

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

A. CALL TO ORDER

The regular meeting of the Molokai Planning Commission (Commission) was called to order by Clayton Yoshida, Planning Program Administrator, at 12:43 p.m., Wednesday, April 11, 2007, Mitchell Paule Center, Kaunakakai, Molokai, Hawaii.

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

Mr. Clayton Yoshida: Good afternoon, members of the Planning Commission and welcome to the first meeting of the 2007-2008 Commission year. My name is Clayton Yoshida. I'm Administrator of the Current Planning Division of the Planning Department and with me are your Deputy Corporation Counsel, Michael Hopper; your Secretary to Boards and Commissions, Suzie Esmeralda; and joining us will be the -- our Coastal Resources Planner, Thorne Abbott, and our Molokai Planner, Nancy McPherson, and we also have Nina Kawano, who's our clerical staff here on the island of Molokai.

B. INTRODUCTION OF NEW MEMBERS - LINDA KAUHANE and MICHELLE PESCAIA

We'd like to welcome Commissioners Kauhane and Pescaia to the Molokai Planning Commission. And, with that, maybe we could have the Commissioners kind of introduce themselves and share a little bit about themselves, in 20 seconds or less, starting with Commissioner Dunbar, and we ask that you speak into the mike.

Mr. Kip Dunbar: Aloha everybody. I'm Kip Dunbar. I guess I can't -- I don't quite remember how long we've been on this but I guess it's three years. We have a couple years left. I guess the only word of advice I can say to any new commissioner would be to read, read, and read some more. And even by doing that, you're never going to grasp it wholly but, you know, rely upon the very able Maui staff and now our local staff, and it will become clearer. It will never become clear. It will only become clearer. But welcome aboard and nice to having both of you.

Mr. Joseph Kalipi: Joseph Kalipi. I too wanna welcome the new commissioners, and ditto what Kip said in a sense of I'm somewhat a -- I guess I'm a one-year vet now, and so just welcome you guys both on the board, and it's glad to see more participation from a diverse community and community people. Aloha.

Mr. Bill Feeter: Yeah, aloha, new members and community. Advice freely given is worth the same, so I'm not going to give any good advice, but we are at a crossroads and new talent is always welcome, so welcome aboard and thank you very much.

Ms. Linda Kauhane: Aloha. My name is Linda Kauhane. I've been a resident of Molokai for approximately 12 years, and I have been involved in community service for about ten of those years within my service for the Legal Aid Society of Hawaii, as well as I am also the previous Executive Director for Molokai Occupational Center. My career has been in the legal realm. I'm presently a Paralegal for a law office on Maui, and I would like to offer my services to the board, and I'm very pleased and honored to be a participant of the Planning Commission and hope to learn as much as possible about the beautiful island that I live on. Thank you. Aloha.

Ms. Lynn DeCoite: Hi. My name is Lynn DeCoite. I've been here just about a year now. I wanted to welcome Mikiala and Linda both on the Planning Commission. You know, as for advice, I gotta learn to take my own sometimes too but, you know, as long as we read our material and we do our homework, you know, and anytime we have questions, we can always deal with Corp. Counsel for more advice. But welcome onboard.

Mr. Steve Chaikin: Steve Chaikin. I'm the owner and operator of Molokai Sea Farms, and I'd also like to welcome you to the two new commissioners. The only thing I can say is that, you know, most of us sitting up here at this table have very little background in planning, so a lot of things come to this board that, you know, we don't really thoroughly understand, so if you have any questions, you know, really, speak up and ask those questions cause when you ask a question, a lot times it helps a lot of the other commissioners understand better about what's going on. And the only other thing I can say is come prepared, and do what you think's right, and don't have any regrets.

Ms. Mikiala Pescaia: Aloha. Mikiala Ayau Pescaia. My parents are Reynold and Maryanne Ayau, and Renette and Moku Castro. My grandmother is Harriett Ahionanei. My family comes from Wailau and Pelekumu Valleys. My other lines come from Maui and the Big Island, but my recent generations have lived on Molokai for many years. I was born and raised in Hoolehua. I went away to school because, in my generation, that's what our parents -- that was always important. So I got my education on Oahu. I lived there for 13 years at which point, when I turned 26, I realized that I had lived away almost as long as I lived on Molokai and that couldn't be, so I moved home with my family. I have four children and, through my marriage, I actually am the mother of nine. So I have big kuleana as far as just making sure that things move at the right pace on Molokai and preserve the things that I have inherited from my ancestors and preserving them in an appropriate way for my children and my grandchildren yet to come that they may too always call Molokai home. I'm very appreciative of the work of the commissioners before me that have secured a place for me here, and I will continue that work and that dedication, and I appreciate everyone's

support in allowing me to be a commissioner and I look forward to everything that I will learn and it'll make me a better leader in my community in other capacities. Mahalo.

Mr. DeGray Vanderbilt: Aloha. My name is DeGray Vanderbilt and it's really good to see some youth here. I figure that I've been on Molokai now longer than Mikiala has probably been on this earth, but the time's flown by, and I guess the -- the only advice I would have would be that just sit up here, and there's volumes of paper and laws and everything else, but most of the decision, a lot of the stuff that you make decisions on, a lot of it is common sense too. And so don't be afraid, as Steve mentioned, to ask questions and don't feel like a question is too dumb to ask, and if you're new on the Commission, you can ask questions that you might think are dumb and some of the older guys on the Commission might not want to ask cause we should know the answer after being on here for four years so you get us off the hook too. So, anyway, welcome, Linda; welcome, Mikiala, and thanks for volunteering to donate so much of your time to this community.

Mr. Yoshida: Thank you, DeGray. The ninth commissioner excused today is Commissioner Sherman Napoleon, Jr., so we have a full Commission. Again, joining us today we have the Molokai Planner, Nancy McPherson, and our Coastal Resources Planner, Thorne Abbott.

C. ELECTION OF CHAIRPERSON AND VICE-CHAIRPERSON FOR 2007-2008 YEAR

First order of business is election of the chairperson for the new 2007-2008 year. With that, I'd like to open the floor for nominations for a Chairperson of the Molokai Planning Commission.

Ms. Nancy McPherson: Nancy McPherson, Staff Planner, Molokai. I have an email that was sent, actually couple days ago, that it was requested by a citizen that it be distributed to the Planning Commission so I'd like to do that now. I think there's another one on the way but I haven't been able to get it and print it out yet, so, anyway, at least we have this one.

Mr. Yoshida: Yeah, again, the floor is open for nominations for chairperson.

Ms. DeCoite: I nominate DeGray Vanderbilt for chair.

Mr. Yoshida: Yes, Bill?

Mr. Feeter: Yeah, Mr. Chair, I'd like to nominate Mr. Dunbar for chair.

Mr. Yoshida: Are there any other nominations for Chairperson of the Molokai Planning Commission for the 2007-2008 year? With that, is there a motion to -- that nominations be closed?

Ms. DeCoite: I'd like to make a motion to close the nominations.

Mr. Yoshida: Is there a second?

Mr. Chaikin: Second that.

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

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

VOTED: that the nominations for Chairperson of the Molokai Planning Commission be closed.

Mr. Yoshida: Carried. We have two nominees for the office of Chairperson of the Molokai Planning Commission; maybe you might want to hear from both of them. So I guess we'll start with maybe DeGray and then Kip.

Mr. Vanderbilt: Well, I appreciate the nomination, Lynn. I came onboard the same year as Kip, so we've got one more year left, and I would be honored to serve as chair. I'm retired now and I have a lot of time to dedicate to that -- to that effort. And, as I said, I've been involved with planning on the island for quite awhile. I was on the CAC, along with Kip, and I was on the -- I'm on the Commission on Water Resource Management, and I'm also a member of the GPAC that's looking at the community plan. So I think, as one commissioner mentioned earlier in this meeting, this island is at a crossroads and I think a lot of people are looking at this Commission to really be a force for this community. I was involved very heavily in putting together the charter amendment to get it on the ballot for us to have our own planning commission, and thanks to a fairly close vote, the voters in Maui agreed to give us our own planning commission so now we have nine Molokai residents representing this community where, before, we were represented by the Maui Planning Commission and there was only a requirement to have one person on that commission from Molokai. So, again, I appreciate the nominations and I would be honored to serve as your chairman. Thank you.

Mr. Dunbar: I would also be honored to serve as chairman. My family is -- actually been from Molokai for about 150 years. My great-grandfather built the first two hospitals down at Kalaupapa when then relocated people from Kalawao up to Kainalu and Kawaikapu and Honomuni, and various areas out on the East End. My father moved here in 1915 and we occupy the same land that -- that we owned then and we still own today. Through all of that and through actual landownership on Molokai, there comes a distinct responsibility. You have a responsibility to your future generations, you have a responsibility to your community, and you have a responsibility to your immediate family. And, through all of that, comes the word "economics," and I believe that, as a commissioner said, we are at a

crossroads, but crossroads doesn't mean that you sell out the aina. A crossroad means that you make the best use out of the aina as you possibly can given the current laws. I have to say that those laws are constantly changing around you and they're making it less and less possible to avail yourself of some very substantial programs that -- that don't entail developing to highest and best use of your property. But you also have to realize that, you know, Molokai is an area that while we would want to embrace agriculture as being our primary objective, farming is a very, very tough road and I don't believe that enough is done in order to really help the farmer. You know, we have lack of port facilities; we have lack of labor; we have lack of -- those port facilities of both getting products in and out; we've just lost another airlines coming to Molokai. So I think Molokai is graced with -- with lots of challenges and I believe that because we've been land stewards for almost a hundred years now on the same piece of property, that I could make good decisions, which is why I would accept the chairmanship if it was so given, and mahalo.

Mr. Yoshida: Thank you. We have two nominees for the position of chairperson of the Planning Commission; DeGray Vanderbilt and Kip Dunbar. We need at least five affirmative votes to carry an action because this is a nine-member Commission. You folks wanna do it by raising of hands? Any objection to raising of hands?

A vote was taken on the nomination for Commissioner DeGray Vanderbilt for Chairperson of the Molokai Planning Commission for the 2007-2008 year.

Assenting: L. Kauhane; L. DeCoite; S. Chaikin; M. Pescaia

A vote was taken on the nomination for Commissioner Kip Dunbar for Chairperson of the Molokai Planning Commission for the 2007-2008 year.

Assenting: J. Kalipi; B. Feeter; D. Vanderbilt

Mr. Yoshida: I guess we didn't have five votes so we could either -- we could defer -- well, we could elect a chairperson to chair this meeting and defer the election to the next meeting, maybe we might get the ninth member to break the tie, or take some other course of action. You want to elect a chairperson to chair today's meeting.

Mr. Kalipi: Can I make a suggestion or can I ask Kip to chair this meeting. I've heard DeGray chair a couple meetings, and that was cool, he did a good job, and I didn't see or get a chance to have Kip to chair any of the meetings, so just recommending this.

Mr. Yoshida: Are there any objections that suggestion made by Commissioner Kalipi? If not, Mr. Dunbar can chair today's meeting and we would defer election of officers until the next meeting on the 24th and, hopefully, we'll have enough people here to take an action.

Moving on, since we're starting a new commission year and we have new commissioners and --

Mr. Michael Hopper: Clayton, I'd just suggest that there be a vote to actually elect that person chair pro tem. If there's no objections, that's fine but there should at least be a vote.

Mr. Yoshida: Okay, is there a motion to that effect to have Kip serve as chair pro tem for today's meeting?

Ms. Kauhane: Thank you. I have a question. I like your idea but since we're doing the pro tem, and I'm new, I've never had an opportunity to see DeGray make a presentation as well so, in all fairness, if we're going to do that, may we, since we're new, be able to see DeGray so we could be fair in our decision-making? Just a thought.

Mr. Kalipi: We can vote on it. We can vote on it. I mean if more people want DeGray to chair this meeting, that's fine. If more people want Kip to chair this meeting, that's fine too.

Mr. Vanderbilt: I would -- I would defer to have Kip chair this meeting.

Mr. Kalipi: Okay, so, Clayton, I make a motion that Kip will chair this meeting until the elections next meeting. I make that motion.

Mr. Feeter: Yeah, Mr. Chair, I'll second that motion.

Mr. Yoshida: Any discussion?

Ms. DeCoite: Yeah, no that's good. Yeah, I've never seen Kip chair and I think that's good. But can we defer it to at the end of today and vote on it because I'd really like to see a chair in place? I mean, you know, have Kip, you know, chair today's meeting and then have the voting at the end of the meeting? Can we do that, Corp. Counsel?

Mr. Hopper: Yeah, you could defer till the end of this meeting. I mean you can defer the election. I mean you can defer it to any date. If you elect a chair pro tem right now, then that chair would presumably act from now until the beginning -- until you elect the chair permanently. So if any questions rose up after this meeting, up until the next meeting, then that person would still be acting as chair, for example. But, yeah, I don't see a problem with you deferring it till the end of this meeting, have the election. And if you can't come to an agreement then, you could defer it again. I don't see that as being a problem.

Ms. DeCoite: Okay, thank you.

Mr. Yoshida: So is there an amendment to the motion?

Mr. Kalipi: No, just I call for the vote.

Mr. Yoshida: Any other -- oh, call for the vote. Okay, all those in favor of the motion please raise your right hand.

Mr. Hopper: The motion was to elect, if -- was to elect, as chair pro tem, Kip Dunbar until the next meeting or until the end of this meeting, and then have a re-vote?

Mr. Kalipi: To the end of the meeting.

Mr. Hopper: Till the end -- okay, we just need to have a specific motion that outlines how long he's going to be acting as chair. The motion would be to -- it sounds like to defer elect - to elect Kip Dunbar as chair pro tem until the conclusion of this meeting at which time you're going to hold another vote for the chair and vice-chair of the Molokai Planning Commission.

Mr. Kalipi: Okay, I'd like to amend my first motion and make a motion that Kip Dunbar will chair this meeting, till the end of this meeting, and then we'll take another election or vote for chairperson of this board.

Mr. Yoshida: Is there a second.

Mr. Chaikin: I'll second that.

Mr. Yoshida: So, everybody understands what we're voting on? What the motion is that's on the table as stated by Commissioner Kalipi?

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

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

VOTED: that Kip Dunbar will chair this meeting, till the end of this meeting, and then we'll take another election or vote for chairperson of this board.

Mr. Yoshida: Okay, that motion carries. Moving on, I guess our first order of business or second order of business is the orientation session, since we have two new commissioners as well as a refresher for the old-timers on the Commission. With that, we have a combination of staff members to provide different sections of the orientation. I guess whatever -- if you wanna move wherever you feel comfortable, we do have handouts of the powerpoint slides.

Mr. Dunbar: ...*(inaudible - speaking away from the microphone)*...

D. ORIENTATION WORKSHOP PART 1

10. County Policy Against Sexual Harassment

Mr. Yoshida: Yeah, I guess the first section is on the County Policy Against Sexual Harassment. We have a short handout there.

We're asked to provide the staff and commissioners with the annual orientation on the County's policy against sexual harassment. We do have a policy in the County of Maui where sexual harassment means unwelcome sexual advances, request for sexual favors, and other verbal or physical conduct or visual display of a sexual nature directed by an officer or employee to another officer, employee, or a private individual. That all personnel must refrain from the following conducts as listed here and on the handout. That the County has a zero tolerance policy against sexual harassment and will not condone or tolerate sexual harassment in the work place. This policy is also applicable to board and commission members as well as County officers and employees.

If you have to file a complaint, an individual who feel subjected to sexual harassment, they should file it immediately with the chair of the commission. If the chair is the alleged offender, then the report should be made to the County's Equal Employment Opportunity Officer, who is the Managing Director, Sheri Morrison.

So there are these various options also for filing complaints and that the complaint may be informal or formal; that the investigation conducted will be in an unbiased, fair, and discreet manner; safeguards will be taken to maintain confidentiality and protection from embarrassment that the law allows. If an individual is found, after the investigation, to be an offender, they shall receive the appropriate warning or discipline. There shall be no retaliation or discrimination against an individual who has made a complaint, conducted an investigation, or acted as a witness. That retaliatory conduct is illegal and constitutes a separate violation.

Any questions on the County's policy against sexual harassment?

2. Land Use Regulatory Framework in Maui County

Moving on. We are the Planning Department. We consist of approximately 60 positions. We have three divisions: a Long Range Division, which handles the General Plan Update and Community Plan Updates; the Current Planning Division, which handles more of the land use applications, that's the division I'm with; and our Zoning Administration and Enforcement Division, who does enforcement as well as deals with variances and appeals.

As far as the workshop, first of all, we'll go briefly through the planning framework, provide an overview; then we'll talk about Title 19 of the Maui County Code relative to zoning; Thorne will talk about the Coastal Zone Management Program; I'll talk about briefly about environmental assessments and environmental impact statements; Francis Cerizo, from our Zoning Division, will talk about floor hazard districts; and we already talked about the County's policy against sexual harassment. And Corporation Counsel will provide you with some information relative to the Sunshine Law, various takings cases, providing a rational nexus on your conditions and decision-making.

There are various resources which the Planning Commission has available to it. First of all, we have the Maui County Urban Design Review Board, which is a professional board consisting of architects, landscape architects, civil engineer, and they review project design, primarily for special management area permits, and make recommendations to the planning commission. The Molokai member on this board is currently is John Sprintzel.

There also is the County Arborist Committee that's under the Parks Department and they deal with trees within the proposed subdivision, public rights-of-way, and parks, and also nominating exceptional trees for protection, and they could also provide recommendations to this board.

We have the Maui County Cultural Resources Commission and they are a nine-member body. They also have professionals on it: archaeologists; cultural historians; architects, and the like. And their primary purview is the County Historic Districts. We have the two County Historic Districts in Lahaina, around Front Street, around the Old Lahaina Courthouse, and one in Wailuku around the County civic center. They approve uses and architectural design within the County Historic Districts, as well as provide recommendations on SMA, special management area, and other types of permit applications. The Molokai member on the board is Veronica Marquez. Veronica Marquez.

We also have other Federal, State, and County agencies who provide recommendations to this board.

As far as the planning framework, we have the State Constitution. Again, this is color coded; that which is in the white block is a function of the State; that which is in purple is the function of the County; and that which is in the brown is the function of this Molokai Planning Commission.

We have the Hawaii State Plan, otherwise known as Chapter 226, Hawaii Revised Statutes, which contains broad goals, policies, and objectives. Then we have the Maui County General Plan and Community Plans, which are -- we use Chapter 2.80B of the Maui County Code, otherwise known as Bill 84. We currently have a General Plan, which was done in 1990, and the Molokai Community Plan, which was last updated in 2001. And this Molokai

Planning Commission reviews the community plan amendments. We will be having a second workshop that's conducted by our Long Range Planning Division on the General Plan Update and Community Plan Update process.

We have the State Land Use Commission or the State Land Use Law, which is otherwise referred as Chapter 205, Hawaii Revised Statutes, for which there are responsibilities for land use district boundary amendments. All of the lands within the State have been classified into one of four districts: urban, rural, conservation, and agriculture. And if an entity wants to change the State land use classification, then they come in for what is called a district boundary amendment. If it is less than 15 acres, then the County has the final decision-making authority, the County Council. If it is more than 15 acres, then the State Land Use Commission has the final say. So let's say in the matter that's before us, Laau Point, the district boundary amendment is more than 15 acres, so that goes to the State Land Use Commission. The Kaunakakai Fire Station is 14.9 acres, less than 15 acres, so that went to the Molokai Planning Commission and then to the Maui -- and then it's going to the Maui County Council. Similarly, Chapter 205 talks about special uses -- special use permits for certain unusual and reasonable uses within the State Agricultural and Rural District. The planning commission has final decision-making authority on special use permits that are less than 15 acres, and the State Land Use Commission has -- the planning commission makes a recommendation to the State Land Use Commission on applications that are more than 15 acres. So in the case of the Molokai Landfill, that's more than 15 acres, so that went through the Planning Commission and then to the State Land Use Commission for final decision-making. If it's less than 15 acres, like the Molokai Animal Shelter project that got deferred, out on the East End, that came to the Molokai Planning Commission and the Molokai Planning Commission makes the final decision.

Also, under Chapter 46, Hawaii Revised Statutes, is the zoning enabling legislation that allows the County to zone lands. We do it through Title 19 of the Maui County Code. Title 19 is divided into two sections: Chapter 19.02, which refers to interim districts that were defined -- established back in 1958; and also the comprehensive zoning section, which is Chapter 19.04 onward. There are a lot of different types of land use entitlement applications listed in the bottom box, which come before this Planning Commission. Some of them you are the final authority. Some of them you make recommendations to the Maui County Council.

We also have the Coastal Zone Management Law, otherwise referred to as Chapter 205A, Hawaii Revised Statutes. And from that comes your Special Management Area Rules, Chapter 12-302, and your Shoreline Setback Rules, which is Chapter 12-4 of the Molokai Planning Commission Rules. The Molokai Planning Commission is the final authority on probably all SMA permits and determinations, including SMA major permits, SMA minor permits, SMA exemption determinations, and also shoreline setback variances. And Thorne will talk a lot more about that.

We also have the State Environmental Impact Statement Law, which is Chapter 343, Hawaii Revised Statutes, and we'll talk more about that in the -- another module, but the Commission does review environmental assessment documents, such as for the Kaunakakai Fire Station, as well as environmental impact statement documents for Laau Point. And the triggers, two of the triggers are: the community plan, as it was for Laau Point and the Kaunakakai Fire Station, but also for shoreline setback variances. We haven't had a lot of shoreline setback variance applications come before this Commission.

Moving to Title 19 of the Maui County Code referring to zoning. Oh, yes?

Ms. DeCoite: I get one question. You know like -- you know if say somebody was doing backfill on the shoreline or the lot is on the shoreline, that would come under SMA, would the -- and they going in for a house permit and backfill, that would come before the Planning Commission also? What if they went -- I mean cause say they going in for -- would they go in for one permit or two permits, say backfill and house, or how would that work?

Mr. Yoshida: Well, again, Thorne probably will get into this more when he does his section on Chapter 205A. Any other questions on what's presented so far?

3. Zoning

Mr. Yoshida: Okay, moving quick through. Relative to zoning, we went through this chain before. The Commission deals with changes in zoning. If a person wants to change the zoning from one zoning designation to another, let's say from interim to, in this case, it was R-3 to B-2, the Molokai Planning Commission would hold a public hearing and provide a recommendation to the Maui County Council. The County Council is the final decision-making authority. We did this in January for the Kaunakakai Fire Station where they wanted a public/quasi-public zoning, so they changed it from ag to public/quasi-public.

We have conditional permits, which are to establish uses not specifically permitted within a zoning district, which are similar, related, or compatible to permitted uses. The Planning Commission would hold a public hearing and provide a recommendation to the Council. The Council is the final decision-making authority. An example of this on Molokai is probably the Neighborhood Store at Pukoo, where it's in the State Agricultural District and County Agricultural District but they're using as a store, so they got a conditional permit and that conditional permit has been transferred several times, from the original owner to other entities, and the Commission has dealt with those transfer of conditional permits.

We have the County special use permit for uses which are identified as special uses within the given zoning district. There are specific criteria established in Section 19.50.070 of the Maui County Code. The Molokai Planning Commission holds the public hearing and is the final authority on County special use permits. This is an example for a church, the picture

shows a church, in a residential district where a church is identified as a special use. I think an example of a special use probably was the social hall over here at the Home Pumehana complex across the field there.

Okay, we have planned development --

Mr. Dunbar: Clayton, how is that relative -- Clayton, excuse me.

Mr. Yoshida: Yes.

Mr. Dunbar: How is that relative, so that they understand the County special use, this social hall?

Mr. Yoshida: Yeah, it's not listed as a permitted use in the zoning district, but it is listed as a special use. So they came to the Planning Commission for a County special use permit to allow them to have this special use in the zoning district, the social hall.

Ms. Pescaia: Okay, so the difference between special use and conditional -- I mean they're both making exceptions to what's normally the activity allowed in that zone but conditional, there's a time limit, and special use, once you're awarded, you're --

Mr. Yoshida: Well, special use, there is a time limit also.

Ms. Pescaia: There is?

Mr. Yoshida: But I think the difference is for County special use permits in a given zoning district, say the residential district, there are certain special uses that are delineated, such as churches and schools and the like. And then if it's not listed as a special use and if it's not a permitted use, but it is similar or related, then it would be a conditional use. And also the difference is, for County special use permits, the Planning Commission is the final -- has the final say. For the conditional permit, the Council has the final say and the Planning Commission makes a recommendation to the Council. So say for the Neighborhood Store, they came to the Planning Commission for a recommendation on the conditional permit for the Neighborhood Store, and then that recommendation was transmitted to the Council and they, the Council, made the final decision on whether or not to grant the conditional permit for the Neighborhood Store.

Mr. Yoshida: Okay, we have Planned Developments. We -- that's in Chapter 19.32 of the code, which is to encourage desirable design and land use patterns within existing natural environments. It does allow for density bonuses as well as protection of common protected open space. It is a three-step process, which comes to the Planning Commission for review and approval. There's no public hearing required but it is a communication item. We

currently do not have any Planned Developments on the island of Molokai. What is shown is an example of a planned development, which is the Puamana Planned Development in Lahaina.

We have Project Districts, which is established under 19.45 of the Maui County Code. This is to establish flexible and creative planning approaches, and this is established through the community plan. It is a three-phase process. Phase 1 is the public hearing is conducted in the affected community plan region and this is to establish the performance standards for the district, you know the -- the uses within a subdistrict; the setbacks; building height limits; floor area ratio; lot coverage. Phase 2 is a public hearing conducted by the Planning Commission in the affected community plan region and requires approval of the preliminary site plan. Phase 3 is the final site plan approval that's done by the department. Now, currently, we don't have any project districts that are in the Molokai Community Plan or that are in Title 19. We do have them on Maui. This Maui Lani is an example of the project district in back of Kahului. We do have them on Lanai. Manele and Koele are both project districts. But it is a three-step or three-phase process. Yes, DeGray?

Mr. Vanderbilt: Clayton, yeah, so, basically, what's the difference? It's hard to imagine you have a planned development and they have no public hearing, is that correct, is required?

Mr. Yoshida: Yes, that's true but it is listed as a communication item on the Planning Commission agenda, and you have to come to the Planning Commission for approval for each of the steps, and people can testify on any agenda items that's on the Planning Commission agenda under the Sunshine Law.

Mr. Vanderbilt: So what's the basic difference between the planned development and the project district that would warrant not having a public hearing on one versus the other?

Mr. Yoshida: Well, with the project district, you're kind of establishing your own performance standards because it is a -- typically, it is a master plan, large master plan community, like Maui Lani or Kehalani on Maui or Kapalua Mauka or Pulelehua, where you're taking, you know, several hundred acres and you're saying, you know, this much is for single-family residential; you might have mixed uses, village mixed use where we have residential and commercial together, maybe they have commercial on the first floor, residential on the second floor; you have public plans; you have golf course -- a golf course; you have schools and parks and so forth, and so you want to establish your own development standards as far as the minimum lot size, like in Maui Lani they have subdistricts of 3000 square foot lots, 5000 square foot lots, and 8,000 square foot lots for residential; whereas, in the typical Maui County Code, you have, you know, R-1, R-2, R-3 for its 6,000 square foot lots, 7500 square foot minimum lots, and 10,000 square foot minimum lots. So you're dealing with sort of larger master plan communities, typically, with the project district. With the planned development, you may be dealing with smaller properties but there is a requirement for 20

percent common protected open space. And for the people on the island of Maui, all of the lands within the Wailea Resort are planned development. So any application that we receive in the Wailea Resort, goes through a planned development approval process. Yes, Kip?

Mr. Dunbar: Yeah, so I think if I hear you correctly, the planned development usually entails one use, it would be residential or condo, you know, I mean it would be for residence; whereas, if you're doing the planned development, you have multiple uses. You can have commercial involved in there with residential with -- well you can have commercial and residential besides, you know, a park or a quasi-recreation, so it's a much larger development than just a -- the PD would be.

Mr. Yoshida: Well with the planned development, you can have a mixture of uses too but you cannot exceed the maximum density from each zoning category, like say Kahana Gateway on Maui, they have Kahana Gateway Shopping Center and they have a Kahana Gateway Apartments. I think a portion of the commercial center goes on to the apartment zoned property but they do not exceed the maximum densities allowed by the commercial zoning or the apartment zoning, but it does allow for certain flexibility but, perhaps, not as much as the project district.

Mr. Vanderbilt: So, Clayton, the planned development works within the standards in the law; whereas, the project district might exceed those standards?

Mr. Yoshida: Yeah, you could create your own standards. You know, Pulelehua, you create your own standards.

Mr. Dunbar: That would be if established by the community plan?

Mr. Yoshida: Yeah, it's identified, say, well, say like Kapalua Mauka is -- or Manele or Koele, it's identified in the community plan as a project district; you know, Kapalua Mauka, West Maui Project District No. 2, and it has a description as to what the project district is supposed to entail.

Mr. Chaikin: Just one quick question, Clayton. I see that on this particular project district, Molokai is protected because it looks like something has to be put in the community plan in order to move forward with this unless there's some kind of a community plan change, but getting back to the planned development, how is Molokai protected in terms of a developer coming in and wanting to do a big project here? What kind of input would the community have and what kind of input would this Planning Commission have on that?

Mr. Yoshida: Well, in the case of the planned development, protection would be you because you have to -- it's a three-step process and the Commission has to -- the

Commission is the final authority on each step. So the person has to come in -- a developer has to come in for a step one development, planned development approval before you. You have to grant that approval. They have to come in for a step two planned development approval, you know, a more refined site plan. You have to grant that approval. And the community can testify at your meetings because of the State Sunshine Law. And they also have to come in for a step three planned development approval, which is approved by the Commission as the final authority. So, in a sense, you are in control because you're the approving authority. I mean they can't do anything with a planned development without approval from the Planning Commission. Any other questions?

Ms. DeCoite: Clayton, so if we're talking development-wise, and I probably sure plenty other people get this same question, is that that's only if we're still within -- under that 15 acres? No?

Mr. Yoshida: Well, it doesn't make a difference as far as the planned development. Well, I think there are certain minimum lots -- lot areas, like three acres or more you can do a planned development, but there's not the 15-acre threshold. Okay, any other questions? DeGray?

Mr. Vanderbilt: Yeah, Clayton, on the project district, it says phase one we have a public hearing before the Molokai Planning Commission and then we recommend approval to the Council.

Mr. Yoshida: Correct.

Mr. Vanderbilt: Yet, in phase two, we hold the public hearing and then we -- we are the approving authority for the preliminary site plan, right?

Mr. Yoshida: Correct.

Mr. Vanderbilt: Wonder if the Planning Commission doesn't approve the preliminary site plan?

Mr. Yoshida: Well --

Mr. Vanderbilt: Because phase three says the department, which is the Planning Department, approves the final site plan, right?

Mr. Yoshida: Right.

Mr. Vanderbilt: So what happens in phase two?

Mr. Yoshida: They would have to come back to you for a preliminary site plan which you can approve. We cannot move to phase three unless phase two is approved.

Mr. Vanderbilt: It just seems kinda odd cause the Council approves phase one, we approve phase two, and you approve phase three.

Mr. Yoshida: Right.

Mr. Vanderbilt: Okay. Thank you.

Mr. Yoshida: Any other questions on planned development, project district? Okay, we do have bed and breakfast permits that's qualified under Chapter 19.64 of the Maui County Code. This is to allow small local businesses opportunities to provide visitor accommodations in a residential neighborhood. We have three types of bed and breakfast permits, depending upon the number of bedrooms that are used, and also the approving authority changes as the number of bedrooms used increases. For one or two bedrooms, type one, the department, the Planning Director, is the final approving authority. For type two, which are three or four bedrooms, the Planning Commission is the final decision-making authority. And for type three, which are five or six bedrooms in a homes, the Planning Commission holds the public hearing and the County Council is the final decision-making authority. Currently, this statute only applies to the residential district and to the business district, not to the State Agricultural or Rural Districts.

We have Country Town Design Guidelines. This was developed -- approved by the Planning Commission in 1993. We had worked with, what was then, the Molokai Main Street Association. This is to establish development standards for businesses in rural communities, such as Kaunakakai, Kualapuu, Maunaloa. The Commission approved these guidelines back in 1993 and the department administers these design guidelines relative to architecture, materials, lighting, signage within the country town areas.

Okay, we have off-site parking approval, which is under 19.36 of the code, which allows for parking requirements to be satisfied on another lot within 400 feet of the affected lot, and the Planning Commission is the final authority on off-site parking approvals.

And then we have accessory use permits, which are defined in the zoning district and the -- as accessory uses and the Planning Commission is the final approving authority on accessory use permits.

Okay, any questions before we -- I turn this over to our Coastal Resources Planner, Thorne Abbott, to talk about Special Management Area and Shoreline Area Rules? Okay, with that, I'll turn it over to our Coastal Resources Planner, Thorne Abbott.

- 4. Special Management Area Rules**
- 5. Shoreline Area Rules**

Mr. Thorne Abbott: Thank you, Clayton. Hi. Thorne Abbott. Mahalo. Aloha. And it's a privilege to serve this Commission and also the citizens of Molokai. Feel free to stop me anywhere through this. I'll go over the SMA Rules and then go into Shoreline Setback Rules.

As you can see here, and I'm sorry this doesn't project exceptionally well, but here's the island of Molokai and you can see, highlighted in pink, is the actual special management area for the island. Now under the State Constitution, the State passed the Hawaii Coastal Zone Management Act, Hawaii Revised Statutes, Chapter 205A, and what that does is that provides authority for the various commissions to pass their own Special Management Area Rules and Shoreline Setback Rules, in this case, Chapter 12-302 and 12-3 -- oops, that should say 12-4, and under that, the Commission reviews SMA majors, you also review minors and exemptions, and you review shoreline setback variances.

Now the whole State and the whole island is within the coastal zone and that's regulated by the Office of Planning, and the Office of Planning makes consistency determinations for agency actions. So, let's say for example, the Fire Station that was proposed, that's well outside of the special management area but it's within the coastal zone, so it's regulated by HRS 205, Hawaii Coastal Zone Management Act. Consequently, the Fire Station, it's a government agency action, would have to get a determination from the Office of Planning that that was consistent with the goals and objectives of the coastal zone management act.

Now when it comes to the special management area, Office of Planning has delegated that responsibility to this Commission, so your purview, regulatory purview, is all the areas you see in the pink along the shoreline there, and this boundary was accepted in 1979, and anything that's "development" requires a special management area use permit or an SMA major.

There's ten different goals and objectives within the Hawaii Coastal Zone Management Act and these are something you want to assess anytime you get a permit application in front of you or a project. So for example, for recreational resources, we have to provide coastal recreational opportunities to the public. You're obligated to protect, preserve, and restore Hawaiian and American cultural and historic resources. You have to conserve aquatic natural resources for sustainable development. For coastal hazards, you have to reduce risk to new structures and enhance public safety. You have to protect, preserve, and, where possible, restore coastal views, open space, and scenery. You wanna enhance public beach access and minimize beach loss due to erosion and site hardening. You want to minimize adverse impacts and protect coastal eco-systems. For economic uses, you wanna provide and co-locate coastal dependent facilities while minimizing negative impacts. What

that means -- what is a coastal dependent facility? It's not a luxury house along the shoreline. A coastal dependent facility would be like a ferry or a harbor, and you want to co-locate harbors and ferries and ports and tanker facilities and those kinds of infrastructure things together rather than have them separated around the island. Also, we're responsible to streamline the permitting process and enhance public awareness, and under public participation, we are supposed to stimulate public awareness, education, and participation.

Now there's a number of different permit decisions that come out of this Commission. The first is an SMA major, and that's for a project that's more than \$125,000. It requires a public hearing. All owners within 500 feet of that parcel are notified by certified mail of the date of the hearing. And you can impose conditions to avoid, mitigate, or minimize any adverse impacts.

There's also minor projects or minor permits, and those are less than \$125,000. They're reviewed by the Molokai Planning Commission for approval in public meetings, and you can have conditions to, again, avoid, minimize, and mitigate any impacts.

There's also emergency permits, and these are for any imminent and substantial harm to public welfare or to prevent substantial physical harm to persons or property. The director can give an oral approval but we must submit a report to the Commission upon the final determination of the emergency permit. It's good for 180 days. We can also put conditions to avoid, minimize, and mitigate any adverse impacts.

And, finally, there's exemptions, and there's a lot of confusion about what an exemption is so I'll -- I'll talk a little more about this and it goes back to your question about, you know, what would a single-family house with some grading and fill require.

HRS 205A list in the definitions things that are "development" and things that are "not development." A single-family house is not a development. So if somebody comes in and applies to build a house and it's in the SMA, and they say: I'm building a single-family house. Then we say: Okay, it's exempt. However, we're going to check to see if you have any adverse environmental impacts based on those ten objectives. So let me give you an example. Let's say we get this application and we send it of to the State Historic Preservation Division, SHPD, of the Department of Land and Natural Resources, and SHPD comments to us and says: You know, we found a lot of historic artifacts there in the past and this proposal's to build a house but it's not going to be slab on grade, they're going to do a lot of excavation. Well there's a potential for an adverse impact. One of the goals and objectives, the second one of HRS 205A, is that you have to protect Hawaiian and American cultural resources. So if this digging has a probability of encountering artifacts or perhaps even human burials, you need to mitigate that. Okay, so you're no longer exempt. Now you're a development. You're having an adverse impact. So what you can do is you can hire an archaeologist, and they write a monitoring plan, and they say: Okay, we're going to

stand here on site, you know, if we find any bones or, you know, artifacts or shards, we're going to tag them, and we're going to contact SHPD. You've mitigated your adverse impact. So now you're back to being exempt. Okay? You're not development.

So, the first thing is do you meet the definition of not development. The second thing is do you have any adverse impacts and can you mitigate those. And the third thing is there accumulative impact. You're the last guy on the cul de sac, everybody's built their walls and their huge houses, lot to lot, and you're the last one with the ocean view. Now that could be accumulative impact, I won't say it will, but it could be. If you were accumulative impact, that bump you back out of exemption into development. One thing you can do, if there is a competing public interest, for example, let's say the Fire Station again. The Fire Station's needed. There's a public interest. Let's say they knew that if they were going to do excavation, there's a possibility they're going to run into some human burials but, for some reason, they could not do a monitoring plan, let's say there's no archaeologist on the island for some reason. You might be able to say, well, there's a compelling public interest that outweighs that adverse effect and you could approve it. So I just wanted to explain exemptions. Exemptions are not guaranteed. The other thing is you cannot put conditions on exemptions. Exemptions means you're exempt. The rules don't apply to you. So you can't put a condition of approval on an exemption because you're saying the rules don't apply.

Mr. Dunbar: You know, I think importantly for the new commissioners, you should realize that even though it is exempt, the Planning Commission still goes through the process of looking at it as if it were not exempt, so they gotta through the whole process anyway, and then they feed it back to us.

Mr. Abbott: Right, and we do that through conducting an assessment at the Planning Department and we look at all those ten criteria, there's actually 12 criteria in your rules that we look through every project and determine whether it has an adverse impact or not, and if that adverse impact would be mitigated or not. And we, basically, we work with the applicant to tweak the project to remove all the adverse impacts or to mitigate for those until the project comes to a point where it could be exempted, and then we present that to you.

Mr. Chaikin: I just had another quick question. If somebody comes here to this Planning Commission and wants to get a -- they're coming to us for an exemption and say we find some particular reason that we believe that it's not exempt and that they need to move forward and get an SMA permit. If they do have to move forward and get an SMA permit, what does that entail for the homeowner? I mean what cost and what do they have to go through?

Mr. Abbott: That's an excellent question. Thank you for bringing that up. If you were going to get an SMA major or we determined you were required a major and were not exempt, and

we're speaking major, not minor; if it was a minor, we just say it's a minor permit, it's under \$125,000, and we'd hand it back to you and you could put conditions on it. For example, okay, Fire Station, you can build but, as a condition of approval, you have to get an archaeologist on site. You have to have one there. We're not going to let you do this without that, even though you have a great public influence here of having a fire station. Okay, so that would be a condition of approval, for a minor. For a major, the applicant, first off, has to put an ad in the paper 45 days prior to the public hearing that says: Hey, I've applied for an SMA major. The second thing he has to do, or her, has to do is notify all the landowners within 500 feet by certified mail of the scheduled public hearing date. So if it was going to be on your agenda for, say, April 24, then, you know, a month before, back on March 24, you would have had to notify all the landowners within 500 feet. That's not necessarily a very expensive proposition, but it could be. You know if you're paving a road from one side of the island to the other side, that could be really expensive, but that's not necessarily a big hassle. And then you have the public hearing. Does that answer the question?

Mr. Dunbar: Yeah, let me just say, having gone through that, it is an extremely expensive and arduous route because you have to go to the tax office, you have to take a point on your property and draw a little circle around it, not from where your -- where your project might be, I mean your house might be in the middle of everything, but you have to go to the ends of the property, and then you have to draw your 500 circle, your 500 radius circle; then you have to go to the tax map office and find out every single owner that is on that and in some cases, there are 10, 12, 15 owners on piece of property; you have to notify every single one of them, okay. And then you have to wait for your return receipt requested to come back either -- either they've received it or they haven't, and you have to keep all this together to then turn in to the Planning Commission so that they realize that you went through the whole exercise of trying to locate every single person. Now you might not get them all, but that's not the point. The point is you have to try to get them all. And it ain't as simple as Thorne says. Trust me.

Mr. Abbott: Okay, well, I wasn't meaning to oversimplify it although that's a good point but, you know, that's the cost of public notification; you know, the cost of having the public aware of what's going on. So it is important to make a distinction whether something's an exempt activity, whether it's a minor activity under 125,000, or whether it's a major, over 125,000. So I appreciate you pointing that out, Kip. Yes, sir?

Mr. Chaikin: Yeah, in the case of like a single-family residence on the oceanfront, is there any additional burdens that they have to go through with the SMA besides this notification?

Mr. Abbott: Yes, and I'll get to that later in my presentation. There would be a second permit they'll have to get, and I'll talk about that in a second.

Lastly, you can deny a permit and so can the director. If it's inconsistent with State land use designations, general plan, community plan designations, and/or zoning, or it has an adverse impact on coastal resources in which a clear public benefit does not outweigh that adverse impact.

Mr. Vanderbilt: Excuse me, Thorne?

Mr. Abbott: Yes, DeGray?

Mr. Vanderbilt: There's -- public access is getting to be a problem on some of the parcels going out, and there's some subdivisions going in where there is only one or two more lots that are undeveloped and there's no public access. What happens if that last guy comes in and you need public access to that area of the coastline and it just hadn't been accounted for in the subdivision? Is that an adverse impact that would have to be dealt with by the owner or what?

Mr. Abbott: Well, I'll speak to that generally, but I'd like to -- would you remind me of that question when we get to the shoreline setback area?

Mr. Vanderbilt: Okay, go ahead. I'll remind you later.

Mr. Abbott: Alright, there is some decision-making criteria that you do have to stick to. First off, there can be no adverse environmental or ecological effect. Those effects have to be minimized in light of a compelling public interest, for example, fire protection from the fire station; it has to be consistent with State land use general plan, community plan, and zoning designations; it has to be consistent with the SMA guidelines and your rules. What are those guidelines? We have to provide adequate access to publicly owned beaches, recreational areas, wildlife, and nature reserves. So that might partially answer your question, DeGray. You have to have to have adequately and properly located public recreational areas. You have to control, manage, and minimize impacts of pollution. You have to minimize adverse effects to water resources and scenic and recreational amenities. And you have to minimize risk to coastal hazards -- risk of coastal hazards to proposed structures. And that's where we get into shoreline setbacks and FEMA requirements.

Looking at this first guideline about adequate access to publicly owned beaches, when you do a subdivision, subdivision rules require that every 1500 foot a public beach access is provided, a dedicated public beach access is provided. A historic access can either be a PASH access, which is protected through case law, which is for Hawaiian customary gathering subsistence rights to the shoreline. There's a third category, which is just historic, which is, you know, my grandmother used to cross the backyard, you know, Joe's backyard to get down to the ocean, and she's been doing that for 20 years, and these new folks move in and they put up a fence, and grandma can't get down there anymore. Well, that's -- that's

their right. That's their property. It's not dedicated public access. We can encourage them to dedicate public access. They don't necessarily even have to have an easement. For example, if you allowed grandma to cross your backyard down to the beach, and you let anybody's grandmother cross the backyard to get down to the beach, and grandma fell down and broke her leg, you're not liable for her damages. You know, she can't sue you and say, well, you have to take care of my health. But, I mean, it'd be -- every case, of course, is specific and I'm sure the attorneys would argue that quite a bit, but there is a clause in Hawaii that if you allow public access on your property, you can't be sued for it. I'll let Corp. Counsel comment on that further, if necessary.

Mr. (?): ...(inaudible)...

Mr. Abbott: Cannot. Cannot. But that's if you let anyone use it. Approval criteria. You can put on reasonable terms and conditions. We were, Corp. Counsel and I were talking about this this morning, a Big Island case. Are you going to talk about that later? Okay, I won't go there. So reasonable terms and conditions, and you have to seek to minimize, where reasonable, dredging, filling, altering any coastal areas; reductions in beach size; impediments to public beach access and coastal recreation; loss to coastal view plain; adverse effects to water quality, fisheries, and wildlife habitat; and loss of existing or potential agricultural uses. And agriculture also includes aqua-culture, which is obviously an important facet here in Molokai.

So, I'm going to speak next about -- do you have any questions on the SMA?

Mr. Vanderbilt: Yeah. You know, going out -- going out east, we had before the Planning Commission one couple came in and they were asked to maintain the view plains on their coastal home, an ohana unit, which they did. They saved 40 percent of the lot so you could look to the ocean as you drive by.

Mr. Abbott: Yeah, great.

Mr. Vanderbilt: Yet, as you head out east, the next several houses, they're all lot line to lot line and you have no coastal views. How does one person have to follow the protection so that there isn't the lost of coastal view plains on the shoreline properties and some don't?

Mr. Abbott: Well, I suspect that's the result of a rule change. For example, I can't smoke in the airport anymore but I could just a couple months ago, and so I think, you know, I don't know the case you're speaking of, DeGray, but I suspect that it has a lot to do with rule changes and changes in staff, at the department, and policy implementation. For example, the former administration, and I'm glad you brought this up, DeGray, the former director had a policy for shoreline parcels, as a general rule of thumb, that you could build 60 percent of your lot but you needed to protect 40 percent of the lot and keep that open for views to the

ocean along shoreline properties, okay. If you're driving along the public road, the idea is you're driving down the highway and you see ocean, house, ocean, house, so kinda like a picket fence. There's -- it'd be very, very, very difficult to put that into a code that requires 60 percent, specifically, as opposed to 59 percent. Can you tell me the 59 percent is any better or worse? No, you can't. It's a subjective kind of thing. So we are working on, and I'll address this later, we are working on a view plain analysis that would take a lot of that subjectivity out of it, and we've been looking at codes that's been used in Maine; Alaska; Portland, Oregon; California, and I think Florida is the other place we -- we're looking at their code. You know, we're not going to adopt what they did; we're going to take the best parts of their code and try to put something together that meets our needs here. Any other questions on SMA?

Mr. Dunbar: Yeah, Thorne, I'm -- I mean certainly that 60-40 rule came up for us but, you know, also you have side yard setbacks that went from 6 to 15, so, you know, from 6 feet on your side yard setbacks, from lot line to lot line, and now they're 15. I mean we face --

Mr. Abbott: I'm not aware of that. Side yard is 6 or 10.

Mr. Dunbar: Well, we face that dilemma out in Waialua where there's a lot that was only 40 feet wide and --

Mr. Abbott: Okay, I can't speak to the zoning restrictions. That's something we check when we're doing the SMA assessment to make sure you're consistent with your underlying land use, such as zoning, community plan restrictions, and State land use restrictions.

Mr. Dunbar: But there are side yard setbacks.

Mr. Abbott: There are side yard setbacks; generally, it's six foot for residential. It's six foot for your first floor; ten foot for your second floor. So you can almost have like a wedding cake structure. So on, you know, on a 100-foot lot, if you have 6 foot on either side, that's 12 foot, so already you're -- you have a 12 percent view plain ...(inaudible)...

Mr. Dunbar: Yeah, we're not talking about Ronny Kimball's house.

Mr. Abbott: I don't know. You know, I'm not referring to somebody specific. Okay. More SMA questions?

Mr. Chaikin: Yeah, you know, as Commissioners, we hear a lot about the SMA permit, but I've never really had an opportunity to look at one or see one, is that something that we can -- can we get one of these permits so I can just read it and see what it looks like?

Mr. Abbott: Sure, and you can also look it up on the website, it's downloadable, and you can print it out there. We also have a lot of information about how you do your SMA process, how we handle that permit, and the shoreline setbacks as well. That's at mauicounty.gov - it's under the departments/planning/CZMP/intro.htm - but I can set you up with the web link or we can make copies for you.

Mr. Chaikin: Alright.

Mr. Abbott: One thing I, and Corp. Counsel can speak more to this, and this is my professional opinion, it is -- is not spoken for the department, the SMA process is intended to be an approval process. It's not intended to be a denial process. It's not intended to control development. It's not about development. It's about coastal resources. If you're going to deny a permit, it's -- or if we're going to deny a permit approval, it needs to have some measurable, quantifiable environmental, ecological criteria for that denial. For example, somebody wants to build something next to the ocean and we can, for sure, know that they're going to pump in ten quarts of oil per day into the local fishpond. You know, if I can show that that's a measurable adverse impact on coastal eco-systems, I can deny that, okay, assuming it doesn't have some public benefit. But it's very important to recognize that the idea is to tweak the project, tweak the project, you know, until it comes into conformance with the State land use, the zoning, the community plan, and what the goals and objectives of the coastal zone management act, or you mitigate those adverse impacts, again, through tweaking, such as hiring an archaeologist, you know, to do a archaeological monitoring plan. So it's not meant to control development; it's meant to preserve, protect, and restore coastal resources.

Mr. Chaikin: I just have one more quick question. One of the tools that we have as Commissioners is when we do approve a SMA permit that we can put conditions on that permit. Can you just speak a little bit about what typical conditions are, maybe some extreme examples of conditions that you've seen put on projects?

Mr. Abbott: Sure.

Mr. Chaikin: And also what happens to this permit over time? Is that something that's totally transferable or is that something that's stated as a condition within the permit?

Mr. Abbott: That's an excellent question. Usually standard conditions, like you'll build your project by such and such date; you'll initiate construction by such and such date; you'll hold the County harmless for liability; you'll get a flood development permit if it's require; you'll get an MPDES permit; you'll get a building permit; you know, you'll go through all those. You'll use best management practices. Then we have project specific conditions and those are really specific to the project. For example, you will have an SHPD approved archaeological monitoring plan; you will have the use of best management practices

including silt fences when you grade your lot so there's no runoff into the ocean. There usually are, out of the public discussion, there can be very specific project specific conditions, something that is a result of public testimony or a greater awareness of maybe an adverse impact that that particular project could have. For example, in Hana, I'm familiar with a project that has a burial in the middle of the project, it's a small single-family residence is being proposed, but in the middle of the lot there's a burial site, and so there is an agreement that there will be a buffer of five feet around that burial site, and that was somewhat negotiated out through the public hearing process, through the testimony, through the discussion with the commission. The commission debated, you know, should it be six foot; should it be four foot; what does SHPD have to say; what do they recommend. So those can be very specific to the project. You do have to make sure it's reasonable though. You can't -- and there has to be a nexus with that project. For example, DeGray, the folks you mentioned that have their houses down the road, you couldn't ask them to mitigate their -- they're building a single-family house down there and you couldn't say: Well, as a condition of your approval, you're going to have to give some money to the watershed restoration fund. That's not reasonable. There's not a nexus with the adverse impact they're having at their specific site. Does that clarify it a little bit?

Mr. Chaikin: Yeah, I'm just wondering what our boundaries are. Say somebody wants to build a house on the ocean, it's a two-story house and we don't like two-story houses, we want them to have a one-store house, I mean is that out of bounds to tell them they can only have a one-story house cause they're going to block the view?

Mr. Abbott: Yeah, if it meets code, yes, it is. If you meet your land -- you have the right to develop your lot; just you have to develop it with a sense of not adversely effecting a coastal resource and that effect, one, cannot be mitigated; two, it doesn't have a compelling outweighing public interest; and, three, is measurable, truly measurable as an adverse impact.

Mr. Chaikin: Okay, and the other part of my question was: What happens to the SMA permit? Does that run with the land and if some guy sells the land, the new guys gets the permit or they have to get a new permit, or is that -- how does all that work?

Mr. Abbott: It runs with the application for that specific action. So if the action is to build a house, and, oh gee, interest rates go up; I don't have the money; I put it off; I sell the land or I give it to my cousin or I give it to my kid; that SMA is not transferable. You can come to the Commission and ask for an amendment to the conditions. For example, an amendment would say: I want to transfer this to a new owner. And then this Commission would review that and you either approve or deny it, or you could approve it with conditions. You could say: You know what, you can give it to your cousin but only if he limits it to -- to two-stories tall. You know, you could do something like that, if that was a reasonable constraint.

Ms. Pescaia: Okay, so it's not transferable? Like say, in the middle of building, I die, that might -- whoever my beneficiary --

Mr. Abbott: It's not transferable without approval by this Commission.

Ms. Pescaia: They would have to stop the project and redo everything?

Mr. Abbott: Well, no. If the SMA is for approval, say construction of a single-family house, and usually we have a condition of when you have to start and when you have to finish, okay, so if you're still within that time frame and you die, they could finish the house, okay, and somebody else could live in the house. That wouldn't -- the approval was to build the house, not to live in the house. It was to build the house, yeah. Okay?

Mr. Vanderbilt: Yeah, Thorne, so you gave the example of an unreasonable, but would it be unreasonable if the house was going to close off access to an area to say that you will provide public access to the shoreline area, the nexus being that's one of the goals of 205A, not to take away the coastal resources, and then, also, you will maintain the 40 percent view plain, which would be consistent with the goals of 205A as to preserve coastal views? Would those be reasonable conditions to put on an SMA permit?

Mr. Abbott: The view plain issue is subjective so that is more challenging to put as a condition because it's -- it's difficult measure. You can't say that my building is going to use up 61 percent of the view of my lot. Well that's bad. That's an adverse impact. But if it was 59 percent, you'd be okay. It's a rule of thumb ...(inaudible)...

Mr. Vanderbilt: Okay, well I'm just saying I wonder if the owner just says: I'm not going to give you -- I'm going to do whatever I want on my lot. I'm not going to preserve any of the view plain, and you say: Okay.

Mr. Abbott: Okay, that's a good question. We recommend that they do but, you know, then it would come to the Commission, the Commission would debate that ...(inaudible)...

Mr. Vanderbilt: And then say we wanna maintain a view plain, and he says no, you just deny the permit, right?

Mr. Abbott: Well, it depends. No, hear me out, if you will, DeGray. Let's presume that they do a view study of neighboring parcels, okay. So what's going on in the neighborhood. If everybody has very small houses and very wide open views, then you might have a good argument that that's a truly adverse impact that exceeds that neighborhood's character and that neighborhood feel. Now if unbalanced, everybody has walls, you know, and you're driving down and you can't see over their 12-foot walls and this fellow wants to -- to build

the same way, you're going to have a much more difficult challenge finding that as an adverse impact.

Mr. Vanderbilt: But earlier you said my example before was, well, that was the old law. Well, now we're dealing with the new law, which talks about view plain. So, anyway, it just -- it's very confusing to me and I'm sure the other Commissioners as to the old laws and the new laws, and what's just fair and reasonable.

Mr. Abbott: Well, I think if it's fair and reasonable, then you're fine. You know, if you're using reasonable person standards. If a reasonable person, you know, felt if you drove down the street, and there's just tiny little bungalows and somebody putting up this massive, you know, 150-foot wide building, then I think it's pretty reasonable to say: That's an adverse impact on view plains. But everybody else has walls and has blocked the views, then it's a little harder to say that. The important thing is to keep connection with reasonable, as you pointed out, DeGray, and also measurable. Measurable's really important because if you do go to contested case or go to court, that's what the lawyers are going to talk about, you know, how many parts per million, and Clayton will get into this with the EA's a little bit, what's direct and indirect impacts; what's measurable; and what's -- not, you know, more subjective. So anymore questions? This is good. You're -- I don't get this chance to go through some of the questions.

Mr. Dunbar: Thorne, one other small point.

Mr. Abbott: Yes?

Mr. Dunbar: You talked about access. I built a home on the shoreline, the SMA area, and the access area, and the access point came up, but because the lot -- I mean because the house was 700 square feet and, you know, the lot was three-quarters of an acre, you know, there were other routes to go down other than where I placed the home, so then, while, yes, it would have been much easier to access it where I put the home, there was still access, so it was not -- it didn't arise as an SMA issue. Or, excuse me, it arose as an issue but it was -- it could be mitigated.

Mr. Abbott: Yeah, and you could, you know, you could demand access. You could demand perpendicular shoreline access. But if you did that, you'd also be in the situation where you might be creating a regulatory taking and that is you are taking away that landowner's right to develop their parcel, or that portion of their parcel, and you would have to compensate them for that. The reverse of that is when you build on the shoreline, and this is very common in the island of Maui, you know, people have these old seawall's that were built in the '20's or the '30's or the '40's when survey techniques weren't as crisp and accurate as they are now, and so the State finds, a lot of time, that a seawall's on their property; sometimes it's both on the person's property but it's, you know, one or two feet over onto

the State's property. Well that -- you have to buy an easement for that cause that blocks lateral public access. You have the right to lateral access all the way around the island, so the State says: Okay, you're blocking access, we'll allow you to do that, but you have to buy an easement for that portion that's encroaching on that area. So that's kind of the reverse of what you're saying, Kip, where you're forcing someone to create public access; likewise, this is a situation where someone took the public access and now has to pay for it. That's how they mitigate it.

Mr. Dunbar: Yeah, don't get me started on seawall's. I happen to ...(inaudible)...

Mr. Vanderbilt: But, Thorne, you don't have to pay for an access that would qualify as a PASH situation it was on?

Mr. Abbott: No. No, PASH is guaranteed. And sometimes, in some circumstances, historic access can also eventually be turned into an easement, but that's a much more challenging scenario.

Mr. Dunbar: You know, on the East End, I know of a number of public accesses that actually the guys have come across and they planted plants in the access so now there's no longer an access and people just keep using a vacant lot, and now when someone builds on that vacant lot --

Mr. Abbott: Yep.

Mr. Dunbar: They either get hammered with the access ...(inaudible)...

Mr. Abbott: Yep.

Mr. Dunbar: And it happens to be my favorite friend.

Mr. Abbott: Yep, that's going to be a challenge. And I understand and respect what you're saying, DeGray, and we've had inquiries about those, you know, last two parcels and, you know, that is a real concern and a real issue that this Commission will have to wrestle with within its purview, should those be developed.

So shall we go on to shorelines? You guys have great beaches here. Nancy did a great job with the Department of Urban and Regional Planning, Luciano Minerbi, in writing the Papohaku Dunes study. That's one of the most unique features in all the Hawaiian Islands as far as dune systems are concerned. And so it's very important to protect beaches. Beaches attract tourists; they give us something to do on the weekend; it's a quality of life issue; we don't wanna lose our beaches. You probably aren't aware of this, but Maui has, Maui Island, has about 53 miles of beaches and within about a decade, they lost a quarter

of those, and the remaining three-quarters are a quarter narrower. So not only did they lose length of the beach, they lost width of beach. Sixty-six percent of that loss was attributable to manmade structures; that is seawall's; revetments; inshore line armoring; as well as people building slab on grade on top of dunes and impounding sound. So you see here on the right side? You have a nice -- this graphic, you can't see it too well? I don't know if you can see. On the right-hand side you have an unstabilized situation. You have a nice beach there, but you've lost the land. See how the beach is further back than on the left side? And that's from coastal erosion. It's a natural process where shorelines retreat over long periods of time from sea level rise, wind, and water and wave action. And while the shoreline is retreating, the beach width is actually maintained from sand, which is released from sand dunes, and sand reservoirs, and from lateral transport up and down the beach.

On the left side, we have a stabilized situation. You see the house here? The house is protected. The lands protect it, okay. So we've protected the land, but what did we lose? We lost the beach. Here we have a nice beach. Here we have no beach. Same place. But you protected the land. And that's beach erosion. And that's the loss of sandy beach width. As the sand reservoirs are depleted, sand transport is hindered, or sand reservoirs are impounded by man-made structures, such as seawall's, or even placing a slab on grade house on top of it. It's just like when you stand in the ocean, right at the edge and the waves are coming up, and you stand there and suddenly you're on a little mound of sand under your feet and that's really fun; eventually, you topple over. If that's your million dollar house, it's not so fun.

Ms. DeCoite: So question then. Say 20 years of erosion and then -- and whatnot and you lost your sand that was actually part of your property, you now own water with sand?

Mr. Abbott: Yep. You do.

Ms. DeCoite: Would they state their claim if it came where -- say you had a --

Mr. Abbott: It is, by default, is the State's.

Ms. DeCoite: Okay, that's what I thought. Thank you.

Mr. Abbott: And people say: But I pay taxes on that. Well, guess what? You can go to the tax office and you can file for a new assessment and they'll reduce your taxes. You can also go to the State and ask if you can have that land back, and they'll probably say no. Yes, sir?

Mr. Feeter: Are you going to discuss fishponds?

Mr. Abbott: In recognitions of the serving Chair, Kip's high degree of awareness, I shall defer on that to another day unless that's a stated need.

Mr. Vanderbilt: Thorne?

Mr. Abbott: Yes, sir?

Mr. Vanderbilt: You talk about slab on grade impacting the sand of a dune.

Mr. Abbott: Correct.

Mr. Vanderbilt: Well, if you go out along our shoreline here, makai of the water, a lot of the ground is just sand, basically, you know if you get close. Does it -- is any consideration given if you do slab on grade on a shoreline house where most of the underlying dirt is sand that has just accumulated over the years?

Mr. Abbott: You can build slab on grade in a sandy area and even in a shoreline area. However, you can't -- you can't degrade a primary dune, and that's actually in our zoning ordinance, under Chapter 20.08.

Mr. Vanderbilt: Okay, the other thing is that global warming is causing the oceans to rise and there's talk about how the Planning Department is going to consider that in these low areas, whether it be Kaunakakai Town or other areas that are a couple of feet above sea level now, and some of our roads are being undercut going east, is that something that the Planning Department is looking into seriously?

Mr. Abbott: Very much so, and I'm glad you brought that up because that's an extremely important consideration for this Commission. Zoe Norcross gave an excellent presentation yesterday at the Maui Planning Commission, the island of Maui Planning Commission, and, unfortunately, her schedule wasn't such that she should -- she could come over here and do her presentation, but, having said that, let me summarize. You know, the -- the inter-government, IPPPC, the inter-government panel on global climate change was a group of 2500 leading scientist that, you know, basically came out and said: We are having global warming. We are contributing to it. Here's our projection of how much sea level rise is going to be, and it is being accelerated by man's actions. It's very hard to project sea level rise. We're clear that global warming is happening. That's easier to recognize and predict. How much sea level rise? It's really hard to guess, you know, but when you look at some of the projections, they're utterly frightening. And one of the last slides Zoe had was a satellite photo of the Hawaiian Island Chain, and she gives this presentation to school kids a lot and one of the kids she'd given the presentation to said: Well, why don't we just build a big wall around the island? And you look at that photo and you realize we're just tiny little specks in the ocean. You're not going to stop the ocean. What you can do is be

precautionary and instead of react to global sea level rise, prevent yourself from getting into trouble in the first place, and what that comes to is this Commission because you look at subdivision approvals, and Papohaku Dune is actually a good example. I think, DeGray, Sam Lemmo from DLNR-OCCL pointed this out last session, and you guys didn't see this presentation, but if you look at the Papohaku Dune lots, they're very deep, and the advantage of a deep lot is you can, as you lose your lot to the ocean, you can move back. You can relocate your house. If you're on slab on grade, it's pretty difficult to do that. If you're on post and pier, it's pretty easy. You just pick up the house and you move it back.

So, you wanna think about the options early in the subdivision process, early in the land use designation process, even the community plan designation process because early in the process, the government has a lot of options, decision makers have a lot of options, and individual property owners don't have a lot of investment tied up. But when you get down to the parcel specific situation where, you know, like this person on the left-hand side, you're treating it parcel by parcel; this fellow doesn't, or woman, doesn't have a lot of options. They can either -- you know, look at where the beach is. It's behind their house. They don't have options. They're highly vested, okay. So they wanna put in a seawall and protect their land. You, as a Commission, have fewer options, government has almost no option at that point because the private individual has pretty much all the autonomy, you know, when it comes to what to do in this circumstance, okay. So it's really important to think about it as early in the process as possible.

There's a book called *Hawaii Coastal Hazard Mitigation Guide Book* by Dennis Wong that recently came out just last year and it's an excellent resource. I highly recommend you read it. It's free from DLNR. We can get you copies. But it talks about the planning process and the importance of taking action early in the process, and you're not always at the end of the pipe reacting to these things, you do get subdivision applications here in Molokai, and this Commission does review early planning process documents. So thank you, DeGray.

Mr. Vanderbilt: Only subdivisions that are within the SMA area, right?

Mr. Abbott: I won't -- yes, I won't go there. But, no. Actually, that's not -- in a sense it's not true because you also look at community plan amendments, change in zoning. You know, this Commission reviews that before it makes a recommendation to Council.

Mr. Vanderbilt: We have no say if somebody buys ag land up here and wants to put a residential subdivision in based on the allowable lots.

Mr. Abbott: Well, if it's zoned for that, then no. But if it isn't zoned for that and it's not consistent with its community plan, then you do have a look at it. So, and on top of that, you know, you're going to be looking at the island-wide plan that the general plan advisory

council's -- or is it committee, is coming up with. So there is a lot of involvement in the early planning process, I think. I believe. Yes?

Mr. Dunbar: Yeah, Thorne, I mean one of things that I -- that you read about constantly in the paper, as you say, is this global warming, and Molokai, in certain areas, has very little shelf before it begin hitting the road and then climbing up the side of the hill, and most of the mauka side of the road is all agriculture, and then you run into the problems with, you know, 19.30A, and the matrix, and what you're able to do. I mean it just -- it compounds. I mean there's even a bill on the State floor right now that has already passed reading that's going to be even more crippling to the County's ability to control, you know, ag type lands. And, you know, if you're pushed off -- off the flat shore and you're supposed to go across the road and you can't go across the road because it's all ag, I mean the real problem I see is that they haven't really zoned it correctly. I mean when you have, you know, a third of the entire 3 million acres on the State as conservation, or I should say 50 percent; the other 50 percent is agriculture, and you only have a smittance of 10,000 acres as rural in the entire State, you know, I mean you really gotta take a good long look at what you call it versus, you know, just lump sum it into ag, so we'll never get off the shoreline.

Mr. Abbott: Yeah, I -- I agree, Kip, but, you know, that's kind of a larger discussion there as far as land use designation.

Mr. Dunbar: It's huge.

Mr. Abbott: However, yeah, however, you do have the island-wide plan in process right now, the GPAC, the community plans are going to be updated, and these are things that should be addressed. I do know the GPAC has wanted Zoe to come and do her presentation to give them better numbers and we're actually looking at some of the LIDAR data between Long Range and Current and Zoe to try to estimate what areas are subject to sea level rise within the next, you know, 10, 20, and 50 years. Another thing that, you know, isn't immediately intuitive is that with sea level rise, you also have more inundation of salt water into your ...(inaudible)... so that means you're going to have more opportunities for polluted water supplies; it means that your septic system, which is, you know, currently maybe -- let's say it's four feet deep and we have a two-foot increase in sea level rise, which, you know, we're not talking year 2100, we're talking 2050, 2030, 2020, not that long away. So suddenly your septic's not working anymore because it's submerged in -- when you have a high tide or a full moon. There's a spot over on Oahu, Nancy can speak better to this, it's a mile inland, and Zoe showed this yesterday, when there's a high tide, their storm drain's all back up and, you know, the streets get submerged in water, and it's sea water, and they're a mile inland.

Mr. Dunbar: ...(inaudible)...

Mr. Abbott: Right, well, and you're going to get more wetlands though; that's a good part. You're going to get more wetlands --

Mr. Dunbar: ...(inaudible)... fresh water.

Mr. Abbott: Yeah, more wetlands; more swamps; that should harbor more mosquitos, which should attract more birds but -- but there will be impacts you really do need to study.

Mr. Vanderbilt: But, Thorne?

Mr. Abbott: Yeah?

Mr. Vanderbilt: Having said that, the Maui Planning, permitting or whoever just keeps giving permit after permit to continue building along the shoreline when you know there's going to be an adverse impact on the marine resources and everything else with backing up cesspools and this and that, so the red flag's there but nobody seems to be doing anything about it.

Mr. Abbott: I think if you meet with -- you know, we are constrained in using the laws we have currently on the books. For example, a septic system does meet Department of Health code but that doesn't necessarily mean that we'll approve, through the SMA process, a septic system in every situation. We might say you have to move more mauka. We might say you have to put a sand mound in. We might even -- there's one over in Maui Island that we're -- we required the fellow to hook up with a public wastewater system at a very high cost, you know, but that was done through the SMA process. So I think the process is effective, DeGray, in many cases.

Mr. Vanderbilt: Well, I think, on Molokai, we're getting a lot of people moving here and buying land and building, which is fine, but we don't have the infrastructure, nobody can hook up to some public sewage system going east cause we don't have any.

Mr. Abbott: Okay, let's move on to shorelines, if I can. Now, you see this house here in blue on the right at the top with that nice cliff there? Cliffs do erode. I have some nice real estate available for a big discount, if you like that. Your shoreline rules were adopted back in July 31, 1991, okay. They're 16 years old. They regulate the use and activities of land within the shoreline area to protect health, safety, and welfare of the public by providing minimum protection from coastal and natural hazards, to ensure public use and enjoyment of the shoreline resources, or preserve and protect it for future generations. There's basically two setbacks: 25 foot for lots less than a 100-foot deep that were created prior to June 6, 1989; or 25 percent of the average lot depth, up to a 150 feet. So maximum shoreline setback here in Molokai is 150 feet, okay.

Now, how do you do average lot depth? Well, if your lot is less than 100 feet, the setback's 25 feet, but only for lots created before 1989. If your lot's 100 to 160 feet, your setback's 40 feet. If your average lot depth is greater than 160 feet, it's 25 percent of the lot, up to 150-foot. So you measure the left side of a lot, the right side of the lot, the center line; you add the three up; you divide by three; that's your average lot depth, basically, you take 25 percent of that, okay?

Mr. Vanderbilt: Excuse me?

Mr. Abbott: Yeah?

Mr. Vanderbilt: Thorne, what is that -- what are the numbers that would apply on Maui? Aren't they -- they --

Mr. Abbott: They're the same, same formula.

Mr. Vanderbilt: They have the same shoreline setbacks as we do?

Mr. Abbott: No, they don't. The caveat about lots created prior to 1989 doesn't exist. It'd be, if you took out the blue up there on the printout, this is how Maui's shoreline setbacks work, so it doesn't matter when your lot was created. It's either 25-foot, 40-foot, or 25 percent of the lot up to 150 feet, and you also have erosion rate based setbacks, and I'll get to that in a second.

Okay, there's basically three, for some reason the second one's not on here, there's three kinds of determinations made by the Planning Department and this Commission. The first one is a shoreline setback determination and that basically just says where the setback is, you know, where you actually look over their site plan and their application to determine that the setback is properly calculated; it's properly located on the site plan, okay. It's valid for one year and normally requires a State Certified Shoreline Survey, I'll describe that in a second.

You also have shoreline setback approvals. Now, in fact, I believe your rules don't actually have a shoreline setback approval process. It's not a permit you get, okay, and that's for things that are explicitly allowed in the shoreline setback area. For example, you're allowed to landscaping in the shoreline setback area; you're allowed to plant plants; you're allowed to have a barbeque; you're allowed a portable moveable sidewalk; you're allowed to have lighting for safety purposes, but you're not allowed to have structures, major structures, okay.

Also a shoreline setback variance; that is you wanna put something in that's not explicitly stated in the rules as being allowed. You wanna put a really huge barbeque in and so you

have to go to the Commission to get approval for that; that requires compliance with Chapter 343, the Environmental Assessment process, the Environmental Policy process, a public hearing's required, all abutting landowners have to be notified, and it requires a State Certified Shoreline Survey. And you can also deny an application, and we can deny, and the department, an application for something in the shoreline setback area if you can't prove non-conformity; that is you can't prove that it existed back before these rules were enacted prior to 1989, okay. So say you had an old seawall built in the '40's, you could probably get an aerial photograph from back in the old days that has a picture of that seawall as it is today, okay, that's nonconforming. So you've proved it's nonconforming. Now let's say, for example, you have a seawall and you come to me and you say: Well, this was done before these rules were passed. And I go out there and I check it out. And funny enough, there's, in the concrete, I shouldn't say this on public record, it gives it away, but you know how people always put their name in, you know? John, 1989. Gee, I don't think you built this in 1940. Funny. So that's illegal and, sorry, you can deny a permit for that, okay, cause it's an illegal structure. If it hardens the shoreline or prevents sand from being transported back and forth, you can stop it for that. If it blocks public access to beaches or recreation, or if it encroaches on State owned land and doesn't have an easement. What's permissible? Minor structures of less than 125,000 and meet the following criteria: They can't adversely affect beach processes; they can't artificially fix the shoreline; they can't interfere with public access; and they can't block public views; any new structures have to be elevated on pilings or columns above base flood elevation; the County has to be held harmless; it cannot harden the shoreline.

What are some of those structures that are explicitly listed in the rules? Well, things like a structure that was there since 19 -- before 1989: agriculture or aqua-culture; public boating or water sports facilities; beach nourishment or restoration projects; existing nonconforming structures; minor structures that are specifically defined in your rules; repairs of illegal structure up to 50 percent so long as it doesn't enlarge, expand, or intensify that structure's use. So, let's say you have a house that's, you know, from, I don't know, let's say it was legally permitted but it's in the setback and you wanted to repair it. You can repair it up to 50 percent, you know, you can keep repairing, keep repairing, keep repairing, but, eventually, it's going to go away. It's going to get too costly to repair. And when you rebuild, then you have these new setback rules so you'd have to setback more mauka. So kind of a planned obsolescence, if you will, okay. You can also repair nonconforming structures, again, as long as you don't enlarge, expand, or intensify their use.

Finally, for a variance, you can approve a variance for landscaping; cultivation of crops or aqua-culture; moving the sand within a beach or dune system; draining improvements; any - - yeah, I just have one more slide -- any publicly owned boating or water sports facilities; public facility repairs; private facilities or improvements that are clearly in the public interest; or protection of legal habitable structure or public infrastructure; or private facilities or

improvements that don't adversely affect beach processes, don't fix the shoreline that result in a hardship if they weren't approve.

I'll wrap up very quickly, okay. There are mandatory conditions. You have to maintain safe lateral access to and along the shoreline for public use or adequately compensate for its loss; you have to minimize any risk of adverse impacts on beach processes; you have to minimize a risk of a structure failing; you have to minimize adverse impacts on views; except for one-story buildings, you have to comply with flood hazard and erosion control and sediment rules.

And the last quick thing I'll mention. We are doing some program enhancement and some changes. We have new Federal mandated performance standards. They're focused on outcomes instead of outputs. We're looking at the SMA boundary study, whether that should be expanded. We're developing brochures to explain the process. We're doing improved view plane analysis, beach management plan update, revolving coastal conservation and protection fund. We're going to implement some recommendations to -- from the Papohaku Dune study to expand the SMA to include all the parcels there along the dune, and also you might wanna consider looking at implementing erosion rates for the Papohaku Dune, erosion rate based shoreline setbacks instead of based just on the average lot depth. Thank you very much. I really appreciate your time. And I will turn it over the Francis cause I think we have some flight considerations to be mindful of.

Mr. Yoshida: Yes, we'd like to have Francis Cerizo, with our Zoning Division, talk about the flood hazard district. Francis's division is very busy. They have a lot of work to do reviewing building permits, subdivision applications, providing zoning information to the public, and I'm hoping that he can finish his section today so he can deal with the public on Maui. So, Francis Cerizo, Senior Planner in our Zoning Division.

9. Flood Hazard District Ordinance

Mr. Francis Cerizo: Good afternoon, council chair -- I mean Commission Chair and Commissioners. My talk today is on flood hazard districts. It's in our County Code as 19.62. We are the agency or the department that reviews projects within the flood hazard ordinance to reduce damages to -- to property and save lives.

You know, many of us can remember Hurricane Katrina. Couple years ago, in 2005, it was the cause of the great New Orleans flood. It also did flood damages along the coast, on the coast of Louisiana and Mississippi. It was or it is our most costliest U.S. natural disaster. So far it's a 100 billion dollars in losses and nearly 150,000 properties totally destroyed.

So a little closer to home, in 1992, we had Hurricane Iniki. That cause 2.8 billion dollars; affected 90 percent of the residents or the structures on Kauai, or is related to 14,000

damaged houses or destroyed houses. So we're just a short distance from Kauai. They say, you know, it always goes to the upper side but the way hurricanes goes, it can go anywhere, it can hit any one of the islands; it's just a matter of time.

Our -- my presentation is how we design for those situations. First thing we're going to be looking at is our Flood Hazard District Ordinance; secondly, the maps and the standards that we use for that area; the National Flood Insurance Program Community Rating System, which is like a bonus program; and then, finally, what is your role; how can you help in making a better and stronger flood resistant community.

Our ordinance was adopted in 1981 and its purpose was the protection of life and property, and, secondly, for the reduction in public cost for flood control, rescue, and relief efforts. In the early '60's, we were hit, the United States was hit by several or many disasters, hurricanes, floods, and the United States Government would come in and help communities rebuild, build new houses next to the streams, next to the coast, and few years later, it's gone again. So after a couple of times of these occurrences, they decided that we have to do something better in the reduction of public cost and, therefore, they created the National Flood Insurance Program that developed the standards that we have now.

We have two different types of flood zones: the A-Zone, which is the riverine flooding and coastal runup, and the V-Zones. This is outside of town, towards the airport, and we have areas here which is the -- that's caused by riverine flooding. And then along the coast, we have zones A-4, which is a tsunami runup. We don't have coastal flooding in the V-Zone or on this side, but on the west side, we do have some V-Zone construction where the flood heights are substantially higher, up to 24 feet in height, that has what they call a flooding situation with high velocity.

Mr. Vanderbilt: Excuse me, Francis, is this -- was that map near our airport? You said near the airport.

Mr. Cerizo: No, that's near the Coconut Grove. I think the coconut, you know where your - - somewhere -- where the church are, yeah.

Mr. Vanderbilt: Okay. Okay.

Mr. Cerizo: The church.

Mr. Dunbar: Francis?

Mr. Cerizo: Yes?

Mr. Dunbar: Can you go back to that map for a moment?

Mr. Cerizo: Sure.

Mr. Dunbar: And not that its Coconut Grove, but I've -- it is very hard for landowners to know if you took -- hold on -- if you took this section right here, it's just one parcel ...*(inaudible - Mr. Dunbar walked away from the microphone)*... how would a landowner know whether or not he was in a V-Zone or an A-Zone without -- he was in a A-Zone or a V-Zone without getting an -- a full-on survey, and trying to get surveyors on this island is whistling?

Mr. Cerizo: Yeah, in every permit that we review, it's required that you get an engineer and on the map, you need to show the existing grades, so it's the cost of doing business in the flood zone. They have to get a surveyor to survey the property. We can do an approximate. In this case here, we know that a lot of the property is in Zone-C, which there's no requirement. But the closer you get -- the closer you get to any of the flood zones we would require a surveyor, engineer to get involved, especially when it gets close to that line. Otherwise, if it's out here, we going say, you know, it looks close, it's close enough to be out.

Mr. Dunbar: Yeah, you know, the function of that also translates to if you already have a home there and you've never paid flood insurance, but now you wanna go out and get a mortgage on your home or a home equity on your home, you know, now the home is already built, you know, it's been there for 40 years, but now how do you defend whether it is or is not in a V- or an A-Zone?

Mr. Cerizo: Well --

Mr. Dunbar: Without getting a surveyor?

Mr. Cerizo: It's the, typically, it's the responsible of the lender to verify that because whenever a loan is given out, in order to get flood insurance or in order to -- yeah, in order to get flood insurance, they require that -- well, actually, you have to get flood insurance whenever you touch that loan again. Yeah, so in that case there, FEMA will say: You know, you've been without flood insurance all this time, not having to pay for it, but if we're going to guarantee that loan, they want you to have insurance because they're the ones who going put the money out if you get damaged.

This is Kaunakakai and here's your little sewage treatment plant. This is a typical floodway section. It starts with the 100-year flood or the area where all of the flooding occurs, and near the center of the stream or the floodway area, the flood plain is an area where most of the runoff goes down; that's where like the river is. On the side is the banks, and in these areas here, since the water is slow, not much velocity, they allow you to encroach in there. So you can build in this area here to a point where, once they fill up on both sides, it actually

increases this and it can increase more than one foot. This area here is considered as the floodway where it's harder to build. It's like building along the coast. You don't wanna build in there. So the part, now this is shown on the map, same map, the white area is the floodway area, that's where the majority of the flooding's going to occur, the high velocities, and this is the area of the flood trench where you can actually fill and less standards to meet during construction.

Whenever you build in the flood zone, you have an opportunity to actually take it out of the flood zone by improving the stream. This is called Kulanihakoi Gulch and what they did was they improved this stream, and then filled in the outer banks, and what happened is that you created some areas of development. They did the same thing along here. So this is where you have a lying stream. In order to do these map changes, it's called a letter of map revision, that is done prior to the development. So, in areas that are being considered to build near streams, you will be seeing these types of maps in your -- in your applications.

Flood Zone-A, like I said, is rivering flooding, and the standards that we use to protect the dwellings or structures are to elevate the structure to the baseline elevation, design it to withstand the flood forces and protect its utilities. Basically, you know, it doesn't -- on the utility side, you want your water, your electricity all to work after the flood occurs and you don't want to have the mixture of sewage into the flood waters and vice-versa.

Besides affecting housing and communities and structures, it also affects roadways. I guess we have all experienced flooding on this side of the island where going to the East End or going to airport, if Kaunakakai Stream was running full or Kawela Stream was flooding through, it would affect your able to commute emergency services. So flooding can be -- can be disruptive, not only to homes, but to the community in general.

Mr. Vanderbilt: Excuse me, Francis, so people, say out along the road in Kawela that are in the -- there's a flood plain or flood zone out in that area.

Mr. Cerizo: Yes.

Mr. Vanderbilt: The people have to meet certain building standards but the people that build the roads, they don't have to do anything to withstand the force of the floods or anything?

Mr. Cerizo: Well, roadways is, you know, they are built by the State.

Mr. Vanderbilt: I think the State should build the house then.

Mr. Cerizo: Yeah, so, you know, when you develop roadway systems, like on Maui, there's areas along the coast that goes to Lahaina, they're built in the V-Zone, they get covered with water during the high surf, so, right now, they're looking at relocating all of that highway

mauka so that that doesn't occur. So in developing these regional roads, that's something that, if it's important to you, as a community, let's move the roads more mauka if it's affected by -- by high surf, or if the riverine flooding is the cause, somehow in the community plan say: Well, let's make the roads passable during the storms.

Now the other type of flooding is the coastal V-flooding, and this is usually done or caused by tsunamis. We recently had tsunamis in Indonesia. Remember the great tsunamis of the Indian Ocean where a lot of the flooding occurs and, well, a lot of the destruction forces of the flooding from the tsunami is actually from the drawing down or the receding of the waves. So we have also situations like in Hilo where the big tsunami came in and actually, as the water receded, ripped out houses, ripped up power poles. Yes?

**C. ELECTION OF CHAIRPERSON AND VICE-CHAIRPERSON FOR 2007-2008 YEAR
(deferred from earlier in the meeting)**

Mr. Yoshida: Yeah, I was wondering, I guess we're going to lose one of the Commissioners and we still need to have the election of chairman at the end of the meeting, so I don't know if you folks wanna vote now or you folks want to defer until the next meeting? Okay, so we're going to have the election of chairman now.

So, again, pursuant to Commissioner Kalipi's motion, we have two candidates, as we did two-and-a-half hours ago, for Chairperson of the Planning Commission: DeGray Vanderbilt and Kip Dunbar. Okay, I guess they've made their speeches. So, again, we need five affirmative votes to carry a motion, at least.

Mr. Vanderbilt: Mr. Chair, is there any discussion or what?

Mr. Yoshida: I don't know if there's any -- if anybody wants to say anything else on the --

Mr. Vanderbilt: No, I just -- I was approached by one Commissioner and he wondered if I wanted to be Commissioner cause I voted for Commissioner Dunbar on the first round. Yes, I do want to be Commissioner -- Chair. I am a Commissioner, just wanna be Chair. So I just wanted to clarify that. Thank you.

Mr. Yoshida: So the two candidates, again, are: DeGray Vanderbilt and Kip Dunbar.

There being no further discussion, a vote was taken on the nominations for Chairperson of the Molokai Planning Commission.

Assenting for Commissioner DeGray Vanderbilt as Chairperson:

DeGray Vanderbilt

**Mikiala Pescaia
Steve Chaikin
Lynn DeCoite
Linda Kauhane**

Assenting for Commissioner Kip Dunbar as Chaiperson:

**Kip Dunbar
Bill Feeter
Joseph Kalipi**

Excused from the meeting: Sherman Napoleon, Jr.

Mr. Yoshida: Okay, congratulations, DeGray, I guess you're the Chair. So vice-chair, DeGray, you can run the election of vice-chair.

Mr. Vanderbilt: Do we have a nomination for the position of Vice-Chair of the Planning Commission?

Ms. DeCoite: Yeah, I'd like to nominate Steve Chaikin for vice-chair.

Mr. Feeter: Yeah, I'll second that.

Mr. Vanderbilt: Are there any other nominations for vice-chair?

Mr. Chaikin: Can I comment on that? On my nomination?

Mr. Vanderbilt: Well, I was gonna -- I was gonna see if there are any other nominations and then go back for the nominees to make a -- are there any other nominations for vice-chair?

Mr. Feeter: I vote they'd be close.

Mr. Vanderbilt: There's a motion by Commissioner Feeter that the nominations be closed.

Ms. DeCoite: I second that.

Mr. Vanderbilt: Seconded by Commissioner DeCoite. Is there any discussion?

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

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

VOTED: to close the nominations for vice-chair.

Mr. Vanderbilt: Motion carries. Okay, Commissioner Chaikin, now we have some discussion on the motion for your nomination as vice-chair. Is there any discussion? Commissioner Chaikin.

Mr. Chaikin: I was only going to comment that, you know, if Kip wanted to be the vice-chair, that I would withdraw my nomination and nominate him to be the vice-chair since he is a senior member, and that was the only comment I had.

Mr. Dunbar: That's real noble and I can appreciate that. I think that's very generous. But that's okay. You folks can carry on and -- and good luck.

Mr. Vanderbilt: Are there any other discussion?

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

It has been nominated by Ms. DeCoite, seconded by Mr. Feeter, then unanimously

VOTED: to nominate Commissioner Steve Chaikin as Vice-Chair of the Molokai Planning Commission for the 2007-2008 year.

Mr. Vanderbilt: Motion carries.

Mr. Yoshida: So I guess Francis --

Mr. Vanderbilt: Is there any other -- is there any other business as far as this presentation goes?

Mr. Yoshida: Well, we have several other sections but I think we probably will have to, Mike and I will probably have to come back to finish our sections on environmental assessments and on the handout from the Department of the Corporation Counsel. He might wanna give a quick few do's and don't's of what you should not do between now and the next meeting, but we'd like for Francis to finish his -- we have to catch a 4:15 flight, so we probably have to leave in about 15 minutes or so, but we'd like Francis --

Mr. Vanderbilt: Everybody has to go at 4:15?

Mr. Yoshida: Well, I think Thorne is the only one that's staying until 8:00 but we'd like Francis to --

Mr. Vanderbilt: Okay, Francis, you wanna continue?

(Commissioner DeCoite was excused from the meeting at 3:05 p.m.)

9. Flood Hazard District Ordinance - *(continuation)*

Mr. Cerizo: So, getting back to coastal flooding. This is typical of the -- of the West End where you have the higher velocities along Kaluakoi. We have elevations of 24 feet in height above mean sea level so you have major -- you can have major damage along that side, there may be some other areas along the coast, but so far that's the one that we've been more familiar with. The standards are -- are -- we have higher standards for that area, basically, these are the same requirements as the V-Zone but, however, what we do on the elevation, instead of elevating only to the top of the floor as in A-Zone on the right side, left side's the V-Zone, we go to the lowest horizontal cross-member. And the other thing on the V-Zone, the structure below the -- the lowest horizontal member, that has to be free of any obstructions, no buildings, no walls, so they have, when we look at it, it's breakaway walls so when the water comes through, it actually breaks away and not having an impact on the -- on the structure itself.

As part of the -- a bonus to the community, we have a community rating system that's part of the National Flood Insurance Program. What we do, we require higher standards or the County has higher standards in certain construction standards and because of that, we have a -- we have reduced premiums. This is similar to the fire rating system. Currently we have a rating of -- a flood rating of eight. We're looking at a flood rating of seven. Right now, all the flood premiums that are being paid by the County of Maui, we have a savings of nearly 300,000, and with the rating of seven, we'll be almost a half a million dollars in saving per year.

Now, what is your role. You know, we all know that we're going to get flooded. We know the areas that are going to get flooded. We have maps that show that. We have a new study that's being -- that's happening now on -- on the east side of Molokai, along this whole coast, down to the west side. FEMA is doing a study, a hurricane study, and they have indicated to us that the flooding is going to double. So, right now, the elevation of the flood is only about three feet on this side but if a hurricane hits, it's going to double or even get more than that. So that's based on a direct hit. So we don't have the results yet but it should be coming out within the next year.

Mr. Vanderbilt: Excuse me?

Mr. Cerizo: Yes?

Mr. Vanderbilt: So what does that mean? That people will now have to just build their house --

Mr. Cerizo: Higher.

Mr. Vanderbilt: Higher?

Mr. Cerizo: Right.

Mr. Vanderbilt: But then if you have a height limit in our community plan for structures --

Mr. Cerizo: Well, we do have a height limit in any zoning district. We have a, not a bonus, but there is an adjustment in the flood zone. If you have to raise your house up five feet or more, we'll give you a bonus of five feet. So instead of having a building height of 30 feet, you'll have a building height of 35 feet, and you should have at least, you know, one story -- a net one story out of that, maybe even two stories.

So how can you get involved in the development or in developing a better flood resistant community? One of the areas that you get directly involved in is the designation of open space in our community plans, and also the zoning of properties on the island that should be open space.

The open space is for areas, in urban or not urban, which is your rural or ag, that is inappropriate for intensive development. It's like going out here in Kaunakakai, river or stream, or Kawela, we have a whole area that's in the flood plain that has high velocity. You build a house there, it probably get ripped out. So those areas, on your community plan, should be designated open space. Open space is an area that you have minimal structures and should not be paved or developed. So when developing your community plan, these streams should be delineated and the important streams that you feel that should be left open, that's the areas where you should designate as open space. And, eventually, these areas will be zoned. I've seen some areas that's zoned open space, or community plan open space, and they took it out and put it into ag, which -- that's counterproductive. So if you see an application like that, that's something that you should really look at before approving a change from an open space to some other use. Questions?

Mr. Vanderbilt: Yeah, Francis, just on the Kawela Stream, I don't know the person or anything, but there's a house just on the lot that's west of the stream where a house just went in, so when you say intensive development, what do you mean? More than one house, or is one house not considered intensive development?

Mr. Cerizo: Well, when I say intensive development, it's like if someone comes in, we have a situation Kihei where you have a flood plain where streams come in, feed into a community, and they build right in the middle of the stream. Okay, when the development pressure gets to that high, you should consider that it be designated as open space, then the development wouldn't occur. In Kihei, that area's all designated as single-family so it's

like, you know, it's consistent with the community plan but if it was designated to open space, yeah, in this area here, that area is designated as single-family, I believe, and should have been designated as open space to protect that area.

Mr. Dunbar: Francis, you know you said that there's a coastline study running east to west down this shoreline, and you say FEMA is doing that, or is it NOAA, or who's the -- who's doing the study?

Mr. Cerizo: It's a -- it's a combined effort by -- it includes FEMA, the civil defense, and NOAA. So all of --

Mr. Dunbar: Who's the second one again?

Mr. Cerizo: Civil defense, NOAA, FEMA, the Corp of Engineers is getting involved, so they have a group effort to identify the hurricane prone areas on all of the islands within Hawaii.

Mr. Dunbar: You know, because a lot of times they just come down and they take one whitewash and they say it all is, and, you know, I can tell you frankly that the East End doesn't get -- I mean Iniki and Iwa went through right up the channel, there's not a ripple out on the East End, not a ripple. But put Fernanda, 350 miles off to the east, yeah you got six-foot waves coming in on the beach. So, you know, I just -- it would be interesting to see how to see how their, you know, how they come together with their material in order to make a real bonafide judgement as opposed to saying: Well, everybody gotta be up 30 feet. Cause it does really make a difference.

Mr. Cerizo: Yeah, a lot of these studies, when they -- it takes a few years, but these will all be brought to the community. You'll have your chance to comment on how it's made, you know, the backup data.

Mr. Vanderbilt: Yeah, but they're the professionals. How can we comment? We don't know how to calculate all that stuff.

Mr. Cerizo: Well, it's just that, you know, you can get involved.

Mr. Vanderbilt: But is there any chance that some drafts of what they're thinking of could come out to Maui and Lanai and Molokai because we're right in the middle of the General Plan review and it would be very important data to have when you're considering certain things in the General Plan review? Is there any drafts that you've seen or --

Mr. Cerizo: No, not yet. So this is an example of open space and the corresponding flood plain area, and this is in Iao Stream, and here's a good example of open space. Along the coast, we have a tsunami area along here, V-Zone, and that was also noted down as open

space. This is a wetlands area so it makes it even more sensitive. Well this is your town of Kaunakakai on the lower side here, here's the stream, so we have, you know, there's no designation of open space and that's something that you might wanna consider on these large stream areas. Here's another stream area, and it's rural, so you might wanna have some kind of a open space so that there's room to put the stream -- stream improvements through. Right now, people can come in and build and almost completely block off the stream flow.

Mr. Vanderbilt: Where are those streams in relation to this map?

Mr. Cerizo: Okay, see the arrows here? This stream goes right there. This intersection here is that intersection there, and likewise here. Here's the -- the pond, and here's the other pond. So this area here, I know it's being developed, but --

Mr. Vanderbilt: It's homestead land, right?

Mr. Cerizo: I'm sorry?

Mr. Vanderbilt: Homestead land.

Mr. Cerizo: Homestead land. Another area that you get involved in is the special management area. As the Commission, you review these applications and one of the requirements is that the developers, the staff, you as Commissioners, there's an evaluation required on the impacts of flood plains, tsunami areas, coastal waters. So when someone comes in and reviews -- when someone comes in and they propose a development in these areas, the questions that you can ask is: Okay, what impact does it have on a flood plain? Show us the results of this -- your housing, your fill. Where is the water going to go? Is it going to flood someone else? So all of these -- these questions are something that we should be providing. You should be asking if it's not provided.

Mr. Vanderbilt: What you said for a development and a single-family house is not a development, so you wouldn't ask these questions on a single-family house would you?

Mr. Cerizo: On single-family houses, yes.

Mr. Vanderbilt: You could ask those questions?

Mr. Cerizo: Yes. So this -- this is a development that was in Pensacola, Florida, in 1995, and, as you can see, there's total destruction down further. This house here alone was recently built. It was built to the current standards, you know, it was high enough, strong enough, but for the rest of the mile-long beach, all of the other houses got damaged or destroyed. So, in planning for the future, you know, we should be looking at when you build,

when your neighbor builds, that we build it at a certain standard so that we can still have our houses. That's the conclusion of my presentation. Any question?

Mr. Vanderbilt: Are you taking into consideration global warming and the impact that might have on flooding or damage from waves?

Mr. Cerizo: No.

Mr. Yoshida: I guess we'll have your Deputy Corp. Counsel, Mike Hopper, give you a very quick do's and don't's, probably more don't's of things not to do between now and your next meeting.

- 11. Discussion of Boards and Commissions Booklet distributed by the Department of the Corporation Counsel**
- 12. The Sunshine Law**
- 13. Ethics**
- 14. Ex Parte Communications**

Mr. Hopper: I'm Michael Hopper. I'm your Deputy Corporation Counsel; that means that I'm basically your attorney and give you legal advice. Because we're on a flight schedule, I'm going to defer most of the matters that I have scheduled until the next meeting; however, there's just a couple things I need to tell, actually to avoid doing anything legal between now and the next meeting, and those are just a few key points.

One of them is that you're -- because this is an agency covered by HRS 92, which is also referred to as the Sunshine Law, there are certain restrictions on how you can conduct your business; the most important of which is that outside of the -- of these meetings, which are agendaed and need to be called to order and everything, and are subject to the rules and Robert's Rules of Order as well, you cannot confer to discuss board business. You can talk to each other about whatever else, about, you know, sports or whatever else is going on, but nothing that is either before or is likely to come before the Commission outside of these meetings. Technically, two of you can meet to discuss those items as long as no commitment to vote is sought. However, any more than two of you, if three of you are together, you cannot discuss anything involving these meetings. And I would urge you, the two of you not to discuss any board business anyway because it can get very -- you can go very close to making a commitment to vote or discussing voting on the issue, so I would recommend avoiding any discussion of matters that are before this Commission. And the Sunshine Law has penalties; one of them is if you -- if you do violate the Sunshine Law, the action that you take can be voided, basically, that action could be reversed if it was -- there was a violation of the Sunshine Law; secondly, if there is an intentional violation or they call it a knowing violation of the Sunshine Law, you're subject to -- you could be subject to a misdemeanor, which would be a fine and potential even jail time. That's administered by

the Attorney General. So the State is actually very serious about enforcing that law. So, between and the next meeting, don't discuss board business, you know, things before the meeting. There are some exceptions to that but I would rather get into those exceptions at the next meeting. However, you've been given a pamphlet called the -- entitled *The Sunshine Law*, and that has The Sunshine Law itself and also a plain English version of The Sunshine Law, which is very helpful. I review that oftentimes, you know, because it's a very good review for you that have been on the Commission. I read that for review for those new to the Commission. I urge you to read through that thoroughly because it'll answer a lot of the questions that you might have for me. I'll give you a more thorough analysis at the next meeting.

And the next issue is that because you will sometimes be sitting in a quasi-judicial capacity, meaning that you'll basically have sort, you know, you'll be considered judges, you have to avoid making any statements or any actions which would -- could be considered a violation of the due process rights of someone coming before the Commission. This basically means don't make any statements either for or against particular projects that indicate that you've already made up your mind on a particular project or a development before it comes before you because the applicants that may come before you for an SMA permit are entitled to a full and fair hearing, and if you've already made up your mind before the hearing's even begun, then they can challenge any vote that you take on that -- on that action and void the action, and your vote wouldn't count in that situation if they can prove that you made up your mind on that -- on that issue before it came before the board. And so, in those issues, if that comes to light, you would be forced to recuse yourself on those particular matters, which basically means you don't vote and, in some cases, don't participate in the discussions on those particular matters.

And so those are both very important things. You know, if someone calls you from the newspaper and ask you to comment on a particular project that's either before you or may come before you, don't comment on it. Just don't do it. Because those not only are, you know, those deliberations are supposed to happen here but, more importantly, in that particular case, if you made a blanket statement "I'm in favor of this project" or "I'm totally against this project," publicly, you'd have to recuse yourself from voting on that particular project. So that's where the problems can be caused.

Also, you've all been given, I believe, financial disclosure forms, you have deadlines to send those in. Those are to prevent any potential ethical conflicts. I'll go into the ethical conflicts later on in a bit more detail. But, just from now, you're not allowed to take gifts from anybody where it could be interpreted that the gift was for, basically, for your vote or for some sort of favorable action, and it's really an objective standard. They're not looking at what you felt like when you took the gift; they're looking at what happened, what are the circumstances under which you were given the gift and could it appear like you were being influenced by that gift. And if you believe you have any ethical conflicts or any issues where

you may have prejudiced yourself by making a statement about a project in public, you can ask me about those and I can advise you or I can go to the Board of Ethics, which is the County agency that's responsible for -- for administering that Code of Ethics and, you know, ask them for an opinion on a particular issue.

I think since we're under a time constraint, that's about all I can cover right now and I will be more detailed on that and other issues at the next meeting.

Mr. Vanderbilt: Thank you. Clayton?

H. NEXT REGULAR MEETING DATE: April 25, 2007

I. ADJOURNMENT

Mr. Yoshida: Mr. Chair, I guess we have to catch a plane so we would ask for deferral on the items that we couldn't get to and will bring them up at the next meeting.

Mr. Vanderbilt: And the next regular meeting is April 25?

Mr. Yoshida: Yes, that's correct.

Mr. Vanderbilt: Okay, do I hear a motion for adjournment? Moved by Commissioner Dunbar, seconded by Commissioner Kalipi.

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

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

VOTED: to adjourn the meeting.

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

Respectfully submitted by,

SUZETTE L. ESMERALDA
Secretary to Boards and Commissions I

RECORD OF ATTENDANCE

Present

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

Excused

Sherman Napoleon, Jr.

Others

Clayton Yoshida, Planning Program Administrator
Francis Cerizo, Staff Planner
Thorne Abbott, Coastal Resources Planner
Nancy McPherson, Staff Planner, Molokai
Michael Hopper, Deputy Corporation Counsel