

(APPROVED: 05/28/08)

**MOLOKAI PLANNING COMMISSION
REGULAR MEETING
APRIL 9, 2008**

*** All documents, including written testimony, that was submitted for or at this meeting are filed in the minutes file and are available for public viewing at the Maui County Department of Planning, 250 S. High St., Wailuku, Maui, and at the Planning Commission Office at the Mitchell Pauole Center, Kaunakakai, Molokai. ***

A. CALL TO ORDER

The regular meeting of the Molokai Planning Commission (Commission) was called to order by Clayton Yoshida, Planning Program Administrator, at approximately, 12:49 p.m., Wednesday, March 12, 2008 at the Mitchell Pauole Center, Meeting Hall, Kaunakakai, Molokai.

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

Mr. Clayton Yoshida: I'd like to call the meeting of the Molokai Planning Commission to order. First, we'd like to introduce our two new members: Lori Buchanan and Don Williams. Welcome back. You folks wanna give, the new members, wanna give like ten minutes ...(inaudible)... of a -- say a few words?

B. INTRODUCTION OF NEW MEMBERS - LORI BUCHANAN and DON WILLIAMS

Mr. Don Williams: Hello. My name is Don Williams. I think I know -- well, I do know everybody here now and that's great. I'm a general contractor here on Molokai. I've been here almost 15 years and I'm very concerned about the future of Molokai as far as in relation to development. That's one of the reasons I got on this board to see if I could assist. I'm a lifelong resident of Hawaii. Although I did spend a few year in the Mainland, I was born and raised in Honolulu and have seen what happened there. I was born, incidently, pre-Statehood so I'm kind of an antique. And I've run from all the development all my life and I found Molokai and it was just exactly soothing for me with all the things I like to do: the hunting and the fishing, and the good comradery with the relatively low development type theme. I love that. I'm here to assist in any way I can as far as the development aspect of it cause I have been involved in development for over 40 years now. In my tenure in Oklahoma, where I went to college, I worked for the Chickasaw Indian Nation to start off with for eight years. I later became the director of development and planning, so I have a lot of experience in working with the tribal type people who I'm assuming that this would be a help to you all as well. So I think that's all I need to say but I'm here for the duration, and I'll try to be punctual, I'll try to make every meeting. That was another concern of mine when I did have things before the Planning Commission, sometimes it seemed like there wasn't a full amount of people to make the right decisions.

Thank you very much for having me. I'm looking forward to working with you and I hope I can make some good decisions on behalf of the people of Molokai.

Ms. Lori Buchanan: Good job. Good job. Okay, we can move on, Clayton. Just thank you. Nice to be back. Yeah, I hope, Don, you can help us make good decisions. We need help. And I'm really happy with the board we have now. You guys are doing a great job. I'm really happy with what you guys have been doing. And also big kudos to the outgoing chair, DeGray and Chairman Dunbar. As a resident of Molokai, I really appreciate the time you guys take to give of yourself to be a servant and that's, basically, why I came back was I like to do anything to help my community. Thank you very much.

Mr. Yoshida: Thank you very much, Don and Lori. I'm Clayton Yoshida. I'm the Planning Program Administrator with the Current Division of the Planning Department. And also with me from the County of Maui are Suzie Esmeralda, your Secretary to Boards and Commissions, and Michael Hopper, Deputy Corporation Counsel, and Nancy McPherson, the Molokai Planner. I'll turn over the roster to the chairperson after the person is elected so moving to Item C, the floor is open for nominations for chairperson for the --

C. ELECTION OF CHAIRPERSON AND VICE-CHAIRPERSON FOR THE 2008-2009 YEAR

Mr. Michael Hopper: I just wanna say also in your packet, there's a -- on Page 11 of the Robert's Rules of Order synopsis, there's a summary of the chairperson, the powers, duties, and things like that if you wanted to take a look at that prior to your nominations and elections. It gives a pretty good plain language summary of what the chair does for your information.

Mr. Yoshida: So do you need a couple of minutes to look over the Robert's Rules? Yes, Bill? Bill?

Mr. Bill Feeter: Yeah, thank you, Clayton, and the Maui Planning Department. I'm prepared, at this point, and I have a question. Can we make a nomination for both seats or just one at a time?

Mr. Yoshida: I think the commissions probably go ahead and elect a chairperson and then proceed with the election of a vice-chairperson.

Mr. Feeter: In that case then I would -- I'd like to nominate Steve Chaikin for Chair.

Ms. Buchanan: I second that nomination.

Mr. Yoshida: Anyone else have any other nominations? Okay, so all those in favor -- so Steve, right?

There being no other nominations, the nomination was put to a vote.

It has been nomination by Mr. Feeter, seconded by Ms. Buchanan, and unanimously

VOTED: that Commissioner Steve Chaikin serve as Chairperson for the 2008-2009 year.

Mr. Yoshida: Okay, thank you. Congratulations, Steve. You're the Chairperson of this Commission and first order of duty is to preside over the election of the vice-chairperson.

Mr. Steve Chaikin: Alright, well, thank you, everybody. I didn't even get a chance to -- to even say whether or not I even wanted the job or I didn't want the job, but anyway, no, I'm honored to have this position. But I guess we need to pick our vice-chair so is there anybody that has any nominations for vice-chair of this Commission? Commissioner Feeter, go ahead.

Mr. Feeter: Yes, I'd like to nominate Joe Kalipi for vice-chair.

Ms. Mikiala Pescaia: Second.

Mr. Chaikin: Okay, we've got a second by Mikiala. Any discussion on this? Anybody --

Ms. Pescaia: Can you nominate people who aren't here today?

Mr. Chaikin: We should ask the Corp. Counsel on that. Yeah, he says, yes, you can nominate other persons. Is the proper procedure for us to -- to just get all the nominations up at one time? Is that what you do and then -- okay, is there any other nominations for vice-chair? Anybody else have any other nomination?

Ms. Buchanan: I have a nomination for vice-chair, since Mikiala opened and asked the question, Lynn DeCoite, Commissioner DeCoite.

Ms. Pescaia: Can I second that nomination?

Mr. Chaikin: Yeah, you can. Go ahead.

Ms. Pescaia: Alright. I do.

Mr. Chaikin: Okay, so we have -- we have a nomination for Lynn and for Commissioner Kalipi, and both of them been seconded. Is there any discussion or is there any other nomination anybody would like to bring forward?

Mr. Joseph Kalipi: I would like to withdraw my name from the nomination.

Mr. Chaikin: You can -- you have that right, I guess, to withdraw. So now we have one name left. Is there anybody else that wants to nominate anybody else for -- for vice-chair?

Ms. Buchanan: Can we have discussion?

Mr. Chaikin: Yeah, go ahead.

Ms. Buchanan: Okay. My concern for nominating the vice-chair is attendance because if the chair is not here, the vice-chair has to run the meeting, and since I'm new and I'm not aware of what past attendances have been for the two nominees and the floor is still open for nominees, which I could ask Mikiala also to serve in that capacity, that would be the discussion I would like to hear from the members that have been here for the past two years about attendance. And if in case they didn't know, the chair does not do motions and so the responsibility for motions rely heavily usually on the vice-chair and that's a big responsibility.

Mr. Chaikin: Thank you, Commissioner Buchanan. Yeah, I mean I think we have had an attendance problem across the board and, you know, I'm going to address that, you know, when we finish this. But, yeah, I think that, you know, everybody here that's been elected for vice-chair has been absent more than they probably should have but I think when you become vice-chair, that gives you the reason to, all of sudden, need to be here more. So, you know, I think that, you know, we can't disqualify people just because they haven't showed up cause I think this is an opportunity for them to step up and -- and move into that position and, hopefully, take on the role. Was that a nomination for Mikiala as vice-chair?

Ms. Buchanan: No, it wasn't, but I will formally make a nomination with that discussion as said for Mikiala Pescaia.

Mr. Chaikin: Yeah, Commission Feeter?

Mr. Feeter: Second that motion for Mikiala.

Mr. Chaikin: Okay, good. Alright. So now we've got two potential vice-chairs: one's Lynn DeCoite and one's Mikiala Pescaia. So is there anybody else that anybody would wanna nominate before we move forward?

Ms. Buchanan: I'd like to move that we close nominations.

Mr. Chaikin: Do we have a second on that? Okay, Commissioner Feeter has moved to close the nominations so now we'll vote and I'll ask if all those in favor of Mikiala Pescaia for vice-chair raise their right hand.

Mr. Kalipi: Commissioner Chair, just discussion. Sorry.

Mr. Chaikin: Sorry.

Mr. Kalipi: I would like to comment and discuss also. I think Commissioner Buchanan has really brought up a good point about attendance and stuff like that. My question is: If Mrs. DeCoite, Commissioner DeCoite is not here and we're not able to have her or if she's verified or say her commitment or if we elect her in, would that mean we don't have a vice-chair for the next meeting?

Mr. Chaikin: Well, that's a good point. I mean here the person's not here and we're considering electing her. We don't even know if she'll be willing to even fulfill that responsibility. So I think that's -- that's a good point, Commissioner Kalipi, so we should take that in consideration, I think, when we vote that we're not even sure about that nomination. Is there any further discussion?

Ms. Pescaia: Because what happens if she is elected and she shows up next meeting and says -- can she undo it?

Mr. Chaikin: Well, I don't know what the Robert's Rules are --

Ms. Pescaia: I mean what would be the point of doing it if she won't ...(inaudible)...

Mr. Chaikin: But I assume that anybody can, you know, withdraw at anytime and we could probably have another election to elect somebody to be vice-chair but -- alright, any other discussion? Alright, I'm going to call for the vote.

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

It has been nominated by Ms. Buchanan, seconded by Mr. Feeter, than unanimously

VOTED: that Commissioner Mikiala Pescaia serve as Vice-Chairperson for the 2008-2009 year.

Mr. Chaikin: Okay, motion carries, five in favor. Congratulations, Mikiala. Alright. Alright, let's move forward with today's meeting. But before we get started, let me just make a

couple of comments here and -- and I think that, you know, as a Commission, you know, we had talked a little bit about attendance and I think that there's a lot of things that come up during our meetings, like people flying in from off-island to be here. I know when applicants come before us, they have to have representation so they'll bring their lawyers, they'll bring their architects, they'll bring their consultants, their -- well, professionals just to help them with their application, and I think, you know, we can only sit here and imagine what that must cost the applicants to come over here with all of these people. And also we ask that the Planning Staff come over here from -- from Maui to help us conduct these meetings. So if we're going to ask all those people to do all of that, I think we, as a Commission, need to make sure that we can uphold our end of the bargain. So I would encourage all of you to adjust your schedules as you can and try to make at least most of the meetings here.

And I think that as a Commission, you know, we can do as much or as little as we choose to do. We can either be proactive or we can be reactive. And the way that I've seen things go around here, at least most of the time, is we get things thrown at us and then we react. But we really can't initiate things. So I would encourage each of you to look out into the community, if you see things that you think could be improved, or you don't particular like the direction that something's going, then bring it up and let's figure out if that's something we should be putting on our agenda, and if it is, then let's put it on and discuss it and if we can build a consensus, let's take action and begin the process of moving that particular issue in a direction that we would like to see it go cause I think that, you know, we all have to ask ourselves why we are even here? And I think to help answer that question, we need to go back to very beginning of this Planning Commission and I think that there was a lot of people that spent a lot of time, and energy, and effort just so Molokai could have its own Planning Commission. And I think that they did that cause they were hoping that we were going to take a more active role in shaping the future of what this island can be and also to take a bigger role in the -- in the decision-making process. So, you know, here we are and I think it's a privilege each of us have to be sitting in these seats representing the -- the community in that way, but you know along with that privilege comes that responsibility and that gets back to what I was talking about is, you know, I think that the responsibility is reviewing the material and then showing up here at these meetings. So again, I'd encourage all of you to do what you can to adjust your schedules and show up here for these meetings.

Alright, at this point, we can move forward with today's agenda.

Mr. Feeter: Chair?

Mr. Chaikin: Yeah, go ahead, Commissioner Feeter.

Mr. Feeter: If I may, I would just like to make a comment, if that's appropriate.

Mr. Chaikin: Yeah, go ahead, Commissioner.

Mr. Feeter: I'd just like to title this "Leadership." Following in your footsteps of what you just said, I'd just like to make three points - three comments rather, and what is leadership, and I'm aiming this at all of us, and also I'm aiming it at the -- the folks that -- well, good, we do have some representation, and so that leadership is -- what are the characters of leadership? Leadership - the person has to be -- have some charisma. They also have to be -- have the capability of inspiring our community. And also they have to get others to follow them. In other words, follow the leader, if you will. Because those people in our community are going to believe in our ideas. And leadership is also having the vision to change something even though it may not be popular to do that change. And I'd just -- that strikes me as something that of value that there are things that we're going to run into, and we have in the past, that are not popular, which brings up to the other subject, the second subject, and that is bias. We cannot afford to be -- have subjective bias. We have got to be open-minded, not as an old preacher told me one time, not so open-minded that you're flat head, but we do have to get away from bias. I think that, in the past, it's been a nagging problem. Thirdly, there's something I'd like to see go to fruition and that is we have better relations with the County Planning Department. We need to have cooperation and better relations, working relations with Nancy, our Planner on Molokai, as well as the staff in Wailuku. And those are my comments. Thank you.

Mr. Chaikin: Thank you, Commissioner Feeter. And I concur. We really do need to have better relationships, not only with the Planning Department, with the community. I mean I think this community has this vision of the Planning Commission that the -- you know, it's just like a horror movie to have to come before this Commission, and I don't think it really needs or should be that way. In terms of the whole bias thing and the way that we think about things, I think that it's important for us to understand that we all come from very different backgrounds. We all show up here with a totally different set of lifetime experiences and we probably all have different visions of what the ideal future of Molokai might look like. And so it is really quite likely that the person sitting next to you is going to be voting differently than you vote on some of the issues, is going to have different points of view on some of the issues that you have, but that's really just a normal part of this process, and I think that there is no reason for any Commissioner to somehow feel rejected, or opposed, or befriended, or any other negative feeling towards any other Commissioner just because they don't share their same point of view cause I think it's just part of this process, it's a -- it's in fact what we are supposed to be doing. We're supposed to be bringing up all the different points of view and deliberating on the relative merits of those positions, building a consensus, taking action, and then after that, setting our differences aside, and then coming back as one Commission. And the reason I even bring this up is cause I think it's a good idea that for us, as a Commission, to in advance agree to disagree. And I think if we can move forward with that mutual understanding, I think we're going to have just a little bit more comfortable time here, it's going to be a little less

stressful, and just a better overall experience. So with that, any other comments before we can move on?

Ms. Buchanan: Sure. Why not. Thank you, Chair. Before we leave today, in the spirit of being proactive, so I was inspired by your talk, I would like to, if it has to be made in a motion under Item I, Other Business or whatever place you see fit, that we put on the agenda for a future meeting amendments to our Molokai Planning Commission rules to address attendance, also to charge staff to work on that, and go from there. So I don't know how you wanna do this later. But before we leave today, I would like to see that addressed.

Mr. Chaikin: Thank you, Commissioner Buchanan. And thanks to our past chair, we have on our agenda now, a place for future agendas and -- and that is a very important of our agenda because that's the place where we, as a Commission, can decide whether or not we wanna steer this ship or we're just passengers going along for the ride. And so every meeting, we're going to have an opportunity for any of these Commissioners to bring up whatever they want and we can figure out if that's something that should go on one of our future agendas. So there is a slot for that, Commissioner Buchanan, and when we get to that area, then we'll insert your request there.

Any other comments before we move on? Alright, hearing none, on our agenda today, we first start off with some housekeeping stuff, which is basically approval of some past minutes; then we're going to move on to an orientation workshop; after that, we have the Planning Department is asking us to concur with them on a exemption, and then we're going to move on to some reports. But before we get into all of that, let me just first ask if there's anybody out here attending this meeting that wants to make any testimony on any planning issue that you think's important that this Commission should be made aware of or on any agenda item that -- and if you don't wanna sit around here and listen to me or anybody else ramble on, you're certainly welcome to provide your testimony at this point? Yeah, go ahead. You can walk up there and provide testimony at this time. Thank you.

Mr. Lloyd Inouye: Are we on? How's everybody doing? I just --

Mr. Chaikin: Just state your name for the record.

Mr. Inouye: Lloyd Inouye.

Mr. Chaikin: Thank you.

Mr. Inouye: I'm here because, you know, trying to -- it's getting to the point where trying to -- and I said this before, you know, I came here before and I said this before, and it's getting to the point where it's next to impossible to get anything done in a reasonable amount of time, yeah, as far as SMA's, as far as that town and country thing, you know, all

of that. And the SMA, after reading it and thinking about it, it is -- it's for a good thing. It is a good thing. Definitely, okay. But the way it's being implemented is -- is -- I don't even know how to describe how bad it is. It's insane, yeah. I was told by Nancy, she and I, we got this radical love-hate relationship. Unbelievable. I go down her office and we argue and fight and we're like, okay, I'm sorry. I'm sorry. It's not your fault, you know. But it's just really frustrating so she told me to come here. Part of -- part of -- part of the problem is that she's swamped with work and I guarantee 80 percent of her work is unnecessary. It's just more paperwork. It's just a bunch of paperwork that she's supposed to do that is definitely not necessary. Here's a perfect example. I got the gas station down the street. When we got the gas station, the bay door, it's a ten by ten opening, had some hollow tile stacked up, wasn't finished, had a piece of quarter-inch plywood pushed against it that a two-by-four was holding it so the wind wouldn't blow it over. Anybody could have walked in that station and robbed me blind. I talked to Mr. Puhi. It was not a structural thing. It was under \$10,000 to fix. And, you know, we wasn't going to alter the building, the footprint of the building or anything, so I went ahead and did it.

The second door had the big iron gate and that iron gate was ready to fall down. And if that hits somebody, I'd be out of business. I would get sued so bad, I'd be out of business. So I fixed that opening. Next thing I know, I'm getting fined because I didn't apply for an SMA. Okay, that's whatever, you know. I didn't know. You know, I can make a thousand excuses why I didn't but I didn't, and that's fine. I got no problem with that. I'll pay the fine. I go down there and I pick up this SMA form, this application for this SMA form, and it's got the definition of development, what this SMA form is for, which is cool. It's got the -- it's got the definition of development here and it's got all these little does-not's. There's two does-not's over here that I fall under, and it's clearly, according to this, I'm going to be exempt from this. So I go down and I see her and she goes, "Yeah, Lloyd, you're going to be exempt." I say, "Well, cool." But I still gotta fill out all these forms. I gotta turn in all these -- it says right here I gotta turn in nine, according to this, I gotta turn in nine copies of what we're going to do. I gotta do all this extra work for something that I don't even need this for. I don't understand the logic in that. All I'm doing is I'm creating more work for myself or I gotta somebody to do this, and I'm creating more work for her, work that she doesn't even have to do or I don't -- I think you got better things to do than that, huh? Look at my exemption and say, yeah, you're exempt, you know. I think she's got a lot more important things to do than that.

So I don't know where we're supposed to go with this or who I'm supposed to actually complain to or talk to about this but, yeah, I gotta start with somebody.

Mr. Chaikin: Thank you, Lloyd.

Mr. Inouye: So -- and then -- wait, wait. Hang on. I got one more thing.

Mr. Chaikin: Okay, go ahead.

Mr. Inouye: One more thing there. The reason -- the reason -- part of the reason why I'm complaining about the length of time it takes to do this and what it cost, and the amount of paperwork it causes, you know, it creates, and why all the extra paperwork it creates is bad is because there's a gentleman that I ran into the other day, he came to my office and he needed some help with something, his name was George Mordan. He wanted to do some work up at his place up at Puko`o. He wanted to do it the right way. He wanted to do it legally, you know, go and get an SMA permit and all of that. He bought this property with an existing house on it. He goes down there and try and get his SMA. He can't. They said he can't and the reason he can't is because he cannot produce the original permits for the structure. Okay, this is where the problem is. If you look at the Maui County Website and you -- and you go to the TMK number and you go through all the, you know, the computer, the click this and press on that, on the website it shows the structure, how much the land is assessed for and how much the building is assessed for. So obviously that structure did get permitted at one time or another, yeah. So something like this, you know, this guy's situation, here's a guy that's trying to do it the right way but he can't because somebody lost paperwork somewhere along the line so, you know, there's a whole bunch of stuff that has to get cleaned up and fixed up and streamlined.

I think one of the first steps is to take care of this. If you're exempt, you know, all total, she's going to take over six hours to mess with this and I gotta spend a whole bunch of time messing with this where all she would have had to do is get in her car, drive over to the station, looked at what we're going to do, look at my plan, and say, yeah, you're exempt. Done. Five minutes. Done. I wouldn't have to go through all of this, yeah. So, you know, I don't know really who I'm supposed to address, you know, about this problem. I talked to Mateo already. You know, I tried talking -- calling the Mayor. I emailed Maui County. But nobody wants to respond so I figure I'll start with you guys again and then see if we can do something. Okay, so that's it. Thank you.

Mr. Chaikin: Thank you, Lloyd. And, you know, you're not --

Ms. Buchanan: Wait, Lloyd. Don't go.

Mr. Chaikin: You're not the first person that's brought this up and I think that, you know, we, as a Commission, need to at least look at this. I mean we can't go in big detail about this right now here today because it's not on our agenda, but it's something that we should consider putting on our agenda, getting Nancy up here talking about the whole thing, and figure out, you know, if there is a better way because just because we've been doing something this way for so long doesn't mean it's the best way or the right way. So I think that, you know, we can take your suggestion and -- and when it's appropriate we should

consider putting this on our agenda and discussing it with Nancy and see if there's a better way. But thank you, Lloyd.

Ms. Buchanan: I have a question for the testifier.

Mr. Chaikin: Go ahead, Lori.

Ms. Buchanan: Hi. Okay, so I was writing down everything you said because always what sometimes we appear, you know, you like find out what is the root of the problem and -- and I was following everything you said and just for conversation sake, there's a lot of issues in what we look as stupid and what might be simple because I've been dealing with the County so long and the guy who knows everything is sitting right behind you. His name is Clayton Yoshida. Sorry, Clayton, I put you on a spot. But if anybody knows anything and how to solve or how to work to solve these problems would be Clayton. It would make sense for Nancy just to do one short exemption and say you fine and drive down. Number one, Nancy doesn't have any zoning authority, okay. At the past Mayor's budget meeting, I got up and gave them over a hundred thousand dollars worth of stuff that I wanted them to budget. Three of those items was all tied into getting help for Nancy, okay. Nobody else testifies for any help for this County, for the Planning Department, but I asked for a zoning enforcement officer for Molokai, and intern for her, office, and equipment for Nancy. So the more of us -- because we all know that our government is complaint driven, okay. I'm sorry to say that. That is true. The more you complain, the -- you know, the wheel -- the squeaky wheel gets fixed first, and that's who government works, and I'm at the point in my life where I accept that. So it helps to complain, Lloyd. Keep on complaining. And it would be nice, not only for us to ask Maui to get Nancy some help because you know why? They never even like fund her position to begin with. I was here. We asked. DeGray asked for years to fund the planning person for Molokai. We worked on the short form for the exemption and got it even cut down some. On the other side, I would like you to appreciate, as a community member, that people come in here for permits or to them and outright lie on their permits. No I not building one vacation rental. I only making one carport. You go down there, the house, the kids, everybody, vacation rental, living in there. So that's what we gotta deal with too, okay? Again, we don't have zoning enforcement, okay. So all that, would you be willing to sit on a task force to work specifically on trying to get through these problems for Molokai because it can be fixed but Maui, right now, is not helping us? We all well aware of the problem.

Mr. Inouye: Oh yeah. Definitely.

Ms. Buchanan: Okay.

Mr. Inouye: Definitely.

Ms. Buchanan: And I can see how you went in and Carl said no need, and then you went do one other one and then, all of a sudden, you have one stop-work permit cause you know what? I got stop-work permit too. So did a lot of people in here. So your frustrations are well taken. But would you willing -- be willing to sit on a committee if we form one to help solve that problem coming from your point of view?

Mr. Inouye: Oh yeah. Definitely.

Ms. Buchanan: Okay, we going call you that's why.

Mr. Inouye: That -- that's -- that's -- I like that. That's fine. Yeah, like even what you said about she's not -- what did you say? She's not --

Ms. Buchanan: She's not -- she's not authorized for zoning.

Mr. Inouye: Authorized, that's -- yeah, she not authorized.

Ms. Buchanan: She's not.

Mr. Inouye: So, yeah, I guess if you form some kind of task force, then we can look at it so we can authorize somebody cause it would --

Ms. Buchanan: And the more -- the more guys asking Danny for help the better.

Mr. Inouye: Yeah, because it would -- it would cut the process down. I mean this -- I have no complaints about it. I have no complaints about this. This is -- I think this is a great thing. Just that the way it's implemented is -- is retarded, you know, right now. So, yeah, if we can form some kind of task force to work on it and make it, you know --

Ms. Buchanan: And you're well aware you can get one emergency exemption on structural stuff?

Mr. Inouye: The only good thing about this is the only reason I'm not totally flipping out about this is because after we talked to her and Mr. Puhi and Maui County over on Maui, they said, yeah, you know what? You can keep operating. They didn't close down my business because that would have been a -- that would have been a big problem, you know, but -- so I'm trying to work with them. I got all that broken glass in the front of the shop that I gotta fix, and all of that, and they told me I shouldn't even touch that until I told them that if somebody gets hurt, what do I do? Do I tell their lawyer to go see you guys? Then they told me, oh no, Lloyd, you can go fix it. You know so, all of sudden, it was different but, you know, this first step right here, it's a hard one to take. So like you said,

you're right, and I'll be more than willing to do that if you wanna form some kind of task form, that would be fine. I don't have a problem with that at all.

Mr. Chaikin: Alright, Lloyd, thank you. And thank you, Lori, for all of that. And let me just make a couple of comments. I'm going to always allow the public to come up here and provide testimony on anything that's important to them. But we, as a Commission, have to understand that these items are not on our agenda so because of the Sunshine Law, we cannot go and start talking about something that's not on our agenda. So, you know, I'm not going to go to the point where we start all getting gag orders but we have to at least limit our conversation and, you know, if it's something important, agree to put it on a future agenda. Alright. Thank you, Lloyd.

Mr. Inouye: Okay.

Mr. Chaikin: Alright, is there anybody else from the community that would like to say anything before we move on?

Ms. Linda Place: I'd like to say, "Hi," and I'd like to welcome Lori and -- I knew it. I knew it. Don. Anyway, I'm here today. I wanna ask that if we could be, Malama Pono, on behalf of Malama Pono -- oh my name. I'm sorry. Linda Place. I should know this already. On behalf of Malama Pono on the East End, I'm here today to ask you, the Planning -- Molokai Planning Commission, to put us on the next agenda and -- and this is related to fishpond and wetlands delineation funding with the Corps of Engineers and the Maui County. We would like to include or ask you for help. Okay? Thank you.

Mr. Chaikin: Thank you, Linda. Could you clarify that a little bit more? You're asking us to put it on the agenda for what reason?

Ms. Place: That we would like to, because we're not on the agenda, right? You just said we cannot talk about things that we wanna bring up to the community, to you, the Planning Commission, so we wanna ask to be on the agenda to talk about wetland and fishpond delineation with the Corps of Engineers.

Mr. Chaikin: Alright.

Ms. Place: They want to match funds and stuff like that. We have presented this to Maui County two years ago, and we have had no response, and now we're working again with the County, we met some people in Maui, and this is the way that we found that we should go so we wanna --

Mr. Chaikin: Alright, it might be helpful, cause I'm not real sure what it is you're even talking about, so it might be helpful if you could write something, and give it to the

Commissioners, so we have some kind of a background and we understand what it is exactly that we would be putting on our agenda.

Ms. Place: Yeah, I wasn't sure if I had to have it in writing. Okay. Thank you.

Mr. Chaikin: Okay, thank you.

Ms. Buchanan: Commissioner -- I mean, Chair Chaikin, the agenda says that the community can come up and express whatever they want to, and I think by saying that, maybe they couldn't, she's asking to go on the agenda. The agenda, Linda, would be if this -- cause we are a governing authority, if it has rules and, you know, for the SMA that maybe Malama Pono wanna address, you gotta be specific and work with Nancy about that, but at this time, if you wanna bring an issue up, you can because otherwise we don't know what you're talking about, and then if you need to go on an agenda, you can.

Ms. Place: Okay, so I have to present it in writing then? Okay, we can do that.

Mr. Chaikin: Well, I think what's -- what we're saying is that anybody can come up here and say whatever they want, okay. It's free speech.

Ms. Place: Right.

Mr. Chaikin: But we, as a Commission, cannot discuss that item with you because it's not on our agenda. So if you want us to actually get into this full-fledged discussion about the issue, then that's something that should be on our agenda. So if you just wanna make some statements about that, you're certainly welcome to do that.

Ms. Place: No, I just wanna be on the agenda, okay.

Mr. Chaikin: Okay, thank you.

Ms. Nancy McPherson: Chair, may I speak?

Mr. Chaikin: Yeah, go ahead, Nancy.

Ms. McPherson: Nancy McPherson, Staff Planner for Molokai. I've been working as technical assistance for the Malama Pono for a while now. I also attended the meeting on Maui with the County and State and Army Corps of Engineers that happened in March. And I believe I can work with the party to present an item to you, I think they're going to be requesting that you write a letter, so that's an action that you would need to take so that's -- that would be something we could put on the agenda, and I can work with them to articulate that a little bit better.

Mr. Chaikin: Thank you for that clarification. Okay, anybody else from the public that would like to come up here?

Mr. Feeter: Yeah, Chair?

Mr. Chaikin: Yeah, ex-Chair? I'm sorry. Commissioner Feeter, did you have something first before we move it on?

Mr. Feeter: Yeah, Linda, you hastily retreated. That's alright. Just a thought. Linda mentioned Corps of Engineers and the County. I presume that's Thorne Abbott in Coastal Zone Management? Is that correct? Okay. In dealing with similar situations, it occurs to me that there may very well be other agencies and would it be appropriate to get them in the hui as well? For example, Sam Lemmo. In other words, under the umbrella of DLNR. There's some new leadership there and I think their mission is maybe similar. Linda, would that be appropriate? What's your thoughts on that?

Ms. Place: Let me give you a little more information then. On March 19, we were invited with Kuhea, we've been working on this wetland thing and I know that you're aware of this also, that we're trying to protect the wetlands on East End, and what happened is we're trying to work with the County because government is always pushing the buck from one to the other and nobody is responsible, and we have gone now for four -- almost four years we're trying to do something and we are still at square one. And so we did have a meeting on March 19 with some heads on Maui and this is what we're going to do but what we wanna do is include the Commission. That's what we're trying to do too so that we can all work together. That's where I think we're at. And we've met with Thorne Abbott and we've met with Derrick from Corps of Engineers and this is one of things that he has told us that we can get the funding for delineation but we need to have a County -- an agency, official agency, State or County, to work and then we need to get the money because we have to match it. So because we're going to be asking for funding and all that, and that's why we're here because this is what you guys supposed to be helping -- you know, that's what the Commission is here for to help the community. So that's why I'm here today. And Thorne was at the meeting and several other people were there, heads, department -- DLNR and enforcement was there and this is what -- this is the next step. We're trying to go in the right direction.

Mr. Feeter: I guess, Linda, the thought is that we need to get this thing resolved.

Ms. Place: Right.

Mr. Feeter: Because it's -- we're in probably the third generation now of the problem.

Ms. Place: Right, that's trying to work on this.

Mr. Feeter: And they're in -- for example, I use the Kawela Bridge as an example, and it's -- well, okay, it's not resolved. And there's multiple agencies and it needs to be condensed to a working situation and, actually, the community water working group has come up with a solution and why the professionals haven't come up with it is where you and the group are right now and so that's why I bring up the point that, yeah certainly, Corps of Engineers and County and so forth - aren't kids great? They should be somewhere else - but, anyway, that's why I mentioned all these other, particularly DLNR and USGS and the UH. I know for a fact both of those have ongoing research on the coral reef and it's not a pleasant data that they're coming up with. It's really detrimental and what's going on and the community, your group, is telling people to be aware --

Ms. Place: Help.

Mr. Feeter: Yeah help, and so these other agencies, and that's why I mentioned a consortium of every single group that should come together. Thank you.

Ms. Place: Right. I mean we agree with that.

Mr. Chaikin: Okay, thank you, Commissioner Feeter. And, Nancy, you've already that you were going to get us something to articulate this so we can understand it better.

Ms. McPherson: Just to respond to Commissioner Feeter's comment, the --

Mr. Kalipi: I'm going to have to interject for a moment. This is not on the agenda.

Ms. McPherson: Okay.

Mr. Kalipi: And I can have some leeway, I'm not the facilitator here, but you know I really believe in rules and guidelines. You know, I don't know about everybody else, but I just wanna bring this to our attention as a board. If this is going to establish how we're going to move into our next season of being Commissioners, please be mindful of the agenda at hand because if not, we're not going to get through any of our agenda. Why have an agenda in the first place? And so I truly believe there needs to be some leeway, and I respect that, and I'm just saying for my submission, I'm going to give the authority to the Chair that if you need to interject, and I know you're a nice guy, however, nice guys gonna need to move things along and I'm just trying to remind all of us as Commissioners that, nothing personally, but I'm just saying that we need to follow some guidelines and some rules. There should be some leeway, however, let's get some work done. Thank you.

Mr. Chaikin: Thank you, Commissioner Kalipi. And I try to be polite but don't have to be. Alright, ex-chair, the floor is yours.

Mr. DeGray Vanderbilt: Thank you, Chair Chaikin and members of the Planning Commission. My name is DeGray Vanderbilt and under Rule 403B of your rules, the ex-planning chair gets a half-hour to testify. No, anyway, I'm glad there is this public comment and I don't think it is abused, it wasn't before, and as long as there's not a lot of discussion on items.

But I did take note of Lloyd's comments and I just think that the SMA assessment, I think if he had applied for an SMA assessment, there would have been the short-form exemption but then he talked about the BC-T, which we never looked at how that impacted the short form so I don't know if the time saved with the short-form on the assessment is offset by a longer problem to get the BC-T design review committee. It might offset the advantages of the short-form. And another thing, he got fined for something that there ought to be some leeway and Nancy or nobody on Molokai has any control over the fine guys. They just come in from Maui and start fining people so there ought to be some coordination, it seems, with -- with that.

I just had a couple of things. I'm not going to be here at the next meeting, but on your agenda, on Item 16 for the Item E, the workshop, is the County Workforce Housing Policy. I just wanna remind everybody that this Commission put in a tremendous amount of work into that. We had a committee. We came up with a lot of great suggestions relative -- almost all of our suggestions were not included but, hopefully, we can correct that when we come up to the community plan.

The other item is on Page 3, 4.b. I think when these agenda items go on, you should try to make it clear. This could -- Item 4.b. could be a big item but if you read it, it says, "A Bill for an Ordinance Repealing Chapter 19.02 of the Maui County Code in adding Chapter 19.02 regarding Interim Zoning." Interim Zoning is a pretty big issue on Molokai and so I don't -- I don't know what's all involved with that but that could be a serious bill to look at especially knowing that our community plan update is right around the corner.

The other thing is Molokai Ranch, on the next meeting, I don't know if you'd wanna find out, what is the status of the Kaluakoi -- or the Ranch's various SMA applications before this Commission? They've said they're shut down; they're out of here; they're not entertaining sales offer for the hotel; they've rejected offers to reopen the golf course, the movie theater, and the gas station, so do they just keep these items open to use whenever they want, ten years from now, or what?

The other thing is there's a -- as far as tonight, there's a meeting of the UPC Group, the wind guys, up at Maunaloa at six. And as far as this Commission, I hope that they work with the GPAC here on Molokai and just keep pressure on to get our island plan started. It looks like it's going to be bogged down some more by delays on Maui and we need to really get started on that now more than ever because of this situation with Molokai Ranch.

One last thing is that I'll be around and whatever information I'm able to come with, I'll share with this Commission and if this Commission or the Chair would like me to do any research on anything, I'll be glad to -- I'll be glad to help out if I can. So thank you very much.

Mr. Chaikin: Yeah, thank you, DeGray. A couple of comments. You brought up that next meeting we're going to be talking about this Interim Zoning District, this -- this is a -- I guess it's a bill for an ordinance that we're going to be reviewing, and you said you're not going to be here, if there's anything that, you know, you think that we should be aware of as we're deliberating on that particular bill, if you could maybe put that in writing and get it to us so we could, you know, take that into consideration. I'd appreciate that.

Mr. Vanderbilt: Yeah, I will and -- and the point I was just making that when these items are scheduled for public hearings, they ought to really give the public a little more idea of what the public hearing's about. Nobody knows -- would know from that what that means.

Mr. Chaikin: Okay, thank you. And then you also talked about the island plan and, yeah, we will, you know, keep getting updates and put some pressure on to try to move that whole thing forward.

Mr. Vanderbilt: Thank you.

Mr. Chaikin: Then you did bring up the issues about the Molokai Ranch and that is something that is on our agenda under closed and open applications, so we could actually get Clayton up to the mike and let us know if the Ranch has given you any information as to what they intend to do with the -- with their open applications that they have for all of their permits. I see that he just moved out. Nancy, do you have any information as to whether Molokai Ranch has communicated anything to the County as far as what their intentions are with those?

Ms. McPherson: I'd like to ask if we could discuss that when we get to that item on the agenda? Would that be okay?

Mr. Chaikin: That's fine. DeGray, are you going to stick around?

Mr. Vanderbilt: ...(inaudible)...

Mr. Chaikin: Okay. Alright. If he's fine, I'm fine with that. Alright. Is there anybody -- anybody else got any questions for DeGray? Hearing none. Anybody else from the community wanna provide any testimony on anything? Okay, hearing none, that means we can forward with our agenda. And on our agenda, the first item of business is Item D, where we have to approve some minutes from some previous meetings and maybe we

could all just lump 'em all together and do it all at one time. Corp Counsel, is there any problem doing that? Okay. So basically we, you know, if somebody wants to move forward with a motion to accept all these minutes, we could do that.

D. APPROVAL OF MINUTES OF THE FOLLOWING MEETINGS:

- 1. FEBRUARY 13, 2008 SPECIAL MEETING**
- 2. RECESSED MEETING OF FEBRUARY 13, 2008 RECONVENED ON FEBRUARY 19, 2008**
- 3. FEBRUARY 27, 2008 REGULAR MEETING**

Mr. Feeter: Move that the minutes of February 27 and ...(inaudible)...

Mr. Chaikin: Commissioner Feeter, can you talk into the mike for the record? Thank you.

Mr. Feeter: Be approved.

Mr. Chaikin: Okay, could you repeat that motion?

Mr. Feeter: Yeah, excuse me. The February 27, 19, and 13 meetings be approved - the minutes of.

Mr. Chaikin: Okay, does that include the recessed meeting of the February 13? There was two February 13 meetings: there's one and then a -- that got recessed to --

Mr. Feeter: Yeah, I overlooked that. Yeah, February 19 and 13.

Mr. Chaikin: Oh yeah, you got that. Okay, any second on that?

Ms. Pescaia: Second.

Mr. Chaikin: Thank you, Commissioner Pescaia, for the second. Any discussion?

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

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

VOTED: to approve the minutes of the February 13, 2008 meeting; the recessed meeting of February 13, 2008 reconvened on February 19, 2008; and the February 27, 2008 meeting.

Mr. Chaikin: Okay, so moved. Alright. With that, we can move right along into our Orientation Workshop and -- and what that is is everybody kinda -- Commissioner Kalipi, do you have something?

Mr. Kalipi: Chair, just a point of discussion. I'm wondering, in the agenda items, just for time constraints, I don't know how exactly how long the workshop would go and I'm just trying to bring a point to fellow Commissioners that would it be more feasible for us to look at the -- the concurrence with the Planning Department of the exemption before we go to the workshop? I'm just saying this because I'm afraid that we won't have enough time if the orientation goes too long that we won't be able to get to this concurrence and what I'm thinking of is that I don't want to hold back anybody if we are concurring with the findings of the Planning Department. So I'm just trying to bring this out before we move on to the orientation.

Mr. Chaikin: Thank you, Commissioner Kalipi, on that. And, you know, this has been a problem in the past, you know, that we get into things and then, all of a sudden, people have to leave, and we lose quorum, and the meeting stops right there. And so that's a good point that you bring up. So I have to ask the Commissioners, is there any Commissioners here that are going to have to leave at any particular time, which might affect this meeting?

Ms. Buchanan: No, I'm not leaving and I am not opposed to amending the agenda unless -- for orientation purposes, I'm familiar with the orientation and I think most of us are familiar with the orientation except for Commissioner Williams. But I am not opposed to amending and I will be here.

Mr. Chaikin: Okay, yeah, the only one that's gotta leave is Commissioner Pescaia and so I think it's best that, you know, we conduct the business that really needs to be conducted first and then leave the workshop till after. So is that something we can rearrange the -- I can just make that decision, counsel?

Mr. Hopper: Under Robert's Rules, you could ask if there are no objections and if nobody objects, you can have your agenda changed if you'd like. If someone objects, you would have to take a vote.

Mr. Chaikin: Okay, anybody object to rearranging the order in which we take our business today? Okay, hearing none. We'll move right into Item No. - what is that? Item F, which is Communications, and this is where the Planning Department is asking this Commission to concur with them on an exemption. So, Nancy, are you going to make a presentation on this? Thank you.

F. 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:**

INTERIM CHIEF NEAL BAL and FIREFIGHTER GREG JENKINS, DEPARTMENT OF FIRE AND PUBLIC SAFETY requesting a Special Management Area (SMA) Assessment for a limited 3-lot subdivision to subdivide out the 5.379 acre proposed Kaunakakai Fire Station site from the larger parcel at Alanui Kaimiike, TMK: 5-3-003: 015, Kaunakakai, Island of Molokai. (SMX 2008/0036) (SM5 2008/0083) (N. McPherson)

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

Ms. McPherson: Thank you, Chair Chaikin. I also have a blowup of the map that you were given. Our Commission Secretary, Suzie, did print it out on 11 by 17 for you, and I appreciate that very much, but I also, and this cause I -- I can't print on 11 by 17 so this is my glued together version of this. I don't know if you want me to put it up on the wall or pass it around or what do you want to do? Pass 'em? Okay.

Okay, the Fire Department apologizes profusely for not being able to attend today. They are at CIP budget hearing with Council on Maui and both Neil Bal and Greg Jenkins had to be there for that because there may be questions about the funding for this fire station that they are going to need to answer questions about. So I told them I would do the best I could. This environmental assessment for this project was brought before this Commission, this was the approving agency, and it was accepted and a finding of no significant impact was issued, so now we are -- we got the land use entitlements and now we are at the subdivision stage so this SMA exemption is just for, basically, splitting the parent parcel, which is quite a large parcel, into three. There's a small little parcel, there's the five-acre parcel, which is the fire station site, and then there's the bigger parcel up above Ranch Camp, which is going to, you know, stay there.

So I reviewed the application. I did the assessment, which you were given, and the determination was made that it was valuation of a hundred thousand dollars, it's for a subdivision of land into four or fewer lots, so this is just for the subdivision of land. This is not for any improvements, site improvements, grading, driveways, anything like that. So it was determined that it was exempt, you know, eligible to be exempted so we're

recommending that it be exempted. And I gave you several exhibits. And that's about it. If there are any -- oh yeah, the FONSI was issued on December 13, 2006. They need to get this subdivided so they can get title to the land so time is of the essence.

Mr. Chaikin: Any questions for Nancy? Commissioner Pescaia, go ahead.

Ms. Pescaia: Lot B1. What is the intended use of that smaller parcel? There's a -- there's three parcels: one's for the fire station; one is the remaining parent; and I just wondering what that other smaller parcel is for.

Ms. McPherson: Yeah, you know, to tell you the truth, I don't know and if Molokai Properties Limited was here, that was a question I should have asked though because it is adjacent. But from the way it looks, it's bordering the agriculture, yeah, going down there so maybe where the former slaughter house was, I think that may be that site, and I'm not sure what they intend to do with that area. I can try to get that question answered for you by the next meeting.

Ms. Pescaia: I'd just hate to have a subdivide right on the coattails of a fire station. I mean clearly we need to subdivide out for the fire station but it would be creating another smaller parcel that -- I mean I'm not clear what the --

Ms. McPherson: Well, it's in the ag. It's zoned -- that parcel will be zoned ag. They have not -- no one has applied for any changes in land use for that parcel so it's basically being separated out as another ag parcel.

Ms. Pescaia: But then it's easier to manipulate in the future.

Mr. Chaikin: Any other questions for Nancy?

Mr. Hopper: Of course, Nancy, if they were to do another proposed action in that area, they'd have to come in for -- if they were in the SMA, they would have to come for an SMA permit again, correct, if they were --

Ms. McPherson: Or SMA assessment.

Mr. Hopper: Right?

Ms. McPherson: Yeah.

Mr. Hopper: Okay.

Ms. McPherson: Right.

Ms. Pescaia: So, individually, they would have to come and redo it?

Ms. McPherson: Yes. And the Fire Department doesn't have anything to with that parcel, the smaller one.

Ms. Buchanan: This parcel is not in conflict with the ongoing discussions between Maui Community College and Molokai Ranch?

Ms. McPherson: No. I believe all of that's on the other side of the road. The -- that's my understanding that the area for expansion of the community college, my understanding, was that was for the -- the side of the road mauka of where the MEC is now, but please correct me if I'm wrong on that.

Ms. Buchanan: Okay, doesn't -- it doesn't include the 15 acres of future development by MCC?

Ms. McPherson: No.

Ms. Buchanan: Okay. But that subdivision, those lands belong to Molokai Ranch. Is that correct?

Ms. McPherson: Yes. The parent parcel is all owned by MPL and it's being subdivided into three.

Ms. Buchanan: So our approval would -- would make -- our approval or concurrence with the exemption by the Planning Department would automatically subdivide that into three parcels?

Ms. McPherson: It would allow the subdivision application to proceed, which is being reviewed separately by the Planning Department.

Mr. Hopper: Okay, you're not approving a subdivision today. You don't have that authority. You're saying, based on the -- right now Coastal Zone Management Act says this is exempt because it's a subdivision of three or less, so your only determination today would be whether or not this subdivision in and of itself has a basically a cumulative impact or substantial adverse environmental effect on coastal resources. That would be your sole determination. It's not anything regarding the subdivision itself. In order to subdivide, you've gotta meet a lot of other requirements, which in fact I think on this parcel they had to get before they could subdivide, for example, they had to, and this went through the Planning Commission, they had to get a change in zoning, community plan amendment, and district boundary amendment for the future fire station parcel prior to subdividing. They had to do that prior to -- to this. I know that's part of the history. Today, the sole concern

or the sole authority that the Commission has deals with the SMA exemption and if you don't -- whether or not you concur or if you do not concur, then they would have to come in and get an SMA permit prior to subdividing at this point.

Mr. Chaikin: Thank you, Corp. Counsel, and thank you, Commissioner Pescaia, for bringing up that point. It's a very important point that if we're going to actually approve something, we really should know what we're approving. I mean if there's going to be three, well what's -- what is it going to be used for? The other question that I have is that it says in here that as the project is for a subdivision of land into four or fewer lots when no associated construction activities are proposed. So how does that work? I mean we -- obviously there are construction activities that are being proposed on one of these lots. So why is that in here and can you explain that?

Ms. McPherson: That's going to be a separate assessment. You're only assessing for the subdivision of land so -- without any improvements. So there's going to be a separate assessment for the improvements that are in the SMA, for the site improvements, and we're still waiting for an engineering diagram on that and you'll -- you'll see all of that, so that's still to come before you. So this is not the last time you're going to see this project.

Mr. Chaikin: Okay, well thank you for clarifying that for us. Is there any other questions for Nancy? Any other --

Ms. Buchanan: I have an observation. This sucks. Sorry. I'm surprised that the Fire Department, at this stage in the planning of such a large project, is hitting us up with this right now.

Ms. McPherson: Can I respond to that?

Ms. Buchanan: Yeah, sure.

Ms. McPherson: They were told, at the beginning, that they were not in the SMA and they were not subject to SMA. What they didn't anticipate was that the parent parcel was in the SMA and that they would need to get an assessment for the subdivision. It's a very complicated process, and they have done their best to conform with every requirement that's been set in front of them, but there a tremendous number of hoops to jump through, and this is one of them. I can go ahead and give -- try to get a hold of Greg Jenkins right now if you would like a response, but I could -- if we could recess for five minutes, I can try to get a hold of Greg on the phone because he told me he would be available by cell phone and I can try to get you an answer on the smaller parcel. I apologize for not having the answer.

Mr. Chaikin: Thank you, Nancy. And I think that's an excellent idea. I mean, you know, I'm basically a cheerleader of this Fire Department. I wanna see this thing just move forward and move through and not get hassled, but on the other hand, I wanna know what the heck it is that we're approving. If there's going to be three lots, let's find out why there's going to be three lots. So I would take that into consideration. So at this point, let's take your idea and let's recess for five minutes and then after five minutes, we'll come back and see you have any additional information for us. Thank you.

(A recess was called at 2:00 p.m., and the meeting was reconvened at 2:08 p.m.)

Mr. Chaikin: Now, Nancy, did you get additional information for us?

Ms. McPherson: Yes, I did. Greg was in chambers, but he exited chambers, and he says if we need to, we can call him back. He's going to wait couple minutes. There was an ag allocation agreement, which was required by law. This three point something acre parcel is a remainder parcel, basically. What he said was that because the Fire Department did not want all of it. It's also, you were correct, Commissioners were correct, in that it could be a site for an annex for the college. So under the ag allocation agreement, which I believe is on this map somewhere, I obviously didn't look at it closely enough, but it says somewhere in the language that the college most likely will have the first opportunity to purchase that parcel under our community plan policies and different agreements that have been done over the years. The trouble with the parcel also is that it is in the flood zone and so there are a lot of constraints on the parcel. Fire Fighter Jenkins said that it's foreseen that it will remain as open ag and/or, you know, open space used for the indefinite future with the idea that perhaps the college would want to purchase it at some future time. But there are a lot of constraints on the parcel so that I guess the best use for it now is to stay in agriculture.

Mr. Chaikin: Thank you, Nancy. Does anybody have any questions or concerns they wanna express?

Ms. Buchanan: Yeah, I have a concern. Just hearing that, I get all kind red flags that went up, and not because, you know, I understand how -- but it's just I think Donna, from the Molokai Community College, is unaware of them petitioning for this subdivision and I would like at least to have her be aware that they're petitioning for this. The other thing is I'm really sad cause the Fire Department has been going through a lot of hurdles trying to get this fire station up, which we all support. I did make testimony even though they found no significant impacts on the flooding issues for that parcel for the Fire Department, which wasn't greeted warmly, but I do have concerns trying to make some kind of decision right this minute without more information.

Mr. Chaikin: Thank you, Commissioner Buchanan. The way that I understand it is that there's one long lot and that the fire station stays in the middle and so there has to be three pieces. They offered the piece to the Fire Department, and they didn't want the piece, so instead of making two, now they gotta make three. So that's just the situation of where the lot is and where the fire station is in relation to the whole thing. Is there anybody else that's got any comments or wanna say something?

Mr. Kalipi: I'm just interested in, Commissioner Buchanan, if Donna does know about what's going on, and I don't know if she does know or doesn't know, in making a decision or not, a decision today, how does that benefit us for the next go around.

Ms. Buchanan: No, I just saying being well aware of -- that the community plan is being developed within that community plan, the issues between the Molokai Community College and the Ranch lands and the Molokai Land Trust are at issue because of what was said, wasn't said, written down and promised, as Jenkins had conveyed to Nancy on the phone that he perceived this and he foresees that. I don't believe anything anybody tells me anymore unless I see it in black and white and signed to that effect because that's why we have this problem now with the future CDC, which is the Molokai Land Trust offspring for development. Those parcels that we talking about today might be in that discussion and although we cannot tie future development to those parcels, we all know that down from there is a flood zone. We know that one million dollars has been appropriated from Department of Hawaiian Home Lands to mitigate flooding and we knew that that was the biggest problem that the Fire Department had at this time. I don't think exempting the parcels -- another thing is tracking. I'm not real sure that County Planning Department is able to track the decisions made because you can -- they can come in later and ask to have an exemption to subdivide again and unless it's written down as somebody remembers what happened, they can come in for another exemption, which they're not supposed to, but they can.

Mr. Chaikin: Commissioner Williams, go ahead.

Mr. Williams: Yes, Mike or both of you, isn't there a comment period where you notify the neighbors and all that legally to let them know that they have a chance to comment either adversely or for?

Ms. McPherson: That's if there's an SMA major and a public hearing required. We're just recommending exemption because this, according to the SMA Rules and the Coastal Zone Management Program for State of Hawaii, this is not considered a development.

Mr. Williams: So then after they make an application for the actual development of it, then the neighbors will be allowed to make comments?

Ms. McPherson: Well, we've already gone through an environmental review process. There was an environmental assessment done. The Commission was the one that accepted it. So it's -- this project's been heard for like the last two or three years at least and so there's been plenty of opportunity for public comments. The issue that will be coming up next is the SMA assessment for the actual construction so that's the next stage and we're still working on that. We're still determining that. So --

Mr. Williams: Okay.

Ms. McPherson: But we're trying to work with the department because they are -- they have to encumber funds, they have a lot of things that are time sensitive, so we're doing the best we can.

Mr. Chaikin: Anybody else got any comments?

Mr. Kalipi: It's not a comment but a question. Nancy, if we defer making a decision to concur today, what is the time lines, if you know, Fire Department in their stream of jumping through the hooplas? Do we set them back or is there some cushion or I know -- I know, originally, when they came here and they mentioning that their doing things simultaneously and so they are filing for different things simultaneously and trying to get through some of things. And if you know, where is it in the matrix of it?

Ms. McPherson: Well, my original understanding the last time I touched base with Greg was that they really wanted to get the subdivision done in March so they're already behind. And the other thing that needs to happen is, of course, the fact that Molokai Properties Limited is going through a major transition and so I think there's a real sense of urgency to go ahead and get this subdivision completed so that they can take title because they have to do -- they have to put out requests for bids, they need to get the contractors going, and so, you know, it's just been a real -- it's been a slow process but -- so they're kind of up against the wall right now. That's my understanding.

Mr. Chaikin: Go ahead, Commissioner Buchanan.

Ms. Buchanan: Okay, no I was going say something was mean but now I not going say it. I better cut my tongue. Maybe would be helpful for Corp. Counsel to read from Chapter 205A, under development and how does the exemption apply to subdivisions.

Mr. Hopper: Sure, I could do that. I think Nancy gave you the summary in her report but the -- the issue is whether or not, when you're reviewing an exemption, remember this not reviewing or granting an SMA permit, this is reviewing an exemption, the issue is whether or not the this action is a development or not because the law states that any development has to get an SMA permit. If you are not a development, you don't have to get a permit.

There's a list of things that are development and a list of things that aren't development in the State law. However, there is a little catch-all provision at the end of the list, which states, you've got your list of what is and what isn't a development, at the end of the list, however, it states that provided that whenever the authority, which is you, finds that any excluded use, activity, or operation may have a cumulative impact or a significant environmental or ecological effect on a special management area, that use, activity, or operation shall be defined as development for the purpose of this part, meaning that anything that is listed as not development can become development if it's going to essentially do that to a special management area. In this case, you are looking at an action that falls under the, in the Planning Department's review, falls under a description of not development, which is a subdivision of a parcel of land into four or fewer parcels when no associated construction activities are proposed provided that any land which is so subdivided shall not thereafter qualify for this exception with respect to any subsequent subdivision of any of the resulting parcels. That is deemed to be not development and that, in Nancy's opinion and the department's opinion, is what this project is. Therefore, what you're reviewing today is to determine, because it's under your rules, you get to determine this, normally the Planning Department, I shouldn't say normally but in Maui and Lanai, the Planning Department makes this final determination. The department has determined that: A) This is not development under this list, and B), which is also important, that it does not have that cumulative impact or significant environmental or ecological effect. What you'll be reviewing today is whether or not you concur with that assessment of the situation. If you do concur, then you would take action. You need a vote of five of nine members in order to concur with the action and then, therefore, the action will be deemed exempt. It will be deemed not a development so they don't have to come back before you for an SMA permit, major or minor permit. However, if you find for a reason that you disagree with the department's findings, you have to, under your rules, first you have to make this determination within 30 days from today; secondly, you have to make this determination and issue findings of fact and conclusions of law stating as to why you're making that determination and those findings of fact and conclusions of law you will have to adopt though the Planning Department and perhaps in consultation with me can help to draft them. Those findings and conclusions are generally there to support a decision that's adverse to a developer in the event the developer decides to appeal that -- that decision to court. So that's what you're looking at today is to make that determination on whether or not there is, in this particular case, if this has a cumulative impact or significant environmental or ecological effect on a special management area, that is your -- the determination that you need to look at today and determine one way or another if you either concur or do not concur with Nancy's decision.

Mr. Chaikin: Thank you, Corp. Counsel. That was a very good clarification that you gave us. Does anybody have any comments or concerns at this time?

Ms. Buchanan: I have a question for Corp. Counsel. Corp. Counsel, can we concur with conditions?

Mr. Hopper: No, you may not. Exemptions cannot be conditioned. However, if a property owner comes before you with an exemption and proposes that they're going to do a project a certain way, it is making representations to you as to how the project's going to go. If they subsequently change their project and build it in a manner that is inconsistent with what they have told you, in my opinion, that can be considered doing a development or doing a proposed action under your rules without an assessment and, therefore, could be subject to a notice of violation and fines basically as if they had never come before you in the first place. So you cannot condition them, make -- you know, have certain exactions. What you could condition would be an SMA permit, a major or minor permit, you could condition. You cannot condition an exemption though because what the law states is that if it is not development, they don't need any approval from you. But if it is a development, they need that SMA approval from you.

Mr. Chaikin: Thank you, Corp. Counsel. Anybody else have any comments?

Ms. Buchanan: Yeah, if the Planning Department can explain if we do not concur, what would be the results for the Fire Department.

Ms. McPherson: Well, my understanding is then you would be requiring, in this case, an SMA minor permit. That same assessment application can be used to support the minor permit and so then we would -- I would have to very quickly do the analysis, do the minor permit, make recommendations, and come back to the Commission so that, you know, I'm not sure if it could be done by the next meeting. Because it's a minor, there are no public hearing requirements. If it was over a hundred and twenty-five thousand in valuation, it would -- we would need public notice requirements and that could take, you know, six weeks.

Mr. Hopper: Oh, but the short term would be we'd have to issue findings and conclusions --

Ms. McPherson: As to why they would not -- are not concurring.

Mr. Hopper: Exactly.

Ms. McPherson: Okay.

Mr. Hopper: Yeah, that would have to be done before the next meeting so you could adopt them and then the minor permitting process would occur subsequently. But those findings and conclusions are required by your rules if you decide -- if the body decides, five of you, decide that you do not concur and you'd have to state your reasons why, and those

reasons would have to be under the Coastal Zone Management Act that I basically read to you earlier.

Ms. McPherson: One suggestion I could make is if the body cannot come to a unanimous decision to concur today, if this item was deferred until the next meeting, then it is possible that additional information could be provided that the Fire Department would be here to answer questions that, you know, we can try to answer all of the issues and questions that have come up today and that we would be prepared to present that information to you; hopefully, that could go out in your packets, whatever we -- we can come up with, and then also again, the Fire Department would be able to attend the next meeting.

Mr. Chaikin: Commissioner Pescaia, you have something?

Ms. Pescaia: Okay, I'm trying to follow this. So the Fire Department submitted this SMA exemption application to subdivide land that they don't own?

Ms. McPherson: Right.

Ms. Pescaia: I mean wouldn't the landowner be responsible for submitting a permit to subdivide their -- I mean how can you -- how can I ask to subdivide your land?

Ms. McPherson: They have permission of the landowner and I think that was basically the deal was that if they were going to get this parcel, then there was a purchase price, which was a very reasonable one, that they would do all the leg work to get it done. They would pull all the permits. They would get all the land use entitlements. They would apply for the subdivision. They would deal with the SMA. Basically they're doing it all. And once it's subdivided, then they can take title. So this is basically the last hurdle before they get title to the parcel.

Mr. Hopper: . . . itself applied for the change in zoning, community plan amendment, and district boundary amendment even though Molokai Ranch is the owner of the property. That's not the first time that's happened before and I think that was the terms of the sales agreement, as I remember it, was that they would agree to sell it if, you know, if -- because it couldn't be conveyed as it was because the -- the land wasn't -- they only wanted --

Ms. McPherson: It wasn't consistent.

Mr. Hopper: It wasn't consistent and so what they did they changed the zoning only to a portion of the land, the portion they anticipated subdividing out to, I believe, public/quasi-public, which is the land that you would use for a fire station purpose, that's what the zoning would be for that. And throughout that process, it was the Fire Department. The Fire Department or the County paid for the environmental assessment and paid for all that --

those other things in an environmental assessment for the fire station with the understanding that it would be the County using that property and not Molokai Ranch that would use that portion of the property. That's my background of it in advising the Commission and the County Counsel while that process went through.

Ms. Pescaia: But all of the -- all of those things pertained only to this 5.3 acres, right?

Ms. McPherson: Yes.

Ms. Pescaia: This is the first time we're talking about the bigger chunk - I mean anything dealing with something that's not going to wind up in the hands of the County, right?

Ms. McPherson: Yes.

Ms. Pescaia: I mean what you're saying is the whole process has just concerned the portion regarding the fire station but this -- now we're talking about what's happening to this other piece and things that aren't going to ultimately wind up in their control. So it's hard for me to just rely on them and -- for answers when they will wind up not being the owners of those other two parcels or speak on their behalf, right?

Mr. Kalipi: Well, I think they own all the three parcels right now actually so --

Ms. McPherson: There's only one parcel right now.

Mr. Kalipi: Well, it's only one parcel but -- so I'm, you know, thinking of the question about they're not going to be responsible for the two parcels, they're not responsible for any of the parcels right now, so they're just purchasing one part of the parcel, actually, dividing it into three parts and so we're either concurring or not concurring with the findings.

Mr. Hopper: Yeah, and the issue would be you'd have two other parcels that would not be used by the County. If you believe the reason that those -- if you believe the creation of those two parcels in and of themselves right now is in violation or at least it raises a concern under the Coastal Zone Management Act, then that's the basis you would have to have for your -- the reason you would not concur with the Planning Department's finding cause you would find that having these three parcels subdivided for whatever reason then you would have to come up with that reason in your findings and conclusions, you know, that would be, you know -- and if ownership -- I'm not sure how ownership is a consideration, you know, whether it's, you know, owned by the Ranch or by the County, if you believe that there's, you know, proposed development activities you're not being told about, I'm not certain, but, you know, the situation is that you're going to have three parcels separate from each other, now you have one parcel, and I believe, you know, if you know

I'm, you know, not correct, that's I believe what I we're looking at at this point, right? Are there proposed development activities on either of the parcels aside from the fire station?

Ms. McPherson: No, there is not. And I want to emphasize that in your next orientation, at least if we ever get through this one, that we will be talking about SMA, and SMA is not a land use tool. It is an environmental impact tool. So we need to look at are we impacting coastal resources by this subdivision taking place.

Mr. Chaikin: Thank you, Nancy. And we're going to move right along with this thing cause we've got more, you know, fires to burn here besides this one. So if anyone wants to make any last comments here before we move, then we can. Otherwise, I'll make a few comments and then -- go ahead, Commissioner Buchanan.

Ms. Buchanan: One fast one. Nancy, do you know why, after using almost 1800 acres for their site, why they don't wanna take another seven-and-a-half and why they have to subdivide at this time?

Ms. McPherson: Well, I think the idea was to keep the site out of the SMA, was one option. The parent parcel, however, is subject to SMA; that's why you're seeing this. If it wasn't, you wouldn't be seeing this application right now. So the idea was to move and also to move it up to a level where they would be well suited and well sited for the function. They -- I believe the reason they didn't want the lower parcel - although without Greg here, it's really difficult to answer that question, I could give him another call and maybe he can -- maybe you can hear him over the cell phone, I don't know - but, anyway, that there's just too many constraints on that parcel. There's -- it's part -- it has to do with the flood control projects that are going on in that area and, like Commissioner Buchanan stated, that there are, you know, homestead flooding issues, etcetera, etcetera, and I believe that was the reason that they didn't want it. Also, they were trying to keep their costs down. They only wanted as much land as they actually needed to do the fire station.

Mr. Chaikin: Thank you, Nancy. Okay, where we are right now is we need to figure out if there's more information that we don't have that we can get that's pertinent to this. And the other thing we need to decide is whether or not their actions either constitute some environmental degradation or some kind of a cumulative impact that would be substantially significant for us to not concur with the Planning Department. And I don't know. Personally, I don't see how this concurrence or what their actions are has much of an environmental impact that we could, you know, go to court and substantiate our position of not concurring with them. So that's, you know, where I'm at on this. But I don't know, does anybody feel like we're lacking some really important information that would change the situation?

Mr. Kalipi: Chairperson?

Mr. Chaikin: Go ahead.

Mr. Kalipi: Before we do discussion, can we do public testimony and close public testimony, and then come back maybe entertain a motion I think for the item on hand?

Mr. Chaikin: Alright, so I'll open this issue up to public testimony if there's anybody that wants to make any comments on the proposed subdivision. Seeing none, public testimony is now closed and we can go back to some last minute discussions and then I'm going to call for the question and see whether or not we're going to concur right now with this, or if we're not and maybe defer to a later meeting and get any additional information. So the question is, is there any information out there that we feel that we don't have?

Ms. Buchanan: I would have liked to have Greg Jenkins here to ask him why they stopped short of seven-and-a-half acres, which now is going to be divided up into a 3.53 acre and a 5-acre lot. We all know once you subdivide a acre lot, it's easier to sell. But the intention and the output to this community from three years ago when the whole fire station came up was that that whole parcel went to the Fire Department and I understand constraints and when you get all your funding and, you know, it's always -- I don't feel that urgency anymore. I don't care if you losing your money. I no care whatever you doing. That's your problem. This is business. You gotta get your eggs in a basket. No come in last minute and put the pressure on this Commission cause we always under pressure. I not going fall into that trap now that I much older. But if they want their exemption and stuff, they need to be here, you know, and if I, you know, gotta defer until Greg is here to answer questions, then so be it.

Mr. Chaikin: Thank you, Commissioner Buchanan. And I think that is a legitimate concern that I think was answered but not adequately answered, and so the real question is: Can we get an adequate answer today? I mean part of our thing is to figure out what our business is and move through our business, and if -- if there's something that we don't know, the question is: Can we find out that answer today?

Ms. McPherson: Well, I could call Greg back and we could try to do it via cell phone.

Mr. Chaikin: But let me just kind of feel the Commissioners out. Do you wanna move -- do you feel like you wanna defer this and then bring it up at another meeting, or do you wanna move and try to make a vote on this today, or where's everybody at? I mean so we can --

Ms. Buchanan: I like call Danny and tell him come up with the funding to buy that additional seven acres. That going take time. I mean if you ask me what I would do, I would call Danny and tell him why ...(inaudible)... them out of seven more acres and then -- and be able to subdivide into two parcels.

Mr. Chaikin: Okay, but the situation that we're up at -- we have an application before us, and we have 30 days either to concur or not concur. If we don't concur and we don't even do anything, it is an automatic concur.

Ms. Buchanan: Okay.

Mr. Chaikin: Okay, so if we're not going to concur with this, then we have to come up with some findings of fact how this is going to create some environmental damage or how this is going to have some kind of cumulative impact that's going to be significantly negative, and that's where I'm having a problem trying to figure out how we can substantiate that, you know, if we don't concur with them.

Mr. Kalipi: I somewhat agree with Commissioner Buchanan, however, I'm not happy with being stuck with this decision also, but for the, in my mind, the greater good, and I would love to have Danny Mateo come up with the money, that's a great excellent idea with the County, however, because of the process and time, it's always somewhat been our position to support the fire station and try to get it and whatever support that we could give them, and so if anything, I would, after the discussion, I will, if nobody else does, make a motion to concur with the department's finding. But I'm just saying that I do -- there is some issues out there. I don't know if we can come up with a statement that for the sake of the process, we are concurring, however, we are not totally pleased with some of the things that -- that had occur and even specify some of the things that we might wanna continue to follow up on.

Mr. Chaikin: Thank you, Joe. And I think that, you know, that's a legitimate concern. It'd be nice if this community could own that parcel, that the County could buy it and have control or maybe if the -- the school wanted to use that, it would be available, but I'm not sure if that's an avenue that's available to us. I mean if we deny this and somehow we're successful not concurring and they had to go get a SMA minor permit and we're able to put conditions on the SMA minor, is that a condition that we could actually put on it that that subsequent piece got used for a specific purpose?

Mr. Hopper: The only conditions, and I'll get into this on your orientation, the only conditions you could put on a permit, again not an exemption, would have to have -- would have to be in order mitigate the impact of the development and, in this case, would have to deal with the topic we're dealing with, which is coastal resources. You would have to show that requiring them use a future parcel for a certain reason, and this would be Molokai Ranch again, this would not even be the applicant in this case, would -- would be -- would be absolutely necessary in order to -- in order to basically protect coastal resources and it's proportionally impact of the subdivision, which I'm not sure what the impact of the subdivision is right now on coastal resources. In addition, if you're limiting the right of a landowner to use their property for the use its entitled, that could be considered taking and

the County would potentially have pay the landowner for that. So that would be another issue that you'd have to deal with as far as conditions. But again, we're not dealing with conditions today so that would be down the line.

Mr. Chaikin: Yeah.

Ms. McPherson: Chair, may I comment on the environmental impact issue?

Mr. Chaikin: Thank you. Go ahead, Nancy.

Ms. McPherson: We've done environmental review on this project. Yes, it's true that the scope of the EA was not the entire parcel, necessarily. There was some overlap there. It wasn't just concentrated on the 5.379-acre area. You know, you look at cultural impacts and you look at the greater area, you know, you spread a wide net because that way you have a better chance of identifying potential impacts. Now when the Planning Commission accepts a final EA, they are issuing a finding of no significant impact. That means that they're also looking at coastal zone impacts, the potential for environmental impacts and significant ecological effect. So, in a way, that evaluation has already been done and this Commission accepted that final EA and issued a find of no significant impact.

Mr. Chaikin: Thank you for bringing that up cause I think that's an important point and I think what we're worried about here as a Commission is what's going to happen with that subsequent parcel. Are they going to build a 20-unit B&B on that piece of property? The problem is they've got lots of property so they could do that anywhere they wanted to do it because they have property, so that's -- it's not a big risk. So I don't know. I mean at this point, I think we have discussed this enough. I think that we need to move forward and either make a decision today; if we can't make a decision, then we'll defer it to the next meeting. So at this time, I'd be asking if anybody wants to come up with any motion to concur with the Planning Department in their assessment of this particular application.

Mr. Feeter: Mr. Chair, I'd like, with condition --

Mr. Chaikin: I'm sorry. State your motion.

Mr. Feeter: The motion is that the Molokai Planning Commission concur with the department on this issue.

Mr. Chaikin: Do we have a second?

Mr. Williams: I'll second it.

Mr. Chaikin: Any discussion on this issue?

Mr. Kalipi: Discussion. You know thinking on this and hearing some of the comments, I don't know if we can add a statement to the concurrence and I somewhat agreement that, you know, thinking through it in my mind, there's three -- subdivision of one parcel to three separate parcels. In my mind, why didn't it be two separate parcels instead of why is it three? Is there something going on with that third parcel? In substance, kinda fishy. However, however fishy it may be, therefore, it still needs to go through the appropriate process of permitting and even probably SMA. In fact, understanding what Nancy said, that even in that smaller parcel, there's more constraints on that parcel being that flood zone and everything else, so I'm feeling kinda comfortable. It is somewhat fishy, however, knowing that there's more constraints on that smaller parcel, as fishy as it is, and I'm just talking my way through this if it helps anybody, okay so, okay, I'm good to go.

Mr. Chaikin: Thank you, Commissioner Joe. And just for clarification, the reason there is three parcels is because it's like a piece of bacon and they want the piece in the middle and they don't want the piece down below because they're not the landowners. They just want the fire station, they don't want to be a landowner, and so that's why there's the three parcels. So any further discussion?

Ms. Buchanan: No, but I would only, as having been past advocate for the Kapa`ahea Homesteaders Association, who's been dealing with flooding issues for many, many years, any development upscale of them, including our beloved Fire Department, impacts them. My concern into parceling of chunks of smaller than what is there right now and what was supposedly promised to the CDC and MCC is potential future development that would add to cumulative impacts of flooding and coastal zone impacts.

Mr. Chaikin: Okay, well that's something that when those developments occur, they would have to come before us and we would address whether or not they're substantial or not substantial. So we do a motion on the floor; it has been seconded. If there's no further discussion? Seeing none.

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

It has been moved by Mr. Feeter, then seconded by Mr. Williams, then

VOTED: that the Molokai Planning Commission concur with the department on this issue.

(Assenting: D. Williams; B. Feeter; J. Kalipi; M. Pescaia; S. Chaikin)

(Dissenting: L. Buchanan)

(Excused: L. DeCoite; L. Kauhane; S. Napoleon)

Mr. Chaikin: Okay, five. We concur with your assessment, Nancy.

Ms. McPherson: Thank you.

Mr. Chaikin: Okay, with that -- with that done, we can now move on to our workshop. And we're going to take a five-minute break, and while Nancy and everyone sets up for their workshop, and then we'll move forward.

(A recess was called at 2:45 p.m., and the meeting reconvened at 2:53 p.m. - Commissioner Pescaia was excused from the meeting during the recess and did not return.)

Mr. Chaikin: Alright, at this time, I'd like to bring this meeting back to order and we're going to move right into the workshop, and just for Commissioner Williams, I mean we've all been through this before. Basically, whenever there's new commissioners come onboard, we have this workshop and it's a good time to ask questions and, you know, just try to understand the process. I mean the better we understand the process, the better we can do our job, and the presenters don't know what we don't know, okay, so we have to ask questions. That's what this whole thing is about is trying to understand it better. So with that, let me turn it over to Clayton and go ahead and take it.

Mr. Yoshida: Yes, thank you, Mr. Chair and members of the Commission. I guess we're catching the 5:40 flight back so we have to leave by about 5. I guess Mike his section and I have my section, so -- so that we could complete at least one section, maybe we'll have Mike Hopper go first and talk about the Sunshine Law, ethics, and some of the court cases, and the handbook that his office distributes to members of boards and commissions. So if the Commission doesn't mind, we'll start with the Corp. Counsel presentation.

E. ORIENTATION WORKSHOP PART 1

- 4. Chapter 343, Hawaii Revised Statutes - Environmental Assessments and Environmental Impact Statements**
- 5. Country Town Business Design Guidelines for the Island of Molokai**
- 6. Meeting Schedule**
- 7. County Policy Against Sexual Harassment**
- 11. Ex Parte Communications**
- 13. Recent Supreme Court Decisions on Takings Issues**
- 16. County Workforce Housing Policy**
- 17. Papohaku Sand Dunes Study**

Mr. Hopper: If that's okay? Okay, I'll do this. The booklet, the boards and commissions booklet is kind of an accumulation of everything else so I'll just go over each thing. Each section I'd like to just go over myself and then if there's questions, I'll ask about questions at the end of each section. I think this is very important for everybody both new and old because these are very important issues and laws that will come before you and govern how you practice in front of the -- in front of the Planning Commission. I'm not going to be putting anything on the board here. You have all my handouts. Yeah. Yeah, that's all Planning Department. That's all Planning Department. I don't have a powerpoint for you. I'm sorry, but I have a lot of handouts for you. Maybe next year I should do that. Our office is traditionally, which you know how hard it is for the County to change. Our office has always had paper copies and things. But we should get a powerpoint together. That's probably a good idea.

- 8. Discussion of Boards and Commissions Booklet distributed by the Department of the Corporation Counsel**
- 9. The Sunshine Law**

The first thing I'd like to talk about is the Sunshine Law. It's very important. This is the State law that governs how all boards and commissions across the State, with the exception of the Legislature, which are the people who wrote the law, they are exempted from it, but everyone else, basically, has to follow this law, including the County Council. This does apply to you. You got a booklet, which is very helpful to you, which is distributed by the Office of Information Practices. It looks like this. It's called *Open Meetings - A Guide to the Sunshine Law*. It has a lot of good questions and answers. It's basically like a FAQ, frequently asked questions, which is a very good guide for the Sunshine Law if you had any questions.

The Sunshine Law is administered by the Office of Administrative Practice -- of Information Practices or OIP. They have a nice large series of opinions on dealing with particular issues that are available online that I will oftentimes reference in dealing with issues of the Sunshine Law.

Now what is the Sunshine Law? It's Hawaii's open meetings law. It requires that all deliberation and decision making and discussion that involves your business, which is board business, has to occur at a duly noticed open meeting and a meeting open to the public. This is sort of to get away from any sort of backdoor negotiations or surprise meetings. To that effect, there's several requirements that your Commission must follow. First, your meeting must have an agenda specifying board business at that meeting and business is limited to the topics listed on that agenda. The agenda has to be posted six days prior to the meeting with the County Clerk. And this agenda is very important. It's not just for guidance and for your organization. It is a legal requirement that you only discuss matters that are on your agenda. If something is not on your agenda, you cannot discuss

it. OIP has had multiple opinions in broad topic headings, such as unfinished business or chairperson's report, without more are insufficient to allow either the chairperson or the Planning Department or whoever to just discuss whatever they want to under that report. There needs to be a specific heading that would give the public notice. Basically, what they look is that if you saw this on an agenda, would a member of the public know that this item is going to be discussed and if they had something to contribute would they show up to the meeting, which is why you can't just have "unfinished business," "chairperson's report," and then begin discussing something under that heading because a member of the public just looking at chairperson's report or unfinished business wouldn't know what you're going to discuss, and that's a good rule of thumb is if you look at it and you think a member of the public would not know this issue would be discussed or acted upon, then -- then it would be a good rule of thumb that that's an issue that you should not be discussing at that meeting.

If you deal with the issue of allowing general testimony, there's this specific OIP opinion on this issue, if you allow people to testify on whatever they want to essentially, regardless of what's on your agenda, that's okay. That's permitted. You can put an item that says, basically, generally testimony or concerns, and those issues can be placed on your next agenda. What you cannot have are any questions about those issues to the presenter and any discussion of those issues. You can put them on your next agenda but you can't do anything else for the same reasons that we just discussed is that it's not on your agenda ahead of time and OIP has a very specific opinion on this and since it's because an item that it looks like that you guys wanna go through, I think I'm going to print out that opinion and give it to you for some guidance so you can see. You're not the first people to want to do that or to do that and a lot of people do that because they feel, obviously, it's a good way of you, as the Commission, to be aware of what's being discussed or what's been going on in the community. Just keep in mind that because of the law, there's limitations on what you can actually discuss as far as asking questions and things like that.

In addition, the -- because all of the decision making and deliberation has to occur at a duly noticed meeting open to the public, you cannot have deliberation and certainly not decision making outside of the meeting. That means that there are certain limitations on what you can discuss with each other outside of the meeting. Two of you may discuss board business outside of the meeting as long as there's no commitment to vote made or a commitment to vote sought by somebody. You can't go up to someone and say, "I really think you should vote for this SMA permit." That's not allowed. You can't do that. You can go up to that person and discuss, however, this application. Here's a few issues I think there are with this application. I would generally discourage that and that you do that in an open meeting, but two people can do that. More than two may not discuss board business at all. You cannot discuss it at all. You can, obviously, talk to each other about the weather, about what's going on, and board business is defined as basically what's on an upcoming agenda or what may come on your agenda, which means, you know, other

development projects, things like that, SMA permit applications and things like that. So those are important rules to follow.

And in addition, the -- there are exceptions to the open meetings, which allow you to, in certain circumstances, not have to have the meetings in the open. You can have what's called an executive session. This requires a vote of two-thirds of the members to which your board is entitled to, which in your case means six members. And an executive session can be called for a variety of reasons. One of them would be to consult with me. I'm your attorney. You, as the Commission, are my client. The same rules apply to us, generally, as they would between me and any private client, which means that I can concur -- can discuss things with you and confer with you in confidence, which means you have an executive session and can discuss matters relating to the board's potential rights, duties, and liabilities with me. You can have that discussion. That will not be on the record and not revealed for the record. However, you can't discuss other matters in that executive session. So there's this specific list in the Sunshine Law of what can be discussed in executive session and what cannot be discussed.

So I would urge you to read the open meetings law and really to -- to abide by it. As far as potential penalties for violation, one thing that can happen is that any vote that you make could be invalidated if there's a Sunshine Law violation. In addition, if there is a willful violation, that's considered a misdemeanor and the Attorney General can actually have enforcement proceedings against any -- anyone that they believe intentionally violated the law; basically, they knew that what they were doing was a violation and they went ahead and did it anyway, that can be a misdemeanor. So the State looks at that pretty seriously and they really wanna make sure that your discussion and decision making happen on the record.

And there's a lot more about the Sunshine Law. I wanted to go over just the main key points in particularly discussion issues so you don't leave here and get together and have, you know, a separate meeting and determine all your -- all the issues. Don't do that. I mean you can all go out to wherever and have a beer and just relax but, you know, just use common sense. And like I said, there's this pamphlet that's very good, it's in plain English, and it will really help you to probably address a lot of the questions that you may have.

So that's my Sunshine Law introduction. Are there any questions that you guys had? Okay, moving -- oh, okay. Sure.

Mr. Chaikin: Just one quick question here. Thank you. Like if we have an agenda and we wanna change the agenda, not the order of the agenda, but we wanna add something new on the agenda at the meeting. Can you explain that to us?

Mr. Hopper: Yeah, you can amend your agenda, it has to be by a vote of two-thirds of the members there, and it cannot be on an item of major importance to a significant number of people. The OIP generally looks at that very strictly, as you imagine they would. What they don't want is people not putting something on an agenda, oh, let's amend the agenda and take a vote on this issue. There was a particular case, I think, a county wanted to settle a lawsuit, it didn't have the lawsuit listed on agenda, they said let's amend our agenda, they amended the agenda, put the lawsuit on their agenda, and went into executive session to determine how they would settle that lawsuit. The OIP, in their opinion, said that that was illegal, that they could not do that because this was a lawsuit that clearly would affect a significant number of people. Now I'm typically pretty differential to a board if it's going to determine that an issue is not of a significant -- not of importance to -- not of major importance to a significant number of people but because there's always people out there that are going to say that issue is very important to me or that, you know, particularly in places where development is such a big issue, you need to be very careful if you do decide to amend your agenda. I mean sometimes it may become necessary if you wanted to assign someone to testify at something that's coming up that you didn't have time to post, even then it might be a bad idea to use, but there's -- there's that requirement in there that you have a two-thirds vote. Actually of which -- sorry. An executive session vote requires two-thirds of the members that are present. To amend your agenda, you need two-thirds vote of the members to which the board is entitled. That means you need six members to vote to amend your agenda, which means if you've got bare quorum, only five people, you can't amend your agenda even if it's a unanimous vote. So that's something that you need to take into consideration.

Okay, so that's about it for the Sunshine Law. The next issue I wanna deal with are your --

Mr. Kalipi: One more question. Executive session. That's just to ask for legal assistance and discussion with you. It's not to deliberate a vote or a position?

Mr. Hopper: There are certain circumstances where you could vote in executive session. They're very rare and they would not involve any sort of development project. You'd have to have that vote in open session. You can't discuss, for example, things that are embarrassing to people in executive session, you know, just because you want to -- that you think might be embarrassing, you can't discuss that in executive session. It would only be in the case to consult with me, basically, for me to give you legal advice. Sometimes I'll recommend and I'll say -- I would recommend an executive session. One of the reasons I would do that was because I wouldn't want to say something in open session that, you know, you guys, if you do this, I think it might be illegal, or, you know, what doing this or that because then if you go ahead and do that, and it's on the record that there's a recommendation that this is illegal, if someone challenges that later on, they can say, look your attorney just told you it was illegal. So the exact same reason why you wouldn't want your personal attorney talking to, you know, the public about the legal advice he or she

gave you. So that's the basic idea behind an executive session. They don't want to curtail the right of the board to open and honest legal counsel because if I had to give all advice in open session, it may be difficult to be more candid in that advice, so that's the idea behind that. Of course, you still would need to determine if you wanted to go to executive session. That's a determination only the board can make. I can't force you to go into executive session.

12. Rules of Practice and Procedure

Alright, next thing I wanna discuss are rules. You've got your -- you've got your rules, you follows Robert's Rules of Order and, in addition, you have your Rules of Practice and Procedure for the Molokai Planning Commission. Those rules govern over Robert's Rules if there's a conflict. However, Robert's Rules govern a lot of what you -- you're doing. Then the Sunshine Law also puts some requirements here as well as far as what sort of vote you need to do anything.

The rules, by State law, require that you need a quorum to do anything, essentially, to convene a meeting. A quorum is a majority of the members to which you're entitled, which means five in your case. You're entitled to nine - you need five. And that is to even begin a meeting. You can't do anything other than recess to another date with less than a quorum. You can't take public testimony. You can't have a site visit. You can't deliberate on any issue. You need to have five members to have a quorum. In addition, you need a vote of at least a majority of your members to take any action. That means five of nine members have to -- have to vote. And in order to take a vote, you need to have a motion made, and that's under Robert's Rules of Order. A motion has to be seconded by another member and then it's put before the -- put before the body by the chairperson, the chairperson restates the motion, you have discussion on the motion, there's debate on the motion, the chair will call for the vote, and then there will be a vote on the motion. If you don't have five votes on -- to take an action, then no action is taken. Silence or refusal to vote, under your rules and under Robert's Rules of Order, constitutes an affirmative vote. So if nobody says anything and then you say, and all those oppose, and nobody says anything, then it's considered that everybody who didn't say anything voted for the project unless they're recused for some reason, and I'll get into recusal in the future. That has to deal with ethical concerns and thing like that. Basically, there's no right to abstain from voting under your rules and I think that's in place because they want to have, you know, action taken. You need five of nine votes for anything. So in order to deny a project, you need five votes. Motion to deny. Motion to approve. If just because you can't get five votes to approve something doesn't mean the project is denied. That actually means there's been no action taken so that's very significant there.

In addition to your rules there -- oh, yes?

Mr. Williams: You just mentioned there's no -- basically, no reason or right to abstain. What happens in the case where something that might be in my personal life is going to be an issue, like since I'm a contractor --

Mr. Hopper: Yeah, I'll get into that.

Mr. Williams: That is -- isn't that right to abstain there when I shouldn't be voting?

Mr. Hopper: Yeah, yeah, that's a separate issue. It's not even a right to abstain. It's a requirement, under the County Code of Ethics, that you'd have to recuse yourself in that case, which means you can't participate in the voting --

Mr. Williams: Right.

Mr. Hopper: And, in some cases, not even in the discussion on the issue. I'll get into that in a second --

Mr. Williams: Okay.

Mr. Hopper: And there's -- there's pretty specific rules for that cause that issue, as you imagine, will come up.

Mr. Williams: So excuse -- I'm asking to be excused rather than abstained?

Mr. Hopper: Right, well if you believe you have a conflict of interest --

Mr. Williams: Right.

Mr. Hopper: That prevents you from voting, you would disclose that and say you're not going to vote on this. That's very common. That happens a lot and so everyone needs to be mindful of that and that's another part, that's the ethical part of my presentation. I will certainly get to that. It's a very important point to make. So thank you.

You have also this *Parliamentary Procedure Simplified in Accordance with Robert's Rules of Order*. That is very helpful as well. That sort of deals with Robert's Rules of Order in plain language. Everybody should know the rules, and particularly the chair and the vice-chair need to know the rules because they are the authority on your rules. It's not me. I will be happy to give you my advice on what the rules are, but the chairperson makes the decision on the rules, and the chairperson's decision is subject to appeal, but if there is a issue as far as a rule of practice, it is the chairperson that makes that decision, which is why the chairperson and vice-chairperson, and everyone else really, should know the rules very well.

And then another point also is that a chairperson, one of the key points about a chairperson, is that they are impartial. They must serve as a moderator. The rules say that if a chair wishes to debate, the chair has to vacate the chair and debate from the floor. So, basically, any chairperson, anyone who is chairing the meeting, across any board in the County or anywhere else is supposed to be impartial. That means the chair cannot make motions, the chair can entertain motions, but the chair can't make motions, and the chair only votes if that person's vote will be a deciding vote one way or the other, otherwise, they normally don't vote. And again, they don't generally speak out and debate. They're job is to basically get through the board business and allow for a variety of opinions. I think that's in Robert's Rules of Order to prevent any abuse of the chair of the minority who may have a viewpoint as well as the majority, or vice-versa. So that's, I think, an important point to make as far as how you continue on with your business.

That's about all I have for your rules. There's a lot more and they'll be coming up as we go along. I can't possibly deal with everything that's going to come up. Were there any questions on your -- on your rules of practice and procedure? Okay.

Moving on, I wanna take -- spend a quick second talking about fairness concerns. This deals with due process. It basically means that anyone coming before you for a permit or approval, has the right to a fair and impartial hearing, which means you should not develop preconceived notions of their projects and you certainly should not make statements about their projects ahead of time. For example -- and the reason of this is because before seeing all the evidence, if you prejudge a project, you violated that person's due process right to a fair and impartial hearing. And in that event, if there's proof of that, you'll have to recuse yourself and you will not be able to vote on the project. So if someone is out there and has taken a position on a project, they say I think this project is very bad, or something like that, then they are not allowed to vote on that project. If the statement's come to my attention, I would certainly advise, you know, the board that whoever has that view, needs to recuse themselves because all that's going to happen is if the project is denied and the person challenges it, they will be able to have that person's vote recused anyway ahead of time, or after the fact they'll be able to have that person's vote, if they can prove that person was not impartial, they can have that person's vote, basically, nullified in court if it's very clear that that person had a preconceived notion. It also works the other way that you can't vote on a project if you've got a direct interest in the project. If you're developing that project or if you get a financial benefit from that project. I'll go into that in a little bit. But the key with that is that, you know, you're planning commissioners, you're very much in the public eye, you'll probably have a lot of opportunities to comment on projects if the newspapers ask you questions and just keep in mind, that you should avoid passing judgement on projects before that project is before you. Wait until all the facts are before you, get all of the testimony, and then you can certainly make your decision. But because your role is as a commissioner to make decisions, it doesn't help anybody if you're

constantly recused from making decisions because we really need your presence here to make this decision. So that's an important point to make.

10. Ethics

And along with that, I wanna talk a little bit about ethics. You've got this *Orientation for Board and Commission Members* pamphlet, which deals with the Code of Ethics, which is very helpful. This is a County law but it also would deal with probably due process rights anyway. Code of Ethics apply to board and commission members. Members of board and commissions are considered officers of the County, so you're subject to the County's Code of Ethics.

The conflict of interest section deals with this: It requires that you shall not engage in any business transaction or activity or have a financial interest direct or indirect, which is incompatible with the proper discharge of your official duties which may tend to impair your independence of judgement. Financial interest has been defined as a financial interest of you, your spouse, or your dependent child. This includes ownership interest in a business, your employment, or your perspective employment. And the example they give is that you sit on a planning commission and your spouse works for a developer seeking a special management area permit. You would have to recuse yourself. As far as children, it only covers dependent children, which means if you've got a dependent son or daughter. If your son or daughter is grown, they're completely financially independent from you, you can still sit on this board on their application, unless you believe your judgement would be impaired by having to objectively evaluate that person's project in which case you should recuse yourself in that situation.

In addition, you've gotta disclose all of your financial interest. You should have had to fill out financial disclosure forms ahead of time; that's so people can, you know, run checks in case you've got, you know, situations that could be incompatible with your duties.

Also gifts. You may not solicit, accept, or receive any gift directly or indirectly whether in the form of money, service, loan, travel, entertainment, hospitality, thing, or promise, or in any other form under circumstances in which it can be reasonably be inferred that the gift is intended to influence you in your performance of your official duties, or is intended as a reward for any official action on your part. There's no dollar limit. It all depends on the circumstances. This doesn't mean that, you know, people are, you know, forbidden to give gifts of aloha, things like that, but you need to basically use your judgement and not accept any gift if you believe that the intent of the gift is to influence your vote or influence some other decision you would make on the project. So, you know, a lot of this would rely on your own independent judgement. You know, the County trust all of you to have that judgement and exercise it well.

And in addition, you may not disclose any confidential information that you receive as in your role as a planning commissioner for your own personal gain. If the information is not available to the general public and you obtain that information as your duty -- pursuant to your duties as a commissioner, you cannot disclose that information for your own personal agenda or personal gain. Such information would be for example the legal advice I would give you in executive session. That's not public -- that's not for the public. That's for you as commissioners in making your decision. It'd be hard for me to determine how that -- you know, you could use that for your own personal gain but there's still that -- there's that restriction. So those are the Code of Ethics and the fairness concerns I wanted to go over there.

15. Topliss v. Hawaii County Planning Commission SMA Case

The next issue would be your -- some legal decisions that will govern both SMA and establishing conditions on permits in general and also the PASH decision, which deals with your affirmative duty to protect the rights of native Hawaiians. Are there any questions thus far leading up to this point? If anything comes up ethically or anything else, feel free to talk to me. I can, you know, discuss that with you. If you've got any questions on your rules or anything else, please feel free to ask me. If I don't know, I can find out the answer for you.

Moving on. A couple of quick cases I wanted to discuss. One case is a Hawaii Intermediate Court of Appeals case. It's Topliss versus the Planning Commission of the County of Hawaii, so this is the Big Island Planning Commission. You will frequently be dealing with SMA permits, which the department will go over. We dealt with one today but today wasn't a permit. Today was just a -- today was just an exemption determination. When dealing with SMA permits, you have to follow Chapter 205A and your own rules in deciding whether or not to -- whether to grant or deny a permit. What you need to determine in the permit is that -- is why you approve or deny of the -- of the permit.

There are certain things you must find to approve an SMA permit and certain things you must find to disapprove of a SMA permit. The things that you need to consider, basically, you need to consider if there is any -- you may not approve any SMA permit if it will have a substantial adverse environmental or ecological effect on the coastal zone. Now, what you need to consider in going through these permits, and this is sort of complicated, is that if there is a substantial environmental or ecological effect on the coastal zone, you need to look at the -- if the effect can be practicably minimized, meaning if there are ways to mitigate the impacts of those -- of those impacts and -- the impacts of the impacts but, you know, the way to minimize the impact of whatever the development is having the effect on the coastal zone. And if you -- you need to consider the project with those impacts minimized, meaning that what has been done to mitigate those impact. And if when the impacts are minimized, that effect is outweighed by public health, safety, or compelling

public interest, you need to approve the permit. Even if there is that adverse effect, you need to consider whether or not that is outweighed by any public health, safety, or compelling public interest, and I believe that does include economic interests, you would be required to approve a permit in that case. However, if you do find on the record the development cannot be made to conform with to the coastal zone management law, that those impacts are just not outweighed by the public interest, you're required to deny the permit. You cannot grant a permit if those impacts are outweighed by the -- by the compelling, basically, public interest. So you've got a balancing that you have to do and it's not easy to do in every case. That's why whenever you grant or deny an SMA permit, you need to issue what are called findings of fact and conclusions of law. What those are, your findings of fact are what you have determined from the record to be the facts of this case. You found that the -- this part of the development will have X impact; this part of the development will have Y impact. We've had testimony by such and such that this will happen, that that will happen. Your conclusions of law will then be to link those facts to why you're making your decision. For example, if you found that there would be an adverse impact on the environment, on the coastal zone, you need to state what facts support that finding and say because of this fact, we've seen that this will affect the environment negatively, therefore, we find that -- that the permit cannot be approved because of the adverse effect it will have.

In the particular case at hand here, the Hawaii Planning Commission denied an SMA permit because of traffic concerns. They believed that the development would have a cumulative and significant adverse effect on the roadway system at the intersection in question. The court said that this was not sufficient in order to justify denial of a SMA permit even though there were findings of fact and conclusions of law because the effect that they found was on this intersection and on the county's infrastructure and not on the coastal zone. This is why I'm always saying, with an SMA permit, your focus must be on coastal resources and the environment around the coastal zone and not on other general factors, such as the county's infrastructure needs, the county's water needs, other issues unless those issues deal with -- somehow relate back to the coastal zone and the impact on coastal resources. The court overturned the denial of permit but did not grant the permit. It sent that permit back down to the planning commission and said you need to look at the facts of the case and determine whether or not this traffic that you're concerned about will have an impact on the -- on the coastal zone and on the environment of the special management area because they said they could not tell on facts, from the facts that were given, whether or not there was that impact. They said maybe there was that impact and maybe you would have -- be able to deny this permit but you didn't properly make that finding in the record, therefore, you cannot uphold your finding, and so they sent it back and that's why it's very important that you findings based on the record and have a good set of findings of fact and conclusions of law, which I can help Nancy or whoever else draft once you've made your decision.

14. Public Access Shoreline Hawaii (PASH) v. Hawaii County Planning Commission

Another issue that involves SMA permits and in fact all permits is that the Hawaii Supreme Court has determined that based on the Hawaii State Constitution, you as the Planning Commission must protect the reasonable exercise of customary or traditional rights that are established by native Hawaiians; basically, these are -- these deal with any cultural or gathering rights that native Hawaiians have established in a particular area. This deals with specifically the Supreme Court goes into which rights are protected. They state, in this decision, that those persons who are descendants of native Hawaiians who inhabited the islands prior to 1778 and who assert otherwise valid customary and traditional Hawaiian rights under HRS 1-1 are entitled to protection regardless of their blood quantum. They cite the Hawaii State Constitution for that. Customary and traditional rights in these islands flow from native Hawaiian's preexisting sovereignty. The rights of their descendants do not derive from their race, per se, and were not abolished by their inclusion within the territorial bounds of the United States.

What rights you exactly need to protect and how do you protect them will vary from case to case, and you need to have evidence on the record that there is gathering going on on the property or that there's some other cultural rights asserted that goes back to pre-contact days and you need to determine, as the Commission, how you will protect that right, whether it is by an access easement for example, whether it is by certain conditions imposed on the SMA permit, which you have the right to do, but the Supreme Court in the case did not really tell the planning commission exactly what to do. They basically said you need to consider these factors and act appropriately in deciding on your permit. So I think they recognize that the commissions themselves, because they know the areas the best and know the history of their island, is that they would be the ones in the best position rather than the Hawaii Supreme Court as far as telling, you know, telling them how they would protect these rights, but because of the Constitution and because of the Hawaii Revised Statutes protecting these rights, that is an affirmative duty you have.

The other side of this, however, is that the conditions you impose, there are certain limitations that you have on the conditions you can impose on a developer when they come in for a permit, and that's dealt with in the -- in the PASH case as well. Let me see if I can find that. The court stated that for -- in order for any conditions placed on an SMA permit issued by, in this case, the Hawaii Planning Commission, to be deemed reasonable, they must bear an essential nexus to the legitimate State interests and must be roughly proportional to the impact of the proposed development. This means a couple of things. One, the intent of any sort of conditions you place on a development must be for the public health, safety, and welfare. In addition, the -- and it also must have a rational nexus to the impact of the development. What does that all mean? It basically means that you need to view -- you need to view what the development is. How big is the development? If, for

example, you believe that there's -- if it's a small development, if it's a one home, for example, and they're developing an area that has a whole bunch of other homes but they're only building that one home, you cannot make that one home pay for the impact of all the other homes around it. That one home can only be responsible for the impact that that one home is having on that area. If it's a bigger development, then you can require a condition that would, you know, in order to mitigate the impacts of that development, there could perhaps have substantially be, you know, substantially larger than if it was a smaller development. That's what we call being proportional to the development. There also must be a rational nexus to the permit that you're granting. For example, if they're coming forward for an SMA permit from you, the conditions need to be to mitigate the impacts on coastal zone and on the special management area. It is not to mitigate the impacts on, for example, traffic in the area unless you can show a nexus between, which is essentially a legal relationship, between the traffic, it'd be additional traffic created by that development and the effect of that additional traffic on the coastal zone and, therefore, you get into a broader -- you get into a broader discretion of the conditions you can place on depending on the entitlement the person is going for. For example, if the developer wanted a change in zoning, you can typically attach more conditions to that change in zoning than you can for a special management area permit; the reason is because the special management area permit only deals with the coastal zone and environmental protection. A zoning, however, deals with a lot more than that. So if you are looking at a change in zoning petition, you generally have more freedom, as far as the types of conditions that you can place, again it still has to be proportional to the development, but you have a greater amount of freedom based on the type of entitlement you're doing.

And I know this is a lot to digest right now. We will deal with these on a case-by-case basis in determining whether or not specific conditions appear appropriate or inappropriate for a development. If they seem inappropriate, I would perhaps, you know, have an executive session, discuss it with you, not necessarily say that you can't have certain conditions on the permit, but that there were concerns that I may have with them that in making your findings and conclusions you would want to put that on the record in order to protect yourself in the future. And I know that's a lot to adjust and this is years of case law in the making that determines, you know, how you conduct your business, but I think it's, you know, very significant for you to understand.

That's the end of my presentation. I'd be happy to answer questions that you have. If I don't have the answer, I will do my best to find it in the future.

Mr. Chaikin: Thank you for that. It was very informative. Clayton, are you going to go next? Okay, and you guys have that time constraint so I think you had mentioned something at a quarter to five or so you needed to shut this meeting down. Is that right?

Mr. Kalipi: I'm sorry, Chair, I'm scheduled to be somewhere else. I'm actually -- I thought this was going to end at 3:30 but I'm extending to 4:00. I have another appointment to go to.

Mr. Chaikin: Okay, so it looks like we've got a quorum problem at 4:00 and what -- what I wanna do -- what's important to me is that we go through some of the things on our agenda, like the Director's Report, which will allow us to talk a little bit about what's going to be on future agendas, that is of greater importance to me than the workshop. So we have some more time but I think that if you feel as though -- what time did you say you have to -- we have to shut this meeting down? Or we have to shut it down at four you say? Okay, so that gives us only - I would like to say ten minutes at the end of this meeting so we can discuss, you know, what we're going to be doing, so I don't know what you can do in 15 minutes but --

Mr. Yoshida: ...(inaudible)...

Mr. Chaikin: Okay, thank you.

- 1. Powers and Duties**
- 2. Land Use Regulatory Framework in Maui County**
- 3. Zoning**

Mr. Yoshida: Yeah, we have the powerpoint slides that we've distributed, if you can follow along. As far as meetings of the Commission, they're normally scheduled for the second and fourth Wednesdays of the month unless it's a holiday, then we try to move the meeting to Thursday. There's no meeting on the fourth Wednesday in December because our experience is it's hard to get people to come out on December 24 or December 26.

Thank you for allowing us to present this workshop. This is like phase one. We have our Long Range Division, which will also be providing you with a workshop at a later stage regarding the General Plan and community plan updates.

So if we can move to the next slide. The department has about 60 staff members and we're divided into three major divisions: Long Range, which handles the community plan, General Plan updates; the Current Planning Division, which I'm their division head and Nancy is part of, we deal more with the applications that go to the Planning Commissions; and our Zoning and Enforcement Division, which reviews more of the building permits, subdivision, and does enforcement and variances and appeals.

Basically, we had a schedule. We'd like to talk about the planning frame work, zoning, coastal zone management, environmental assessments including the EA's and EIS's, the County's Policy Against Sexual Harassment, and Mike did his Corp. Counsel section. And

at a future meeting, we'll have maybe Francis Cerizo from our zoning division talk about flood hazard districts.

As far as resources available to the Commission, we have the Maui County Urban Design Review Board that reviews project design and provides recommendations on projects. Currently, we don't have a Molokai member on this board. John Sprintzel was the Molokai member but his term ended at the end of March. We have an Arborist Committee that deals -- reviews trees within proposed subdivisions and nominates exceptional trees. We have the Maui County Cultural Resources Commission that has purview over the three Historic Zoning Districts in the County: two in Lahaina; one in Wailuku. They also approve uses and architectural design, and they provide recommendations on SMA, special management area and other permit applications. Veronica Marquez is currently the Moloka member on the Maui County Cultural Resources Commission. We also send the applications to other Federal, State, and County agencies and they provide their recommendations.

We have the State Constitution from which we had the Hawaii State Planning Act, Chapter 226, Hawaii Revised Statutes, which allow the counties to develop general plans and community plans. Currently, we have the 1990 General Plan but we're going through the General Plan update process, which the Commission was involved with -- in the one component, the Countywide Policy Plan, and we also have the Molokai Community Plan, which was last updated in 2002. The Commission reviews community plan amendments.

Then we have the State Land Use Law, referred to as Chapter 205, Hawaii Revised Statutes. From that, there were district boundary amendments. If a person -- I guess all lands are classified into one of four categories by the State: conservation, urban, rural, or agricultural. If an entity wants to change their State land use classification, they have to go through a district boundary amendment. Yes, Bill?

Mr. Feeter: Where does interim come in that?

Mr. Yoshida: That's a zoning district. We'll cover that in the next -- but if an entity wants to change the State land use boundary, let's say, well, I guess Laau Point, they wanted to change it from ag and conservation to rural, or rural and conservation, then they had to go for a district boundary amendment because it was more than 15 acres. They went to the Land Use Commission. If it's less than 15 acres, then it comes to this body and you make a recommendation to the County Council.

We also have State special use permits for unusual and reasonable uses in the State ag or rural districts. If it's more than 15 acres, it'll come to you for a recommendation and then your recommendation will be transmitted to the State Land Use Commission. If it's less than 15 acres, then it will come to you and you are the final decision making authority. For

example, the Molokai Solid Integrated Waste Facility at Naiwa, the County facility, is more than 15 acres, it's 25 acres, so it came to the Planning Commission and then it went to the State Land Use Commission. Whereas say the Neighborhood Store out in Pukoo is less than 15 acres so it just same to the Planning Commission and the Planning Commission made the final decision on the special permit for the Neighborhood Store.

We have zoning, which is permitted under Chapter 46, Hawaii Revised Statutes. That's codified in Title 19 of the Maui County Code. Chapter 19 of the Maui County Code is divided into two sections: Chapter 19.02, which is the interim zoning district that Commissioner Feeter referred to, which we're coming to the Commission on April 23 to repeal that and install a new interim zoning district. And then we have the rest of the code, which is comprehensive zoning, which is from Chapter 19.04 onward and from that, the Commission reviews various types of applications, such as zoning changes, conditional permits, County special use permit, etcetera.

The fourth arm is the Coastal Zone Management Program, referred to as Chapter 205A, Hawaii Revised Statutes. We have special management area permits, or your rules, which is Chapter 12-302, and your Shoreline Setback Rules of the Molokai Planning Commission, which is Chapter 12-4, and the Commission reviews SMA permits - I guess all SMA permits now, whether they're major, minor, or exemptions, as well as shoreline setback variances.

And from that is the requirement for, well, environmental impact statements, which is Chapter 343 of the Hawaii Revised Statutes, which links up with, if you're doing a community plan amendment, you need to do -- comply with Chapter 343 regarding environmental documents as well as if you're doing a shoreline setback variance, you also need to comply with Chapter 343, and at times, the Commission does review environmental assessment documents, say for the Molokai General Hospital Phase 2 Project, or environmental impact statements, say for the Laau Point Project.

So moving to County Zoning, which is Title 19 of the code, the Commission would review these various types of applications specified at the bottom, such as change in zonings. If a person or landowner wants to change the zoning from say interim to BC-T country town business, the Planning Commission would hold a public hearing and make a recommendation to the Council, say for the new Take's Variety Store. The Commission held a public hearing; made a recommendation to the Council; the County Council is the final authority.

We have conditional permits to establish uses not specifically permitted within a zoning district, which are similar, related, or compatible to permitted uses. The Commission holds the public hearing and provides a recommendation to the Council. Council is the final authority. This is a picture of the West Maui Community Federal Credit Union. An example

again is the Neighborhood Store where it's not a permitted use in the County ag district. They came to the Commission for a conditional permit to allow for this use in the County ag district.

There's the County special use permit, certain uses are allowed as identified as special uses within the zoning district, such as a church as a special use in a residential district. There are specific criteria established. The Commission holds the public hearing and the Commission is the final authority. So an example of this is say the Social Hall across the field at Home Pumehana. It's not an outright permitted use in the residential district but through the County special use permit, the Commission granted that permit to allow for the use of the Social Hall at Home Pumehana.

We have planned developments to encourage desirable design and land use patterns within existing natural environments where an overall unit densities while maintaining common open space, recreational and community facilities are established. It's a three step process. The Commission review and approve each of the steps. No public hearing is required. There has not been a planned development project, to my knowledge, on the Island of Molokai. This is Puamana in Lahaina. That is a planned development. So I don't think the Commission has ever gone through the -- or an applicant has gone through a planned development process on the Island of Molokai.

We have project districts. There are none identified currently in the Molokai Community Plan. This is a picture of Maui Lani. It's project district. It allows for flexible and creative planning approach. It is established through the community plans. It is a three phase process with Phase One being a public hearing in the affected community plan region, and the Planning Commission would make a recommendation to the Council, so say Wailea 670, that -- they went through the Phase One Planned Development Amendment Stage. And then there's the Phase Two, which is a public hearing in the affected community plan region, and the Planning Commission approves of the preliminary site plan. And there's a Phase Three application where the department approves of the final site plan. We don't have any identified again in the project districts in the Molokai Community Plan.

We have bed and breakfast permits. We talked about this a lot when the department came through with its legislation in October, November, December. It does allow -- there's three types depending on the number of bedrooms used. Type 1, one or two bedrooms, it's approved by the department; Type 2, three or four bedrooms is -- has public hearing by the Commission and approved by the Commission; and Type 3, five or six bedrooms, the Commission holds the public hearing and makes recommendation to Council, and the Council is the final authority. To my knowledge, we have not had a bed and breakfast permit application on Molokai through this Type 1, Type 2, Type 3.

We have the Country Town Business Design Guidelines established through Chapter 19.15. They establish development standards for businesses in the rural communities to preserve the country town atmosphere. The Planning Commission did approve the Molokai Country Town Design Guidelines back in 1994 and the department administers the design guidelines for the areas of Kaunakakai, Kualapuu, Maunaloa, and East End. They were developed -- the consultant was Chris Hart & Partners.

Then we have the off-site parking approval, which allows for parking to be provided on another lot within 400 feet where the Commission is the approving authority and no public hearing is required as well as the accessory use permit, which the code allows for certain accessory uses in a zoning district, the Commission is the approving authority and no public hearing is required.

Let's see, we're at about 3:50. I don't know if you wanna move to general discussion on the Director's Report before we lose quorum at 4.

Mr. Chaikin: Yeah, thank you, Clayton. Yeah, my inclination at this point would be defer the rest of this workshop cause I think more important to us and this community right now is that we go through your -- your Director's Report in that it gives us an opportunity to talk a little bit about what we're going to be doing in the future -- future agenda, so if you wanna just move forward with your Director's Report now, that would be good.

H. DIRECTOR'S REPORT

1. 2008 Hawaii Congress of Planning Officials (HCPO) Conference, September 10-12, 2008, Grand Wailea Hotel, Wailea Island of Maui.

The Commission may take action to cancel or reschedule its September 10, 2008 meeting so interested members can attend the Conference.

Mr. Yoshida: Thank you, Mr. Chairman, under Item No. 1, under Director's Report, is the hosting of the 2008 Hawaii Congress of Planning Officials Conference on Maui. Again, this rotates amongst the four counties and the State and this is the Maui County's year to host the conference. We've selected a -- some dates and a site. September 10 through the 12th at the Grand Wailea Hotel. Again, September 10 is the second Wednesday of the month, which is your regularly scheduled Planning Commission meeting, so we'd like the Commission to consider possibly cancelling that meeting so that the members can attend all of the conference. The department will pay travel, room, registration fees, attendance at the various field tours, mobile workshop for the Commissioners who plan on attending, well the three Planning Commissions, plan on attending.

Mr. Chaikin: Thank you, Clayton. Just one comment. Yeah, we do have that conference coming up and, you know, I encourage everybody to go and attend and get educated. As far as what's happening right now is you're asking us to figure out what we wanna do with that meeting whether we wanna cancel it because -- so we can go to that and, you know, absolutely, we don't wanna have that meeting. The question is: Do we wanna cancel it or we wanna move it to a new date? And I think that that's highly dependent on how much stuff we have going on at that particular point in time. If it looks like we're getting backed up, we're going to wanna not cancel that thing but move it to a new date. So I would hope that we can wait till we get a little bit closer to the September time area and then make that determination whether we just wanna skip that all together or we wanna move it to a falling week or move it up or something. Does that sound -- does any Commissioners have any comments on that?

Ms. Buchanan: Maybe staff should find one other date and place availability. It's easier to cancel than to try and make last minute arrangements.

Mr. Chaikin: So you're saying move the date to a new date, find a place and everything, and then, you know, if we have to. I can concur with that. Is everybody okay with that just to move it to a new date? Alright, Clayton, is that okay? You guys can work on that?

Mr. Yoshida: Yes, we'll try to find a facility and I guess the date when -- I think we have faced this before with the Countywide Policy Plan when we had special meetings to kinda catch up.

Mr. Chaikin: Alright, thank you.

Mr. Yoshida: Yeah, we would look toward finding a place. We've circulated our list of pending and closed Molokai applications.

- 2. Pending Molokai Applications**
- 3. Closed Molokai Applications**

Mr. Chaikin: Okay, I think that question came up earlier about the Laau Point whether or not they have approached the County to actually, you know, take those permits out or are they just hanging or what's happening?

Mr. Yoshida: To the best of my knowledge, they have not withdrawn their applications.

Mr. Chaikin: Okay, and then as a determination, is there anything that the County does to those applications or do they sit there indefinitely? Can they come back ten years from now and pick up where they left off or do they have to start all over again?

Mr. Yoshida: It depends. You know we did distribute the application out for agency comments but if too much time elapses, we may have to send it out again for agency comments. But again, the critical point is the acceptance of the environmental document by the State Land Use Commission because again, the 343 trigger is the community plan amendment and they need to comply with Chapter 343 before we can move forward on the community plan --

Mr. Chaikin: Okay, Clayton, if anything changes on this, could you, when we get to this point of your Director's Report, can you let us know if there's any changes from what's happening right now in terms of whether they've taken them off or they're letting them sit there so we don't have to ask you every meeting what's going on with it?

Mr. Yoshida: Yeah, we can provide the Commission with any change in status if they withdraw those applications.

Mr. Chaikin: Thank you.

**4. Agenda Items for the April 23 Molokai Planning Commission meeting.
The following public hearing items are already on the agenda:**

- a. **MR. JEFFREY S. HUNT, Planning Director transmitting Council Resolution No. 08-05 containing A Draft Bill to Authorize Home Occupations in Various Zoning Districts to the Lanai, Maui, and Molokai Planning Commissions.**

- b. **MR. JEFFREY S. HUNT, Planning Director transmitting A Bill for an Ordinance Repealing Chapter 19.02 of the Maui County Code and adding Chapter 19.02 regarding Interim Zoning Districts.**
- c. **MR. JEFFREY S. HUNT, Planning Director transmitting A Bill for an Ordinance to modify and add definitions found in Chapter 19.04 of the Maui County Code. Definitions to be modified are: "basement," "building," "court," "apartment court," and "height." Definitions to be added are: "areaway" and "habitable room."**

Mr. Yoshida: The next item is we have scheduled at your next meeting on April 23 the three public hearing items that are were listed. We had gone to the Commission back in February and March to ask if you wanted to have evening meeting -- meetings on these; can we schedule them for April 23; and the consensus of the Commission was that it could be during the day time; we could schedule it for April 23.

Mr. Chaikin: Okay, were these all advertised? These --

Mr. Yoshida: Yes, they were published in *The Maui News* as well as one of the Molokai papers.

Mr. Chaikin: Okay, thank you.

Mr. Yoshida: Again, relating to that April 23 meeting, I know there's been a request from the -- the Manae group to make a presentation, Linda Place, earlier so do you wanna place that on this agenda also?

Mr. Chaikin: Have you moved on to future agenda items? Is that where you are referring to or --

Mr. Yoshida: Yeah, I think that Item 4 just says, you know, these are the agenda items that we have scheduled.

Mr. Chaikin: Yeah. Clayton, what was going to happen was Nancy was going to give us further documentation on that, kind of give us better background, you know, on it and then we can decide whether or not we wanted to put that on our agenda. That's what I thought was going to happen that she was going to supply us with additional information. Did you hear something different than that?

Ms. McPherson: I think what they're going to do is write a letter to the Commission and request what -- and describe what they want and you'll get that letter before -- you know, in your packets, and then, you know, we can -- you can agree now to place that on your agenda for the next meeting if you'd like. If it's, maybe Clayton can clarify, if the letter -- if you receive the letter, they can discuss the letter. Can they do it?

Mr. Yoshida: Well, you know, if it's on the agenda, yes.

Mr. Chaikin: Okay, yeah, I don't have any particular problem not having it on the agenda. Does anybody oppose to having that on our agenda? Fine. Let's put that on the agenda for the next time; that means we have to get the letter prior to that so we have more stuff to talk about as far as that. And then is there anybody else that has anything else that they would like to be considered to be on future agendas here?

Ms. Buchanan: Not for the 23rd cause look like you too full on the 23rd but for future, the SMA -- I mean the Molokai Planning Commission rules on attendance if we might be able to amend that rules.

Mr. Chaikin: Well, yeah, thank you. That's a very important issue and it's not only that rule, there's a whole long list of rules that we need to take a look at and Nancy, I think, was going to put together some kind of a list for us and maybe she could just, you know, we won't have that on the agenda but if she could get that list to us, then we can start to take a look at it in our packets and start thinking about it so when we do talk about it, then we can -- we'll have more to say. Nancy?

Ms. McPherson: That was in reference to the SMA rules and the shorelines rules. This is -- she's referring to the rules of policy and procedure for the Commission, so those are kinda two different things, but, yes, I will be preparing a list for the SMA and shoreline rules. It -- I can't tell you right now exactly when that's going to be ready but I'll try to get it to you as soon as I can.

Mr. Chaikin: Thank you, Nancy, for that clarification. And I think that, Lori, I think that, you know, it's okay that we put things on our agenda even though if we don't get to them, we can always defer them. But if we have the opportunity and we don't have it on there, it's a lost opportunity. So I think that we should put that on the agenda is take a look at our Molokai Planning Commission rules and let's decide, like cause right now, we're going to have to quit this meeting, we don't have quorum, and one of our issues is attendance, so that's something that we can talk about, you know, at the meeting. Does anybody else have anything else?

Mr. Kalipi: I agree too. I would like to look at the rules again for attendance and also just to add in that it's going to be important on how we facilitate the process of the meeting to get things done. Just be mindful about, not only the rules, but time constraints on certain things. If we're not able to come to a conclusion within a certain period of time, it might wise to move or defer certain things to an appropriate time that we can digest things. So also beside looking at just the attendance, I think were going to look at reexamining facilitating the process how we go through the agenda items. But I too agree on looking at the attendance.

Mr. Chaikin: Thank you, Commissioner Kalipi. There's one thing. The last chair and myself took a trip to Maui and we met with the Planning Director and Nancy and - who else was there? Clayton and the zoning and enforcement officer, and we sat down and we made a long list of, you know, we wish we could have this, and Nancy was good enough to make a written record of what went on at that meeting, and I think it's important that -- I don't know if -- you don't have it? Do you have that? I think, Nancy, if we could get all the Commissioners, some of us already have that, but some of us are missing that and within that is the list of things that, geez, we hope we could do this and, you know, there's more things on there that we can probably get but what we need to do is let's figure out what's really important to us and push the Planning Director to, you know, let us do that.

One of things that I had on there that I have been asking for for quite some time that hasn't come through was the ability for the community to get emailed either a link or the agenda when it comes out because right now it's just kind of a fishing thing, you can check back and forth on the internet and see if it's posted, you can keep walking down to the library, this is technology that's been readily available for quite some time, so is there any reason, Clayton, that you can find that we can't do that right away, get a list and just push the one button and it goes out to whoever wants to be on that list to get the Molokai Planning Commission agenda?

Mr. Yoshida: I think we just have to research how Council does it, you know, for their committee agendas.

Mr. Chaikin: Well, email is a normal part of everyday thing and you can carbon copy 500 people on there if you want and they can be hidden so you don't see what the addresses of the people and it's just a matter of just pushing a button and everybody that wants to get the agenda can get it as soon as it's published and it's out on the web and don't have to go fish for it. This is something that's just really commonly done on a regular basis so I don't see why we have to be any different and we wouldn't be able to do that. Can you think of any reason why we wouldn't be able to do that?

Mr. Yoshida: I just think we just need to research how Council does it because I think they do that for their different committee agendas.

Mr. Chaikin: Okay, thank you, Clayton. So maybe next time that you could come here and give us a, you know, basically an answer of how we're going to progress on this issue.

Mr. Yoshida: Yes.

Mr. Chaikin: I've got some other things but they're really administrative in nature. I can go over that with you cause I think we need to understand, when we come out with a new agenda, that, you know, I'd like to have an opportunity to take a look at it and make sure that everything on it is on it that we wanna be on it and things aren't getting dropped off the agenda that we don't want dropped off, and so before it actually gets published or whatever, I wanna be able to have a look at it to see if there's anything that, you know, I have any input on it. But does anybody have any -- anything else they wanna add for future agendas?

Mr. Buchanan: No, but so how you going do that?

Mr. Chaikin: Well, what I'm hoping is once they get the agenda finalized, they can email it to me and then I can, you know, email them back and say, you know, this is great or, you know, what about this, we shouldn't have dropped that off, or, you know, and I understand

they got deadlines so, you know, if I'm not there and I don't respond, fine. You just run with it. But we need to have this window of opportunity for me to take a look at that and see if there's anything that we need to fix on that. But I can go over that with Clayton later, you know, because it's really an administrative function. Anybody else have any -- anything else?

Mr. Feeter: Yeah, just to clarify. Is it next time we're going to do the home occupations and the interim zoning that's going to be on the agenda?

Mr. Yoshida: And the definitions. The three items that are listed under 4 -- Item 4 of the Director's Report.

Mr. Chaikin: Thank you. The other thing that I wanted to do was to have the new Commissioners get a copy of this Commission's recommendations that went up to the Council with regard to transient vacation rentals and bed and breakfast because I think they need to have a copy of that because at some future meeting, we need to put that on our agenda to consider, you know, writing a letter to the Council and not only saying that these are our recommendations, but why they are our recommendations cause so far we have gotten no concurrence from the Planning Director. They have gone through all of our recommendations and I don't think they've instituted any of them. So they're not -- we don't have any advocate that's cheerleading for us over in Wailuku so we have to kind of go beyond, you know, the regular thing to say, hey, these are our recommendations; this is why we think that this is the case, so anyway, if you could get them a copy of that letter that you've gotten to the rest of us stating all of those things that would be good. Okay, is there anything else that anybody got?

G. CHAIRPERSON'S REPORT

I. OTHER BUSINESS

Mr. Feeter: Are we talking about pending projects ...(inaudible)...

Mr. Chaikin: Yeah, that would be fine.

Mr. Feeter: Well, I have a question about Kaunakakai Elementary cesspool, which was -- entry date was May 2007. Cesspools are, in relation to an elementary school, I'm just wondering what the status of that is and why it's being dealt with or just what's the status?

Ms. McPherson: I'm processing that SMA assessment and it's for an exemption for the installation of individual wastewater treatment system for Kaunakakai School. My understanding is the front part of the school is one the Kaunakakai wastewater treatment system but that they -- they still want to replace the cesspool with an individual wastewater

treatment system. Either that or they're trying to -- they may also be trying to connect up to the -- to the main system also. So I'm working on that one but we were waiting for some additional information and so we've got that now so we can move forward.

Mr. Feeter: Well, yeah, thank you. I'm astounded that they're not tied in with the municipal treatment plant.

Ms. McPherson: Well, I think there's a lot of cases where they're just old cesspools and so the government agencies I believe -- my understanding was that EPA did a, you know, consent decree or whatever saying that -- that all these government agencies have to upgrade their facilities and so we've had County parks doing it, they've been working on upgrading and getting rid of their cesspools, and so Department of Education's doing the same so this is part of that effort.

Mr. Feeter: Well, I don't know what to say except cesspools are stinky and they sure need to be dealt with immediately.

Mr. McPherson: Well, this will be coming before you and the idea is to get rid of the cesspool, yes.

Mr. Chaikin: Alright, just a couple more things and then we're going to wrap this meeting up, and that is, you know, we have a lot of different responsibilities as Commissioners but one of our core responsibilities is the special management area and one of my concerns is that I don't even know where that is. I've heard it includes Kaunakakai and some statements, but I think it would be really helpful if this Commission each had a little map that they had so they can see where the special management area is, and I understand that when the County starts passing out maps with lines on it, it has legal ramifications, but you can even make it as a draft and that would be fine, but if we could have a map, each of us that we have in our book or multiple pages or whatever so we could just see where that special management area is, that would be helpful.

One more thing. We got maps of the zoning districts in -- on the island, but these were big maps that we have to put up on the wall. We as Commissioners really should have an understanding of the zoning on the island and I think we each need our own individual zoning map and, again, it could just say "draft" on it. We're not trying to make any determinations from these maps. We're just going to try to get a general idea of what's going on zoning wise on this island.

That's all I've got. So anybody else got anything else? County, do you have anything else before we close this meeting out? Commissioners, you got anything else? Hearing none, I would like to thank all of you for attending today and our next meeting is on April 23 at 12:30 here. This meeting is now adjourned.

J. NEXT REGULAR MEETING DATE: April 23, 2008

K. ADJOURNMENT

There being no further business brought before the Commission, the meeting was adjourned at 4:08 p.m.

Submitted by,

SUZETTE L. ESMERALDA
Secretary to Boards & Commissions

RECORD OF ATTENDANCE

Present

Steve Chaikin, Chairperson
Mikiala Pescaia, Vice-Chairperson
Lori Buchanan
Bill Feeter
Joseph Kalipi
Don Williams

Excused

Lynn DeCoite
Linda Kauhane
Sherman Napoleon, Jr.

Others

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