

**(APPROVED: 09/12/07)**

**MOLOKAI PLANNING COMMISSION  
REGULAR MEETING  
AUGUST 8, 2007**

**A. CALL TO ORDER**

The regular meeting of the Molokai Planning Commission (Commission) was called to order by Chairperson, DeGray Vanderbilt, at 12:38 p.m., Wednesday, August 8, 2007, Mitchell Pauole Center, Kaunakakai, Molokai, Hawaii.

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

Mr. DeGray Vanderbilt: Okay, gang, I'd like to call the meeting of August 8, 2007 Molokai Planning Commission to order.

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

At this time, I'd like to offer the public, anybody who won't be able to stay or -- to come up and testify, and you can testify on any agenda item or any other matter that you feel is -- deals with planning issues on Molokai. Is there anybody that wants to testify in advance?

Okay, seeing no one, the next item is Item C, which will be the approval of the minutes of the June 13 and the June 27 meetings of the Molokai Planning Commission. Want me to give you all a little chance to look them over? Motion to accept? You got a mike down there, Bill?

**C. APPROVAL OF MINUTES OF THE JUNE 13, 2007 AND JUNE 27, 2007  
MEETINGS**

Mr. Bill Feeter: I make a motion that the minutes of the June 13 and June 27 be approved.

Mr. Vanderbilt: Is there a second? Is there a second the motion?

Mr. Steve Chaikin: I'll second that.

Mr. Vanderbilt: Motion to accept the minutes of June 13 and June 27 by Commissioner Feeter, seconded by Commissioner Chaikin. Is there any discussion on the minutes or any corrections? I have one. On the last page,

well, on the first page it says, "A quorum was present. See record of attendance." And the record of attendance is on the last page. And just for the record, it says, "Present." Now, do we list members that with an excused absence or not excused absence? Do you know, Clayton? What's the -- cause some minutes we've had absence listed and this one doesn't so I was just wondering what -- oh no, it's on the back page, excuse me. Excused. Alright. Senior moment. But, Clayton, while you're up there, do we have excused and unexcused absences? Is that -- if there's somebody -- say somebody doesn't call in and is that an unexcused absence or do you just --

Mr. Clayton Yoshida: Thank you, Mr. Chair, members of the Commission. Yes, I believe that we would list them as excused or absent.

Mr. Vanderbilt: Okay, thank you. Okay, any other discussion?

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

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

**VOTED: to accept the minutes of the June 13, 2007 and June 27, 2007 meetings.**

Mr. Vanderbilt: Motion carried. Okay, the next item on the agenda is Item D.

Chairperson Vanderbilt read Item D.1.a. into the record.

#### **D. COMMUNICATIONS**

1. **MR. JEFFREY S. HUNT, Planning Director, requesting concurrence from the Molokai Planning Commission pursuant to their Special Management Area Rules, as amended, that a Special Management Area exemption can be issued for the following:**

- a. **MR. KEKOA COPP for the construction of the Copp Residence and related improvements at 1100 Kamehameha V Highway, TMK: 5-4-005:023, Kamiloloa, Island of Molokai. (SMX 2007/0154) (N. McPherson)**

**The applicant plans to construct a new 1800 square foot 3 bedroom single family residence and 1000 gallon capacity individual wastewater treatment system on an 8000 square foot lot.**

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

Mr. Vanderbilt: And this is the one that Lloyd Inouye was building, I believe, and he testified before us on some issues he was having. We did get a -- an assessment here that was done, dated August 1, by Nancy, and maybe, Nancy, you could just give us real quick update on this and then we can see where we go with it.

Ms. Nancy McPherson: Good afternoon. Thank you, Chair Vanderbilt. Good afternoon, Commissioners. Nancy McPherson, Staff Planner, Molokai. This is actually, and I apologize if I have not listed it as such, but it is -- there is an after-the-fact permit involved here with the grading and fill, so this is an SMA assessment. The SMA assessment was applied for, then it was found that the grading and fill had been done already, and so the applicant went ahead, and if you look at Exhibit 3, obtained an after-the-fact grading permit. This is a small lot. And this is an interesting area because I believe it's right across from The Heights and these lots are very small and what also is the case, if you look at Exhibits 4 and 4a and 4c, there's been a lot of grubbing done in the area that there's actually a road shown on the TMK that is on the plat map that isn't really there yet. So those improvements, those subdivisions were drawn, those lot lines were drawn, and the improvements were never done. So what's happened now is that the beach lots, I wasn't able to ascertain in what year those were cleared, but I have a feeling that it was quite a while ago. What has happened since then is that the, I believe it's -- this property is owned by the Chow family, that's closer to the fishpond, their area has been cleared, and that's a separate subject, but that is something I'm following up on. That was not done by the applicant. Just to clarify.

Mr. Vanderbilt: Okay.

Ms. McPherson: So these are small lots. This Malino Place does not actually exist yet, but the pad was created. The applicant did the fill because he asked Department of Health for approval for his individual wastewater treatment system, and the Department of Health told him that in order to get that high enough above the water table that he would have to do fill, so he went ahead and did the fill. So he was really following instructions. But, you know, I coached him to always come to the Planning Department before you do anything and ask. So I feel like we -- we worked on this and we have a good understanding of what not to do in the future. Because it's far enough away from the shoreline and the fishpond, the shoreline setback, you know, I determined that it was exempt.

Mr. Vanderbilt: Okay, are there any questions for Nancy on this? Bill?

Ms. McPherson: Bill?

Mr. Vanderbilt: Commissioner Feeter.

Mr. Feeter: Okay, looking at -- it says the Kekoa residence, which would be I guess the second insert here, there's a ten-foot setback from the lot line. Is that appropriate at this time?

Ms. McPherson: The side setback you mean? Yes. It's a pretty small lot and my understanding is that that's the minimum setback. So he's -- he's, you know, actually getting approval from the building department. It was just the SMA assessment that he still needed. But what people are doing is they're applying for building permits and then they're getting the SMA assessment after. They can't get the building permit until they do the SMA assessment but, I don't know, I kind of like to see it happen the other way around but that's another story again.

Mr. Vanderbilt: Any other questions of Nancy? Yeah, Nancy, I had one. It just says that on item three of your letter the project will not require a flood development permit but, on Exhibit 4b, it shows that it's in - I can't read what type of flood zone it's in and --

Ms. McPherson: Okay, that's the 500-year flood plain and I believe that that results in a -- a flood zone of C, which doesn't require a flood development permit. They went ahead and got the zoning confirmation and they -- it was determined that they were not in a floodway and they didn't need a flood development permit.

Mr. Vanderbilt: Okay, thank you. Are there any other questions? Commissioner Chaikin.

Mr. Chaikin: Excuse me, just for our general knowledge, what is the general, you know, rules relating to fill? If you have an ocean lot, can you bring in fill and raise your ocean lot up?

Ms. McPherson: Well, that's something that I'm still trying to find more information about. I know that if they're in the SMA, there are certain things that we can do to minimize fill. Where the rules get really strict is when you're in the shoreline setback area, that's basically forbidden, but because of the way the grading ordinance is written, we kind of have to go by that, and the other area that controls is if it's in a flood zone. So we do have some ability to work with applicants on the fill issues, I prefer not to see fill in the SMA, but, again, this is

after-the-fact and, unfortunately, Clayton may want to clarify, but I find it difficult to, you know, there may impacts from removing the fill and, at the same time, they also need to have their individual wastewater system. There needs to be some fill in order to provide for that individual wastewater treatment system. I'm staying in a place where there's a mound in the yard mauka of the house and that's where the -- the infiltration area is because the water table is so close to the surface that, in order to have a treatment system, you have to have it above -- far enough above that. Three feet I think it is.

Mr. Chaikin: So what information or what data they use to decide the elevation of the lot? Who determines that and how is that determined?

Ms. McPherson: Well, I believe they're supposed to shoot topo when they come in for -- well, like this grading permit that was gotten after-the-fact. My understanding is they're supposed to submit those kinds of calculations, elevations, and topo. And for SMA, it's supposed to be two feet, I believe. So kind of the dilemma here is that, you know, that was done after-the-fact so, you know, the idea is, for me, as a planner, here on Molokai is to step up the educational campaign so that, you know, the fill isn't done before the SMA assessment is done. I think that's going to be the key. And also to get multi jurisdictional coordination so Department of Health, you know, understands that, you know, if someone's in an SMA, then maybe they should coordinate with the Planning Department and DSA as far as any fill happening in the SMA so -- so we need to do some more coordination. Clayton, do you wanna comment? Oh, you're bringing name tags.

Mr. Chaikin: Well, Nancy, I have like I guess a recurring issue that always comes up when we take a look at these -- these houses that are in close proximity to the ocean and I think that when we concur with you that they should be exempt and when you guys go and issue a building permit, there's kind of an implication there that everything's okay, you've reviewed everything, and we don't see any significant potential problems. But we know that there are forecasts for the oceans to be rising anywhere from 3 to 20 feet in the next hundred years, and if that actually does occur, the Planning Department's going to look kind of foolish and, potentially, even liable. So, you know from our perspective, I mean I'm not going to sit here and say that we shouldn't be building in a inundation zone, but I think at least we should be recognizing that's an issue and, basically, dealing with it. I mean at least acknowledging with the people or having them sign some kind of affidavit saying that they are building this with full knowledge that they know there's potential hazards, they know that there's forecast increase in sea level, forecast for the future, and that the County, down the road, should the sea level rise that they could actually condemn that improvement. And further to that, that if it becomes a safety issue down the road, that the County could require them to remove those improvements. And then even to take it a step further, to

have them record that document so that subsequent buyers of the property would, not only be aware of the situation, but would be able to know that they're not only buying that asset but they're buying that potential liability as well. And so far I haven't seen the County take any action, that I'm aware of, to make the people aware of what's going on. I mean there's brochures and stuff, but I'm talking about, you know, affidavits or something that the people would actually sign saying, "Hey, we're fully aware of this situation and we're willing to move forward." Now, unfortunately, we are not allowed to put conditions on exempted, and it's not really fair for these people to jump through all these hoops just so we could put an exemption, so I'm hoping that the County will step up to the plate and acknowledge the fact -- I mean they use all this data from the past, all these 500-year flood plains that are past data. They're not using any data that's projected out into the future to make these kinds of decisions. So I'm just hoping that the County will step up to the plate and make these people, you know, sign something that they're fully aware of the potential liabilities that they're getting into by building this house where they're building it. And if the County, if you guys aren't willing to do that, then I would suggest that, you know, that we take a look at how we can amend our rules that we can put on conditions, attach the conditions to, not only SMA permits, but to building permits as well. That's all.

Ms. McPherson: Chair, may I respond?

Mr. Vanderbilt: Yes, go ahead.

Ms. McPherson: I have spoken to Francis Cerizo, of ZAED, about this. He says that FEMA is revising the flood zone data, that that's in process, and that we should have new data fairly shortly. I believe that we will be stepping up the use of that data. Another thing is I do wanna say that this lot is right off the highway so it's actually at the highway elevation, which, at one point, was considered fairly safe, I suppose, in that area, but if you look at some of the information that I submitted to you previously about the Papohaku Dune Report, the coastal hazard design and subdivision design and that sort of thing, the problem actually starts when the subdivision lot lines are originally drawn. And, in this case, they were drawn fairly narrow. You know, they're small lots so it makes them difficult to build on anyway. There's not a lot of wiggle room with these lots. So the problem really starts at the -- when the subdivision's approved, and that happened quite a while ago, I'm not sure the exact year, but the thing is we have to start, and the County is applying the newer standards now to subdivisions that are occurring now. Now, the lots that are closer to the water are going to have a much, much more difficult time, that's -- a lot of that is wetlands, if not all wetlands, so everything between those lots and the sea is pretty much wetland, and so that's really going to be a challenging place to do any development. I'm not even really sure how they're going to build a road in there. But, you know, it's

a legacy that we have to deal with now and we -- and it makes it really challenging.

Mr. Vanderbilt: Thank you, Nancy. Are there any more -- Commissioner Dunbar.

Mr. Kip Dunbar: Nancy, you mentioned the road. Who's going to be responsible for putting in that road?

Ms. McPherson: I really don't know. I --

Mr. Dunbar: I mean it should be the person that's subdividing that.

Ms. McPherson: It would be the property owner, I would imagine, yeah.

Mr. Dunbar: And all these lots are now owned by who?

Ms. McPherson: The ones along the highway are owned by individual owners.

Mr. Dunbar: Okay.

Ms. McPherson: A couple of them already have houses on them.

Mr. Dunbar: Right.

Ms. McPherson: They've been there for a while.

Mr. Dunbar: And so who developed this subdivision?

Ms. McPherson: I'm not sure about that either. All I know is that the Chow Store is there and then there's all that property behind the Chow Store, but I don't know exactly about when those lots up by the highway were done. I'm not sure. I could do some more research if -- if you'd like.

Mr. Dunbar: Well, no, I mean it used to be an ice cream stand. I remember that.

Ms. McPherson: Oh.

Mr. Dunbar: I remember that 55 years ago. But I was just wondering is it -- is it the same owner that -- when was this subdivision granted? I mean was this one of those ancient ones that --

Ms. McPherson: It's pretty long time ago.

Mr. Dunbar: You could apply for and just be -- be given?

Ms. McPherson: And it was, yeah, like kind of on paper or whatever, yeah.

Mr. Dunbar: And then it -- yeah. And then you're given infinity to develop?

Ms. McPherson: Yeah.

Mr. Dunbar: Okay.

Ms. McPherson: I think so. There's a few of those on Molokai.

Mr. Vanderbilt: Are there anymore questions or comments regarding the exemption that we're going to make a decision of whether to concur or not to concur? Hearing none. You know, I'd like to entertain a motion to concur with the Planning Department's recommendation for an exemption from the Molokai Planning Commission shoreline management rules for the Copp residence at TMK 5-4-005 --

Ms. Lynn DeCoite: I'd like to make a motion to -- for the Kekoa residence per Planning Department's decision on an SMA exemption.

Mr. Dunbar: Second.

Mr. Vanderbilt: Motion by Commissioner DeCoite, second by Commissioner Dunbar? Okay, any discussion?

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

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

**VOTED: to concur with the Planning Department's recommendation for an SMA exemption for the Copp residence.**

Mr. Vanderbilt: Motion unanimously carried. I'd like to recognize Commissioner Kalipi and Commissioner Pescaia have arrived. And, with that, we'll move on to Unfinished Business. The first item under E, E.1.

**E. UNFINISHED BUSINESS**

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

**The Commission may act to authorize a change in the processing of these types of applications for interior remodels. (Deferred from the June 27 and July 11 meetings.)**

Ms. McPherson: Chair Vanderbilt?

Mr. Vanderbilt: Yes?

Ms. McPherson: I do have some recommendations that were unintentionally omitted from the memo that you received. May I pass out these replacement pages?

Mr. Vanderbilt: Sure. Go ahead, Nancy.

Ms. McPherson: Thank you. I just wanna apologize to the Commission because they're always asking for guidance and I seem to be omitting it regularly, so I am trying to provide some guidance here.

Mr. Vanderbilt: Okay, Nancy, you wanna give us a little update on this? We had it on the last agenda.

Ms. McPherson: Okay, you have previously received a copy of a memo, dated October 4, 2006, when you were asking for the ability to only review or only need to concur with recommended exemptions for certain categories of projects. At that time, you were advised, not incorrectly, that that would be a difficult thing to do - how would we amend the rules in order to do that - so we have taken another look at this. There has been a lot of policy development on the part of the Planning Department for Maui and Lanai Planning Commissions as regards to streamlining the SMA assessment and exemption process.

What they're doing now is that they have this one kind of checklist sheet, the one-page SM5 sheet, and where you just check off which exemption category it falls under, provides some minimal information: TMK, project description, owner, that sort of thing. And then there is also a standard assessment form that is prepared for the various exemption categories. So, from my understanding, some of them may be sort of lumped together but there are the recommended as not development, or defined as not development categories in Chapter 205A, in the definitions, all of those, basically, receive this treatment.

Now, this Commission, in the past, has chosen to request that not all of those not development categories be sort of given this quickie treatment that -- and that you want to -- you will have to actually, according to the SMA rules, you will have to -- they will have to be agendaed even if it's an interior only remodel and it's getting a standard assessment, which means it's just basically a canned kind of thing, and the short form, it'll still be on your agenda, but you're going to get like one piece of paper. You're going to get the one short form for that. Now, the ones -- in this recommendation handout that I just handed to you, replacing Page 3, I think it's bringing the memo up to five pages now, it's actually listing the recommendation that these are -- there's a total of 16 not development categories. You have chosen, in the past, to get the full treatment for one, two, three, four, five, six, seven, eight of those, and actually I've been advised by Corp. Counsel that this is a procedural thing that we don't need to change the rules in order to process information and provide it to you in a different way. So that the rules don't need to be amended. You can actually choose to only see a full assessment done, let's say for number one and let's say number 15, and then we could actually do the short ones for all the rest. So you can kind of pick and choose; you could also leave it up to staff to make that determination of whether we think we need to do the whole assessment or not. My preference is for number one, construction of a single-family residence, because of the sensitive nature of the SMA here on Molokai: wetland, springs, sand dunes, etcetera, etcetera, and cultural and historic resources, and the sensitivity of those resources, frankly, you know, I would like to do a full treatment even for grubbing and grading activity in preparation for construction of a single-family home.

So I think it depends on the activity and it depends on the location, as we often say in planning, it depends, and so you could defer to staff to make the determination for your list of the first set of not development categories that I make that determination as to what level of analysis needs to be performed. My guess is 99 percent of the time I'll wanna do a full assessment for the single-family residences but perhaps not for everything else.

But what we can do is we can, and I know you'll probably were hoping that, you know, you'd have it -- we'd have it ready today, but we could also do a policy memo describing exactly how this is going to be handled because the way it's handled for Maui and Lanai, ZAED takes those in when people apply for building permits, they're not submitting the entire SMA assessment application with all of the requirements for measuring distances from the shoreline and all that sort of thing, they're submitting the information for a building permit, and then that information is what's used to do the SMA assessment or determine, you know, whether it needs further review. And, at that point, you can ask -- we can ask for more information. We can ask the applicant to go ahead and fill out the complete assessment and say: I need more than a building permit in order to give you an exemption, to recommend an exemption. Or I can say: You actually need an

SMA minor, an SMA major, so you're going to have to submit everything and get a public hearing and the whole thing. So we -- staff has to do that analysis anyway but we can try to streamline where we can and where it's obviously a no-brainer where it's a interior only renovation, let's say, the building permit should suffice, and the trick is going to be how am I going to review that if it's going to Maui. So we have to work out that process but we can outline that in a policy memo and then copy the Commission on that. So if you chose to take an action today to act on the recommendation in this memo, then we could go -- we could take it from there.

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

Mr. Joseph Kalipi: I got some comments. Nancy, say we, just for example, say if we go with the recommendation of possibly a full assessment for number 1 and number 15, could we also put in a clause or some language that gives us the liberty to ask for a full assessment whether it was number 5 or number 11? Say that when it comes before the board and there's some questions or concerns, whether it's for number five, zoning variance, the height or whatnot, and then -- what I'm saying is that could we put in language in the policy that gives us the liberty to go back and look at some things that we might wanna take a closer look at even though we think it's maybe just a, you know, no-brainer, you know, renovation or, in this case, would be zoning variance?

Ms. McPherson: Well, I have talked to Corp. Counsel and Clayton about this. Clayton, do you wanna respond to that question? Or maybe Corp. Counsel does. My understanding is that, yes --

Mr. Vanderbilt: Well, let them respond to it then.

Ms. McPherson: Okay.

Mr. Vanderbilt: Clayton?

Mr. Yoshida: My comments would be that, based on your rules, all of the proposed exemptions have to come to this Commission for concurrence so, you know, the Commission will get the information, they will review it and, at that time, they could make their decision whether they concur or whether they need, you know, additional information. I mean the final authority is the Planning Commission.

Mr. Vanderbilt: Thank you, Clayton. Corp. Counsel?

Mr. Michael Hopper: And remember you gotta make your final decision within 30 days of when you get it. So if you decide you want more information, then you

could pretty -- you're pretty much going to have the next meeting to make the decision on it. If you've got other things on your agenda or it's busy, you could be risking that you run out of time on this, so that could be another concern if you're just going to request more information so -- and that would put some pressure on Nancy to get that done pretty quickly. So that's just another concern I would raise.

Mr. Vanderbilt: Commissioner Dunbar.

Mr. Dunbar: Yeah, I'm looking at this list again, you know, I mean there was never really any consensus that this is where we should be with this, but if you look at your first page where it's 1, 5, 8, 10, 11, 12, 14, and 15, I mean I really think that what came up for us was number 5 where there was except for height, density, parking, and that key word "shoreline setback;" that's where this all arose from. And so when we wanted to take on just a couple of these, we were told we had to take them all on. We couldn't just take some. And so now we're coming back with a recommendation of doing some, and not others, and I suppose that we could do that but, to me, the real only relevance of these are only 1 and 5. You know, if you're going to look at a -- at a construction -- and I think we'd have to expand that too. If construction was single-family residence including accessory unit that's not part of a larger development in the SMA area, if that's what you wanna say. But, you know, I mean if someone wants to build a home, you know, in Hoolehua or they wanna build a home up here, you know, on Aahi Place or The Heights, and it's not in the SMA area, I mean why would I care? Terrific.

Ms. McPherson: Kip, this wouldn't apply to those because --

Mr. Dunbar: So this is strictly only SMA?

Ms. McPherson: For SMA, yes. As it says above there --

Mr. Dunbar: Okay. But I mean, you know, we were getting people that -- I mean when you think about this, all of Kaunakakai is in the SMA area.

Ms. McPherson: Right.

Mr. Dunbar: Okay, so what you gotta do is you gotta get some of those areas that doesn't make any sense to be in the SMA area out of it so they're not, you know, this isn't a problem for them.

Ms. McPherson: Well, we're working on that too. We're working on the SMA boundary study and you'll --

Mr. Dunbar: And where are with that? What's the --

Ms. McPherson: You'll be seeing the results of that. I'm not sure when. I can check with Thorne Abbott and find out where we are with that and how much longer he thinks it's going to take and I can report that back to you at the next meeting. The thing is it's not that you're choosing not to review; you're still reviewing all exemptions.

Mr. Dunbar: It's all review, I understand that, but you know it's whether or not the director signs off on it or whether or not we sign off on it.

Ms. McPherson: No, you're still going to be signing off on it. It's just whether or not you're only going to see a very minimal amount of information, or whether you're going to see what you saw today with the Kekoa Copp project, which includes the full assessment, and exhibits, and a full analysis. So we're -- we can do it in a streamlined fashion for many of these not development categories, and then what we can do is do a fuller assessment and analysis for the ones that -- I mean, again, as Corp. Counsel mentioned, if I, as a planner, feel that the Commission may be concerned with a particular project, you can bet that I'm going to go ahead and do the full analysis anyway just to cover myself.

Mr. Vanderbilt: Are there any -- Commissioner DeCoite.

Ms. DeCoite: Nancy, I would -- I would recommend then if the full assessment and being that we only get, what, 30 days, Corp. Counsel, and we meet every other two weeks that the full assessment should be attached to 1, 5, and 15, unless you see fit that a full assessment be taken on the rest of them.

Ms. McPherson: Well, it's really up to the Commission to make that decision. This is my recommendation, but you can change it anyway you'd like.

Mr. Vanderbilt: Commissioner Chaikin.

Mr. Chaikin: Yeah, Nancy, just to try to, you know, clarify what we're doing here. You've got two groups. You've the first group, which is the 1, 5, 8, 10, 11, 12, 14, and 15. Is that the group that you wanna give us a lot of information on?

Ms. McPherson: That I would, potentially, give you a lot of information on and that you would be looking -- you would tend to look more closely at.

Mr. Chaikin: Okay, so the second group is the stuff that you'd give us a little check sheet that --

Ms. McPherson: Right. You'd basically get --

Mr. Chaikin: A shortcut?

Ms. McPherson: Yeah, the one-page checklist and if you look at the memos and the summary of the memos that I provided you in your packets, there is a lot of discussion in those memos about comments from other agencies and how they would wanna see that BMP's are attached to permits for these activities that if there's any excavation that there be archaeological monitoring, so there's a lot of other kinds of protections that we can put in that can be implemented even by DSA, let's say, or other -- by Public Works that Planning doesn't necessarily have to do. We can make sure, in the policy memo, that those are outlined and specified.

Mr. Chaikin: Okay, Nancy, question. On the second group, number nine, there's an item called "transfer of title to land." I don't understand that. You need to get an assessment if you're going to transfer the title of land, or what is that?

Ms. McPherson: No, this is actually listed in the definitions of Chapter 205A as being not development, therefore, the counties, who are implementing Chapter 205A, have the option of exempting those -- these are categories of proposed actions that are exemptable.

Mr. Chaikin: Right. But -- but we still gotta -- I mean --

Ms. McPherson: It's just listed for completeness.

Mr. Chaikin: Is this saying when somebody sells their land, we've got to -- they've gotta through a process?

Ms. McPherson: No. No, not normally.

Mr. Chaikin: Right, not normally but it's on the list.

Ms. McPherson: Well, it's -- this is -- I'm just quoting out of Chapter 205A actually.

Mr. Vanderbilt: Commissioner Chaikin, maybe -- maybe I can -- Nancy, whether it's in Maui or here, when somebody transfers title, they have to fill out some kind of minimal form with the Planning Department, right?

Ms. McPherson: I'm not certain. Clayton, the answer's no?

Mr. Vanderbilt: If it's in the SMA.

Mr. Yoshida: Mr. Chair, I guess we haven't done that for transfer of title to lands located within the SMA.

Mr. Vanderbilt: Are there any other ones that you haven't done? Any kind of assessment form have to filled out? Any paperwork?

Mr. Yoshida: That's the only one that I can see. Well --

Mr. Vanderbilt: Number nine.

Mr. Yoshida: Number -- number nine and, possibly, number eight if somebody wanted to grow agricultural crops within the SMA, we haven't required --

Mr. Vanderbilt: You mean if somebody came on -- on 50 acres along the ocean and wanted to put in some -- grow something for bio-fuels or something and use chemicals and everything else, there wouldn't be a need for an assessment on something like that?

Mr. Yoshida: I don't believe so unless they were doing something within the setback area.

Mr. Vanderbilt: Thank you. Commissioner Chaikin.

Mr. Chaikin: Okay, so our job, right now, you got two groups: you've got the group to, you know, shortcut, and then you've got the long-cut group, and what we need to decide is if those groupings that you've made are okay or if we want to alter those groups in any way, and I guess we, as a Commission, need to look at each one of those and see if it's in the improper category.

Mr. Vanderbilt: I'd just like to make a comment. We did this and, I think it was Commission Buchanan was chair at that time, since we don't have minutes that we can refer back to and pull those up by index, by subject, it's kind of hard, but we voted on these first eight and, at this point, it just seems that until we see that there's an overbearing workload, that we should -- should stick with the recommendation that our planner is making cause I don't want it -- we need to set something where we can alter that at a later meeting if something's just getting out of hand, but Nancy may not be here next year and we might not have a planner that is as efficient as she is, as dedicated as she is, and -- and so we don't wanna sort of leave it to the discretion of the planner to say whether they wanna give us something not. So I would hope that we could just go with this and see how it works and then Nancy can come back to us and say: You know, I'd like you to consider changing this one way or the other. But this has been on our agenda for quite a while now.

Ms. McPherson: I'd be happy to come back with, you know, we'll come back with a policy memo, we'll try it out for three months or six months and see how it goes, and I'd be happy to come back to the Commission with some kind of progress evaluation of some kind.

Mr. Dunbar: Chair?

Mr. Vanderbilt: Commissioner Dunbar.

Mr. Dunbar: Nancy, prior to splitting up these -- these 16 categories of whether or not they were exempt and, correct me here, if it were -- it was then approved by the Director of the Maui Planning Department. I don't recall ever, from when I first got on the board, ever really seen any of the exempted, any of the 16 exempted things before me. It's not that -- it's not that the 205A isn't done. It is done in every case. It is just not something that then came before us for approval. Is that correct?

Ms. McPherson: Right. Previously, before you amended your rules, all of the exemptions were approved by the Planning Director and because you didn't have a planner on Maui, they were approved by planner -- they were submitted by planners on Maui and that was the end of it. And, so now, things have changed. You have a planner on Molokai, and you also have amended your rules so that you're reviewing all exemptions. Exemptions are based on this category of not development. Now, there is language in Chapter 205A that also says that even if it is deemed not development, if you can identify significant enough -- significant and cumulative impacts to the environment, to the coastal zone, to the eco systems, to cultural and natural resources, you can still require that there be an SMA major or minor permit done. So we -- the staff has that flexibility already to make that determination. Even if it's considered in an exempt category, we can still say, well, but we can make findings that -- that we think there's significant impacts anyway even if it is in one of the exempt categories. But I think staff has to work with the Commission as a team.

Mr. Vanderbilt: Nancy, just let me interject something. So you would make that decision at the planning level and it wouldn't come to us cause it wouldn't be an exemption ...(inaudible)...

Ms. McPherson: Well, it -- it would come to you in the form of a permit. Yes.

Mr. Vanderbilt: Okay. So we went through all this quite a while ago, we amended our rules to look at all of them, and now Nancy is just saying here are the eight that you really wanted to look at, and to be consistent with your rules, you still need to look at all of them but these other 16 we're just going to do, basically, what they do on Maui, it's a short form --

Ms. McPherson: Correct.

Mr. Vanderbilt: And we'll send you a one-page thing with them attached and you could just say, "yay or nay."

Ms. McPherson: And if something -- you can flag something, then I'll have to go back and do another analysis.

Mr. Vanderbilt: Commissioner Chaikin.

Mr. Chaikin: Yeah, Nancy, I don't really have any problem with the list that you've made up, with one little minor clarification, and it's really more of a clarification than anything else, and that would be the whole thing came about by you wanting to not have to go through this major process for minor interior renovations, and that is actually listed here, it says, "repair, maintenance, or interior alterations to existing structures," and I would feel more comfortable if it said, "or interior alterations that don't result in a increase in interior square footage," so all of a sudden these, you know, add-ons and stuff don't get shoved into this category. Other than that, I have no objections with the way that you've written it.

Ms. McPherson: Well, perhaps, Corp. Counsel will wanna comment, but it's my understanding, by looking at all of these policy memos that I submitted to you and trying to understand them, that our department can put in that kind of language into our policy memo that's saying that that, you know, these interior only renovations with the exception of anything that may expand the footprint or cause any kind of impact in that area. You know, I can try to draft some language to that effect. We can put that into the policy memo; that's not a problem because this is the -- I'm taking language directly out of the State Coastal Zone Management Act but we are the implementing agency for the area within our jurisdiction so we can do -- do what we want within reason. So I can go ahead and add that language in.

Mr. Chaikin: Yeah, Nancy, I think it's fine, you know, just with that little minor thing. I mean I have no problem just moving forward with, you know, this as you've put forward to us.

Mr. Vanderbilt: Commissioner Dunbar.

Mr. Dunbar: Yeah, I actually do have some problems with moving forward with it, and I believe that there are too many categories in the long form. I mean if someone wants to raise, you know, crops or trees, and they happen to be in the SMA area, you know, if they're doing it wrong, they get turned into the EPA

and -- or USDA or NRCS and these guys, you know, regulate. Creation or termination easements, covenants, or other rights in structures of land. Regularly, the State will come around and say, "I want an easement for a retaining guide to a telephone pole." And so if you gotta go through the whole long form process, you know, it just -- I don't see how that's relevant. If someone wants to take a land and subdivide it and into lots greater than 20 acres, great. So I mean if he wanted to subdivide it into a 4,000 square lot, well maybe we have some problems here, but 20 acres, I mean what -- what more could we want? Subdivision of a parcel of land into four or fewer parcels. You know, I think this comes into effect when if you have like a family -- family owned subdivision, you can correct me if I'm wrong, but there's a family owned subdivision into four or fewer parcels, when there's no associated construction activity. Okay, so if some guy wants to create four different lots out of one and there's no construction activity to it, I mean what's the harm? And structural and nonstructural improvements of existing single-family residences where otherwise permissible. I don't have a problem with that either. If nonstructural improvements to existing commercial structures, you know, I mean all of Kaunakakai is in the SMA area so maybe you ought to just take that out. I remember when we were doing, as I said before, just an ATM, it had a six-inch shelf that stood -- it was till under the eave of the building but stood outside of the wall, you know, we had to go through an entire SMA process to do that. It probably delayed it, at that point in time, four to six months. So I will not -- I guess the point is that I -- the long form or any form, I can't see it relative to many of these that you already have it under.

Mr. Vanderbilt: Thank you, Commissioner Dunbar. Any other comments? I'd like to entertain a motion that we accept the recommendation of our staff planner and to include Items 1, 5, 8, 10, 12, 14, and 15 in the long-form category, and the short form for Items 2, 3, 4, 6, 7, 13, and 16, taking out the transfer title of land.

Ms. McPherson: Chair, did you omit number 11 consciously or unconsciously?

Mr. Vanderbilt: Unconsciously. Eleven will be included. So we need a motion of some kind.

Ms. Linda Kauhane: I make the motion to agree with the numbers as outlined by DeGray except for the number nine, transfer of land, transfer of title to land.

Mr. Vanderbilt: Moved by Commissioner Kauhane. Is there a second?

Mr. Chaikin: I'll second.

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

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

**It has been moved by Ms. Kauhane, seconded by Mr. Chaikin, then**

**VOTED: accept the recommendation of our staff planner and to include Item 1, 5, 8, 10, 11, 12, 14, and 15 in the long-form category, and the short form for Items 2, 3, 4, 6, 7, 13, and 16, taking out Item 9, the transfer of title of land.  
(Assenting: B. Feeter; L. Kauhane; S. Chaikin; M. Pescaia; D. Vanderbilt)  
(Dissenting: J. Kalipi; K. Dunbar; L. DeCoite)  
(Absent: S. Napoleon)**

Mr. Vanderbilt: So the motion carries.

Ms. McPherson: Thank you.

Mr. Vanderbilt: So, Nancy, at our next meeting, could you come up with a policy statement to take in some of the considerations, like Commissioner Chaikin brought up?

Ms. McPherson: Well, it may happen by the next meeting. It may take a little bit longer. It has to be done with the Planning Director.

Mr. Vanderbilt: Well, actually, take a little bit longer because I think our next meeting is a public hearing on that General Plan policy statement, which is going to take a lot of time.

Ms. McPherson: Okay.

Mr. Dunbar: Just so we can be accurate, Chair, you know, just so it goes down as a five to four vote. You know, I think the four that need to -- that didn't vote for this motion, you know, I'm just making sure that Suzette has them.

Mr. Vanderbilt: Yeah, it was -- it was a five to three vote with Commissioners Pescaia, Commissioner Dunbar, and Commissioner Kalipi voting no -- oh, and Commissioner DeCoite voting no, and those voting yes were Commissioners Feeter, Kauhane, Chaikin, Pescaia, and Vanderbilt.

- 2. Discussion on the Papohaku Dunes Cultural and Natural Resource Preservation Plan implementation. The Plan was presented at a previous meeting by the Office of Hawaiian Affairs and the Department of Land and Natural Resources. (N. McPherson)**

**The Commission may discuss and make recommendations on the implementation of the Plan. (deferred from the June 27, 2007 and July 11 meetings)**

Mr. Vanderbilt: Okay, so moving along, we're into the Item E.2., and this has been on our agenda for some time, and this is the discussion on the Papohaku Dunes Cultural and Natural Resource Preservation Plan implementation. Now, this plan was presented at a previous meeting by the Office of Hawaiian Affairs and the Department of Land and Natural Resources.

Just as a note, on future agendas, maybe we could put the date of the meeting in there so anybody getting the agenda that may want to look back at some minutes or something could do that.

But, Nancy, could you give us an update, please?

Ms. McPherson: Well, we just had to defer this from the last meeting. I've submitted pretty much everything I can think of to the Commission, and it's really -- you have several choices here: you can choose to adopt the Plan in its entirety; you can choose to adopt the recommendations that I have included in the memo that I gave to you previously; and I would also advise that you consider adopting the appendices because that's the data that backs up the recommendations, so that I would advise that you adopt the recommendations and the supporting data, or you can pick and choose as you see fit if there are some recommendations that you don't agree with. These don't all apply to planning so, you know, I've included them all just because I think that would support the County in having a more holistic approach to the implementation of this plan, but really -- realistically speaking, the Commission is only concerned with planning related matters.

Mr. Vanderbilt: Corp. Counsel would like to make a comment.

Mr. Hopper: I would just advise, based on what I've read in *Robert's Rules of Order* about adopting a report and they talk about it in the context of a committee report that you do not adopt the underlying data involved in this study because that's something they actually warn against. In *Robert's*, they say that if you adopt an entire plan or they caution it's adopting every fact or the facts that are behind the recommendations that it's rather -- they consider it, anyway, a better idea to just adopt the recommendations, basically, the action that's going to go forward. If you adopt the data, I mean you would have to be able to really verify that research that was done, that those numbers are accurate, and if, you know, it would be basically considered as a fact before the Commission, so someone could arguably come before you and say you found, you know, for an application

or something, that they see that you have recognized certain facts as if you would be taking potentially judicial notice of those facts and -- and could basically say you've noticed these fact, that they exist, and, you know, if you wanna do that, that is your discretion, but some of the passages that I've read in *Robert's Rules of Order*, as far as adopting committee reports, for example, recommends against that and would recommend that you adopt only the recommendations in the study. It is, as Nancy said, up to you, but I just wanted to let you know, you know, what I've read about the process behind adopting reports, and maybe Nancy has a different perspective on that, but that's just what I have read.

Ms. McPherson: Well, I would withdraw that recommendation but I would advise the Commission that I will be using that data for my analysis for projects in this area, not --

Mr. Vanderbilt: So you're talking about the appendices?

Ms. McPherson: Yeah, I won't totally be relying on that data, but it is part of -- it is available data, and it is fairly reliable in my professional opinion.

Mr. Vanderbilt: Alright, just for the record, the Appendixes are the A, is environmental oriented building guidelines; and, B, is additional relevance State and County regulations and programs; C, was Input from the public meetings held on Molokai; D, is subdivision redesign; Appendix E, is the DLNR letter of support and some other stuff; Appendix F, is photo methodology and dune profiling; Appendix G, is a ethnographic report; Appendix H, archaeology report; Appendix I, botany -- botanical report; Appendix J, is coastal processes, the geomorphological study of the Papohaku Dune; and Appendix K, is the drainage report; Appendix L, is an erosion report; Appendix M, is GPS and GIS report; and Appendix N, is the fish table narrative, the Molokai fish table and the study area, Maui nui map, and marine GAP analysis. That'll just give you an idea of what the appendixes are of which Nancy says she feels is fairly well researched data that she will be using whether we elect to accept that or not.

Ms. McPherson: And I agree with Corp. Counsel that I don't think you necessarily have to adopt that supporting data.

Mr. Vanderbilt: Are there any questions? Commissioner Chaikin.

Mr. Chaikin: Well, you know -- you know, I think we're getting a little too picky here. I mean we could make a motion and just, basically, saying we, you know, adopt this as -- to use as a general guide, or something like that, so there's some, you know, discretion, you know, and the people that are going to use this, whether or not they're going to absolutely take that information or not. I think we

can word it in such a way that kinda gets us off the hook so we're not, you know, on the hook for every single fact that's in that book.

Mr. Vanderbilt: Corporation Counsel.

Mr. Hopper: Yeah, that might be a good idea to maybe use language other than adopt. I mean a motion to adopt is a specific motion in *Robert's Rules of Order* that's typically used by, for example, Full Council to adopt a committee report. The committee would make a report recommending, I don't know, something like approving a permit; they would adopt that -- the report, which would generally be a limited -- or adopt the findings in the report that would have, you know, a finding that the permit's approved, or something like that. You don't necessarily have to use the word "adopt." You could say that you -- that you concur with the recommendations or other language that you would see fit. So adopting it might not be exactly what you want to do. You have a variety of options, but that could be an idea.

Mr. Vanderbilt: Let me ask you something, Nancy. Based on these recommendations that have come out of this report, is there, and maybe Corp. Counsel can answer this, is there any advantage of us to adopting rather than concurring with as far as giving you some authority to push other agencies to get with it ...(inaudible)...

Ms. McPherson: I would actually -- I would defer to Clayton to answer that question. I know that the Deputy Director has asked me if the Commission or any other body has yet -- has adopted this Plan yet. But I also think that, you know, we do have some leeway, I'm not absolutely certain how -- Clayton, do you think you could respond to that question: How the County would approach implementation based on whether the Plan was formally adopted by the Commission or just that you concurred with the conclusions or recommendations and recommended that the Planning Department institute, and the County --

Mr. Vanderbilt: Implement.

Ms. McPherson: Institute implementation?

Mr. Yoshida: Mr. Chair, members of the Commission, I believe it would carry more weight if the Commission adopts the Plan or portions of the Plan in terms of agencies trying to implement some of the policies, say in the same way that the -- for the Maui Planning Commission, the department had formulated a Beach Management Plan and the Commission adopted the plan, the Council supported the plan and -- by resolution, so that carries more weight in terms of the agencies that these bodies had supported the plan.

Mr. Vanderbilt: Thank you, Clayton. Any other comments? Commissioner Dunbar.

Mr. Dunbar: Yeah, Clayton, I don't know if this is for you or for Mike, but I'll bring it up. You know if we -- hopefully, people have read this Plan. I have full faith in protecting the Papohaku Sand Dunes, number one. But if you look even on almost the second page, there's a disclaimer that says, "The Planning Practicum Class and it is not the work of certified planners, therefore, implementation of solutions and suggestions need to be reviewed by professional planners and pertinent scientists." Okay, it goes on to say that when you get to the alternatives, under the recommendation, the group recommended Alternative Number One, and that would be: The group would work to reach consensus on prioritizing the items for implementation. Thus, the second benefit would be that decisions would be made for and by both sides and no one would be excluded, and that happens to be the Papohaku community and those lot owners. And, obviously, if that group had been developed, you know, I don't think this would need, you know, further adoption but I'm not so sure that that has gotten any further, I may be wrong, but I haven't heard of anything.

So the conclusion that they list here is that to have a co-management council, which has not been developed, and they would then spearhead the movement; go to its community plan members and the Papohaku Ranchland owners in the sensitive areas of these dunes so that they can be protected in perpetuity.

And so if this Plan is adopted, then we are adopting, or I don't even know if "adopting" is the right word, it seems to me that we are then recommending that if this book is in stone, then we also follow what they recommend, not just all the appendices, but there's an -- and it goes on to say why they would do this - it's the exclusionary process, and you not having landowners fighting non-landowners, and everybody buys into the Plan, so I'm -- well I would, you know, fight to the death to correct, you know, and protect the Papohaku Sand Dunes, I really would like to know if we're going to go and carte blanche and accept 400 pages here that they already disclaim right up front, you know, whether or not the scientific data is defensible because if it's not defensible, you know, then we just open ourselves up to -- to further ... (inaudible)... and I know that there's a lot of, you know, there's a lot of protection for those dunes; I mean and it comes in all forms from the DLNR. I mean it's easy to read in some of these appendices that that's there. I think the base problem is it's unfortunate that you gotta complain before you're going to get, but that is the kind of system that we've been given. You gotta complain about it and then it gets corrected. And there are a couple bad actors down there, do doubt about it, but they're all not bad actors and I think if they're going to approach the Papohaku or the Kaluakoi Homeowners Association and involve them, it's great. But to just say this is what we're going to do, if that's the case, then we're going to do what's in this book and this book

says you gotta -- you gotta have them included and they haven't been included yet, so we're not going to be able to make recommendations that aren't part of the original process or we're accepting part of it and not accepting part of it, and I think we either gotta take it in the whole or none at all.

Mr. Vanderbilt: Commissioner, excuse me, Commissioner Chaikin. Nancy?

Ms. McPherson: Could I respond, Chair?

Mr. Vanderbilt: Okay.

Ms. McPherson: The memo that I sent to you regarding this also list Alternative One as a recommendation to proceed with co-management strategies from the County's side, so there needs to be a co-management council created. Well, the County needs the motivation to do that, to participate in that process. Right now, we -- our problem is there is no real lead agency. DLNR is proceeding with up zoning the subzone in the conservation district. They are working on that right now. They're analyzing that. That hasn't been completed yet. So they are working on implementing the Plan recommendations already for their jurisdiction. What hasn't happened yet is a concerted effort on the part of the County to implement the recommendations for the area under our jurisdiction. I included Alternative One because I firmly believe, as someone who has worked on this study, that that is critical; working with the property owners is critical to any implementation of any recommendations in the plan and I feel very strongly -- my guess is that, you know, the Planning Department is going to be taking a lead in implementing these recommendations and working with the lot owners to get a co-management council going in coordination with the State, with the Nature Conservancy, and other agencies. We're trying to develop that partnership. What we need though is we need support to devote staff time to doing those kinds of activities. I think the County does support it. But support from the Planning Commission would really help, in my opinion, and I think it would be sufficient to adopt the recommendations and leave it at that.

Mr. Vanderbilt: Yeah, Commissioner Chaikin?

Mr. Chaikin: Yeah, I mean I concur. I mean I don't think we need to get tied up in all the details cause we're not making any decisions on what's going to happen. We're just saying, "Hey, we agree with this stuff and we're asking the director to take a look at it and do something." That's all. So I mean, you know, we don't have to get too tied up in all the details.

Question. You're talking about adopting the recommendations. I'm a little confused. Those recommendations in the book itself? There's another sheet of paper that's got some recommendations on it?

Ms. McPherson: Well, there was a memo and, you know, I don't think I have it right in front of me right now, but there was a memo that I drafted because, at a previous meeting, you requested that I identify the specific recommendations, what section of the document they're in, and I listed them all in a memo. Does everybody have that?

Mr. Chaikin: Nancy, I don't remember getting that memo.

Ms. McPherson: Really?

Mr. Chaikin: Yeah.

Ms. McPherson: Okay. Well, you might wanna look at one of the other Commissioner's copies then. I apologize for not having extras, but what I requested you do is then go through that memo, read those recommendations as their written in the document.

Mr. Vanderbilt: That was the July 11?

Ms. McPherson: Yes.

Mr. Vanderbilt: July 11 memo? Okay.

Ms. McPherson: And then you would know exactly which recommendations you were being asked to adopt or concur with or however you wanna phrase it.

Mr. Vanderbilt: Okay, I -- Commissioner Dunbar.

Mr. Dunbar: So if -- if we had a motion that said we would like you to push, I guess it would be the Maui Planning Department, into action on some of these recommendations, is that what you're asking for? I mean you seem to think that the Planning Department there is not doing anything to implement this.

Ms. McPherson: No, I'm not saying that. I'm saying that the County, there are more departments involved than just the Planning Department. By adopting the recommendations in the Plan, you are giving weight to the Plan. As Clayton described, you're actually saying that we consider this to be policy that we can live with and we're willing to direct the County to then move forward. So you're kind of giving it your stamp of approval. If you, as recommended by Corp. Counsel, don't wish to adopt all the supporting data because of problems with *Robert's Rules of Order*, I'm fine with that. And this is not just coming from me. This is coming from the community as well. This Plan and study was done in the first place because nothing was being done about problems that were occurring

out of Papohaku, so the State is now alert, DLNR is now on alert, except they still don't have decent enforcement capability so people are driving ATV's out there over the dunes and over the plants; DLNR has recently written a letter requesting that a property owner remove a fence that was put up without permission but the fact is the fence is protecting the dune plants so that people aren't going to be driving their ATV's over that area. So, you know, again it's the problem that everyone complains about with government - the left hand doesn't know what the right hand is doing. Coastal zone management is a challenge because we have a lot of different jurisdictions involved. This Plan is dedicated to getting those different agencies to work together. And if you adopt the recommendations, you're supporting us in moving forward with doing exactly that and doing our part as the County.

Mr. Vanderbilt: Thank you, Nancy. And I agree. I mean I think all of us, like Kip would -- Commissioner Dunbar would want to see that dune protected, but up until now, it's been damaged quite frequently and there's no reason to say that it won't continue to be. Now, by our adopting these recommendations, they're going to move over -- the Planning Department is going to move and try to adopt some of these things with some other agencies and they're going to go under further review at that time by those specific agencies. So, I mean I don't know if anybody has any problem with any of the, just philosophical problem, with any of the recommendations made in Nancy's July 11 memo that she put together for all of us. But, to me, it seems this was a locally initiated effort to try to protect one of our island's resources and -- and I think our Commission should at least give some weight rather than just saying, "Well, we'll let Planning do the best they can with or without us," because I think a lot of work went into this, OHA put in quite a bit of money to help fund this study, and, anyway, so unless somebody has problems with any of the recommendations just from a philosophical standpoint, it would seem that our Commission may want to adopt the recommendations and ask that Planning Department move on with the implementation with the various agencies around the State that need to be included.

Ms. McPherson: And the property owners. That's a critical piece for this. This isn't going to preclude you from still having --

Mr. Vanderbilt: But they were -- they were mentioned in the July 11, right?

Ms. McPherson: Yes, and Alternative One is recommended. You'd be also adopting Alternative One, which states that the property owners will be included, and if any changes are proposed to any ordinances, it's going to -- and it regards planning, it's going to be reviewed by this Planning Commission before it's adopted. So it's going to come to you again anyway.

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

Mr. Dunbar: No, but I have one for Corp. Counsel.

Mr. Vanderbilt: Commissioner Dunbar.

Mr. Dunbar: I got a question here. With -- I still don't what form the motion is going to take, but I'm looking at it from a legal standpoint and where the board is involved. Your original suggestion was that a recommendation on just a blanket adoption be done or finding that we should just accept this Papohaku Sand -- even though they disclaim themselves and says that scientists should do it, you know, I wanna make sure that this is something that we're going to accept that, in fact, it has some law in backing so when a homeowner comes back to us and says, "Well, that's not law, and you said in your own recommendation it was disclaimed, and you also said that you should involve us and you haven't." You know, I just wanna make sure that -- that if this is something we're putting forth that it is defensible.

Mr. Hopper: You guys need to determine if you think that these recommendations are defensible. I don't see anything illegal about adopting the recommendations only. The disclaimer, I thought, was mainly to say that professional planners hadn't done it and that in order to be implemented, that they would need the assistance of professional planners, which it appears that you would have with Nancy and with others in the Planning Department who would be professional planners to actually implement the recommendations. I don't wanna suggest that I was making a recommendation on necessarily any particular motion. Just as far as the form of how you would accept them, you could, for example, say that you would adopt the recommendations of the study as set forth in Nancy's letter. You can -- you can delete recommendations. You don't have to agree with all of them. You don't have to agree with any of them. But I had just recommended in the past that you have read and understood the study, you read and understood the recommendations, you know what affect that they would have, and before making a motion to recommend or to adopt the recommendations, that you understand what's happening. I wouldn't see a problem with recommending or with a motion to adopt the recommendations as far as a legal standpoint, but I can't really comment on any of the policy matters involved because that's up to you and how you feel. If you feel that the policies involved are good policies and would help to accomplish goals that you're interested in accomplishing, then that's your call.

Ms. McPherson: May I make one more comment? Chip Fletcher's erosion rate and coastal hazard assessment methodology has been peer reviewed and it is well respected in the field; in fact, it's some of the most cutting-edge work being done currently in the field, at least in the Pacific. The Nature Conservancy. These are biologists with masters degrees. You know, in my opinion, all the

work done is good data but, again, you know, you folks aren't scientists, for the most part, you're lay people, and I would understand it if you didn't feel comfortable with adopting all of that supporting data.

Mr. Vanderbilt: Okay. Thank you, Nancy. And, Nancy, this is going to be -- isn't this Papohaku Dune report going to be reviewed at some international conference coming up later this year?

Ms. McPherson: Yes, actually, Luciano Minerbi is working on a submittal for a paper and we are also doing a poster and he and I, and possibly one other student, are going to be attending the dune conference in Santander, Spain, in -- at the end -- beginning of October. So, at that point, this work will be peer reviewed internationally. They have some very large dune systems in that area of Spain, which I'm going to be visiting. There's going to be some technical trips and I'm going to learn as much as I can while I'm there.

Mr. Vanderbilt: Okay, and, again, I think this is something -- just the initiative that's been done with this report is something that I think Molokai can be really proud of. Commissioner Kalipi -- oh, Commissioner Feeter?

Mr. Feeter: Yeah, thanks, Chair. There's no question in my mind that this Commission should support this wholeheartedly. This is a landmark issue and there's a higher order beyond us. Already, if you look in the literature, it also states that not only OHA, which is a State association, and DLNR, they're right here in the literature, and that these -- these certainly supersede Maui County and, in terms of legality, I would challenge the legal opinion on that previously given. I would, if it's appropriate, I'd like to make a motion, Chair.

Mr. Vanderbilt: Go ahead, Mr. Feeter.

Mr. Feeter: The motion is that this -- this Commission accept the Papohaku Dune study to be used as a technical reference and accept in its -- its wholeness, period.

Mr. Vanderbilt: Is there a second? There's no second, so the motion dies. Do we have another motion? Commissioner Chaikin.

Mr. Chaikin: Well, I concur wholeheartedly with Commissioner Feeter, except that, you know, I feel uncomfortable, you know, taking the whole document and adopting that, but I would be willing to set a motion forward that we -- we adopt the recommendations set forth by Nancy in her letter dated July 11, 2007 to the Molokai Planning Commission, and all of those recommendations that are listed in that document that we adopt that in its entirety.

Mr. Vanderbilt: Is there a second? Is there a second to that motion?

Mr. Feeter: Motion seconded.

Mr. Vanderbilt: Seconded by Commissioner Feeter. Discussion?

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

**It has been moved by Mr. Chaikin, seconded by Mr. Feeter, then**

**VOTED: adopt the recommendations set forth by Staff Planner Nancy McPherson in her memo dated July 11, 2007 to the Molokai Planning Commission, and all of those recommendations that are listed in that document be adopted in its entirety.**  
**(Assenting: J. Kalipi; B. Feeter; S. Chaikin; M. Pescaia; D.Vanderbilt)**  
**(Dissenting: K. Dunbar; L. DeCoite; L. Kauhane)**  
**(Absent: S. Napoleon)**

Mr. Vanderbilt: Alright, for the record, those voting for it - raise your hand again - Commissioner Kalipi, Commissioner Feeter, Commissioner Chaikin, Commissioner Pescaia, and Commissioner Vanderbilt. Those opposed: Commissioner Dunbar --

Mr. Hopper: If there's a silence or refusal to vote, under your rules, it counts as an affirmative vote, so if you want to have a vote opposed for the record, if that's a concern of some people, then you should probably have it --

Ms. Kauhane: Maybe clarify the language whether it's adopted or just -- yeah. Clarify that.

Mr. Vanderbilt: We already voted, the motion carried, five to three and --

Mr. Kalipi: Can you just let them know what was the language, although it's passed, Commissioner Chaikin said he moved to adopt it, the language was adopt, just to make it clear.

Mr. Vanderbilt: Yeah, the motion was to adopt the recommendations contained in the July 11 staff report in its entirety.

Mr. Dunbar: Okay, it should be pointed out that if you did not bring your July 11 packet, you don't have it here, and so if we're adopting something that we don't have, I'm not also sure that it's a good idea.

Mr. Vanderbilt: Well, that should -- yeah, that should have been brought up during the discussion. We all had the agenda. It says right on the agenda: "the Commission may discuss and make recommendations on the implementation of the Plan." And so I don't know what else to say but it passed five to three and --

Mr. Dunbar: I understand it passed five to three. All I'm saying is that, you know, it didn't say bring your July 11 meeting -- because that's what we're going to be voting on. So that's okay, it's passed, but that's just a point that's being made.

Ms. McPherson: I would request that the Commissioners bring any materials related to agenda items that have been handed out at previous meetings with them to the meeting for future reference.

Mr. Dunbar: I agree and I think that's good, but if we did, you know, we would probably have about 400 packets on the special management area assessment and we had probably at least, you know, 20 packets under this Papohaku Sand Dunes. It's hard enough just to carry the book.

Ms. McPherson: And I'm hoping you're reading it all, Kip.

Ms. DeCoite: Well, you know, with that too, Nancy, you know, Steve and I were both missing that memo that was on the July 11 so, you know --

Ms. McPherson: Well, I would be happy at a break to run and make you copies right now, if it'll help.

Ms. DeCoite: Okay. That's fine.

Mr. Chaikin: We did have a chance to look at it though. There is a copy over here.

Ms. DeCoite: Yeah, we kinda glanced over --

Ms. McPherson: Well, that should have been included -- oh, I take it back, if you were absent, it may have been passed out at one of the meetings. If -- maybe what we can do is, if you miss a meeting, please contact the department, please call me, and I'll be happy to provide you with -- that should have been mailed to you though; I apologize if it wasn't.

Mr. Vanderbilt: Thank you, Nancy.

## **F. CHAIRPERSON'S REPORT**

**1. OHA Resolution in Support of Molokai Ranch Master Plan Land Use Plan process.**

Okay, with that, we move on to the Chair's report, and, yeah, the OHA Resolution supporting the development of the master land use plan for Molokai. And the reason this is put on the agenda, somebody brought it up asking what role the Planning Commission is playing in all this with OHA because -- so I checked with Nancy, she found the resolution and, sure enough, our name is mentioned in there, on the last paragraph it says: *Further be resolved, that a certified copy of this Resolution has been sent to the Governor, the Mayor, the Maui County Planning Commission, the Molokai Planning Commission, DHHL, and the Molokai Enterprise Community.*

Clayton did take the time to research back, quite a ways, back to the date of this resolution and nowhere in the files or in the mail logs was there any certified copy ever delivered to the Molokai Planning Commission by the Office of Hawaiian Affairs. And so I guess I just wanted our Commission to be aware of this, and the public to be aware of this since -- since we're mentioned in here. And -- and if the Commission wouldn't mind, I'd just like to write the chairperson of OHA and ask them if they -- they could send us that formal letter with the certified copy of the resolution. And if they've already sent it, maybe they could alert Planning who it was sent to, just for the record.

And somebody, I think at the last meeting, we passed out -- was it the last meeting? This was an OHA -- this was an OHA article that was printed a -- about almost, let's see, this -- it was printed almost a year after the resolution, and I think this article came out after there was a protest of Molokai residents that went over to OHA and protested the OHA investiture of the new trustees, so then they came out with this article sort of explaining a little bit more of what OHA supports.

So I just wanted to get this on the record because our Commission's name was mentioned in the resolution. Commissioner Chaikin.

Mr. Chaikin: I had a question for Clayton. You said you researched back. You looked for the document. You could not find the document that was supposed to be sent to the Molokai Planning Commission. Did you also, in that search, see if it was sent to the Maui Planning Commission or the Mayor of Maui County?

Mr. Yoshida: Mr. Chairman, members of the Commission, we did look back at our mail log for -- as to whether the resolution had been received by the department on behalf of the commissions, and we could not find a mail log item for the resolution.

Mr. Chaikin: So that did not include the mayor's office? So you don't --

Mr. Yoshida: No, we did not query the mayor's office. We just looked at the department's mail log.

Mr. Chaikin: Okay. So I just have a -- just a question for Corp. Counsel. When you have a document such as this, or I'm sorry, he's not even here, huh? Oh, never mind. Pass on that.

Mr. Vanderbilt: He'll -- I didn't -- stealth. Alright. Hold that thought. Were there any other comments? Were there any other -- oh, we have a question. Yeah, we have a question from Commissioner Chaikin regarding the OHA document.

Mr. Chaikin: Yeah, I just had a question. You know, this -- we have this resolution from OHA that was signed by all of the trustees of OHA, but does this constitute a -- I guess a document that -- that we should consider if it was never delivered in a timely manner?

Mr. Hopper: Consider for what purpose?

Mr. Chaikin: Well, here's a document, and in the document it says it's going to be delivered to the Molokai Planning Commission but it's been -- we have not received it for a period of one year and ten months, so it was never actually -- even though it was adopted by the trustees, it was never delivered as it was supposed to within a timely timeframe. So I'm just wondering: Is that still a valid document that we should take into consideration even though it was never delivered?

Mr. Hopper: Are being asked to consider for any approval or permit or anything?

Mr. Chaikin: Well, it's just a document that were sitting in front of us and I'm just trying to figure out whether or not this is something that we should take seriously or not because it was never delivered to us in a timely fashion.

Mr. Hopper: As far as whether or not it's a legal affect for OHA, as far as a valid resolution, I would have to ask OHA's counsel cause I have no idea. As far as for your purposes, I still don't know any -- if for any reason why you would be asked to consider this. If you're asked to consider this at a later date, then maybe I could opine on that. But as far as its legal effect towards OHA, I have no idea because I don't advise OHA. I don't know any of their rules for adopting the resolutions. I'm sure somebody does. But I, personally, do not because I don't advise OHA, so I can't opine on that.

Mr. Chaikin: Alright, yeah, I just was under the impression that we're supposed to take into consideration all testimony that we get and this is actually testimony

coming from OHA but it was never delivered in a timely manner. But I think Chair is going to clear that up by asking for OHA to, you know, if they want this to be delivered to us to deliver it to us in a way that they said they were going to deliver it to us in the letter.

Mr. Vanderbilt: Thank you. Any other comments on this?

Ms. DeCoite: Yeah, I guess I kinda looking it at as is this part of a supporting document on that master base plan to Planning Commission, and I gotta agree with Steve. If this is some kinda added information in support of the MPL master base plan and being that they stand behind that plan a hundred percent on OHA, I mean the courtesy extended should be delivered within a timely manner. I agree with that.

Mr. Vanderbilt: Thank you, Commissioner DeCoite. Any other comments? Okay, hearing none.

Mr. Dunbar: Yeah, Chair, let me make one other comment. Again, this is something that's handed out to us today, okay, and Linda didn't get, when she wasn't here, she didn't get the handout that came that we voted on today. So having it come out today and then having to vote on it, I have some problems with that.

Mr. Vanderbilt: Well, this is just an item under the Chair's report for information. I think this was handed out at an earlier meeting, wasn't it?

Ms. McPherson: Yes, and I haven't checked, but I think it may be possibly have been included in the EIS as well.

Mr. Vanderbilt: Well, anyway --

Ms. McPherson: From a -- as part of the --

Mr. Vanderbilt: This was just for an information because people were wondering -- people knew about this and we didn't know about this, and our name was in there, and I was just following up with Clayton, with Planning to see how this thing slipped through the crack and so there's -- there's really nothing to vote on. This is just an informational document. Commissioner Pescaia?

Ms. Pescaia: Can I just ask how we came by this copy? Was this submitted to us from someone in the community or someone --

Ms. McPherson: Actually, the Chair requested that I contact OHA, and I did, and an OHA staff person emailed me a scanned copy of it.

Ms. Pescaia: Okay, so it wasn't formally submitted to us --

Ms. McPherson: No, I --

Ms. Pescaia: I mean even in this unofficial uncertified format?

Ms. McPherson: No.

Ms. Pescaia: It wasn't submitted to us as testimony recently?

Ms. McPherson: It was not submitted to the Planning Commission formally. No.

Ms. Pescaia: Okay.

Mr. Vanderbilt: Thank you, Commissioner Pescaia.

**2. Scheduling of a Site Visit to Laau Point - *The Commission may decide on the scheduling of a site visit to Laau Point.***

Okay, moving on with the Chair's report. We need to schedule a site visit to Laau Point and I think the Office of Planning has already gone down there. They will be before the Land Use Committee along with the County of Maui. The County of Maui's attorney before the Land Use Commission will be Jane Lovell and she said that if we schedule a meeting, she'd like to go down when we went down, and dates that were good for her were the 15<sup>th</sup> and the 21<sup>st</sup>. So I'm -- I don't know what -- what -- the 21<sup>st</sup> has gotta be on a Tuesday, and the 15<sup>th</sup> is a Wednesday.

Ms. McPherson: Chair, what month are you speaking --

Mr. Vanderbilt: August.

Ms. McPherson: Okay, we do -- we are supposed to get an approval by the Attorney General. Is that correct? State Attorney General's office?

Mr. Hopper: Same rules apply as the first time you voted to have a limited meeting. You have to make the finding that there's a condition going down there that's dangerous to the health and safety, make those findings on the record, send those findings to the Attorney General, and they have to agree with you before you can have the meeting. That's what, unfortunately, the Sunshine Law says, but it's definitely something that we have to follow.

Ms. McPherson: And, Corp. Counsel, do you -- I'm sorry, Chair, but do you have an idea how long that might take once that request is sent to the Attorney General's office? Any estimate?

Mr. Hopper: I talked to them the first time we considered this and they weren't sure. I mean they may or may not even concur with the findings. They could say -- they could say no that they don't believe that it's dangerous to the health and safety and there's no reason why you couldn't have an open meeting. But I did talk with someone there. I gave you the contact information of the person there. I could give them another call or really, you know, it should be handled by staff of the Commission because, you know, it is the Commission that's requesting. It also has to be videotaped so there'll have to be arrangements for the staff to videotape the meeting, and just to make sure -- there also has to be a two-thirds vote of this body, of the nine of you, so five of you or whatever two-thirds is, would be six of you would have to take a vote to have the limited site visit or to have the limited meeting. But, again, you've gotta make those findings on the record right now if you're going to vote a meeting time and also get permission of the landowner to have the visit at that time in order to have the visit under the Sunshine Law.

Mr. Vanderbilt: And I think -- and I think, just to follow up on that, the reason we have to have a limited meeting is that Molokai Ranch will not allow us to go in there without signing waivers, and the Office of Information Practices says that if -- that that's just not going to work because if anybody comes up there and says they're not going to sign a waiver, anybody from the public, then the meeting has to be cancelled. So the Planning Department went down without signing waivers but they're not subject to the Sunshine Laws. The Office of Planning went down without having to sign waivers but they're not subject to the Sunshine Law. But the Ranch is saying if we hold an open meeting, we have to sign the waivers and anybody that happens from the public to come along. I, personally, don't think there'll be a lot of people coming down. As a matter fact, didn't we schedule the limited -- we scheduled an open meeting and really nobody showed up but we had to cancel it or something?

Ms. McPherson: Yes, we did. We did schedule a meeting and then we cancelled it.

Mr. Vanderbilt: But the public didn't show up?

Ms. McPherson: But, no, I was up at the airport and I waited for two hours, two or three hours, just to make sure. We did previously also -- a memo was distributed previously, I can re-circulate that memo, I can even make copies on the break, discussing the kinds of findings of fact you need to make, and that, previously, we said, well, we wanted -- you said that you wanted to have a

meeting some time in the month May. Now, let's say we shoot for September. You could say we would like to have a limited meeting in the -- sometime during the month of September. The dates can be worked out. I don't know that those have to be specified to the Attorney General's office, but I'm --

Mr. Vanderbilt: Do you know that or --

Ms. McPherson: I don't know that. I will call them though and find out all the details. You may want to go ahead and do that today but I don't think everyone on the Commission has seen that memo, that original memo. I'm sorry I didn't have it here today.

Mr. Hopper: The key with that memo is that, like we said, in order to have a limited meeting, you have to find that there is -- it is dangerous to the public health and safety to have the meeting as an open meeting at Laau Point, and there were some information and some -- some findings that were made the first time that a limited meeting was authorized. It was authorized for the month of May, I believe, originally, but that didn't happen. So those same findings, you would have to make them again by motion and have those findings on the record for the Attorney General. But you do have to make some findings that's giving your reasons why you believe that it is dangerous to the health and safety to have an open meeting there.

Mr. Vanderbilt: So, Nancy, you have that original memo somewhere that states the --

Ms. McPherson: Yes.

Mr. Vanderbilt: The reasons that we gave for a limited meeting? So, at this point, can we just defer this until the next meeting or, yeah, the next meeting, and you can give us and you can distribute --

Ms. McPherson: I can redraft the memo, putting in the new timeframe, pretty much virtually the same findings of fact.

Mr. Vanderbilt: Well, we're not -- we don't have -- we don't have a date so --

Ms. McPherson: Right, but --

Mr. Vanderbilt: And you can check with the Attorney General whether we need a date in our motion?

Ms. McPherson: Yes.

Mr. Vanderbilt: Thank you.

Mr. Feeter: Chair, a comment, if I may?

Mr. Vanderbilt: Commissioner Feeter.

Mr. Feeter: Can we table this trip to Laau. It's run out of gas and we're not -- we're expending time that's not proficient and I would suggest --

Mr. Vanderbilt: Okay, well, we're -- well, are saying that we shouldn't go down as a Commission to Laau Point?

Mr. Feeter: I'm suggesting that we do it on an individual basis and risk life and limb and not as a group.

Mr. Vanderbilt: I'll let Corp. Counsel answer that one.

Mr. Hopper: I did look into that and that's actually something you should avoid doing. They talk about ex parte communications for boards and commissions that have permit approvals before them. You know, if you happen to know information, then that's your personal knowledge. But there have been some due process concerns raised in other cases of if a board is going to look at a -- an application, for them to have ex parte communications about those issues can raise concerns, so I would recommend don't go down on an individual basis for the purpose of gathering information to make a ruling on the -- any of the Laau Point applications. And I'm just relaying to you what I've seen in case law and court decisions that have been made before and making you aware of that.

Mr. Feeter: Chair?

Mr. Vanderbilt: Thank you. Commissioner Feeter?

Mr. Feeter: In view of that, I suggest that we just move on and cancel any attempt to, as a body, to go to Laau.

Mr. Vanderbilt: So you're suggesting that we're -- we're going to be making a decision on Laau at some point, at some point, and you don't think, with all the agencies taking the responsibility to go down there that we shouldn't go down there? I mean how can you make a decision on anything unless you see it?

Mr. Feeter: Your point is well taken. I have seen it. I was down there 12 years ago. We went from Kaupoa all the way around to Hale O Lono without any legal aid or we did not get snake bit either way, and it was a very learned functional

trip, but we've gotten tied up and burdened with legalese and it's lost its point. We're out of context.

Mr. Hopper: I'm talking about -- I'm not saying that -- that -- the problem is going as individuals versus going as a group. You know the board can act and you would need a quorum to have that limited meeting. It's just going down as individuals. You get into situations where one person has a lot more information than the other and, you know, they don't get the same information, generally, which has been a concern raised by courts in the past. That's -- that's all that I was speaking of. It's not say you would be prohibited from doing a limited meeting legally on this issue because you are a commenting party to the EIS and, you know, the applicant has asked for your comments on the EIS, so this is perhaps a different situation than in some cases, but I just wanted to raise that issue and recommend that if you do go down to have that visit, you have it as a limited site meeting with the Commission rather than as individuals.

Mr. Vanderbilt: Thank you. So, Nancy, you can get that information to us and --

Ms. McPherson: Yes.

Mr. Vanderbilt: We'll have that in front of us and next meeting or the meeting after that, we'll decide whether we wanna go. Commissioner DeCoite.

Ms. DeCoite: I suggest we do go and I would like to recommend, while Nancy is working on the Attorney General and the recommendations by that, that we table in the date. MPL will be coming back to the Commission for recommendations and the sooner the better and if she doesn't come back with a clearance on it, that we just push the date back but set something up now for the site visit after approval by the Attorney General.

Mr. Vanderbilt: Okay. Well, based on that, how do any of those dates work, August 15<sup>th</sup> or August 21<sup>st</sup>? The 21<sup>st</sup> is a Tuesday. We probably won't be able to do it on the 15<sup>th</sup>.

Ms. McPherson: We might not be able to do it in August. I think that was the point I was trying to make. We might have to shoot for September. We need the approval before we can even really proceed so -- but you have to make a decision that you wanna go. So, you know, if you're willing to say --

Mr. Vanderbilt: Commissioner Pescaia. Excuse me, Nancy.

Ms. McPherson: Go ahead.

Ms. Pescaia: I just wanna say I've never been to Laau, I've never had a reason to go, and now that I'm sitting on the board, I'm actually advised not to go on my own. If I'm going to be here for the next five years and there are lots of topics that are going to be coming before me, I would appreciate having the opportunity to visit the area that I'm going to be asked to make decisions on. And if this is the only way that I'll be able to do that, then I would -- I know that some of you on the board have been, you're much more familiar with the area and its history; I'm not, and so I would appreciate everyone else's support in this. I'm guessing you could call the meeting and you could, before hand, let us know that you are unable to attend. If it's a question of the walk, whatever the issue is, there's a scheduling conflict that would, you know, prohibit you from joining us, but I would really like the opportunity. Thank you.

Ms. McPherson: Yeah, we would need again the -- the two-thirds majority. Correct, Corp. Counsel, to move forward and request the limited meeting, then we would also need a quorum present in order to conduct the site visit? Well after approval by the Attorney General's office.

Mr. Vanderbilt: Commissioner Chaikin.

Mr. Chaikin: Yeah, I just wanted to say that I support, you know, going to Laau just because we do have to make major or we may have to make major decisions and I think we can do that better if we've had an opportunity to take a look -- look at the place. I mean I guess my questions right now is: You know, is this a timely time to go see Laau? Or like -- I don't know. Do we have meetings that are coming up shortly which we're going to have deal with Laau or are they way down the road? Cause my preference is to go and look at Laau when we're close to having to make some kind of decisions or recommendations so it's not so distantly removed from, you know, the time that we've gotta actually make decisions.

The other thing is that, for a limited meeting, we have to come up with some, I guess, findings of fact that there's a health and safety hazard for the public to go down to, and we came up with some pretty feeble -- feeble rationale last time around, but now I think with the -- with the new developments that we've had on Molokai and our landfill, and taking into consideration there is a bombing target in that area, that there may be some unexploded ordnance in that area and that might a reason that, you know, the public shouldn't -- may not be allowed to go on this.

Ms. McPherson: I can bring additional information to the Commission at the next meeting about timelines and how soon we estimate that you might have these coming before you.

Mr. Vanderbilt: Well, the -- the earliest we would hear it is they gotta come out with the final -- the Final EIS, there's a 60-day challenge period to that, and that 60-day challenge begins 30 days after it comes out, so we're looking at three or four months, four months, five months before we would even have an opportunity because where we would first get involved is the change in zoning and the community plan amendment, which they're going to run concurrently with the land -- State Land Use Commission meetings so -- but we would have to make decisions at those meetings but that's not going to happen for four or five months, at the earliest.

Mr. Dunbar: Chair? I certainly realize why Michelle would wanna go and I think that's really a good reason. I've been to Laau a couple of times and so, you know, I would really like to see what comes from all our 400 suggestions to the State Land Use to figure out, you know, whether they buy any -- any of it or not before we, you know, jump through the hoops and commit to go. So I --

Mr. Vanderbilt: Okay, well, I --

Mr. Dunbar: But if there is a time constraint, then that has to ...(inaudible)...

Mr. Vanderbilt: That's a good point, Commissioner Dunbar, and it goes along with Commissioner Chaikin's desire to sort of get closer to when we're going to be involved with it, but I still would like Nancy to get that information to us on the limited site -- do we have -- is there anybody here that doesn't wanna go? Okay.

Mr. Dunbar: ...(inaudible)... I mean at this point.

Mr. Vanderbilt: No, no. Okay. Alright.

Mr. Dunbar: Sorry. I think if they came up and we had -- we had definitive information that they were refuting that we put in there, then we would need to defend that information that we -- that we talked about. You know, and until we know what we're defending, you know, going down to look at Laau Point is, you know, it's not going to shed much light on what we already know.

Mr. Vanderbilt: Well, when we're in a body and we have the public hearings for the change in zoning and the community plan, there's going to be a lot of information thrown at us that's not comments or -- that we made, it's stuff coming from the public, and so we need to be prepared. Anyway, okay, do we have anyone from the public that would like to say anything on this item? Oh. Excuse me, ma'am, could you identify yourself for the record?

Ms. Judy Caparida: I'm sorry. My name is Judy Caparida and good afternoon. Aloha. You know what? This is an easy problem to solve. Before you can do

anything, you gotta see what the heck going on. You gotta see the place. Because if you're going to make decision, how can you make any clear decision if you never even see the place. You still going to be like this for months and months. They'd be happy for you guys to go up there and check it out because you know what? They're desperate. They want you guys to do something about it and so do we. The community wants to know what's going to go on. So you know what? Wake up and let's do something. You gotta put it into action. I come here to the meeting, I like sleep already. I mean this is a dull meeting. Really dull, dull meeting because so dead. We wanna do something because it is the purpose of our community. And almost all of our community on Molokai is concerned. So they cannot be here but I'm here because I want to talk about Manae. Manae wants to know what's going to go on, majority of our people, because we're not rich people. We are poor people and we wanna know what's going to happen to us. So you know what, Chairman? I'm sorry but I have to come up here and say it that we have to move on. Thank you.

Mr. Vanderbilt: Thank you, Commissioner -- thank you, Judy. Does anybody have any questions for Judy? Commissioner DeCoite.

Ms. DeCoite: You know that's the reasons why, you know, we gotta -- we gotta make that site visit and look at how many things is on here for MPL. I mean I no like this thing come before us and we never even reach there and now we're scrambling to get there. You know, we gotta be prepared. We gotta be prepared when the community come to us so, you know, that's why I really wanna do the site visit. Maybe we do step on a bomb here and there. I mean, Jesus Christ, you know, and they authorizing the building of these houses? You know, gee, where's the EIS on this issue? I mean I never see that in there. But, you know, look the landfill. We find `em, we close `em, we open, we find `em again, and we close `em again. You know, so, you know this is serious issues that I think the Commission should, as soon as possible, take a look at it because we know how government works. Thank you.

Mr. Vanderbilt: Thank you, Commissioner DeCoite. Okay, so, Nancy, you'll get us that information from the A.G. and then we can just set it up for sometime down the road. Commissioner Chaikin.

Mr. Chaikin: Yeah, maybe we can find out whether or not we can submit the request for a limited meeting without the date and then, you know, so if we do decide to go, we won't have to go through that whole process and we could do it in a timely manner.

Mr. Vanderbilt: Thank you, Commissioner Chaikin.

### 3. Format of future agendas

Okay, the next is the format of future agendas. I got a call this morning from somebody giving me a little bit of grief because they said they pulled up -- they went to the website, clicked on the August 8 agenda for the Molokai Planning Commission, and up popped the agenda for the Maui County Cultural Resources Commission for an August 2 meeting. And I went and checked on that and, sure enough, it did, and I think we really need to make a concentrated effort to spend some time when the agenda for the meeting is not even on the website on the day of the meeting and it seems like something that we really need to --

Ms. Suzette Esmeralda: You could have just called the department and let us know.

Mr. Vanderbilt: Excuse me?

Ms. Esmeralda: You can just call the department and let us know. I mean we make mistakes too.

Mr. Vanderbilt: Excuse me. I was just alerted to this yesterday afternoon. I wasn't near a computer. I was coming back from the Mainland from visiting my grandkids, but if I had been here and noticed it earlier, I would have given a courtesy call but -- so, anyway, and the other thing is -- anyway, we'll just pass on that item for the time being. Commissioner Chaikin.

Mr. Chaikin: Yeah, I just had a, you know, a question regarding that. I mean, in this particular case, it was just an honest mistake, but I -- you know, what I'm a little concerned about is how people ever find out what's on the agenda. I don't know. Is there some kind of a legal requirement of what we have to do to get the word out to the community as far as what's going on on our agenda?

Ms. McPherson: The -- Suzie publishes it in the newspaper. No, the agenda doesn't -- oh, okay. I'm thinking of public hearing.

Mr. Vanderbilt: Here's Clayton behind ya.

Ms. McPherson: But we do post it. We're posting it on the island now. Nina's posting it on the island.

Mr. Yoshida: Mr. Chair, members of the Commission, I believe the legal requirement, under Chapter 92, is to file the agenda with the Clerk's office at least six calendar days prior to the meeting. In addition, we do send the agenda to people that ask to be put on the mailing list, we do try to post the agendas on

bulletin boards around town, and we, given the age of the computer, we are posting the agendas and approved minutes on the County website.

Mr. Vanderbilt: Thank you.

Mr. Chaikin: Okay, so is that something you said that if you request to be put on a list they will send the agenda to you. Is that via snail mail or email or how does that work?

Mr. Yoshida: Generally, if they wanna be put on our mailing list and receive agendas, then we do send it to them. We also try to post them on our County website and inform people that agendas are posted on the County website.

Mr. Chaikin: And you said send. Was that via email or via postal service?

Mr. Yoshida: As far as notifying the individuals?

Mr. Chaikin: Yeah, you said that they could be on a list and then you would let them know of the agendas. How do you do that?

Mr. Yoshida: I guess we put them on the mailing labels that --

Mr. Chaikin: Oh, you send it through the postal service?

Mr. Yoshida: Yes.

Mr. Chaikin: Okay.

Mr. Yoshida: Yes.

Mr. Chaikin: So is there any -- is there a similar thing to that that people can get the agendas emailed to them?

Mr. Yoshida: Well, we feel that they can, if we put it on the website, they can download it from the website.

Mr. Chaikin: Okay. So, basically, what you're doing is you're posting them around town. Where are they posted?

Mr. Yoshida: There are, I guess, a number of bulletin boards around town that they've been posting it on for a number of years now.

Mr. Chaikin: Okay, cause just, you know for your own information, a couple of times I've actually walked around town trying to find out what our agenda was

and I couldn't find it, so I just wanted to bring that to your attention that maybe you can kinda get on that and make sure that they do get up on the bulletin boards and so when we do have these meetings, they're really for the public and so, you know, a lot of times the public has a hard time finding out what's even on our agenda if they don't have internet. I mean I don't know how they would find out if it's not posted up and they don't have internet.

Mr. Yoshida: I think we'll be more diligent in checking to see that the agendas are posted on bulletin boards and are posted on the website.

Mr. Vanderbilt: Thank you, Clayton.

Mr. Kalipi: Mr. Chair, I like, you know referring back to what Nancy said in a comment prior to our discussion, I like the fact when she talked about education and even if we have one of the local newspaper to print out some information such as if you want something on the agenda or even having some information given to them to have our agenda, upcoming agenda, I think it would be a great way to let the public know what's going on, what's on our agenda, and if they wanted a certain issue on the agenda that they can apply or go through the procedure to get that on the agenda. Just a comment.

Mr. Vanderbilt: Excuse me, Clayton, so if somebody wants to get a copy of the agenda mailed to them, who do they contact within the Planning Department?

Mr. Yoshida: They would write us a letter or send us an email.

Mr. Vanderbilt: To who?

Mr. Yoshida: I guess addressed to the director; eventually, it'll find its way to the secretary to boards and commissions.

Mr. Vanderbilt: Thank you. Would it be the same address that testimony goes to? Or would it be the 200 South High Street address?

Mr. Yoshida: Well, I guess we have been stating on our more recent agendas that -- that people could send their documents either to the Molokai P.O. box or in care of the Planning Department.

Mr. Vanderbilt: Thank you. Commissioner Chaikin.

Mr. Chaikin: Yeah, since we're on the subject of agendas, we had talked at some previous meeting that -- about the Commission adopting, you know, the technology that's available, mainly like email, having people email their testimonies to the Commission, and we kinda discussed and we -- Nancy said,

“Well, maybe we could have them email me and then I could put it on here,” but I see that that hasn’t made it onto our agenda so we’re not really advertising that, you know, out to the public that we are willing to accept testimony by way of email. And another comment to that is that I actually think that the Planning Commission should have their own email address rather than -- so if somebody wants to send email to the Planning Commission, they send it to the Planning Commission, not necessarily Nancy. Now Nancy could actually receive the mails but, you know, it’s not going to some, you know, you don’t have to address it to some other individual to get it to the Planning Commission.

Mr. Vanderbilt: So, Nancy, could you look into getting a Molokai Planning Commission email address? I appreciate it. Thank you. Thank you, Commissioner -- Yahoo. Okay, and I, under the staff report, I’d just like to add this one -- one thing. This letter that we received, Clayton, maybe -- Nancy, let Clayton answer this. This is a letter that we received in our packet but it wasn’t on as a communication item or anything, and it’s a letter having to do with the EIS process on the Molokai Properties Environmental Impact Statement from Mr. Hunt to Tom Witten, PBR. Why wasn’t this put on the agenda as a like a communication item? It was just included in our packet but people following this whole issue of the EIS, there’s no way the public even knows it’s around in our file or anything. Did you see it? It was a letter dated July 25 from Thomas Witten to -- or from Jeffrey Hunt, Planning Director, to Tom Witten, PBR, and it was included in our packet but it wasn’t on the agenda as a communication item or anything.

Mr. Yoshida: I believe that letter was cc’d to the Commission and, as a follow up to a request from the Commission Chair, and so we’re just circulating the cc’s.

Mr. Vanderbilt: But -- but why, on important letters, what’s the procedure for letters that come to our Commission? How does the public know what letters we’re getting so they know they can go review the file or do something? Is it just -- some seem to get on the agenda and some don’t get on the agenda, so could we have, if we get any letters, that they be put on the agenda on communications received on the agenda?

Mr. Yoshida: If the letter relates to an agenda item.

Mr. Vanderbilt: Hmm?

Mr. Yoshida: If the letter relates to an agenda item, then we put it on the agenda.

Mr. Vanderbilt: Well, this -- this Planning Commission has taken the lead on this whole EIS process and tried to educate the community and this is -- this is part of that so I just -- it would be good to at least let the public know that it’s in the file

some way. So, anyway, I would hope that in the future when -- that letters that seem to have some significance to things that are still before us because the final environmental impact statement hasn't even come out yet so -- but, anyway, that's just a -- a thought to include it on the agenda so the public at least knows that it's there. Thank you. Oh, Commissioner DeCoite?

Ms. DeCoite: You know, yeah, I kinda disappointed in that. I mean this is like a major issue and I'm sure the community would like to know what is the final environmental impact statement and the formatting of it with all these Land Use Commission meetings and they're trying to educate themselves but I mean we get stuff being slid in here which, basically, is proving one point to the island that is -- what is this a shibai or I mean, you know, that's just me and I just going say -- say what I think but I mean the community would like to see this stuff. I mean I can see if you slid in one septic tank that maybe had one hole, they wouldn't care, but something like the Molokai Properties Limited needs to be addressed, the same thing on the agenda, a letter like this I'm sure the community would wanna see. That's all I have to say, thank you.

Mr. Vanderbilt: Commissioner Pescaia.

Ms. Pescaia: And I just -- and I just would like to add that, you know, something like this may seem insignificant, it's just, you know, the format of a report, a request for a format, but it shows our community that we're taking their comments and their concerns and more moving on them and it builds the integrity of the entire Planning Department that the community has voice this in the past that they would like to see -- they would like us to take this action and recommend that this format be adopted where the responses are right after their comments, and by putting this, you know, just showing that we have received it, we're acting on it, hey, gang, we're on what you folks asked, you know, it shows that we're taking action and builds their confidence in us.

Mr. Vanderbilt: Thank you, Commissioner Pescaia. Okay, if there -- we're moving on to Item G, the Director's Report. Clayton?

#### **G. DIRECTOR'S REPORT**

- 1. Response to Concerns Raised by Molokai Resident and Contractor Lloyd Inouye during testimony at the June 27 Commission meeting**
- 2. Pending Molokai Applications List distributed for the July 11 meeting**
- 3. Pending Molokai Applications List distributed for the July 25 meeting**
- 4. Pending Molokai Applications**

5. **Closed Molokai Applications List distributed for the July 11 meeting**
6. **Closed Molokai Applications List distributed for the July 25 meeting**
7. **Closed Molokai Applications**
8. **August 28 Public Hearing on the Countywide Policy Plan part of the General Plan - 6 pm, Kaunakakai School Cafeteria**

Mr. Yoshida: I think under item a, we had talked about Lloyd Inouye's concerns in terms of the Copp residence SMA. I believe that Ralph Nagamine had addressed Mr. Inouye's concerns with Mr. Inouye regarding availability of inspectors on the island and --

Mr. Vanderbilt: Ralph gave a written report on his conversations with Lloyd Inouye. Then Planning was going to get a hold of him so you covered everything with Lloyd as far -- there's no outstanding issues with him? Nancy's shaking her head. No outstanding issues. Thank you. Any comments from the Commission? Hearing none, okay, Clayton, what's next?

Mr. Yoshida: Let's see, we have our pending applications lists for the past that was circulated for the past three meetings.

Mr. Vanderbilt: Clayton, is there -- is there any way that on these reports that any new additions to pending applications could be put in bold or something so we don't have to filter through the whole report and try to remember? Is there any way to do that or -- I don't know how your computer program --

Mr. Yoshida: I can see -- I can see if that can be done.

Mr. Vanderbilt: Okay. Thank you. If you could look into that, that'd be great.

Mr. Yoshida: And then we've circulated our closed Molokai applications lists for the past three meetings.

Mr. Vanderbilt: I'd like to ask Commissioner Dunbar: Did they get you off the closed one yet? Did they get you off the open one yet?

Mr. Dunbar: The what?

Mr. Vanderbilt: Did they get you off the open one yet?

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

Mr. Vanderbilt: Alright. Good. Okay, Clayton, anything else?

Mr. Yoshida: Let's see, our -- the public hearing on the Countywide Policy Plan is scheduled for August 22 at 6 pm. I believe at the June 27 meeting, the Commission had discussed having a meeting at 12:30, and then a public hearing on -- at 6:00. The public hearing is at the Kaunakakai School Cafeteria.

Mr. Vanderbilt: When will the report, it's going to be a pretty big document, when is that going to get to the Commissioners or when is it going to be available for the newspapers to pick up?

Mr. Yoshida: I guess we'd have to check with the Long Range Division, but I thought they were trying to mail something maybe sometime this week.

Mr. Vanderbilt: Will it be on the website?

Mr. Yoshida: I need to check with the Long Range Division on --

Mr. Vanderbilt: Cause we're getting pretty close and it's going to take people some time to review this and last time they did a General Plan, it was published, the whole plan was published in our local papers, and I don't think they're going to do that this time so we need people to have time to really digest this thing or -- Corp. Counsel says they'll have -- no, they won't have a 120 days. They'll -- the public hearing is August 22.

Mr. Hopper: There'll be -- August -- that's the original public hearing date but keep in mind there's going to be a 120-day comment period beyond that for you to finalize your comments and all of those meetings are open to the public as well and people can come to all of those meetings during that 120-day period and give their comments. The initial public hearing is going to be a night meeting and so that's, you know, going to be a chance for people who can't make it during day, but it's -- there will be a 120-day comment period; perhaps with time extensions, which were done with the General Plan review by the GPAC's. But there will be substantial time after that as well in frequent meetings for commenting parties.

Mr. Vanderbilt: Thank you. Is that it, Clayton?

Mr. Yoshida: Yes, Mr. Chair.

## **H. ANNOUNCEMENTS**

Mr. Vanderbilt: Thank you. Are there any announcements by any of the Commissioners or anybody in the public? Commissioner DeCoite.

Ms. DeCoite: Is our vacation -- how's our vacation rentals and bed and breakfast going? Can I ask?

Mr. Vanderbilt: Vacation rentals --

Ms. DeCoite: And bed and breakfast. The revised -- the one -- yeah, the bill?

Mr. Vanderbilt: Maybe Clayton could just give us a brief update of where that is.

Mr. Yoshida: Yes, Mr. Chairman, Commissioner DeCoite. The department is proposing a bill regulating transient vacation rentals. We need -- since it involves an amendment -- amendments to Title 19, we will go out to the three planning commissions for public hearing on the bill probably sometime this Fall; I would say as early as October.

Mr. Vanderbilt: Has a draft been completed yet?

Mr. Yoshida: I don't think it has been finalized, yet but it will be available at the time that we publish the public hearing notice, which will be at least 30 days prior to the hearing.

Mr. Vanderbilt: Okay, thank you. This -- I was reminded by Corp. Counsel this isn't on the agenda but thanks for the update. There's no other -- is there any other business that anybody has? Commissioner Chaikin.

## **I. OTHER BUSINESS**

Mr. Chaikin: Yeah, I guess I have a question for Clayton. We had a -- at our last meeting, we had Verizon, we gave him a special use permit, and that special use permit was good for a period of years. And during that process, we found out that there was some confusion by the application about what a special use permit was and that there even was time periods that could be put onto a special use permit, and that kinda just kinda raised a red flag that he may not be the only one that's confused, there may be other people that are confused, and this Commission, in the past, has issued other special use permits. And I'm just wondering: What happens, in your department, as the time approaches, are there bells and whistles that go off when some permit expires? Or how does that work on a --

Mr. Yoshida: Mr. Chairman, members of the Commission, we do write a letter to the applicant stating what the terms of the permit are, and we feel that it is the applicant's responsibility to -- it's their permit, so they monitor their permit. When it comes up for renewal, they should renew it timely. We do have our permit tracking system and it does list when these permits expire.

Mr. Chaikin: Alright, so it sounds like it's initiated by the applicant and if the applicant's special use permit expires, and doesn't come forward, it sounds to me like nothing really happens. Chair, would it be reasonable to request a list of the special use permits that we've given out and whether -- and the timeframes that which they expire so we, who are responsible for the special management area, can have an idea whether or not somebody's --

Mr. Vanderbilt: You're talking about special use permits?

Mr. Chaikin: Yes, special use or even conditional permits.

Mr. Vanderbilt: Well the -- the next regular meeting date is August 28 and, again, Corp. Counsel said this isn't on our agenda and there's probably some people in the public that might like to hear this discussion, so maybe we could put something like that on the next agenda for a special use and conditional use permit process.

Mr. Chaikin: Alright. Well, thank you, Mr. Chair.

Mr. Yoshida: Yeah, that would be for August 22.

Mr. Vanderbilt: August what?

Mr. Yoshida: Twenty-second.

Mr. Vanderbilt: Okay, August 22, okay. Okay, so is there any other business? Oh, Commissioner Dunbar?

Mr. Dunbar: Yeah, but with the special use, I mean it is really incumbent upon the applicant to make sure that it goes through because if he loses his special use permit, he's gone so --

Mr. Vanderbilt: Good point.

Mr. Dunbar: You know if he doesn't wanna follow it, that's fine, but then it's taken away and he's no longer in business -- or she.

Mr. Vanderbilt: Okay, thank you. Seeing that there's no other business, this meeting is adjourned.

**J. NEXT REGULAR MEETING DATE: August 28, 2007**

**K. ADJOURNMENT**

There being no further business brought before the Commission, the meeting was adjourned at 3:06 p.m.

Respectfully submitted by,

SUZETTE L. ESMERALDA  
Secretary to Boards and Commissions

**RECORD OF ATTENDANCE**

**Present**

DeGray Vanderbilt, Chairperson  
Steve Chaikin, Vice-Chairperson  
Kip Dunbar  
Bill Feeter  
Lynn DeCoite  
Linda Kauhane  
Joseph Kalipi (Arrived at 12:50 pm)  
Mikiala Pescaia (Arrived at 12:53 pm)

**Absent**

Sherman Napoleon, Jr.

**Others**

Clayton Yoshida, Planning Program Administrator  
Nancy McPherson, Staff Planner, Molokai  
Michael Hopper, Deputy Corporation Counsel