issue final, and the people defer doing the improvements and post a bond, is there kind of a time limit that you put on that they have to complete the process?

Ms. Otani: Yes, the time limit is, by code, is one year. But it can be less than that because if someone is optimistic, and they submit their bonds and those documents to us early, so let's say they submit it in January, and they don't have final until March, if their bonding date started in January, then we'll carry the date of completion of the improvements to one year from January when the bond was submitted. So it's usually a year or less because we have to have that money ...(inaudible)...

Mr. Chaikin: So what I'm hearing is that it's not practical for somebody to actually go subdivide a big parcel and then not go through with it? I mean, do you have to actually go through with it in a timely fashion?

Ms. Otani: Well, they're supposed to do it within that one year. So typically, people do the bonded final, especially these large small lot subdivisions such as Maui Lani or Kehalani, because you can start conveying the property. When you receive final subdivision approval, you can convey the property, you can go through escrow, those types of things, and then they do their construction in the meantime. And when the construction is done, it passes inspection, all that, then we release the bond.

Mr. Chaikin: Okay. Thank you.

Mr. Kalipi: Commissioner, I get one.

Mr. Vanderbilt: Yeah, Commissioner Kalipi?

Mr. Kalipi: If you have a property, let's say on the west end or wherever it is, and you fill out the applications, but there is a CC&R that's stating that there is -- that they don't approve in subdivision, or you're not suppose to subdivide your property, how do you proceed to process their application?

Ms. Otani: Okay. So this code requirement for the preliminary plat, that's typically, referring to new CC&Rs being proposed with that current subdivision action. And other than the statement, it's very similar to the Water Department, we just need the statement. And if they have -- if they state no, or if they give us the CC&Rs, we put in our file, but we don't have any requirements to enforce anything within the CC&Rs. So usually, for us, the only time we're involved with CC&Rs is if the County of Maui is a party to the CC&Rs and we have an interest in it. But if it's a private -- you know, sometimes the CC&Rs may be the color of houses, or the types of retaining walls, things of that nature. We're not enforcing that private CC&Rs.

Mr. Kalipi: So the CC&R language would go in there. Even though it opposes the subdivision, you still process the paperwork because you have the language in it?

Ms. Otani: Yes, because we're -- I'm enforcing Title 18. I'm not enforcing the private CC&Rs.

Mr. Kalipi: Okay. Thank you.

Mr. Vanderbilt: Lesli, and maybe Ralph can help out on this last question, you said there's no public review on Molokai for any new subdivisions that were proposed here. What document needs to be changed to allow community review of any major subdivisions on Molokai? And who would initiate that change in the ordinance?

Mr. Nagamine: That question's rather timely because just a couple of weeks ago, our department submitted a proposal to the Planning Department to make certain changes to the ag ordinance that would incorporate public review of ag subdivisions. And so, I can -- that proposal was made several weeks ago so I can only assume that the Planning Department is trying to digest that proposal. And, eventually, I would assume that it would come before this body.

Mr. Vanderbilt: Why did you only do it for ag subdivisions and not all major subdivisions?

Mr. Nagamine: I don't know. I think it's just because there's more interest in ag subdivisions as opposed to other subdivisions.

Mr. Vanderbilt: Alright. But -- so the ag ordinance has to be changed to allow public review during subdivision or Title 18?

Mr. Nagamine: Well, that was the proposal that was submitted from Public Works to Planning.

Mr. Vanderbilt: To change what? Which ordinance?

Mr. Nagamine: To amend the ag ordinance in Title 19.

Mr. Vanderbilt: And that would be initiated by the Planning Department?

Mr. Nagamine: No, it was a proposal from Public Works to Planning to change Planning's Title 19.

Mr. Vanderbilt: Title 19. Now, if we wanted to change on Molokai, at least, community review of any major subdivision, where would that have to --

Mr. Nagamine: I think if it was just general to all subdivisions here on Molokai, then that would be a Title 18 amendment.

Mr. Vanderbilt: And that could be done by Planning?

Mr. Nagamine: No, that would be submitted to Public Works.

Mr. Vanderbilt: And you would initiate that change if you --

Mr. Nagamine: Yeah, we would do the consideration and action on it.

Mr. Vanderbilt: Alright. Could anybody else initiate the change? Could the County Council?

Mr. Nagamine: The County Council can initiate their own changes.

Mr. Vanderbilt: The Planning Commission?

Mr. Nagamine: The Planning Commission can make a recommendation to the County Council to make the changes.

Mr. Vanderbilt: Thank you. Okay, if there are no -- Thank you, Lesli, for a very thorough presentation. I hope we got you out of here on time to get home in time. And with that, we'll have Francis Cerizo, who's with the Zoning Enforcement, I guess, Department of Planning, and he's the guy that looks at the ag subdivision request whether they be a major ag, new ag subdivision, or in the case on Molokai on the west end, the resubdivision of existing ag lots at say, Papohaku Ranch lands. And he's going to explain to us the process. And if there's any questions on the process, please feel free to jump in. And if the public has a question, just jot it down, and we'll let you come to the mike and ask it also because this is a public workshop and everybody's free to share their mana`o here with the Commission. So without further adieu, Francis.

Mr. Francis Cerizo: Good afternoon, Commissioners. My name is Francis Cerizo. I'm with the Planning Department, Zoning Enforcement and Administration Division. Today I'm going to give a workshop on the processing of permits and approvals within the ag district. And I'll be covering how we process building permits within the ag district. It involves farm plans. I'm going to be talking about how we approve, or review, and make recommendations for approvals of subdivisions within the ag district. And, lastly, I will be talking about the Planning Commission's participation in these reviews.

As an overview, we have, on Molokai, 165,800 acres. Of that there's about 2,500 acres in urban, about 110,000 acres in ag, and about 1,800 in rural, and about 50,000 in conservation. So as we can see, you know the majority of the area is in the ag district.

The first permit I'm going to be looking at is the building permits within the ag district. And one of the first things that we --

Mr. Vanderbilt: Excuse me, Francis. Did Planning bring any extra handouts for the public on this?

Mr. Cerizo: We have very few left.

Mr. Vanderbilt: Very few left?

Mr. Cerizo: Yeah.

Mr. Vanderbilt: Okay.

Mr. Cerizo: Okay, the first thing that we'd like to mention in the ag district is that any building permits within the ag district are accessory to a permitted principle use. What that means is that a principle use has to be established in order to have any buildings or structures. A dwelling, for example, is an accessory use. So before we approve any permits, they have to meet one of the principle uses. And these are the typical three that are used. One is that it's agriculture where you're actually an active farmer. Ag land conservation, and this deals with activities that nourishes the soil, helps prevent erosion, and improvement of air quality and, lastly, it assists in the habitat restoration. And the third one typically, is livestock raising such as ranching and so forth.

In order to establish that they have -- whenever an accessory structure, or building, or dwelling is proposed, they need to provide a farm plan that shows that more than 50% of the parcel will be in agriculture. So we just previously saw what ag uses are, those three I listed before. So they come in and provide a plan. And I have a copy of that plan in your attachments. It's your first attachment. It's called a Farm Plan Application. So in there, we have a description as to what is required in a farm plan. And, basically, we need a map that shows your parcel, and what areas are you going to be farming, or what areas are you going to be in ag conservation, or in some kind of ranching. So the map will show the total areas of the different uses, and it has to meet the 50% of the parcel.

This farm plan was developed about two years ago, and we recently -- well, last year we had the rules adopted for the implementation of the farm plan requirement. One of the requirements of a farm plan also is a recorded unilateral agreement. This agreement informs the owners and future owners that failure to conform to the farm plan may be a violation.

And, lastly, whenever there's a second building that's proposed, we require now that a compliance report be submitted and approved before the construction or even a permit approval of the second dwelling.

Mr. Vanderbilt: Excuse me, Francis. So with the first dwelling on ag land, you don't have to have a principle ag use or a farm plan?

Mr. Cerizo: You have to have one. For the first dwelling, you have to have a farm plan that says, okay, I'm going to be doing this in ag, this in ag conservation, or I'll be ranching. So in order for them to get a permit, that plan, what he's going to be doing with his first house, has to be submitted and approved.

Mr. Vanderbilt: But how is that different from the second house? What did you say on the second house?

Mr. Cerizo: The second house requires -- if you want to build a second house, we need a compliance report from the owner saying that I have planted half of my parcel --

Mr. Vanderbilt: Or I've done nothing with half of my parcel, right?

Mr. Cerizo: Well, if you have done nothing with your parcel, you wouldn't be in compliance. You have to be in compliance to what your original plan --

Mr. Vanderbilt: All right. So you're saying you can't just leave half your land in its natural grass area? Do anything with it?

Mr. Cerizo: Well, there's different ways of complying with the ag uses, and one of them is ag conservation.

Mr. Vanderbilt: Which you'll allow somebody to just leave it in its natural grasses and not develop it?

Mr. Cerizo: Well, if you look at the ag conservation, the definition of ag conservation, I think we can go back one -- well, it's on your handout. There's -- ag conservation deals with soil nourishment. It deals with planting of plants that will reduce soil erosion to assist in the betterment of air quality, and also habitat restoration.

Mr. Vanderbilt: Let me just ask it real straight: if I buy a lot on the west end, and I want to do a farm plan, I say I'm going to build a house on half of it, and I'm going to leave the rest of it in its natural grasses to prevent soil erosion, would you accept that?

Mr. Cerizo: If they meet their criteria, yes, we would.

Mr. Vanderbilt: Thank you.

Mr. Cerizo: So this is a typical plan or a farm plan that was approved. You can see the house is in the middle. And they have shown that they have certain areas in ag conservation on the left. They'll be growing some fruit trees, and flowers, it surrounds the house, and on the left bottom, they have a total of the areas that's going to be used, the use areas, and also, you need to show that the area that's being developed as ag is over 50%.

Ms. Tootie Kalipi: I can ask one question?

Mr. Cerizo: Sure.

Mr. Vanderbilt: Excuse me, Toochie, you gotta come up to the --

Ms. Kalipi: I'm sorry.

Mr. Vanderbilt: You probably have a lot of questions, so you better just stay up there.

Ms. Kalipi: My name is Zaidarene Kalipi. Everyone calls me Toochie. The question I want to ask is, how many acres do you have to have?

Mr. Cerizo: If you have a lot -- the minimum lot size in the ag district is two acres, but we have many lots that are larger than two acres. So there's -- the smallest you can have is two acres.

Ms. Kalipi: Two acres?

Mr. Cerizo: Yeah. In some areas --

Ms. Kalipi: But what if you live on an ag area and -- well, of course, I got a lot of fruit trees, I plant taro, I plant flowers and whatnot, but it's only about an acre and a half. Can I still add another home on it?

Mr. Cerizo: Okay. Let's say your lot is two acres. How big is your lot?

Ms. Kalipi: I just said: about acre and a half.

Mr. Cerizo: Okay. If your lot is an acre and a half, you're required to have in agriculture, three quarters of an acre. That would be half, right?

Ms. Kalipi: More than half.

Mr. Cerizo: Yeah, so it has to be -- so if you can show on your lot, like the map that we just showed, you can show us that you have your taro over here, and your fruit trees here, and it's over three quarters of an acre, it'll be approved.

Ms. Kalipi: Oh, that's all. Thank you.

Mr. Cerizo: You're welcome.

Mr. Vanderbilt: For a vacation rental? Excuse me, Francis. So let me just -- where's that example of the map of the --

Mr. Cerizo: That's the farm plan.

Mr. Vanderbilt: So if that was a four-acre parcel, and that was subdivided into two lots, then they'd still have to meet that 50% on both lots, right?

Mr. Cerizo: That's correct.

Mr. Vanderbilt: Thank you.

Mr. Cerizo: So moving on to ag subdivisions on Molokai, as an overview, we have since 2000 to present, we've had 31 subdivisions that were submitted to the County. And of that, 25 agricultural lots -- I mean, subdivisions, were submitted.

In your next packet, we have on the last page, copies of the subdivisions. Just turn it around. You can see the subdivisions that we're talking about. Sixteen subdivisions were three lots or less. Five subdivisions were four lots. And four were larger than four lots. The reason why we separated the four lots and more is because the community plan requires that any subdivisions that are four lots or more requires a public meeting for input and --

Mr. Vanderbilt: Where does it say that?

Mr. Cerizo: In the community plan.

Mr. Vanderbilt: Well, I don't think so. It says that if it's four lots or more there has to be minimum of 25 acres, but it doesn't say public review, does it? Maybe I'm wrong.

Mr. Cerizo: Yeah, you can review it later on. It's in here if you want to review it. So that community plan requirement was part of your 2001 community plan update. So everything from 2000 -- we just use 2000 as a round number. So we have nine subdivisions that may be coming up for public review. One thing, though, as far as -- there's four subdivisions that are Department of Hawaiian Homelands, and those subdivisions are not subject to review.

Mr. Vanderbilt: Francis, you're right. I was wrong. There is public review for four lots or more on ag land. So without that ordinance -- Ralph, you mentioned there was an ordinance being considered by Planning that would review ag subdivisions, but we already have that, right?

Mr. Cerizo: Well, let me just say one thing on that. The -- it calls for public input and review. It doesn't have that it has to be by any -- by the Planning Commission or by any party. So as a process for our Department, since we are the Department that checks for

compliance or conformance to the community plan, we have taken it upon ourselves to have public reviews of these subdivisions. The most recent one that we did was for the -- was it the employee housing up in Maunaloa?

Mr. Vanderbilt: There was a public hearing on that?

Mr. Cerizo: Yes.

Mr. Kalipi: Excuse me. So if it's not -- no designated body to do the public review, could the owner himself just call a public meeting say in the community center and call it a public meeting?

Mr. Cerizo: That would be the minimum -- well actually, we would be moderating the meeting, and we require the applicant to be there to make a presentation. Then, we'll take in comments on the subdivision.

Mr. Vanderbilt: So this is a policy that you've adopted?

Mr. Cerizo: It's a requirement that we have -- It's not a policy. It's in the community plan. And as part of the --

Mr. Vanderbilt: But you've interpreted the community plan like you want to interpret it, right, rather than saying we think the public review should be before the Planning Commission like most other public reviews? It could be that, if you guys want it, huh?

Mr. Cerizo: No, it doesn't say that, though. So that's why probably the Title 19 revision will be more specific, and the proposal does show that it goes in front of the Planning Commission.

Mr. Vanderbilt: Terrific. Thank you.

Mr. Cerizo: So the Subdivision Ordinance, which is Title 18, requires conformance and consistency with the General Plan, community plan, and the Zoning Ordinance. So as part of our review, we have in the community plan, we have listed the -- there's four requirements that specifically is mentioned in the community plan under the planning standards, and the first one is that lot configuration shall be designed to respect existing features and resources to the greatest extent possible. So this usually is when you have a stream, a river, the ocean, existing roads, or let's say, historic walls that, to the greatest extent possible, they should subdivide their lots to match those.

Another requirement is that impacts on agriculture and socio economic impacts on the community is analyzed, and that the improvements are non-urban.

Another one is minimum lot sizes. For large lots or large subdivisions, the minimum lot size would be 25 acres. There's exceptions to the 25-acre lot, and these are agricultural parks, family subdivisions, and three lots or less subdivisions.

And, lastly, the agency and public review.

Mr. Vanderbilt: Excuse me, Francis. In our community plan it also says discourage development or subdividing agricultural designated lands for gentlemen estates or pseudo agricultural uses in which the resident would be the primary use and any non-intrusive agricultural activities would be secondary. How is that considered in your evaluation?

Mr. Cerizo: Well, when someone builds a subdivision, and also when someone builds your house or dwelling, at each stage, there's an agreement that notifies the owner, first, as a subdivider that the lots are going to be used for agricultural purposes. And it's also reinforced on the farm plan that the primary use of the property is ag, and you're required to put the farm plan in. So we see it as in compliance.

Mr. Vanderbilt: And as far as you're concerned, you have no say or concern whether the farm dwelling is 13,000 square feet or a thousand square foot farm dwelling?

Mr. Cerizo: The only concern we have is that there is maximums, that's in the code, and it's ten percent of the lot. So if you had a two-acre lot, the maximum buildable area would be about 8,000 or 9,000 square feet, and you're allowed to have two dwellings: one not more than a thousand square feet. So you'll have one that's, you know, a thousand and one that's 8,000 square feet, approximately.

Mr. Vanderbilt: Does that apply to rural zoning, too? Subdivisions in rural zoning? Do they have some kind of percentage of lot coverage?

Mr. Cerizo: No.

Mr. Vanderbilt: Thank you.

Ms. Lynn DeCoite: Francis, excuse me. I got a question. So, you know, if we're looking at the gentlemen estates, and we're looking at say, I guess it would be classified as a farm or workmen's quarters, and the classification of what DeGray was just saying, and the sizing of that farmer's dwelling, what -- say they submitted that second plan based on 50 percent whatever is being farmed, or conservation, or whatnot, does the County, you -- who does the enforcement in saying, okay, this is an approved second dwelling? Because my interpretation of it is that gentlemen's estates is, basically, trying to get around taxes, in my eyes, as a farmer myself. So who would come in and do an enforcement based on a

workmen's quarter which would actually -- what would we call it, Kip, a second vacation rental?

Mr. Cerizo: Okay. There's -- when you say, "workmen's quarters," that's almost like the third dwelling because you're allowed to have two ag dwellings, and then you're also allowed to have, for every five acres, you can have a worker's quarters. So maybe -- so that we don't get that confused, and if you have a bigger lot, you can have one for every five acres. If you have a big --

Ms. DeCoite: So the classification on the workmen's quarters and the requirements is what?

Mr. Cerizo: It's in the code. You're required to show that you have a -- for each dwelling for workers, you have to have a gross of about \$35,000 per year and --

Ms. DeCoite: Okay. So say the gross -- I mean, so they would have to actually turn in a general excise, a federal ID based on that?

Mr. Cerizo: That's correct.

Ms. DeCoite: And the County would adhere and enforce?

Mr. Cerizo: That's correct.

Ms. DeCoite: Okay. Thank you.

Mr. Cerizo: Okay. As part of the ag subdivisions, we do an agricultural assessment. And it may be hard to see on the screen or even on your handouts, but as part of your handouts, there's the ag assessment handout. It's probably easier to read from that than from the screen. If you go to Page 3 of 4, we have it typed up. So the first one is -- well, you know, before I even go into the ag assessment, the purpose of the ag assessment is to check the ag potential of the property. Can that property be truly -- do an ag operation? Or can it achieve the requirements of the code that you're in that you can comply with one of the principle permitted uses in the ag district?

Mr. Vanderbilt: Excuse me, Francis. So one of those principles that you're looking and evaluating would be leaving it in the natural grasses to prevent soil erosion?

Mr. Cerizo: Well, one of them is ag conservation. And in some places, you know like on the East End or up --

Mr. Vanderbilt: How about on the West End?

Mr. Cerizo: Well, it's probably harder there, because sometimes you may have bare ground; you may have big swats of eroded area. So -- and the percentage may be half the lot is in -- let's say it's all eroded. So to say to leave it bare ground is not acceptable. So they would have to come out and say, okay, what is ag conservation? Ag conservation is the planting of soil nourishing plants to achieve -- to reduce erosion, to reduce or improve air quality, or planting for habitat restoration. So if they can show in their review that this can be achieved on their lot -- in some places some areas, the whole area is grass, so it may be already achieved.

Okay, so on the first one, on the ag assessment is, what the general soil capability and productivity of the site? And if you look at the handout, you know, we ask them to go to the USDA Soil Survey and give us a detailed land classification that you have on the lot. We also ask them to tell us that, okay, this soil is -- actually, we ask them to give us the whole rundown on the type of soil that they have. It's a deep soil. It's a dry soil. It's rocky. And in some of these analysis, they also say, you know, what is the best use that they can use it for. So we have them explain -- that's what's explained in No. 1.

The second one is, describe the adequacy of the existing irrigation and water sources on the site. And No. 3, if there is no water available, we ask them to describe the adequacy of the proposed irrigation and water sources to the site.

Mr. Vanderbilt: So, Francis, let me just ask you something on three. If they say, we don't have any water, but we plan to go and have a well drilled, and we gotta before the State Water Commission to get approval, it might take a few years, what would your position be on that subdivision? Would you just assume they're going to get the permit And make your comments accordingly to Lesli's group so they could process the subdivision for approval or --

Mr. Cerizo: It depends on the area. In some areas, you may have -- and we have accepted some areas if they have adequate rainfall that it can support agriculture or at least support ag land conservation, that might be acceptable. However, in some areas where there's no water, very little rainfall, very difficult to sustain any kind of growth, that might be -- we might have to wait 'til the water is actually there.

Okay. Also, No. 4, we ask, what is the property being used for? And if it's being used for some kind of use, we ask them, how will this support the existing or the diversification of activities taking place on the subject property? How are you going to -- are you going to continue it? Sometimes they have it like in ranching, and you cut it up, would you still continue that? Are you going to put it back in -- are you going to put more fences up so that people can still use it for cattle raising or other livestock?

If it's no, we ask the question that on your evaluation, what is suitable for the site? What kind of farming can happen based on the water that you have, based on the soils, the topography? Sometimes we have lots that half of it is in gulch. Can you still have agriculture on those properties?

Moving on to the back of that page, we're looking at page 4 of 4, one of the requirements that we have in our code is that we cannot have any CC&Rs that restrict ag uses. So we review any existing CC&Rs. And if there are any CC&Rs that prohibit ag uses, those would have to be either changed or the CC&Rs be amended before the transfer of title that would remove those restrictions. No. 6 --

Mr. Vanderbilt: Excuse me. So you say they have to amend before they transfer title?

Mr. Cerizo: Yes.

Mr. Vanderbilt: So you wouldn't approve the subdivision unless the CC&Rs were amended, right? You wouldn't send the --

Mr. Cerizo: The CC&Rs would need to be amended, but it doesn't have to be --

Mr. Vanderbilt: Could be any time?

Mr. Cerizo: Not recorded.

Mr. Vanderbilt: There's no time? There's no timeframe?

Mr. Cerizo: It's when they -- the requirement is that whenever you transfer a title, you cannot have CC&Rs that restrict ag uses, so at the time that a person sells the lot. So we would have a proposed CC&Rs that would be reviewed as part of the subdivision process, and if the owner is saying that this would be part of the conveyance documents.

Okay, moving on to No. 6, how do the proposed lots relate to the current parcel sizes and configuration established in the area? We're just looking at, you know, lots that are -- you know, what are the impacts on the adjacent ag areas? If the lots are, in some cases, the lots are all small two-acre lots, and if you resubdivide the lot to another two-acre lot, you know, it's not -- that's one way of showing that the impacts on the adjacent areas are minimal.

No. 7 is one of the harder requirements, and this comes out of the code. It asks, explain how the proposed subdivision supports the specific purpose and intent of Chapter 19.30: mitigate rising property values of farm lands to make agricultural use more economically feasible. So there's been a lot of creative responses to this. And one of the more

meaningful ones is that, you know, is that when you have a family subdivision. I'm going to give it to my kids. I'm going to just give it to them. So that's one actually that they've met the requirement. Other responses are that these lots, these larger lots, are -- could be worth, you know, millions of dollars. So by cutting the lots up, it actually is worth one million dollars. So it actually reduces the price for that one lot for transferring over. Now, that's, you know, it's another creative way of saying it, but it makes -- it may make it more feasible to farm when it's less than buying a larger lot.

Mr. Vanderbilt: So who makes this determination that it's -- these creative responses are really legitimate? Would it be you?

Mr. Cerizo: Well, the Department does.

Mr. Vanderbilt: So you would recommend, then the Director would make the final say?

Mr. Cerizo: That's true.

Mr. Vanderbilt: Thank you.

Mr. Cerizo: Okay, another applicant -- the applicant also needs to submit photographs of the areas so we can visually see what's there.

And the last No. 9 is an analysis on how the project conforms to the General Plan, community plan, and the zoning. And so one of those -- what we saw on the screen previously was the community plan requirements: 25 acres minimum lot size, non-urban standards, that they do an economic -- socio economic consideration should be looked at as part of approving the subdivisions and so forth. So this requirement is used for all the community plans, and some community plans are not as active as the Molokai Community Plan as far as requirements, and so we need to look at the individual community plans for guidance on conformance to the community plan and the General Plan.

Mr. Vanderbilt: Clayton -- I mean, not Clayton, I'm sorry. Francis, so the subdivisions that you approve, you consider those to be productive ag lands?

Mr. Cerizo: No, I'm not saying that. It's -- you need to, as far as the ag assessment, show that those subdivisions can comply with Title 19.30, the ag district, where there are -- there's actually, seven permitted uses, but those that's related to ag as long as they can show that they have the capability of achieving agriculture, ag land conservation, or livestock raising --

Mr. Vanderbilt: Wouldn't that make them ag productive lands? Productive ag lands?

Mr. Cerizo: Well, ag -- when you say "productive," do you mean that it's going to be making money?

Mr. Vanderbilt: Alright, let me get right to the point here I'm trying to make. It says here that demonstrate that the proposed project is consistent with specific General Plan policies. In the General Plan it says, discourage the conversion through zoning or other means of productive or potentially productive ag lands to non-productive agricultural uses including, but not limited to golf courses and residential subdivisions. I mean, the intent there -- now, you can play with the words and do everything else, but the intent's pretty clear there.

Mr. Cerizo: Okay.

Mr. Vanderbilt: So how does a guy come down here and say, well -- how does he respond that he is consistent with that policy?

Mr. Cerizo: Well, like I said, as far as when we review building permits and review subdivisions, we go through the analysis. And, you know, one of the key things that we rely on is they're noticed that these lots are for ag That's the primary purpose. The housing and all of the other accessory uses are secondary. That's why they call it, "accessory." So you need to establish your permitted uses first. And, you know, if it goes on as far as the building, if they comply with the requirements, you know we have -- if they go into an active ag land conservation, it will be productive. They can -- you'll have -- in some areas you'll have an improvement.

Mr. Vanderbilt: Glenn, could you give your name for the record?

Mr. Glenn Teves: Glenn Teves. Just a couple questions. One, if the lots are already in ag subdivision, and the CC&Rs are restrictive, how do you folks get to have input into the changing of those CC&Rs?

Mr. Cerizo: We don't.

Mr. Teves: You don't?

Mr. Cerizo: Yeah. In existing subdivisions, the law -- I believe it was 1997 or thereabouts that restricted any new CC&Rs to have ag restricted. Those that were prior to that date are grandfathered.

Mr. Teves: Okay, so, what if they come in and they subdivide? Would that kick in at that point? Or is it after the transfer of the lot to somebody else?

Mr. Cerizo: We would require that, as part of the subdivision review process, that documents would be drafted that would cancel those restrictions. And that before the transfer of any lands, or as part of the transfer of any lands, that the new CC&Rs would be -- would allow ag uses.

Mr. Teves: Because I guess in the case of the Kaluakoi and the Papohaku Subdivision, I think the CC&Rs are restrictive right now, and that subdivision was allowed to go through. Are you familiar with that one?

Mr. Cerizo: I believe -- yes, that subdivision was '70s or '80s, and way before the --

Mr. Teves: No, no, just the one in the last year. What was the guy's name now? Notman. Okay, the Notman Subdivision, did those things -- I mean, he evidently got approval and their CC&R is restrictive to agriculture down there.

Mr. Cerizo: That's true.

Mr. Teves: How did that go through?

Mr. Cerizo: That one there, as far as the CC&Rs, the way that our Corp. Counsel reviewed it, it did not restrict ag uses. What it did was it restricted water for ag uses. So as far as ag, you can do whatever ag activity that you want to do. There's no -- saying you can't -- there's nothing that says you can't have cows, or this, or that, but it's just that you can't have the water for that. So the water would have to be -- either you bring in the water, you're bringing the water system in, or actually, you use water-reducing crops or uses.

Mr. Teves: That would seem to be restricted to agriculture if you cannot use the water for agriculture.

Mr. Cerizo: But the CC&Rs says, as far -- it limited -- if we look at, it just limited the water uses, and it didn't tie it to the ag uses. I believe it just said -- and we have to look at that. In fact, if you want to have a copy of that, maybe you can look at it another time, and we can explain that portion there.

Mr. Teves: Okay. Are there rules in the ag subdivision exclusive to Molokai?

Mr. Cerizo: In the rules?

Mr. Teves: In the ag subdivision, in the Title 19, are there ag subdivision rules unique to Molokai that --

Mr. Cerizo: Except for the community plan provisions, I mean, those as I said before, those are -- there's several of those that are unique to Molokai: the 25 acres, the public hearing. That is unique. Other than that, there's some other uses that are -- in the special uses of the ag bill, it says that the Molokai Planning Commission would like to have -- you have to have Molokai Planning Commission approvals instead of being outright permitted.

Mr. Teves: So in the case of the Notmans, the Molokai Planning Commission did not have input into that.

Mr. Cerizo: That's correct.

Mr. Teves: So what happened there?

Mr. Cerizo: The requirement for Commission input -- in fact, the only time the Commission gets involved as of now is whenever the project is in the special management area. If it's a lot in the SMA area, you automatically get -- through the SMA, and through the SMA process that Nancy did, that would get -- you would have an opportunity to look at that subdivision. Other than that, SMA, there's no other connection as far as the Commission having opportunity to review any subdivisions. There's a proposed subdivision amendment -- well, Title 19 amendment to the County Zoning Code that is being reviewed now that would require the Molokai Planning Commission review of subdivisions.

Mr. Teves: Okay. So the rules unique to Molokai are in the community plan and not in the Title 19, then?

Mr. Cerizo: That's correct.

Mr. Teves: So it kicks in at a different point in the process?

Mr. Cerizo: It kicks in as part of subdivision review process.

Mr. Teves: Okay. The other thing is conservation -- that conservation thing in here. Is there a certain limit on the amount of land that can be put in conservation in a lot?

Mr. Cerizo: Ag conservation?

Mr. Teves: Yeah.

Mr. Cerizo: No, there's no limit.

Mr. Teves: So they can put a 100 percent of their land in ag conservation?

Mr. Cerizo: That's correct.

Mr. Teves: Shouldn't ag conservation be part of a production process in where you're actually in farm production, you rest pieces of land, and in and of itself is not in agriculture production process?

Mr. Cerizo: Well, that's the way the rules are written now. I mean, that could be something that could be an amendment to the code.

Mr. Teves: Because I think this is the big loophole. You start talking about to people, they say, oh, yeah, my land is conservation. And there seems to be a lot of people, conservation-minded people all over the State of Hawaii because nobody seems to be farming.

I would think there would be a limit on the amount of land that you can put in conservation, you know, and any farm, anybody who puts all of that in conservation, farmer, goes out of business. So you would think a certain, say, 20%, 15% where they're actually rent -- they're resting their land, they put in fallow, they may put in cover crops, and then they bring it out of conservation back into production, and then you go piece-by-piece, increment-by-increment in your whole farm production area, and you do that. But in and of itself, to me, that's one violation of the law to say that my land is in conservation, and it's probably going to be there until I die. That seems to be one -- either it's a loophole or it's a misinterpretation of the Act 205. Because I was just looking at Act 205, and I think, you know, it would be good for the Commissioners to have a copy because that's the main law. Title 19 is to enforce Act 205. Title 19 can be more stringent than Act 205, but not less stringent. And I think you need to really look at that, especially in view of the Hokulea case where the same kind of rationale was coming out of that thing like we're not going to farm the land. Somebody else is going to farm it. And we're going to have this land in conservation. Those types of same kind of rationale. But I think this conservation thing is a big, big loophole that a lot of people are using, and they're not farming, and they don't intend to farm. Thanks.

Mr. Vanderbilt: Thank you, Glenn. Francis, just one question. You mentioned the rules that's being drafted up would let the Molokai Planning Commission review agricultural subdivisions. Is this just going to be an amendment to the law for Molokai or is that planned for all of Maui County?

Mr. Cerizo: That's planned for all of Maui County.

Mr. Vanderbilt: Thank you.

Mr. Chaikin: Francis, just a couple of questions. Does the -- when the subdivision potentially is in an SMA, is that considered a development?

Mr. Cerizo: Well, if you look at the subdivision -- I'm not sure if you have the SMA application, the special management area assessment application, there are provisions in there that shows what is exempted and what is not exempted. And I believe it says three lots or less. If it's four lots or more, it's not exempted. And also, the other thing that also makes its not exempted is if there's any improvements. So you could have a three-lot subdivision. If there's improvements, it's not exempted. You have to go through a minor permit. And if their work exceeds \$125,000, then you would have to get a major SMA permit.

Mr. Chaikin: Alright. Just a couple comments. I think the reason why we even had this workshop is to take a look at what's working and what's not working. And if something's not working, is there anything that we can do to improve it or fix the situation? We've already heard that there is a potential change in Title 19 that's in the works. So that's something -- a step in the right direction.

I think something that kind of jumps out at me that seems to be not working very well is this whole farm plan concept. Okay, it's great on paper, and everything looks good, but then in reality, is that what's really happening? I mean, what's really actually going out into the field? And I think that, you know, if you really went out there and looked, you might actually be appalled at what you see because there's a lot of activities, and it's straying away from -- the people are not really actively encouraged to fulfill their duties and their responsibilities.

So I think that we need to come up with some kind of a mechanism that improves a very poor situation. And I don't know if you have any ideas, but one of the things that I was thinking of is right now, we have a two-tier tax structure, it seems like, with ag. Basically, if you have an ag lot, it's my understanding that you kind of get taxed at the highest and best use for that ag parcel unless you have a bonafide ag operation in which you can get an exemption, and then you pay a much lower rate. As an example, if there was a three-tier structure instead of a two-tier structure that everyone would pay a much, much higher tax rate unless they could come through with compelling evidence that they were actually fulfilling their duties and responsibilities of their farm plan as they're required to do. And in that way, it would take the burden or the onus off of the enforcement and the Planning Department, put it back on the landowners, and I think you would see them all scrambling to try to fulfill their obligation because that's how they could get their tax exemption so they could play the lower amount, you know, the middle tier. I guess not the bonafide, you know, real ag operations because there's -- none of these gentlemen estates are going to probably qualify for that, but that's an idea.

And I guess the other thing that we need to do is find out from you if you have any other ideas how we can make the situation better, or if there's things that we can change or fix.

Mr. Vanderbilt: Francis, you got any ideas?

Mr. Cerizo: Well, we've had a lot of -- not complaints, but comments of exactly that. We go out in these subdivisions, they have their house there and there's like nothing there. You know, there's no farming. There's no trees. And we are re-evaluating, you know, how we do the farm plan. There may be changes. I think we're looking at that right now on changing the -- possibly changing the requirements. Right now, we require a compliance report before the second dwelling is built. So there's other options to that. You could require one before the first house is occupied. Or the extreme would be is that you'd have to have it in before you build the first house. So you can go from a big spectrum. So those are the options that we're looking at, and it may change in the future.

Mr. Vanderbilt: Francis, there's a lot of laws in the books and there's very little enforcement. There's very little penalties. If somebody builds his two houses and then says, the heck with this farm plan, I don't want to spend the money on the water or anything, and he just lets it go to hell, what is the fine, or how is it enforced? Does he have to tear down his houses then? Or is there any enforcement or any fines?

Mr. Cerizo: Well, I'm not -- we haven't gone there yet, but -- we have not gone there yet. So that's something that --

Mr. Vanderbilt: But do you have anything you can go to? Is there any law in the books that says if you don't keep the farm plan, you're going to be subject to a thousand dollars a day fine or something?

Mr. Cerizo: Well, that's -- as part of the farm plan and as part of the unilateral agreement that was enclosed in your packet there, it indicates that if you don't comply to the farm plan that you'll be in violation. So the owner knows ahead of time, I have a farm plan, and it says in there: if I don't follow the farm plan, I will be in violation and subject to -- so as far as --

Mr. Vanderbilt: And what's he subject to? Subject to what kind of fines?

Mr. Cerizo: Violations. Violations as far as -- the requirement is that you have more than half of your property in agriculture.

Mr. Vanderbilt: Alright. So you don't, and he says I'm still not -- I'm not going to comply. I think it's baloney, this whole idea, I'm not going to comply. What is his fine?

Mr. Cerizo: Okay. Find us the guy that's doing that. If you --

Mr. Vanderbilt: No, I'm not saying -- It's not up to me to find him. I'm trying to understand the rules. All I'm asking is, what is the fine if he violates?

Mr. Cerizo: Okay. As far as use, it's a thousand dollars.

Mr. Vanderbilt: A day?

Mr. Cerizo: It starts at a thousand dollars.

Mr. Vanderbilt: A day?

Mr. Cerizo: Yeah, as long as he doesn't -- and then the daily fines are -- it starts low, but it gradually compounds to a thousand dollars a day. And then it can -- there's a maximum fine.

Mr. Vanderbilt: Well, I think you could find a lot of volunteers who'd be willing to work on commission, straight commission, to go out and work on that. Frances?

Ms. Frances Feeter: I'm Frances Feeter. I'd just like to ask Mr. Cerizo: Have you ever enforced any action against these gentlemen estates? We lived in Pukalani 18 years ago, and Kula was notorious for these ag lots that they weren't doing any ag on then, and I'm just curious: Is it being enforced? Are you taking any action against these people? Or is it just another one of these things that the law's on the books and nobody is enforcing?

Mr. Cerizo: Well, the law is relatively new, 1998. As far as enforcing, we do enforce when they build the second house that a compliance report is submitted, or we have an inspection that goes -- an inspector goes out there to make sure that there is -- the ag activity that they say that they were going to perform --

Ms. Feeter: But you only do that if they're applying for a second house? You don't check up to see if they're fulfilling their obligations on a yearly basis?

Mr. Cerizo: As far as the obligation is, the current farm plan rules, which was adopted in late '06, which is just last year, November '06, says that the compliance of the farm plan is required when you build the second house. So that's what we're -- we're looking at perhaps, changing that requirement, because, you know, as far as the appearance that they're doing ag isn't there so --

Ms. Feeter: But nobody goes out and checks to see that they're doing ag or anything like that?

Mr. Cerizo: Well, since the ag rules were just adopted last year, we're required to find that they are in compliance before we issue a permit.

Ms. Feeter: So you're not actively enforcing it? I guess that's my question.

Mr. Cerizo: The rules say when you build your second house, you have to have it in.

Mr. Vanderbilt: Thank you, Frances. Francis, this farm plan, you have to implement it for the second dwelling. So if you never build a second dwelling, theoretically, you never have to implement the farm dwelling -- I mean, the farm plan, is that correct?

Mr. Cerizo: Theoretically.

Mr. Vanderbilt: Theoretically. Okay. This farm plan, was it -- who approved it? And who gave input into that? Was it -- Did it go to public hearings or anything? Or was it just an internal document?

Mr. Cerizo: It's a Department rules that was published for public hearing. A public hearing was handled or performed. And after those required --

Mr. Vanderbilt: They had one on Molokai?

Mr. Cerizo: No, I don't think so.

Mr. Vanderbilt: I didn't think so. Well, so --

Mr. Cerizo: I'm sorry. I'm not sure.

Mr. Vanderbilt: If we wanted to change -- make some -- or contribute some suggestions for the change to the farm plan or change the ag ordinance, how do we do that?

Mr. Cerizo: As a Commission, you should draft recommendations to the -- either to the Planning Department Director or to your Councilman.

Mr. Vanderbilt: For both the farm plan and the ag ordinance?

Mr. Cerizo: As far as the farm plan, that would be to the Department. As far as the ordinance, you can go either to the Department or to the County Council.

Mr. Dunbar: And that's Title 19?

Mr. Cerizo: That will be Title 19, correct.

Mr. Vanderbilt: Thank you.

Mr. Teves: Questions.

Mr. Vanderbilt: Yeah, Glenn?

Mr. Teves: Glenn Teves again. So, basically, all the enforcement is complaint-drive? If there's no complaints, then there's no real enforcement?

Mr. Cerizo: As of now, that's how it's been worked.

Mr. Teves: You know one of the big problems I see, and this again came up in the Hokulea case is that if you have no farm, then you don't need a farm dwelling. That was one of the big parts of that case. So, basically, if they don't have a farm, they don't need no house, because everything on that lot has to be accessory and ancillary to the farm. So I think what you folks doing now is you putting the horse before the cart. The farm comes before the farm dwelling. And, you know, if you did it like that, you kind of get away from having to enforce. When you got farm done, then you come see us. You know so you take away all these enforcement actions. Okay, I got my farm. I want my dwelling now. It makes things a whole lot easier. And then you would still need to have some enforcement to make sure they don't bulldoze everything after they get their house permit, you know, but this would make things a whole lot easier.

And I think that question that Mrs. Feeter asked was the same thing I wanted to ask is that how many people have violated and have been fined since 1999? Is there any idea of how many? Just a ballpark figure?

Mr. Cerizo: I have no idea.

Mr. Teves: So you don't -- has somebody been fined?

Mr. Cerizo: No.

Mr. Teves: Okay. Thank you.

Mr. Vanderbilt: Thank you, Francis. So where are we on this process right now? Francis, could I just ask you one question? Was this application or this assessment application, is this a recently amended document? Or was this application -- was this assessment application enforced when Mr. Notman got his subdivision approval? Or has it been drafted since he got his approval?

Mr. Cerizo: As you can see on the back, this was revised on 8/06, August '06. This -- Mr. Notman's was the first in the County. So he -- we started with Mr. Notman.

Mr. Vanderbilt: Using this application?

Mr. Cerizo: It was a draft form.

Mr. Vanderbilt: A draft form.

Mr. Cerizo: Yeah.

Mr. Vanderbilt: Thank you.

Ms. Michelle Pescaia: I have a request.

Mr. Vanderbilt: Commissioner Pescaia?

Ms. Pescaia: I was just wondering if someone could provide us with a contact department who handles the violation of this farm ordinances? Only because now that it's come up, I'm sure -- and because somebody published my name in the newspaper that I'm a Planning Commissioner, now people are coming out of the woodworks with complaints, and I'd like to have someone else they could direct their inquiries to, and maybe even an outline of what those penalties are since you're not aware -- I don't know if anyone else is aware of what the penalties are for violating -- You know what I'm talking about? Am I making sense? So --

Mr. Cerizo: Yeah, what you can do is call our office. We're the Planning Department, the Zoning Enforcement Division, or you can also go online and online there's a tab for a request for service, and that you'd like to make a complaint on -- yeah.

Mr. Vanderbilt: So, Francis, are you about finished with the process or -- Done? Let me ask you a question. The Notman approval got processed where he subdivided his lot into two, and I think he sold half of it for a million and a half, and now you have another one that you're looking at, I understand, from a Mr. Anderson, a lawyer in San Francisco that wants to do a 27 -- three lots and his 27-lot thing at Papohaku. The money's getting so big down there that -- and the Realtor seemed to be aware that people are being allowed to subdivide. How are you going to not let somebody subdivide if you've already approved Notman? I mean, nothing's changed since his application. I mean, the water's still there, the ag land conservation, all the rules that he went through the community plan and said how he was consistent with our community plan. And if somebody just duplicates his file and gives it to you, how will the County -- how could the County deny another subdivision down there? A similar type subdivision of an existing lot?

Mr. Cerizo: If anyone comes in for a subdivision, and we're just looking at it in general terms as far as the names that came out, we'd process the subdivision the same here on Molokai, we do it the same on Lanai and on Maui, so if you can meet the requirements of the ag assessment, satisfy those questions, and meet the requirements of the subdivision, it would be in compliance, therefore, we'd recommend approval.

Mr. Vanderbilt: Now, that might change if there -- in this draft ordinance where it comes before the Molokai Planning Commission review, assuming that passes, then we would make recommendations to the Planning Department on whether to give a -- What input would we have and how valid would that input be to you guys?

Mr. Cerizo: Well, the ordinance is being drafted now, so it's hard to say because it could change, but the original draft requires that they come in and it only applies to lots that's ten lots or more.

Mr. Vanderbilt: Ten lots or more?

Mr. Cerizo: Yeah, so, you know --

Mr. Vanderbilt: So everybody at Papohaku would be exempt then probably there because of a 25-lot --

Mr. Cerizo: Yeah, that's the proposal now, but it was before -- well, one of the things that probably the staff didn't know was that Molokai requires four lots or more. So it may be for Molokai that you have -- your threshold would be four lots.

Mr. Vanderbilt: Now, how does the Commission have input on that or the community? Will a draft come out and then it come to the Commission? Or how does that work?

Mr. Cerizo: Well, it's still in draft form, but the draft says you submit it to the Planning Department. There's a submittal. And it's similar to, in Chapter 19.500, I believe there's a whole section that deals with 05.10 that deals with applications, and it's quite intense. It's almost like coming in for a change in zoning or a conditional permit. You look at impacts. You look at, you know, all the different impacts that may be involved in -- like in a conditional permit, change in use, special use.

Mr. Vanderbilt: So all I'm saying is when the draft comes out, will it come for a public hearing to see if people agree with the draft and then go to Council? Or is it -- Oh, excuse me.

Mr. Hopper: All land use ordinances have to go to what they call the appropriate Planning Commission. So if it is -- would affect Molokai, which a general change would, then it

would have to come before the Molokai Commission, as well as the other commissions, much in the same way you've seen other rules or draft ordinances, and it would have to be -- I believe it has to go through a public hearing process, and then you would have, I believe, 120 days from that public hearing to make your comments. And I think there are some restrictions on Council ignoring your recommendations, if they decide to do so. I think they have to have a greater weight of load in order to do that. But if it's a land use ordinance, then it would have to come before you for review and comments to Council.

Mr. Vanderbilt: Is that your guys' understanding of what would happen?

Mr. Cerizo: I would have to concur with Counsel here.

Mr. Vanderbilt: Oh, alright, well, okay. We've got consensus on that one. So are there any questions of Francis or Lesli? Commissioner Chaikin?

Mr. Chaikin: Yeah, I've seen on a number of occasions when we've had impacts to properties that are in the SMA by properties that are not in the SMA, and I was wondering what we would need to do to be able to get notification when a particular subdivision request comes into your office even though it's not in the SMA because it might actually have an effect on the SMA. How could we achieve that?

Mr. Cerizo: I believe the change in the ordinance that's being proposed would resolve that.

Mr. Chaikin: Okay. Thank you.

Mr. Vanderbilt: Lesli, just one question, and you can just shake your head. Do you have a list of the pending subdivisions on -- or was that list -- that was the ag subdivisions. Do you have a list of all pending subdivisions on Molokai that you could leave with the Commission? Oh, you do. Okay. Thank you.

Is there anybody from the public that has any last minute comments about suggestions -- Lori?

Ms. Buchanan: I was just--Lori Buchanan--I was just sitting here thinking that's why it's so important to expand the SMA because you see there's so many loopholes, but the Planning Commission is the end review process for the SMA. And you cannot review it if it's not in the SMA. So it's important to expand the SMA beyond its boundaries because you going have people coming in wanting to subdivide.

Now, had our rule change gone into effect, the Notmans would have not gotten the approval to subdivide because it would've came here. And that's the argument why you

shouldn't throw the baby out with the bathwater because the process is taking a little longer. Because you still get the last say no matter if I doing interior renovations or whatever. You can work on changing that, but don't lose the power that took you years to get back. Remember now, Lanai and Maui, the Planning Director said, the one that exempt this project, why we fought so hard for that rule change was because people sat in front of us asking us, why the house stay built in the water? Why the house being built in the lo'i? Why they putting one wall up on the beach? Why the house digging in the sand dune to build? We couldn't answer them. You know why? All was exempted. So the process and the purpose of us getting that back was to get the last say. So if you get any doubts about whether you did the right or wrong thing, don't even go there. That was the right thing to do. So if you want to amend it a little for little interior things, and assessments, and stuff, that's fine, but never lose your power. No ever give that power away. And you gotta push for the Planning Department to expand the SMA so you no have to deal with all the loopholes that they going come through because you can see already: I only take care of this. As long as this on the palapala, you know, I cannot say nothing. I only deal with this. We the watchdogs over here. They only process paper. So let's keep the power that we have. That's all I gotta say.

Mr. Vanderbilt: Thank you, Lori. I just have one other question. I don't know who can explain this, but there's one other subdivision process which is outside of even your jurisdiction, and that's the State affordable housing process where you can come in, and just to give an example on Maui, a person bought 238 acres of ag land. The ag ordinance allowed him to do 19 lots. He went through the 201H project that gets him out of zoning and a lot of other exemptions and he ended up with 466 lots on that 238-acre parcel. And the same thing could happen back here behind Kaunakakai, or East End, or wherever. And I'm just wondering if somebody -- I mean, it takes Council approval, but where does that fit? Can anybody just quickly given an explanation of the 201H to this Commission just as --

Mr. Dunbar: You know, let's take that up at a different time, Mr. Chairman. It's not even on the agenda. We're talking about ag 19 and the subdivision that's on the agenda but --

Mr. Vanderbilt: We're talking about subdivision approvals.

Mr. Dunbar: 201 is not on the agenda.

Mr. Vanderbilt: It is a -- we're -- What is on the subdivision? What is on the agenda? Let's look at that. Maybe -- What? Is this the agenda? What's it say? Where is the subdivision? D, Workshop on subdivision process. The subdivision process that applies to existing, proposed, and future subdivisions on Molokai. Well, all I'm saying, Kip, is that they can do a subdivision up here that doesn't even come before this community like the County can, and I just was asking for a very short explanation of how that process works,

two minutes, just so people from the public know that there's something else out there that can impact our community plan process here.

Mr. Yoshida: Yes, Mr. Chairman, members of the Commission, for the 201 process, the -- either the Department of Housing and Human Concerns or the State Housing Agency would submit the application to the Council, and they have 45 days to vote up or down on it or on the 46th day it's automatically approved. In the case of the I think the Halemua Project, they did go before the State Land Use Commission to urbanize the properties. There is an expedited process there, too, where the Land Use Commission has 45 days after the application is complete to hear the matter, and take a vote up or down. Otherwise, on the 46th day, the application is automatically approved. So I believe that was the case with the Halemua Project.

Mr. Vanderbilt: And that was initiated by the County's Housing --

Mr. Yoshida: The 201H application was transmitted from the County Housing Department to the Council.

Mr. Vanderbilt: Thank you. Anybody have any questions of Clayton on that?

Mr. Yoshida: Mr. Chair, I guess we need to leave at about 3:30 to catch a plane.

Ms. Kalipi: Can we go back to this to the next meeting?

Mr. Vanderbilt: Hello? You want to put it on for the next meeting?

Ms. Kalipi: Yeah, because I had questions about that.

Mr. Vanderbilt: Now, wait a minute. How many questions you got?

Ms. Kalipi: I have to think about it. I have one so far.

Mr. Vanderbilt: Well, if you -- I'll stop by your house if you want to give me the questions.

Ms. Kalipi: ...(inaudible)...

E. CHAIRPERSON'S REPORT

- 1. Draft letter from the Molokai Planning Commission to the Planning Department regarding enforcement on the Feeter Vacation Rental**

applications at Pukoo, Molokai. *The Planning Commission may act to amend the letter and authorize its transmittal.*

Mr. Vanderbilt: Alright. Alright. Okay. Well, with that, well, I guess if you guys gotta leave at 3:30, I would like to get to the letter, if the Commissioners can hang in here for about ten more minutes, on the draft letter that we were going to send to the County regarding enforcement on the Feeter -- it was going to Jeffrey Hunt. And the County has come up with a general enforcement policy for vacation rentals, a draft policy that they presented to the Council. I don't think our Planning Commission was sent one. Did we ever get one? Or can we --

Mr. Yoshida: I don't believe it was in the packets, but if the Commission wants a copy of that, we can transmit -- make that available.

Mr. Vanderbilt: If you could at the next meeting just for information purposes. But I don't know if you've all had a chance to read over this. I did get some comments back from Commissioner Feeter and -- but, basically, what we were doing is sending the Feeter application up to the Council, the conditional use permit, because we had to send it up within 90 days, and just asking them not to make a decision on the conditional use permit until we've made a decision on the special use permit. And it is our intention to make a decision on the special use permit after our community plan process is completed.

So what this does, basically, is the Feeters went through the process. They tried to become legal. They got conflicting responses from three different Planning Directors. By doing it this way, they're still trying to get their approvals. And we're just saying there's so many people -- I think Commissioner Chaikin said he saw an article that there are 3,000 illegal vacation rentals in Maui County. There's plenty of enforcement opportunities on people that didn't even try to become legal, and that they should make an attempt to enforce those before coming against people that are still in the process of trying to get their approvals, whether they will or they won't in the future, we don't know, but that was just the point of this letter.

Mr. Dunbar: Yeah, Chair, I think it was a very well written letter, as a matter of fact, and would endorse that it be sent to the Department of Planning.

Mr. Vanderbilt: Thank you, Commissioner Dunbar. Commissioner Chaikin?

Mr. Chaikin: Yeah, I agree, too, that it was also well written. My only comment, and, you know, it's not so strong that I think we need to hold this up, because I think it would be good to get this letter going, but I thought that the purpose of this letter was twofold: one was to keep the Feeters out of harm's way until we complete the community plan process so we

can have a clear vision of what the future holds in respect to vacation rentals. That was one thing that we were trying to achieve with this letter.

The other thing that we were trying to achieve, I thought, was to communicate effectively to the County Council of why we're taking the position that we're taking. And I think that with a little bit -- well, we could've added a little bit more to this letter so the Council understood our position. The way I understand our position was that the reason we weren't acting on it was because our community plan does not address vacation rentals directly, and the few words that it has in there that one could construe does apply to vacation rentals, there is conflicting statements. So, basically, since we're in the community plan process or about to start that we're waiting until that process is completed before we made a decision. And so I just wanted to somehow for the Council to understand why we're doing what we're doing.

Mr. Vanderbilt: Would the Commission be amenable to maybe adding a couple of lines just to make Commissioner Chaikin's point a little more clearer? Would you be amenable to approving the letter going out with that change in it?

Mr. Chaikin: Chair, I think if we just add, you know, a sentence that says something like the reason we are deferring is that our current community plan does not directly address vacation rentals and there are conflicting statements within the plan on language that could be construed to apply. So if we do that, I think the Council will understand why we're deferring on this, and then they can act, do whatever they want.

Mr. Vanderbilt: I'd entertain a motion that we approve this going out -- this letter going out to Director Hunt with the suggested additional wording suggested by Commissioner Chaikin.

Mr. Chaikin: I'll make that motion as was stated by DeGray.

Mr. Vanderbilt: Is there a second?

Mr. Dunbar: Second.

Mr. Vanderbilt: Seconded by Commissioner Dunbar.

Mr. Hopper: Excuse me. Nancy, do you have that language? I just wanted to make sure that there's a clear -- that we clearly know what language is inserted and where it would be inserted.

Mr. Dunbar: And, Mr. Chair, prior to the vote, maybe a little discussion.

Mr. Vanderbilt: Yeah, discussion. Commissioner Dunbar?

Mr. Dunbar: Well, the discussion part is I'd really take out -- I would leave in maybe "prior administration," I wouldn't say who it was. And I would take out who the present administration is just because I don't think it really adds anything, but it's pointing the fingers that may not have necessarily --

Mr. Vanderbilt: Where was that?

Mr. Dunbar: You're talking about Alan Arakawa and Charmaine Tavares, about the third sentence.

Mr. Vanderbilt: Was that somewhere in the letter? So you're just saying just leave "previous administration?" Okay. And then take out -- yeah, okay. That sounds -- that's a good suggestion. Okay. So --

Mr. Hopper: Technically, since you didn't restate the motion, I think the easiest thing if you agreed with Kip's change is to just make the motion over again with both Commissioner Chaikin's and Joe's -- or Kip's changes both in the letter. Have that motion be seconded again, and then state the motion so it's then before the Body.

Mr. Vanderbilt: Okay. Thank you.

Mr. Chaikin: I'd like to -- since we're on discussion, I'd just like to add one more thing. I don't see that this letter is going to the Chair of the County Council. I think the Chair should get a copy of this.

Mr. Vanderbilt: Okay. Good point. Okay, do I have a motion?

Mr. Chaikin: I'd like to amend my motion to include the comments that --

Mr. Hopper: Actually, you can just make the motion again. Technically, under *Robert's*, since DeGray didn't state the motion, you could just make another motion right now, and until DeGray states it -- so you can go ahead and just make a new motion right now with, I guess, your two changes and Kip's one change.

Mr. Chaikin: Okay. I'll make a motion that we approve this letter as it's written with the following changes. One, that we insert this sentence in the letter:

The reason that we are deferring is that our current community plan does not directly address vacation rentals and there are conflicting statements within the plan on language that could be construed to apply.

I would like to also add to the letter that we copy the Chair of the Maui County Council. And that also in the second paragraph, we don't mention Mayor Alan Arakawa and just refer to the previous administration or is that what we wanted? Previous administration?

Mr. Dunbar: Or Charmaine Tavares as the present administration. One is the past ...(inaudible)... and the other is the present ...(inaudible)...

Mr. Chaikin: Yeah, just take the names out, then. That'll be good enough? Okay. That's the motion.

Mr. Vanderbilt: Do we have a second?

Mr. Dunbar: Second.

Mr. Vanderbilt: Any more discussion?

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

It has been moved by Mr. Chaikin, seconded by Mr. Dunbar, then unanimously

VOTED: To approve the letter as written with changes as stated by Commissioner Chaikin and Commissioner Dunbar.

Mr. Hopper: And just also for the record, this is as I said at the last meeting, just a recommendation to the Planning Director on his enforcement policy. He doesn't necessarily -- he's not bound to follow that enforcement recommendation.

Mr. Vanderbilt: Yeah, it's a strong recommendation from the Planning Commission. So, thank you, Corp. Counsel. So with that, if there are --

Ms. McPherson: ...(inaudible)...

Mr. Vanderbilt: On the next agenda?

Ms. McPherson: ...(inaudible)...

Mr. Vanderbilt: We -- go ahead.

Ms. McPherson: Chair, I just wanted to ask the Commissioners to, I know it's heavy, but please bring your plans with you to the next meeting so that you can look stuff up if we're referring to it, because I can't keep making copies of everything in there. It would really help.

Mr. Vanderbilt: And you've got your recommendations, right?

Ms. McPherson: Yes. The recommendations have been distributed to you today.

Mr. Vanderbilt: All right. So we'll look over those, and I suggest that all the Commissioners review this plan again. It's pretty interesting reading, in some cases. As a matter of fact, our 1984 plan, community plan, has a policy statement in there to protect the island's dune systems way back in 1984. So it's been on the books for a long time, and a lot of people did a lot of hard work on this. So anyway, with that, if there's no other business, this meeting is adjourned.

J. ADJOURNMENT

There being no further business to come before the Commission, the meeting adjourned at 3:30 p.m.

Respectfully submitted by,

SUZETTE L. ESMERALDA
Secretary to Boards and Commissions

RECORD OF ATTENDANCE

Present

DeGray Vanderbilt, Chairperson
Steven Chaikin, Vice-Chairperson
Bill Feeter
Lynn DeCoite
Joseph Kalipi
Michelle Pescaia
Kip Dunbar

Excused

Sherman Napoleon, Jr.
Linda Kauhane

Others

Clayton Yoshida, Planning Program Administrator
Nancy McPherson, Planner, Molokai

Molokai Planning Commission
Minutes - 07/11/07
Page 57

Francis Cerizo, Planner
Michael Hopper, Deputy Corporation Counsel
Ralph Nagamine, Administrator, Development Services Administration, DPW
Lesli Otani, Engineer, Development Services Administration, DPW