

(APPROVED: 08/13/08)

**MOLOKAI PLANNING COMMISSION
REGULAR MEETING
JUNE 12, 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 Molokai Planning Commission Office at the Mitchell Pauole Center, Kaunakakai, Molokai. ***

A. CALL TO ORDER

The regular meeting of the Molokai Planning Commission was called to order by Chairman Steve Chaikin at approximately, 12:45 p.m., Wednesday, June 12, 2008 at the Mitchell Pauole Center, Meeting Hall, Kaunakakai, Molokai.

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

Mr. Steve Chaikin: It's the 12th of June 2008. At this time, I'd like to bring this meeting of the Molokai Planning Commission to order. I'd like to thank all of you for attending our meeting here today. And I'd like to acknowledge some of the Members of the Maui County Planning Staff that have come over here today. We have Clayton Yoshida. Welcome back. We have Nancy McPherson, Suzie Esmeralda, and we have our Corporation Counsel sitting over there in the middle, Mr. Michael Hopper. And I think that's it for Maui County. I'd also like to acknowledge our Commissioners here today. We have Commissioner Buchanan. We have Vice-Chair ,over here, Pescaia. We have Commissioner Feeter, Commissioner Napoleon, Commissioner Williams, and Commissioner DeCoite.

On our agenda today we have a couple of exemptions where the Planning Department is asking us to exempt these permits, these applicants, from a couple of special management area permits they normally have to get. So they're asking us to exempt them which are normally done in the single family residences. Well, we're gonna take a look and see if there's any excess of environmental or cumulative impacts on those. Then after that, we're gonna move into -- we have some workshops on special management area permits, and shoreline setbacks, and environmental assessments, environmental impact statements. After that, we'll move into the Chairperson's report. And on that I have a number of different issues that we need to discuss. And then we'll move into the Director's report, and we'll see what Clayton has for us today.

B. PUBLIC TESTIMONY ON ANY PLANNING OR LAND USE ISSUE

But at the beginning of each of our Planning Commission meetings, we want to give the public an opportunity to come forward if they have any planning issues or land use issues that they would like us to be aware of. We're kind of giving you an opportunity in the beginning of the meeting to come up and say something if you wanna say something

regarding that. Also, we give you the opportunity if you wanna provide testimony on any other agenda item. You can come up now, if you some things you need to do and you don't wanna be sitting around here all day waiting for us to do what we need to do to get to that agenda item, then you're welcome to come forward. And so is there anybody from the public that would like to get up and -- you guys have any issues you wanna bring to our attention this morning? Okay, seeing none, we'll move right into our agenda.

C. COMMUNICATIONS

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

- a. **Goodman Residence - SMX 2007/0471(SM5): 2,080 square foot single family dwelling and 576 square foot garage on 12,897 square foot abutting Kanoa Pond, at TMK: 5-4-017: 002, Kawela, Island of Molokai. (N. McPherson) (This item was deferred from the May 28, 2008 meeting. Commissioners: Please bring your documents.)**

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

Mr. Chaikin: Item No. C is Communications, and this is -- we're gonna start off with a deferred item. Welcome. This is Thorne Abbott, Coastal Zone Management from the Planning Department. Okay, we have a deferred item that we were looking at at the last Planning Commission meeting, and that was -- has to do with a single family residence that's gonna be built on near the shoreline in Kawela. And the Commissioners had some issues with that that they really wanted to get a little bit more information before they came to any final conclusion on that. So I think Nancy was working on some of that stuff. Nancy, are you prepared to give us --

Ms. Nancy McPherson: Yes.

Mr. Chaikin: Nancy McPherson.

Ms. McPherson: Nancy McPherson, Staff Planner for Molokai. Greetings. Good afternoon, Commissioners, Chair Chaikin. I don't have a podium here so bear with me. Okay, taking the questions from the Commission and the discussions back with me, I went

to Maui and I had the subdivision file for -- the old subdivision pulled. I had copies made, and some of that information is displayed over there on the wall. There is the final map of the subdivision that shows easements, various things on there. That's very educational. There's drainage study information, engineering calcs. So a lot of this flooding assessment was done at the time that the original subdivision application was filed, and what I -- or approved, actually. And so what I've done is I've taken the text from that and given you copies of that. If that's the -- I think it's about six pages total. And I know you have -- I'm sorry I couldn't get that to you sooner. I think if you read that, it'll give you a kind of snapshot about what was going on back in the day. And of course, some of you remember when this subdivision was done. Things have changed. Some of our attitudes about coastal development has changed in the interim. But at the time, the applicant did submit all the information required by the County, State, and other agencies reviewing the subdivision application. And they did go through the SMA review process. They did get an SMA permit for the subdivision. They did go to -- they were reviewed by the Molokai Advisory Committee which was the precursor to the Molokai Planning Commission. And the one thing that was -- I took note of, was that the Committee didn't have quorum, so they were unable to actually make a recommendation. So that was kind of interesting. But they did forward all the information to the Maui Planning Commission who then approved the SMA for the subdivision with conditions. Now, I didn't get time to make copies of the SMA conditions, I just realized. So if you would like, at some point, if we're having trouble deciding, and you'd really like to see those, I can run over and make copies of that for you so you can see what the original conditions were. I do have that information here if you'd like me to read it to you. What is your will? Would you like me to read the conditions of the original subdivision?

Mr. Chaikin: Have you read those? Is there stuff in there that you think might be of interest to us? Is there any Commissioner that, you know, you have any feelings on whether you want to hear all the conditions for the original subdivision?

Ms. Lori Buchanan: Chair Chaikin?

Mr. Chaikin: Commissioner Buchanan?

Ms. Buchanan: Exactly -- because I'm sorry I wasn't here at that meeting, what issues came up with this particular permit that we asking for clarification?

Mr. Chaikin: Thank you, Commissioner Buchanan. You have a list of -- I know that Commissioner DeCoite came up with a list for us of things that we should probably take a closer look at.

Ms. McPherson: Yes. Some of the concerns that were brought up were -- is beach access being adequately addressed in this area; what are the flooding concerns and issues,

potential flooding; and, you know, kind of taking a little closer look at the project even though it did actually get a special flood hazard area development permit approved between the last meeting and this one. I also have a copy of that, if you'd like to see that.

There was a question about wetlands. I was -- well, first question: beach access. The final map over there has the dedicated beach access easements on the map. There are no -- there's one access point at the very east end of the subdivision, the very top of that map. There's a remainder parcel that is actually dedicated for wetlands. It's like a flood receiving area. The main numbers of beach accesses are actually on the other end of the subdivision from where the subject parcel is. So there are no required beach access easements related to this subject property. And if you get up and look at the map, you can see that for yourselves.

As far as the flooding, again, I went through the drainage report. You have some of that information there in front of you. There's more up on the wall. The issue is that there is flash flooding in the area. There's a -- you know, there's a catchment area mauka of that low lying subdivision. So when it rains really hard, which we know it does, when it rains, it pours over there, you know, that results in sheet flow. And the engineer's assessment was that there was really nothing that could be done about that. They analyzed this separately from the Kawela Subdivision that's up mauka. So they separated it out. They were looking at these drainage areas probably toward the end.

The areas that Commissioner Feeter is concerned about with the walls, I also looked at the walls issue. I did a windshield survey of walls along the highway. I went all the way down to Puukoo. I took photographs. I didn't have time to prepare all of that in a memo for you guys, but I will, if you'd like me to. And I have been directed by the Planning Director to proceed with the request for service for walls that I find are nonconforming. So I'm going to be moving forward with that. That -- it all requires research. But anyway, so there are things moving with the walls, but the walls -- the issue is actually east of this subdivision. There's maybe one in the Kanoa Subdivision that could be causing problems. And I'm gonna follow up on that, but the major walls that are -- that could be contributing to the flooding and the funneling down the highway of the flood waters when it rains really hard are actually east of the Kanoa Subdivision. So that was my assessment of the walls, you know, flooding connection. Again, I haven't had enough time to really do the research. I've just started. So, you know, the Commission's gonna have to give me a little more time to follow up on this, but I will follow up on it and report back to you.

As far as the wetlands' concern, I was -- you know, I do not have knowledge of what the landscape looked like for these Kamakana properties before they were subdivided. I was told that people had -- that it had actually been bulldozed. That may be true. That may be not true. I have also been told that a number of the lots have had a lot of fill brought in. And by raising their lots' grade, they have actually quite possibly displaced water onto

adjacent lots. Now, as you -- I'm sure you all know one of our other issues here on Molokai is people doing things without permission. And I'm not saying, you know, any of these lot owners have done that, but I'm just saying that, you know, the County's dilemma is that if things are done and we don't have a permit application in front of us, and then enforcement isn't forthcoming, then it happens. And so I guess the issue is -- the Commission's issue is cumulative and significant impacts. That was the term that was brought up at the last meeting. Okay. Now, it's true that subdivisions get built out. It's true that in many communities, as they get built out, people get more concerned because they sense intuitively that, you know, there may be problems developing or may have not been foreseen.

Now, in this review case here, this may not be this case. We don't know. We don't have that information. We would have to have some kind of drainage study done based on what's been -- what's there now, what changes in grade, in fill, etc., etc., have occurred; how many structures there are that don't -- don't meet flood requirements, or weren't permitted, or whatever. I have the sense that pretty much everybody got their permits there. So that means they've been reviewed for flood impacts. Again, that would -- you know, we would have to get more information from the Planning Department for the people who handle those kinds of flood assessments. And I wasn't able to pull all that information together in the last two weeks. So I did the best I could. I kinda gave it, you know, the quick overall look.

My sense is that, you know, this area of the subdivision is actually -- that land is accreting so there aren't erosion issues. The proposed action meets the shoreline setback. Therefore, I don't see it impacting the shoreline. The Department of Health -- the one thing that happened with this original approval is that the subdivision SMA original permit, one of the conditions was that they install a secondary wastewater treatment plant. So what happened after that is the developer went back after the approval was granted, and they asked for an amendment, and they asked that that condition be removed after going to the State Department of Health and having correspondence. And, you know, the attorneys were corresponding, blah, blah. So anyway, they got the green light from the Department of Health. They went back to the County. They went back to the Molokai Advisory Committee and the Maui Planning Commission, and they got approval to have that condition removed. So at that point, the developer said they couldn't afford to do it and other things. So at that point, the idea was that each lot would do an individual wastewater treatment system. Now, the theory with that is that if those treatment systems meet the specifications of the Department of Health and our County, then we sign off on those, and the presumption is that those are not -- you know, impacting the shoreline and impacting the fishpond. So here we are.

I don't know how many wetlands or fill were removed, or what happened. I know that there's an archaeological study that was done before the subdivision was approved. I can

get a copy of that for you, if you'd like. And I realize that, you know, it's really good to research the subdivision even if you have, you know, a house coming in kinda later on in the game that it really pays to understand the bigger picture, and that's everything about the subdivision and the original SMA approval, and I intend to do that later on as part of my analysis.

Mr. Chaikin: Thank you, Nancy. Does any of the Commissioners have any questions for Nancy this morning? Commissioner Buchanan?

Ms. Buchanan: Nancy, besides the condition of the treatment, how lengthy is the SMA conditions?

Ms. McPherson: They may have 12 or 13 conditions. If you'd like, I could read them.

Ms. Buchanan: I just wondering like Steve said if anything was -- it's kind of like after-the-fact already. It probably won't shed any light on this right at this point, but --

Ms. McPherson: Okay, some of them are standard that they'll be initiating with the one-year period, that BMPs will be utilized, the comments from Public Works will be followed -- Water Supply. Oh, number five might be of interest, "That the applicant shall appropriately notify all future owners of the residential subdivision that the site may be subject to potential flooding."

So basically they should have been warned when they purchased the property that there could be flooding. And to my knowledge, they are. It's quite possibly, you know, connected with the deed somehow.

State Historic Preservation had requirements. They need to meet those. That it would conform to the Shoreline Setback Rules and Regulations. There was an indemnification. The SMA is not transferrable. That final construction plans for drainage, rights-of-ways, sewage disposal, grading the roadway, and utility improvements shall be subject to review and approval by appropriate State and County agencies. So the one that was removed was no. 12, "That a consolidated secondary sewage treatment plant facility shall be constructed to service the entire 40-lot subdivision in lieu of a septic tank seepage pit system on individual lots." And then the 13th one was that three improved beach -- public beach rights-of-way shall be provided. There's a public parking area. And according to that final map, all of those requirements were met.

Ms. Buchanan: I have one more question. Between the east access from the project site to the west access, how many meters in between is for public access?

Ms. McPherson: Well, that's a really good question, Lori, and I don't know the answer to

that. So could you restate that question?

Ms. Buchanan: I was just wondering since most of the access seemed to be at the west end of this subdivision, the project lot in question, you said that there was maybe one public access east of the Goodman project site.

Ms. McPherson; Yes, there's that driveway that angles off to the side. Actually continues, and there is supposed to be access around the top edge of the subdivision but -- you know, and then that's basically a floodway over there. So, you know, that was what was originally approved by the County back in 1981.

Ms. Buchanan: Okay, so from that point, the next access is not all the way down to probably the Kimball's residence?

Ms. McPherson: It's down -- yeah, by -- yeah, no, before there. It's -- I think it's Jerry's house?

Ms. Buchanan: Johnston?

Ms. McPherson: Yeah, Johnston, yeah.

Ms. Buchanan: So the Goodman -- the project site, is that next to where the other person came in some years ago for a permit for a swimming pool?

Ms. McPherson: It's right next door.

Ms. Buchanan: Right next door. Is there any existing -- I see the wall in the photos that you took. And the wall that is directly abutting the property, that's still -- they did not lessen the height of that wall after all that controversy from before with the swimming pool?

Ms. McPherson: No, they actually got exempted.

Ms. Buchanan: So the next door project site swimming pool got exempted?

Ms. McPherson: Yeah, not by me.

Mr. Chaikin: Do the other Commissioners have any questions, concerns? Alright, hearing none. It sounded like, you know, there was a number of big issues. One was the wetland. Another was flooding. We had public access issues and we had wall issues. Just taking the first one -- wetlands -- when you go look at that lot, does it look like there's wetlands on that lot?

Ms. McPherson: No.

Mr. Chaikin: Thank you. In terms of the walls, we see that there actually are walls on the property. What's the deal with those walls? Is that -- who built those walls and why are those walls on that property?

Ms. McPherson: I was told that those walls were built by a previous owner quite a few years back probably at least ten years back. And in consultation with the Department, it seems that we weren't doing SMA assessments back then. If it met the code and basically didn't require a building permit, they could just go ahead and build. Now, if it's in a flood zone, it has to meet certain height requirements and flow-through drainage requirements. I haven't gotten all the specifics on that issue, but the way I look at that wall is it's low, and then it has columns going up. The driveway goes in front. There's a CMU wall on the other side, on the mauka side, you know, towards the highway. But my sense is it will channel the water running down there until it gets to their driveway, and then it's gonna come across their property. It's also going to keep going towards this kind of receiving area on the top, that remainder parcel, which is actually a floodway, in a floodway. That's why that parcel was not allowed to be developed. It's actually a drainage easement there. So my sense is that the water will flow down the driveway and go out into the drainage easement area. I'm not an engineer. I don't know that for sure, but as a professional Planner, that's my assessment.

Mr. Chaikin: Alright. Thank you. I think the other issue was the flooding thing. And you did mention that between our last meeting and this meeting, they did get a specific flooding permit or what is it called?

Ms. McPherson: Yeah, they got a special flood hazard area development permit. So based on their drawings, which you didn't get copies of all of that, unfortunately -- and I didn't get copies for you. I apologize, but they are ten feet above mean sea level. The bottom of the house is ten feet above mean sea level. The base flood elevation there is three feet. So they're meeting all of the FEMA flood requirements and the County basically signed off on that special permit that they needed because they are in the flood zone.

Mr. Chaikin: Okay. Just out of, you know, just so we have a better understanding of this whole thing, I think last time, we got a very good explanation from Thorne about building in floodways and flood areas. But what I didn't really get or I didn't really understand from all that is that is it normal and ordinary to be building in these flood hazard areas? Like this is in '82. Is that correct?

Ms. McPherson: Yes.

Mr. Chaikin: Like, do we normally do that all around the islands, or is it just something

that's really out of the ordinary?

Ms. McPherson: It's done quite often. Any time people have lots where -- they can't really get out of the flood zone, so their mechanism is to meet the base flood elevation and meet the specs that are told to them by the County, which is implementing the Federal regulations and the FEMA flood program. The idea being we want people to avoid property damage, loss of life, that sort of thing. So the ideas that -- now, Thorne knows the actual calculation, but they're not allowed to exceed a certain level of displacement of water. So whatever they build, as long as that structure does not displace X amount of acre feet of water from the property itself, then they're allowed to build it.

Mr. Chaikin: Okay, thank you. And the other thing that I had brought up at the last meeting is that, you know, when people fill in flood areas, we, as a Commission, we need to look at the stuff and feel good about passing this thing through. And one of the things we like to look at is -- well, here is the base flood level. And I can see they're building the house way above or the required amount above that flood line, and we really didn't see that on the plans. Is that something they submitted to you and the County to be able to get this permit or --

Ms. McPherson: They have to submit it to the County. They submitted it on Maui. And that's some of our challenges that some information goes to Maui, some I get, some I don't get. So we're working on improving that information transmission process but -- yeah. So Francis Cerizo or someone that he has trained is reviewing these applications to make sure that they meet all the flood zone requirements, and that's what happened to it.

Mr. Chaikin: Okay, thank you. I'm gonna give the public an opportunity. Is there anybody from the public that has any testimony that they wanna present on this particular agenda item? Does the applicant -- did you have something that you wanted to present? I mean --

Mr. DeGray Vanderbilt: Aloha, Mr. Chair and Members of the Commission. My name is DeGray Vanderbilt. I just had a couple of questions. The public accesses, they say there are three. And I don't know. If they're not clearly marked on the road then they should be. Somebody ought to make sure that they're clearly marked. I'm not that familiar with that area. I think Nancy did a tremendous followup job on this in a short notice. And -- but I'm still confused about this floodway. And if you go out there near Kawela along the road and you see all these walls that are solid walls. And the sheet flow comes down. It hits them and bounces down the line until it finds a place that doesn't have a wall, and then it goes in. So I don't know how -- I can understand building something so the water can get under like a house, but it seems to defeat the purpose if you then allow somebody to put a solid wall along the perimeter of their property. And -- but that's just my lack of understanding of the whole flood thing but -- so anyway, those are just a couple of comments I had.

Thank you.

Mr. Chaikin: Thank you, DeGray. And, yeah, walls are a big issue and we might put that on our -- one future agenda where we can discuss that at length and see if there's some recommendations that we can set forth on that. I know Nancy's gonna be giving us some more information on that, so maybe we can take a look at that and make some decisions, if you wanna take it any further. Commissioners, do you have anything else? Commissioner Feeter, go ahead.

Mr. Bill Feeter: Thank you. Two things that I'd like to mention and one is the old Latin term, "caveat emptor." And for those of you that are not conversant in the Latin language, it's "buyer beware." Is there a clause in either the Zoning Department or -- I know possibly Realtors, but were these people apprized of the building problems that they would have? Secondly, I can't support any building at this date along the shoreline. Now, that may seem hypocritical, but it's gotta stop somewhere. And I can't support any shoreline development now or in the future until such time as the watershed vegetation has been restored mauka. The issue here is flooding, and wetlands, and environment. And for well over 200 years, we've been watching the lowland forest be decimated and with the result of all these flooding issues. And the GPAC and the Waterworking Group, they've come up with some really concrete evidence that we got to restore the vegetation mauka. And that vegetation is responsible for increased absorption into our aquifer. It's agreed by those from the Water Department that our aquifers is in trouble. And that has got to be changed. And I think this is a turning pointing right now. Thank you.

Mr. Chaikin: Do the other Commissioners have any comments? Commissioner Buchanan?

Ms. Buchanan: I'm sorry. This might have been one question for Planner McPherson, but on the shoreline setback determination, it was based on average lot depth of 108 feet. And so the calculation was 40 feet. Are they just going to the 40 feet or are they past the 40 feet setback?

Ms. McPherson: They're actually in the -- the representative here might wanna answer that, too, but they're actually five to ten feet further inland than the 40-foot setback. So they do actually meet and exceed by a, you know, relatively small margin. But because of the configuration of the lot and etcetera, I think they did the best they could.

Ms. Buchanan: Okay, so, where, Nancy, at what point does the highwater mark come in with the determination instead of just taking and averaging out an offset lot to come up with your setback?

Ms. McPherson: Well, I did a site visit to the lot. The shoreline was certified and that

setback was measured from the State certified shoreline.

Ms. Buchanan: What was the date of that certification?

Ms. McPherson: At the time they submitted the application, it was current. So if you'll give me a second, I can look up --

Ms. Buchanan: I just needed to know that it wasn't no 1979 --

Ms. McPherson: Oh, no, no, no. It has to be current at the time they submit the application or at the time that we, you know, begin processing.

Ms. Buchanan: Okay, thank you. The 1979 Watson Lee Inc., Hydrological Report and Drainage Report is very inadequate. And that has nothing to do with us now, but in order for me to point out that it's very inadequate on the record. And I agree with Commissioner Feeter about long term impacts to the general area. But getting back to these people who wanna build a house, I guess I have questions then, for the applicant, and I'll address the applicant.

Ms. Laura Kapuni: Laura Kapuni. I'm not the applicant. I'll represent him as best I can and I'll answer all the questions you have to the best of my ability, but I just want to clarify that.

Ms. Buchanan: We need one table over there for our papers.

Ms. Kapuni: Okay, and just to clarify the zone for the flood, it's A4C, not 2, so I think that makes a difference. And for Commissioner Pescaia, the last time I couldn't answer your question about the garage. It is 14 feet mauka of the shoreline or of the flood zone area. So that's why they can make it a concrete foundation.

Ms. Buchanan: Okay. It's Laura, yeah?

Ms. Kapuni: Yeah.

Ms. Buchanan: Okay. Laura, these people, are they familiar with Molokai or have they been residents here in the past?

Ms. Kapuni: They have not resided here, but they do come and visit and they do stay on a rental where they live or close to where they're building their home.

Ms. Buchanan: Do you know if they have any future plans for any future excavation for a swimming pool or anything like that?

Ms. Kapuni: Absolutely not. It's just a single family dwelling. It's just the house and the garage.

Ms. Buchanan: Okay, so besides the normal digging for drainage, and pipes, and that type of stuff, I didn't see at what depth you guys are digging down to for laying foundation except I saw some cement work. It would be my recommendation because Kawela is a historical site, regardless of what the SHP, which is Historic Preservation, they did an arc. study way when the subdivision was done. I'm familiar with that arc. study. What had been recommended in that past was that an archaeologist or someone that the Commission was satisfied with their credentials would be onsite at the time that excavation was taking place. That might be one condition that -- to this project. You think they would be --

Ms. Kapuni: We did bring people there on May 30th '08 from the State of Hawai`i Department of Land and Natural Resources. And they said that "The aforementioned permit for the single family dwelling," it does not -- or it passed. It basically -- let me see. "We believe that no historic properties will be affected because the residential development urbanization has altered the land, and previous grub and grading has altered the land. And based on pictures of the project area, it just appears to just be --"

Ms. Buchanan: Yeah. And with respect, Laura, I hear that all the time. I don't believe it with respect to DLNR and also to the State Historic Preservation Division, it's been my experience that, you know, although they say stuff like that, it's really -- they're not here to really follow through with what they do. So I just saying that in Kawela, in the whole district of Kawela, was one of the most historical sites. This Commission is charged with the responsibility of protecting the natural area and historical sites of Kawela as well as any other place in Hawai`i especially, on the shoreline. That's why we have purview over shoreline management rules. So besides the setback, do they clearly understand what they getting themselves into?

Ms. Kapuni: The only kind of excavation that will take place will be for the footings which is 12 inches max -- actually, 12 feet. Sorry. Sorry. Oh, and also for the individual wastewater system, we are installing it and that is mauka of the garage, so that is outside of the flood zone. And it's gonna be dug -- they're gonna dig it up, excavate for the individual wastewater system, and then it's gonna be filled. So there will not be any mounds. I think that was mentioned at the last meeting, but there will not be any mounds on this property.

Ms. Buchanan: Okay. I guess the point we trying to make, Laura, is that this Commission had issues in the past with building in the Kawela District. And we're trying to operate within the legal ramifications that we have set and our rules and regulations, but it also within our purview to put conditions on the project. So I going give -- sure it is. We can put conditions on any project.

Mr. Chaikin: Well, we're gonna -- what they're asking for is an exemption. And so they would be exempt from the SMA permit process so we wouldn't be issuing -- if we issue a permit, then we could put conditions on the permit.

Mr. Michael Hopper: You're exactly right, Steve. If it's an exemption, that means it's not a development. So 205A does not apply to it at all, which means this Commission doesn't have any jurisdiction over it. If you make a decision that this project is a development, then you would have the ability to put conditions when they came in for the SMA permit. But because of the way your rules are, you first have to determine if this is a development or not as presented to you. And in making that determination, you're pretty much limited to what they're proposing right now. If you believe that what they're proposing should be defined as a development which would require an SMA permit, then you would be able to put conditions, but there's no basis to condition an exemption. The one thing that sometimes happens is that the applicant with the Planning Department changes the design of their project. They come in with one design. They're going to do "X." The Planning Department says we have some concerns. They say, okay, we're going to do "Y." We're gonna build our garage outside of this area. We're gonna resubmit our plans. This is what we're going to do. And then you have a different project. What you're assessing is the project before you if you believe that's a development or not. And if you believe it's a development, they've gotta come in for an SMA permit. And you've gotta issue your findings of fact, conclusions of law, showing why you believe it is a development. If you don't believe it's a development, though, then as Steve said, there's no basis for conditions because it's exempt. It's not something that -- it's basically something that you have no review power over in that situation, but you've gotta make that determination first.

Mr. Chaikin: Mike, while you're up there, can we just ask you -- let's just say that they did have to go get an SMA permit. What additional burden would that be for the applicant?

Mr. Hopper: Well, I think Nancy would have more details, maybe even Thorne. I think they'd have to get an SMA major permit. They'd have to publish in the newspaper 30 days in advance. And they would have to do a variety of other things. I don't handle exactly, you know, what goes into that, but I know that it would be a major permit since it's, I think, valued over \$125,000. I think Nancy could speak to that, or Thorne, a little bit better than I could, though.

Me. Chaikin: Could you, Nancy, just for our own knowledge?

Ms. McPherson: The way our -- your SMA rules are written and the way that Chapter 205A reads, single family homes are, you know, defined as not development. Now, the question before you is, do you concur with our assessment of the ecological impacts and -- environmental impacts and ecological -- what is it, Thorne? I always forget the wording. You know, could the project as proposed create significant environmental impacts and what

would you base that on. So there needs to be facts that you base that on. I'm recommending that it be exempted because in my review and analysis, those impacts have been assessed, responded to, and mitigated below the level of significance. Now, if you make that determination, then the applicant has to come back in with additional information, notification materials. They have to, you know, notify neighbors. Is that correct within a 500-foot -- yeah, would you, Thorne, help me out here? And there's a public hearing so --

Ms. Buchanan: And I have a question since Thorne is coming up. Would a significant impact be raising your neighbor's property taxes by changing the percent within one year?

Mr. Thorne Abbott: No. What you want is environmental or ecological impacts. Thorne Abbott, Coastal Resource Planner. Always nice to be here. To answer a couple questions: What the applicant would have to do for a special management area major use permit? They would have to make an application to the County. I'm not sure what the fee is. That would be transmitted to agencies. We'd collect the information. We'd submit a report to you. They would have to notify -- first off, they have to put an ad in the paper that they made the application. Then they have to put an ad when it's gonna be on the hearing docket for you folks. Then they have to notify all landowners within 500 feet by certified mail. So there's three notifications which is somewhat burdensome on an applicant. It could be costly. Then we'd have the same discussion we're having now. And you can put conditions on that project. In order to decide if a single family residence is having an adverse impact and needs to be bumped up to a major, you have to have some measurable ecological, environmental, or cultural impact that was not avoided. For example, Commissioner Buchanan, they are avoiding the shoreline setback area by moving out of harm's way more than 40 feet which what your rules requires. Their meets flood development requirements by fortifying their structures that are built in the flood zone. So that mitigates their impact. They may be having an impact, but it's mitigated cause they meet the requirements of FEMA, the Federal Emergency Management Agency guidelines. So you'd have to find some hook that they're -- you mentioned Historic Preservation. They're gonna be digging in the ground. SHPD basically says if you have an archaeologist onsite, that's okay. That's mitigating your impact. And you might discover some bones there. That archaeologist is there so that they can take actions that's appropriate to preserving that burial. That mitigates their impact.

Mr. Chaikin: Thank you, Thorne. While you're up there, let me just ask you one more question. I know we should be looking at it whether or not there's significant environmental impacts. But the other thing is really a cumulative impact. Does this project have a cumulative impact? And I never really could quite understand that because, you know, what are we looking at? Like when you look at the straws on a camel's back, there's ultimately the last one that's gonna break the camel's back. But it's all the straws in there that have a cumulative impact that finally will cause the thing to break. So how do you -- how are we, as a Commission, supposed to look at cumulative impacts when we look at

something like this project?

Mr. Abbott: There are actual frameworks for evaluating cumulative impacts. However, a good way to think of it is, as Commissioner Buchanan pointed out, and DeGray -- Citizen DeGray Vanderbilt explained it in the past, let's presume that everyone builds a wall, a privacy wall, in their front yard and their side yard down by the shoreline. And everyone does that all the way down that subdivision, and you get to the last home, and that's the last shoreline access point, that would be a cumulative impact. They're gonna close off the access. So when you evaluate this subdivision in the first place, you don't think of it as individual homes one at a time. You have to think of it as the whole project. Do we want walls all the way down and no beach access? Of course, you don't. So one of the conditions of the subdivision approval was that beach access was provided. Our subdivision law actually requires beach access every 1,500 feet more or less. So that's a cumulative impact. Now, it's pretty hard to say, well, you're the last person building and you're taking the last of the view or the last access. Well, that should've been evaluated in the original subdivision, not at this late date.

Mr. Chaikin: Alright. Thank you, Thorne. Does any other -- you have -- Commissioner Buchanan?

Ms. Buchanan: Where's the water coming from for this house? They're not on the County line, right?

Mr. Abbott: I will say one more thing, if I may about cumulative impacts, if I may? When people build houses and elevate their house by putting a mound in, that can cause additional flooding at the neighbors. The flood zone regulations require that if you're gonna flood your neighbor by more than one foot, then that would be a cumulative impact. And you can't actually get FEMA approval to do that. You can do less than one foot, but not more than one foot.

Mr. Chaikin: Okay, thank you.

Ms. Buchanan: That's next to impossible to determine.

Mr. Abbott: Well, an engineer does that, theoretically.

Ms. McPherson: To respond to the question about the water, it's the Kawela Water System.

Ms. Buchanan: Okay. Do we have a letter from the Kawela Water System to say what their current state of water is and their ability to continue to provide water for development in this subdivision?

Ms. McPherson: No, we do not. The assumption is that the property owner realizes that they have to secure that approval for water service. And if they don't, then that's kinda their problem, you know. Do you have any information on the water? No? Sorry.

Ms. Buchanan: Yeah, I guess the reason why I ask is we've been involved in the Waterworking Group meetings going on which is now continued to the County of Maui. Reports by the Kawela Plantation seem that there may be a water concern. And so on behalf of the subdivision, I would be concerned whether I would be having to provide this water. In absence of maybe somebody bird-dogging their water situation at Kawela, it would probably be up to us to find out that information if they had adequate water supply for all the development that is going on there currently.

Ms. McPherson: Well, my understanding is that the Kawela Association manages -- you know, they interact with the people managing the water system. That water system was -- you know, when it was designed, I'm not sure exactly, you know, which came first, but that subdivision should have been taken into account at build-out, you know, as part of that system, as being served by that system. So they need to evaluate that. If they have users who are using an exorbitant amount of water, then they're going to have to conserve, and they're gonna have to limit how much water they use so that everyone has water. That's really the responsibility of that system and the people who are managing that. I think it's wise for the Commission to be aware of these issues and to ask questions. That's helpful to me as a Planner. That's helpful to the public. Again, if I had been able anticipate that question, I would've asked someone from that system was here to respond.

Ms. Buchanan: Thank you, Nancy. I guess it's just with the concerns that the West End residents are having right now with their water distribution from a public utility company, you know. And now with them just saying I'm gonna throw this problem on the State of Hawai'i, that doesn't seem too fair to me, but I think maybe from here on out, all the projects should have certificates or letters from their water provider saying that they are adequately -- they have sustainable yield for their project build-out.

Ms. McPherson: I'll make a note of that, Commissioner.

Mr. Chaikin: Thank you, Commissioner Buchanan. Anybody else have some concerns they wanna bring up?

Ms. Lynn DeCoite: Yeah, Nancy, you know, I just wanna make aware also that within the Waterworking Group, Bob . . . (inaudible) . . . has been more than instrumental in providing a lot of that information being that he's a resident of Kawela. You know, and with everything that's happening, I kinda wish actually the Goodmans were here in person because they need to hear this. We shouldn't have to go through every year of other people conserving and so forth. We know what the well situations are, water allocations,

and salinity so far. But we really need to look at build-out. And actually, build-out is way before the norm of these levels because when these people build their houses, they start putting in extensions. And it's an understanding between the County for permits and so forth, but it's also -- I would like to look at it as common since that I've seen this happening enough times. And I'd like the Goodmans to hear that also that they need to be mindful of what is going on right now. So it would be a good idea to have them here.

Ms. McPherson: Yeah, if the application is for an area that's served by the County water system, then, you know, at that time, we do send it out for review and comment by the Department of Water Supply. Our challenge here on Molokai is we know we have a lot of private water systems, but I will take it under advisement that I get comments from those water systems themselves assuring us that those folks will be covered. I'll do that from now on.

Mr. Chaikin: Thank you, Nancy. We're gonna have to wrap this up fairly soon cause we have some other stuff on the agenda, but I just wanted to give the public one last chance. I know there's a couple of people out here that wanna say something. So if you could just keep it kinda short, then we'd appreciate it. Thank you.

Mr. Nat Bacon: Nat Bacon speaking for myself. Last week I asked the question about whether this is all part of the same subdivision and if that would apply to the SMA thing. And then this handout that we have now with special management areas, 205A-22, on the second page there, it defines development. And the first thing is construction or it says, "Development does include the following," which is what's been touted here, "construction of a single family residence," but that's only part of the sentence. The rest of it says, "that is not part of a larger development." The question I had before is this larger development, the existing subdivision? And that's the question I have.

Mr. Chaikin: Thank you. Is there anybody else? Did you wanna say something and then maybe we can try to address this?

Ms. Zaidarene Kalipi: My name is Zaidarene, but call me Toochi Kalipi. The reason why I'm saying something about the water is because whatever West End is using, it's sucking up our aquifer too. You know what I mean? And that's when we going start drinking salt water, you know. And we don't want that here. And Molokai is such a small island. And we gotta be careful because we don't wanna be like O'ahu. They running their darn sewage pipe in the middle of the street. And, you know, we gotta be careful with what we doing and undo what is wrong. Thank you.

Mr. Chaikin: Thank you. Is there anybody else from the public? Does anybody have any concerns or questions about any of the testimony we heard from any of them?

Ms. Buchanan: I would like Corp. Counsel to try and address his question about part of a larger development.

Mr. Hopper: Okay, in general, I get into the question. If you wanna get more specific as far as how it applies to this particular project, we'd have to go into executive session to discuss that because that involves legal advice on this particular project, and we haven't done that before, but that's actually pretty common for attorneys in giving legal advice on a particular project. But for a -- I do not believe that for something to be "part of a larger development" that if there's a single family home being built because it was part of the subdivision, that means it was part of a larger development because logically then, about every single family home in the entire State of Hawai'i would be required to get an SMA permit, and the single family home being defined as not a development would have absolutely no legal effect. Because at one point or another, just about every home is part of a subdivision. Now, when a subdivision actually occurs, that in itself is a development that requires an SMA permit. This project actually got an SMA permit at the time it subdivided. And if someone wants to build maybe five homes at the same time in perhaps a condominium project -- I actually gave you an opinion from our office that that -- for the Montana Beach situation that if you're dealing with a condominium property regime where all the properties are constructed at the same time, have to be constructed at the same time, then that can be considered to be the larger development in that situation. However, building one home in a subdivision that was subdivided earlier or at some point, I do not believe based on the law that there is a basis for saying that because something was subdivided at some point in history that it's automatically part of a larger development because it would appear that every project that comes before you that's a single family home would require an SMA permit. And that that exemption in the code would have no meaning. So that's my opinion on that issue. And we can get into a bit more specifics as far as legal advice I give to you. The purpose of an executive session is basically that a Planning Commission has the same right to confidential legal advice that a private individual, company, whatever would have. So if you want some further clarification, I have no problems with doing that and going into an executive session.

Mr. Chaikin: Does anybody have any followup? Any Commissioners? Satisfied with that answer? Okay, so anybody have any final comment? Okay. Let me just say that, you know, we've gone through this whole thing for a couple meetings now, and I think we've gotten a lot of good information that's come out. We found out that, you know, there's a problem with walls. Lori brought up a good point with the water that we should be requiring water. I think Commissioner Feeter came up with some legitimate concerns about the coastal area. But right now, we have a set of rules. Okay? And our job as a Commission is to follow those rules whatever those rules might be. Now, another part of our job is to -- if we don't like the rules, to try to change the rules. Okay? So -- but the rules that are existing, in existence today, it's our responsibility to follow those rules. So anyway, at this time, we should really try to make a decision on this and move on. So does anybody

wanna make a motion? Commissioner Buchanan, do you?

Ms. Buchanan: I'll make a motion for discussion sake even if we change that motion. I move that we not exempt this project.

Mr. Feeter: Second.

Mr. Chaikin: Okay, we have a second by Feeter. Any discussion on this? The Planning Department is asking that we exempt this so they don't have to go through the SMA process, permitting process. And so, that's the motion. It got seconded. And now we can move into the discussion phase.

Unidentified Speaker: . . . (inaudible) . . .

Mr. Chaikin: Right, to not exempt, to not concur with the Planning Department. Any more discussion on this?

Mr. Hopper: Mr. Chair, just to note in order to do that, you would have to come up with your findings of fact and conclusions of law. That's in your rules. So you would -- I'm not sure if Nancy's prepared a draft. No, she hasn't. Okay. So you'd have to do that on the record right now. You'd have to basically go over all the facts of record that you believe would indicate on this particular project that it is -- that it has the -- well, the language that we have adverse environmental effects, essentially. I can read that language to you more specifically. And then you have to do conclusions of law which basically link those facts to the legal basis for believing that this is a development. Basically say, due to this fact, we believe there would be, for example, adverse environmental or ecological effects on the SMA in this particular case.

Mr. Chaikin: Thank you, Michael. So, yeah, but we're in the discussion phase. So part of the whole discussion, if this is gonna be upheld, we need to get those things out before we even vote on it is find out what our conclusions are, why we're making this decision, and the findings of fact we might have. Do you have anything you wanna follow up with that?

Ms. Buchanan: Yes, I am. I'm prepared to address that. Number one, if you -- if Corp. Counsel is advising that if we exempt this project that we cannot put conditions on this project, then that's the reason why I'm not in favor of exempting this project. If the homeowner would be obliged to accept conditions, and I don't know if we can do that with Corp. Counsel. He making eyes already. But this is the reason why. I feel that every beach lot in Kawela, maybe even not in Kawela, but each shoreline development should have a mitigation that what they're gonna do if they found ancient Hawaiian burial sites. There's nothing in the SMA or in the subdivision that addresses that issue. That issue has come up twice before with house lots in Kawela. I think at a certain point, it needs to be

addressed. That might be as simple as having someone with some knowledge of archaeological whatever onsite during digging only. Okay? So this can be really simple, but, you know, if -- right now, people have a sense when they gonna move into an area on Molokai that certain conditions that they gonna have to abide with, then maybe this is a point that we going have to do this. Same thing with the water issue, yeah? It would be the same thing -- a condition -- that letter would state from the water provider to the project person that adequate water is available, and a certificate from either the Department of Health or whoever that those systems are intact.

Mr. Chaikin: Thank you, Commissioner Buchanan. I heard you say three different things. One, you were taking about conditions. That we couldn't put conditions on with the exemption. We can't base our if we don't concur with their exemption, we can't base it on the condition part. But then you came up with cultural. That there's insufficient cultural protections basically, for that lot. And that's something that, you know, that we do need to take a look at. And she did come up with a letter. And as you reiterated, you thought that was insufficient from your past experience. The other thing you brought up was the adequacy of water. We don't -- there may or may not be an adequate amount of water. We didn't get any letter to confirm either way, so we don't know. So at this point, you know, it would be hard to find a finding of fact with the water because we just don't know. We don't have a letter. We do have the letter on the cultural thing, which -- is that in our packet? See, cause the thing is, if we make this decision, we have to base it on something. So we would have to read that letter and say, you see this statement here? We don't concur with, you know, the conclusion of this letter or something. We have to be a little bit specific as far as why we're rejecting this, I think. So do we have that letter -- the cultural thing?

Ms. McPherson: No, I didn't include it in your exhibits. I apologize for that. But in the determination letter, there is an item that discusses that State Historic Preservation stated that because of the condition of the lot and the proposed activity that they, you know, felt that there would be no effect. But then there's also language that goes into that letter to the applicant that in case that anything is uncovered that all work shall cease immediately and that they will contact, and the phone number's in there, that they will be contacted. Now, my sense from Commissioner Buchanan is that she feels, and I don't mean to speak for you, but that that may not be happening on Molokai. And so that is a problem. That's a significant problem, if people aren't doing the right thing. Okay? We do have a copy of the letter here. "No historic properties will be affected because residential" -- this is dated May 30th 2008. "Residential development --" but I contacted the archaeologist prior to this and got this information via email from her. "Residential development and urbanization has altered the land. Previous grubbing and grading has altered the land. Based on pictures of the project area, it appears to be filled." So her statement, this statement, means that there is actually a layer of fill that would be over any possible archaeological remain. Now, we don't have a record of -- again, people fill, and we don't have a record of it. So that's

another challenge we have. But if it is fill, which my sense was that, you know, there is a very good possibility that fill was brought in there that that would actually be a layer over any archaeological remain. You know, this letter is from Nancy McMann, Deputy State Archaeologist. And for the Planning Department, that's sufficient for us, but I respect the concerns of the Commissioners that are concerned, and the people of Molokai who are concerned.

Mr. Chaikin: Do you know where they got the information that they based their letter on? Did they do a physical site visit?

Ms. McPherson: I transmitted the application to the archaeologist.

Mr. Chaikin: And so how do they make their determination?

Ms. McPherson: They have a data base and a GIS. They bring up all of those layers. They look at their records to determine, you know, if there's ever been any sites assessed. They review the archaeological survey that was done when the subdivision was created. And I think the point being that, you know, those -- all of those cultural impacts should've been assessed at that time and mitigated when the lots were created. Keeping in mind that, you know, there's archaeological resources all over this island. There's burials everywhere, sandy areas, especially. And we have to be really, really careful. So that's why I -- you know, I always work with applicants to try to emphasize that they need to be hyper aware. What I haven't gotten to are the contractors themselves. And I think that may be an area that needs exploration to do education for the people who are doing the work. I've had conversations with Commissioner Williams about this issue on the West End and how, you know, he's very supportive of being respectful of archaeological resources, but a lot of times folks aren't even licensed, you know, so it makes -- it's really challenging.

Mr. Chaikin: Thank you. Are you satisfied with where we stand and --

Ms. Buchanan: I'm very sympathetic. If that was my lot and I wanted to build a house, then I have the right to build a house. Okay? But at the same time, I feel that this community can give certain conditions to a landowner especially, when they're not from Molokai. They have no idea of the area they're building in. And they only have representatives that show up at this Commission to make the plea on their behalf. It's very difficult to get a message across to people who just aren't in front of you and listening to you. And if it needs to go through an SMA in order to make a condition whether how small or however it is, then maybe that's what needs to be done. I mean, I feel really bad, you know? Why not let them build a 2,000 square foot house? I mean, that's their land, you know? If it was my land, I like build'em too. But when you have an SMA application, at least you can say this Commission doesn't favor swimming pools abutting an ancient fishpond, you know, that obviously have cultural significance, and stuff like that. When you exempt

a project, you just cannot say nothing at all. You just say, yeah, it's cool. Do whatever you like, you know? As long as you don't go 40 feet from the shoreline, we no care. I walked that shoreline right next door at the time of the swimming pool fiasco. And it depends on what time of year you draw your shoreline conclusion by your highwater mark and your vegetation is where you come up with your calculation, and that's it. Mike has something to say. Go ahead, Mike.

Mr. Hopper: Mr. Chair, it's just that -- well, when you grant an exemption, it's not granting them right to build whatever they like. It's the right to build under their -- what they've submitted to you, what they've represented to you, they're held to that. Okay? If they change what they are doing, they didn't get an exemption for that change, therefore, they're subject to penalties, fines, and in violation. We've had that situation happen before on Maui. We're evaluating some projects with that. If they get an exemption, they're only exempt from what they have told you they were going to do. And if they change their building plans or if they change something, then essentially, they're doing a proposed action that has not been assessed in that situation. That's my interpretation of the law. It's true you can't condition -- you know, condition the project. I don't know if there's something you could do where the applicant agrees to withdraw and resubmit different plans, or to actually alter their plans. But something like an archaeologist onsite is a condition that's a lot different to me than if you're to build your wall here versus you're going to build your wall here or the wall will be four feet. If they agree, okay, the wall will be six feet. The problem is it's very difficult. First of all, your rules don't say you can put conditions on it. For SMA permits, it says you can put conditions on it. For exemptions, it doesn't say that, so you can't put conditions on it. Also, I'm concerned with your ability to enforce a condition dealing with an archaeologist onsite because it's sort of an affirmative condition that requires them to do something versus something like their wall is going to be in a certain place or not in another place. So this is why we've had, you know, the positions. Obviously, this isn't the first time this issue has come up whether or not you can condition an exemption. You've got to evaluate this project as it's put before you. If you do believe that it's got these impacts, and you make the findings and conclusions, then you're well within your jurisdiction to require an SMA permit. That's exactly correct. But it's the rules that you have to follow right now. And you need to determine whether or not this project as presented has those types of impacts that you're concerned with and come up with the basis for that. And if you find that basis and you believe that then, yes, you can require them to come in for an SMA permit.

Ms. Buchanan: Mike, question -- two months from now when they wanna build a swimming pool, is that exemption gonna come up before us as well, hypothetically?

Mr. Hopper: It would have to come before you and you would have to review that. I mean, the way the SMA law reads is that if they do any proposed action in these areas, they've gotta come to you for a permit. So if they add on things that would, you know, and with

you guys versus Maui, if it's an exemption, it's gonna come to you. Maui, an exemption, would not come to their Planning Commission though they would get notice of it. But for you guys, if it was any proposed action that would be -- that are pretty broadly defined, that would have to come to you as an exemption if they were gonna build a swimming pool, another shed, or something else that's also in the special management area.

Mr. Chaikin: Thank you.

Mr. Don Williams: Can I ask a question? Nancy or Mike, either one, isn't it -- if say we did require an SMA, isn't it more than likely gonna come up with the same result being that the old subdivision had the SMA, the archaeological was previously done? What I'm getting at is I don't see this redundancy and keep going stalling things when it's gonna end up in the same result. I think ultimately what's gonna happen, even if you require this, and if I'm not mistaken, is you've just caused them some more delays. You're gonna make them spend some more money. And ultimately, more than likely, the Planning Director is gonna come up with the same findings.

Mr. Hopper: Well, an SMA permit, again, you're the final authority on that. So I can't speculate on what would happen with that. That would be up to the Planning Commission at the time. And you do have different standards to evaluate it under. Most things do require SMA permits. This one initially does not because it's a single family home. That's a specific exemption. But if you have -- make those findings, the SMA law was amended some time ago because they realized there could be single family homes that have adverse environmental or ecological effects on the special management area. That's another important language. The effect has to be on the special management area. So that's the standard that you have today. The standard later on for a special management area major permit or use permit, as they call it, are different. I believe you have to find that the project as mitigated does not have that adverse impact. Or if that if it does have those adverse impacts, they're outweighed by other concerns such as the, I believe, economic development value, things like that. You have to do sort of more of a balancing act than you do now. So it's a different standard. You guys would review it. And you could place conditions on the permit, if you wanted to, if you believe they were necessary to mitigate the impacts of that development.

Mr. Chaikin: Okay, just to clarify, the only reason we would want them to do an SMA permit is so we could put conditions. Condition No. 1, you get an archaeologist there onsite while you're digging all your pits or whatever, or any other conditions that we might feel is important. Unfortunately, we can't just do that now with the exemption. Nancy, do you have something?

Ms. McPherson: Yes. Actually, this was first brought before you on May 28th. It's been deferred 'til today. Your next meeting is June 25th. Now, I have spoken to the

representative here. She doesn't have the authority to say yay or nay on behalf of the owners, you know, spending more money to do X, Y, and Z, but what we could do, if she thinks that's a good strategy -- I would advise it, actually, is to, you know, request this item be deferred one more time to allow her and myself to contact the owners, discuss these issues and concerns with the owners. And if the owner submits in writing assurances that there will be an archaeological monitor onsite, or whatever it is specifically that you folks would like that we get a letter from the water system saying that there's adequate water, and there won't be environmental impacts, you know, whatever would satisfy the Commission, and they're willing to add that to their application, then I can review that, resubmit that to you hopefully in your next packet, and give you time to review that. And then you can decide at that point if that project, that proposed action as amended, is now, you know, exemptable.

Mr. Chaikin: Alright. Well, thank you for that. Well, Commissioner Buchanan, do have any comments on what Nancy just said?

Ms. Buchanan: Yeah, I do. Thank you very much. I'd like to withdraw my motion. And I'd like to make a new motion. Okay. My new motion is to defer until June 25th to give time for Nancy to consult with the Goodmans to see if we can come up with a simple solution and amend that at that time.

Ms. McPherson: May I ask the Commissioner the specific changes that the Commission would like to see?

Ms. Buchanan: Specific changes would be to have when they do their large digging of the cesspool and other footings that will require some depth that they have somebody with archaeological experience present to mitigate -- to come up with a one-page mitigation plan which states how they going handle, who they going call, and it's already in the packet. There are people on Molokai that I think this Commission is comfortable with. That would suffice. And I can make that list available to you.

Mr. Chaikin: There's also the issue that you brought up concerning the water.

Ms. Buchanan: Would be nice to have a letter from the Kawela Plantation Homeowners Association as to their current water status and potential sustainable build-out, but that has nothing to do with the project in specific.

Mr. Chaikin: I think it does have anything to do with the project. Yeah. It's, you know, I mean, if they're already having difficulties supplying the homes they already have, it's problematic to be adding to that difficulty so -- Commissioners, is there anything else? Commissioner Feeter?

Mr. Feeter: Could we clarify their source of water? Is it County water or Kawela Plantation?

Ms. McPherson: It's a private system but, Chair, I think we need a second on the motion.

Mr. Chaikin: We're just trying to clarify what the motion was. She brought the motion up. She brought up two issues so far. And then -- I guess we could second and do a friendly amendment if somebody wants to add something else, but we're still kinda working on that.

Ms. McPherson: Okay.

Ms. Buchanan: I will add Feeter's, Commissioner Feeter's -- wait. Wait 'til our Planner's paying attention.

Mr. Chaikin: Nancy?

Ms. Buchanan: Nancy, can you just add to show where the water source is?

Ms. McPherson: Okay, water source. And they may -- I'm hearing they may already have a water meter, but I'll check on that. Okay?

Mr. Feeter: Chair?

Mr. Chaikin: Feeter, go ahead.

Mr. Feeter: If I may ask? Specify if it's Kawela Plantation source, or Maui County water, or thirdly, I don't think there is their own -- they don't have their own -- okay. Enough already.

Mr. Chaikin: Can I have a second on that motion? Okay, second by Commissioner Feeter. All those -- well, any other further discussion?

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

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

VOTED: To defer this project until the meeting of June 25, 2008, as discussed.

Mr. Chaikin: Okay, unanimous. Approved. Alright. Thank you, Commissioners. And thank you for everybody here for your patience as we wade through this. Yeah.

- b. **Ponce Addition - SMX 2008/0139 (SM5): 576 square foot addition (enclosure of ground floor level) at 1580 Puili Place, TMK: 5-4-011: 021, Kaunakakai, Island of Molokai. (N. McPherson)**

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

Mr. Chaikin: Now we have the -- the next item on our agenda is -- let me grab that here is the -- how do you say, the Ponce, the Ponce Addition? Ponce Addition. We have an addition to an existing dwelling that happens to be in the SMA so we gotta take a look at it. Nancy, you're gonna do a little report for us? I'll give you a little time to get your stuff out.

Ms. McPherson: Thank you, Chair Chaikin. I'm shifting gears here. This item is basically the enclosure of a ground floor level of a home previously constructed. It is in Ranch Camp. And it meets our codes and regulations. May I finish my -- what do you need, Bill?

Mr. Feeter: . . . (inaudible) . . .

Mr. Chaikin: Yeah, go ahead and finish, Nancy. And then we can ask if there's any questions.

Ms. McPherson: Okay, thank you. It would help if I could read it too. Okay. I just had a birthday yesterday. I won't say which one, but I'm depressed. Okay. It is not subject to the shoreline rules. It's a 576 square foot ground floor addition. There will be a restroom added. It will increase the living area. So there will be -- it's a habitable area. So it's conversion from a, you know, kind of storage and hangout area, shady area under the house to a habitable area. My guess is their family is expanding and they'd like to make a place for the family. The only excavation that will be occurring again is an expansion of the individual wastewater treatment system by one leach line. This has been reviewed by State Historic Preservation. Again, it's in a subdivision that was created. I did not research the Ranch Camp Subdivision, but I'm sure I will as soon as possible. And so we have determined -- we are recommending that you concur with our determination that this is not a development. The -- again, the State Historic Preservation commented that, you know, it's an already developed lot. That in case anything is discovered that all work should cease immediately. And also the usual best management practices, you know, all of the agencies, when they get their permit for their wastewater treatment system, they are -- you know, they get a lot of BMPs if they wanna get their building permit from Public Works. They're required to, you know, control dust and all that sort of thing. So we do have a lot

of best management practices in place. Whether or not they're implemented and whether or not anyone follows up with enforcement, you know, enforcement's been pretty good lately at least in town, in my opinion. So --

Mr. Chaikin: Thank you, Nancy. Commissioners, any questions? Commissioner Feeter?

Mr. Feeter: Thank you. This is a -- I need a joint answer. What is that area called? But it's not Ranch Camp.

Ms. McPherson: Oh, I'm sorry.

Mr. Feeter: Well, no --

Ms. McPherson: I don't know why I was thinking about Ranch Camp.

Ms. Buchanan: One Alii.

Ms. McPherson: Oh, yeah, yeah. It's at Kamililoa.

Ms. Buchanan: Kamililoa.

Ms. McPherson: It's Kamililoa. Sorry.

Ms. Buchanan: Where --

Mr. Feeter: Okay, from what I understand that there's the Heights 1 and the Heights 2, and yet the other explanation -- and I'm getting off the track. So shut me up if I get -- but within the Heights 1, there's ...(inaudible)... There's Kamililoa.

Ms. Buchanan: Okay, this would be Heights No. 4 all the way down past Hotel Molokai on the left. That's Puili. That's Puili Place.

Mr. Feeter: So you people that have lived here for 90 years, you tell me what the heck it is called then, just for our own edification.

Ms. Buchanan: Pano Place.

Mr. Feeter: Okay, Pano Place. Let's from now -- just for -- okay, secondly, getting down to the real issue is why is this coming up as an SMA? Because if we look at the map, only half, approximately, 60 to 70% of their property, is in the pink. And the other one is in the darker pink. I don't --

Ms. McPherson: The wastewater treatment system expansion is within the SMA. And because that's part of the proposed action, it triggers SMA assessment. It is determined to be exempt, however.

Mr. Feeter: Okay, thank you. That clears that up because it doesn't seem like it's a precise boundary. The third comment is that effectively, this is turning this house into a duplex. And is that appropriately zoned for that because now we have two kitchens and three baths, plus the bedrooms and the other living area?

Ms. McPherson: Yeah, my understanding is that, you know, per the Building Department review, per the Zoning, that they're permitted to do this. So it's consistent with the zoning, the community plan, etcetera, etcetera. It's, you know, either that or build an ohana. And this is probably a lot cheaper for them than to build an ohana unit so --

Mr. Chaikin: Commissioners, you got any other questions? I just have a question. Could you just -- like I don't understand the whole wastewater thing. Is there requirements that you have to have a septic tank or when do you have to have a septic tank? When do you have to have a cesspool? When do you have leach lines? Or --

Ms. McPherson: Cesspools. They're really not allowing new cesspools to be constructed any more. It's pretty much all going towards individual wastewater treatment systems. There are different kinds, different, you know, I think previously when we were reviewing the beach park upgrades, you know, the one at Papohaku had an aerobic thing, and the one at One Alii didn't, or I forget. It might've been the other way around, but anyway, so when they go in and apply for those, the Department of Health reviews it. The County reviews it. And they basically work -- and hopefully the person who's designing it for them knows the law, and knows the specs, the things that they have to provide. So, you know, it's reviewed. And basically, I ask for an approved wastewater treatment system before I bring it to Commission.

Mr. Chaikin: Alright. Thank you. Any other questions? Does anyone from the public wanna make any comments on this? Alright. Seeing none. Any further discussion? Do I have a motion on this issue? Commissioner Feeter?

Mr. Feeter: Yeah, move to approve.

Mr. Chaikin: Alright.

Ms. Buchanan: I second.

Mr. Chaikin: Okay. We've got a motion by Feeter to concur with the Planning Department. We have a second by Commissioner Buchanan. Any discussion?

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

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

VOTED: To concur with the Planning Department.

Mr. Chaikin: Okay, unanimous. Passed. Thank you, Commissioners. Okay, moving right along without delay -- I'll find my agenda. Alright. The next item on our agenda is an Orientation Workshop Part IV that's really been deferred from sometime ago. But let me just say I know we have some Commissioners that have time constraints that have to leave. And if there's no -- what I would like to do is move some of these Chairperson's Report items up while everybody's here so everybody has an opportunity to provide input on some of those before they leave. Is there any objection to moving some of the Chairperson's Reports up? Okay, seeing none. Then, let's move right over to the Chairperson's Report.

E. CHAIRPERSON'S REPORT

1. Administrative Rules of the Molokai Planning Commission

Mr. Chaikin: And Item No. 1 deals with Administrative Rules of the Molokai Planning Commission. And what this really focuses on I think is the issue of quorum. And it's really our rules pertaining to quorum or perhaps the lack of rules that we have that really assist this Commission in obtaining and retaining quorum on a more reliable basis. And I think that this really came to light with the Kauhane -- Commissioner Kauhane situation. We had a Commissioner that was on this Commission, and she really enjoyed being a Commissioner, but she very rarely ever came to a meeting. And I think that really highlighted the fact that there really is no minimum performance requirements to be a Commissioner. And it was really problematic for this Commissioner -- Commission to obtain quorum. But our quorum problems go far beyond Commissioner Kauhane, as you all know. I mean, this Commission has been plagued with chronic quorum problems for the last two years. And I think that showed up in a variety of different ways. Sometimes we can't get a Commissioner to even hold the meeting that we're scheduled to hold. Other times, we don't have enough Commissioners present to begin the meeting when it's supposed to begin. And we need at least five out of nine to show up in order to have the meeting, and especially, you know, there's been a whole bunch of times when we've been sitting here for an hour and a half with the public sitting here and all of Maui County reps. waiting for that fifth Commissioner to show up. Other times, we do get the meeting started, then Commissioners have other commitments and have to leave, and we have to abruptly close the meeting down. And I think that all in all, it really has, at least in my opinion, it really has had a negative impact on this Commission's ability to be productive. And I think

that's happened in a number of different ways. For one, we only very rarely can we ever get through an agenda. Usually because of starting late or ending early, we can't make it through. There are other reasons why we don't get through agendas, too, but the primary reason I think is because of quorum problems. Also, even when we do have quorum, we might only five people show up, and what that does is the basis of this Commission or the way this Commission works, it works on kind of a majority rules basis and -- or a consensus basis. That means like if you have nine Commissioners, and five vote for a project for approval, and four votes against, the motion passes. But when we only have five Commissioners present, it still requires those same affirmative votes. So it moves from just a simple majority to a unanimous consent. And that is a very high bar to achieve. And so we find ourselves sputtering through all of our agenda items trying to get through, and it really has been a problem. And it's been a problem for me as the Chair because, you know, I probably, you know, cut people off all the time trying to move things quickly because we need to move through and get to some of the other items on our agenda. I know I did that to Commissioner DeCoite last time and Commissioner Feeter. And I think I've done it to every Commissioner -- just cut'em off trying to move things forward. And that's not good. And I apologize for that, but we need to try to get this situation resolved. But I think our worst offense is when we, as a Commissioner, invite people from off-island to come over here, and sometimes groups of people fly over here to this Commission to present something to us, come here, and then we lose quorum, and they can't present what they flew over here to present. And I think when it gets to the point where we, as the Commission, start wasting other people's time and money because we can't fulfill our duties and our responsibilities, then it starts to become a little bit of a serious issue. So the feeling here was to put it on the agenda, get it out in the open, discuss it. I think actually, Commissioner Buchanan had brought this up that we should have it on the agenda, and I concurred about that, but the real purpose here is not to give anybody a hard time, but to try to figure out if there's a better way. Is there a way that we can improve the situation and have better attendance so we can really be more useful? And I think that, you know, what -- just -- you know, I would like to hear from everybody on the Commission about this, and what they feel, and if there's any way we can improve the situation. And just as a starting point, we could figure out whether or not this 12:30 start time for these meetings is the best time frame for us to hold these, you know. Or is there a better time that might yield better attendance. Is there anybody that wants to make any comments on this? Commissioner Feeter?

Mr. Feeter: Start time. Middle of the day meetings are disastrous. We -- last time we had seven employees from Maui County here. We had seven public members in the room. There were -- there was a quorum of us. There were two reporters and two ...(inaudible)... personnel and a dog. And the -- ...(inaudible)... Yeah, Dan, I'm sorry about that. That -- yeah. Anyway, you're invaluable. So the point is, we need to meet in the evening when the public can come out. This -- I don't see representation from Kalae. I don't see West End, I don't think. I don't see any Policemen, Firemen, shopkeepers, medical personnel,

the people that are the glue to this community that make it run, pay the bills. We're not being represented and we haven't been for months and months, if not years. An issue comes up and we have the real vocal, loud minority. And so I would move or make a suggestion that the meetings be held in the evening at an appropriate place. Either -- there's more comfort now in ...(inaudible)... the DHHL, if that's possible. The acoustics are better. The air-conditioning is almost too cold. And it's a comfortable place to meet. Mitchell Pauole needs updating. Look at our audio visual. We use a sheet. Our Planner does not have an additional camera yet, as far as I know. This is inexcusable. So those are the comments back to the Chair, initially. There are some more, but let somebody else talk.

Mr. Chaikin: Okay, thank you, Commissioner Feeter. Is there anybody else who would like to address if there's any ways we might improve the situation? Anybody? Lori?

Ms. Buchanan: Let me take a stab at it. I thought after all that, you was going to make one recommendation. But anyway, how about we charge staff to research and come up with recommendations that would address what other agencies are doing as far as quorum? And if too much absences and stuff, how you can remove a person off of the Commission.

Mr. Chaikin: Thank you, Commissioner Buchanan. Is there any -- I'd like to hear from you guys. Is this a good time to have a meeting or is there a better time to have a meeting? Is night better? Should we start in the morning? I mean, what situation would yield you guys showing up the most?

Ms. Buchanan: I think that's a staff issue for Maui.

Mr. Chaikin: Well, it is. But I know that, you know, for them, it's best to have this in the day. They can come. They can stay here. And they can go home. But they serve us. And I know on Lanai, they have night meetings. I'm not proposing that we have night meetings, but I'm just saying that we, as a Commission, need to figure out what's gonna work cause right now, it's not really working. I mean, as you know, it's no good for you guys to fly over here and then the meeting gets cancelled, which is where we've been pretty close to the last few meetings. So whatever works. What do you guys think? Commissioner Williams, is this a good time for you, or is there a better time, or what do you think?

Ms. Kalipi: Can I say something? I think, you know, way back, we used to have it in the evening and more people showed up. You know, people are working during the day. I mean, common sense going tell you that. So it's better to have it in the evening.

Mr. Chaikin: Right, and we concur. The reason we're having these in the daytime is really for the staff so they can be home with their families at night. You know, they come over

here in the day, and then they leave, and they go back. But whenever there's a really important issue that affect the community as a whole, we would always move it up to the nighttime. I mean, that's the way we have been doing it. I mean, if there's a better way, you know, we're certainly open to hearing that. And did you have any comments on this?

Mr. Williams: Being a working man, naturally, I would choose the evenings although it's cutting into my beer time. But, yeah, I would think the evenings for the general public would be better, in my opinion. I know it might cause a little bit of problem for the staff especially, with lodging these days, but they're welcome to stay at my place, especially women.

Mr. Chaikin: Thank you, Commissioner. Sherman, do you have any preference? Daytime? Nighttime? What's best for you?

Mr. Sherman Napoleon: I think for the evenings during the day -- the weekdays is fine. I think the Commission here as a whole is a working Commission. I don't know how many of us on here as jobs besides coming to here. Everybody else works. Bill, he's lucky that he's, on his days off, he's paddle-boarding out there in front of Kawela and stuff, so he's having a good time, but I think everybody else has jobs here. So we gotta work during the day. And then some people -- I know some Commissioners left because they couldn't get off of their jobs to come to attend. So evenings would be good for us, for me. I think it might be good for the rest of us here so you can schedule the evening cause right now, I don't know. Everybody else probably got somebody at home or at their job place covering them guys. I hope so, so when they go back, it's gonna be okay.

Mr. Chaikin: Thank you, Commissioner Napoleon. Commissioner DeCoite?

Ms. DeCoite: Yeah, Steve, I think evenings is good. And, you know, with all due respect to the County, you know, they're here to serve the community. So I'm sure we can change that. And it would be also good that we do have that number ninth person Commissioner in place. That would also make a big difference on this Commission cause we are missing a ninth Commissioner.

Mr. Chaikin: Thank you, Commissioner DeCoite. Commissioner Pescaia?

Ms. Mikiala Pescaia: A suggestion would be to start the meeting sometime in the late afternoon and take care of the housekeeping-type things, all the stuff that we kinda don't get through, training, and save the issues for later on. So maybe starting around 3:30 or four o'clock. And then by the time 5:00, 5:30 rolls around, then it's accommodating for the community to come and we'll take testimony-type action agenda items at that time. But we always seem to kind of figure out when people show up, and who's here, and then we keep flipping our agenda around, but that might be a suggestion where we could get through

early enough that they could still make a flight home in the late -- I mean, in the early evening, you know. I don't know what time the flights are, but they could get home on a seven o'clock flight or so if we started just a little bit later in the afternoon, but yet roll into a time where the public can -- it's more conducive to the public participation.

Mr. Chaikin: Thank you, Commissioner Pescaia. Did you have something to add to that?

Ms. Buchanan: Well, since everybody bringing the time up, you know, we talked about buyer beware earlier. So you know when you signed on as a Commissioner, you knew very well what was required of all of us. Okay? The schedule is set one year in advance. And I hate to be the rainy cloud all the time, but you know, you signed up as a Commissioner. You knew when the schedule -- what was -- you knew it was requiring part of your working day. I'm all for moving it any time, but the community has the rest of all their meetings, too, in the evening. I can attend five meetings in one week every single night if I wanted to. Okay? Cause everybody else is having their meetings at night. I take off from work just like everybody else to be here. And there will be times when there's conflicts. And I going say, this is Molokai. Born and raised Molokai. If there's an issue that somebody wants to address, they going be here no matter what time. To prove my point, jet skis, two weeks ago, this room was flooded out into the parking lot with 50 kids who wanted to come ...(inaudible)... If there's an issue they wanna address, they going be here no matter if they gotta take off from work or what. Evening meetings are always gonna be there for big issues in which the whole community gotta address. So going have to be one give and take like we've been doing. The basic thing again is quorum. And it's us right here. Our commitment to this community whether we going do'em or not. We have our schedule one year in advance. I serve on another Commission, Legacy Land Acts. I gave them my schedule one whole year in advance. And I said, I will not make your meetings if it coincides with this meeting. But, you know, always going have something, and we going be absent, but that's my mana'o.

Mr. Chaikin: Thank you, Commissioner Buchanan. So we've heard a number of different things. A lot of people thought it should be at the night. I mean, a lot of us work. We wouldn't have to take off work. We could come in the evening. Commissioner Pescaia had a version of that. We'll just move it up a little bit so that, you know, we could do it in the late afternoon. Everyone would be able to go to work, and then after work, they could come to the meeting, and perhaps the Planning Department could then, you know, catch a flight and go home. So let's just, at this point, I think what we should do is, you know, I think Commissioner Buchanan, you know, had brought up, you know, having you guys look at what we could do with our rules or something. But I think this is kind of, you know, could be served as kind of a wake-up call, so to speak to get everybody more, you know, in-tuned and making sure that, you know, we make these meetings. And I think what I would like the Planning staff to do is really investigate, you know, how you could -- how could we do it to accommodate you? I mean, can we have a night meeting where you can still go home

and be with your families in the evening? What time would we have to start in order for you to catch a flight and get back? So maybe, you know, we could kind of like keep this dialogue going, and see if we can come to some, you know, consensus on this at a future meeting. But let me just say a couple words, a couple closing comments here, and then we'll move on. And that is that -- you know, and I've said this before, you know, we, as a Commission, can do a lot more than just sit here and approve or deny a permit. You know, I think that what a fully functioning Planning Commission does is they go out into the community. If something's broken, you try to fix it. Or if there are issues in the community that needs to be resolved, you facilitate the process of resolving those issues. That's what a fully functioning Planning Commission does. And I think that's what makes a Planning Commission useful and beneficial to a community. And I think that quite frankly, this Commission, you know, if we're gonna have any hope of being a fully functioning Planning Commission, we're gonna have to be firing on all cylinders. And quite frankly for the last couple of years, we've been sputtering. And I don't think that, you know, we're gonna sit here and waive a magic wand, and everything's gonna be fixed. That's not gonna happen. And I don't think that the Commissioners are gonna drastically change the way that you're currently doing things, but I do think that if each of us can make just a little bit bigger commitment to this Commission that collectively, I think it will have an impact, and we will be able to get things done, and be useful and beneficial to this community. So I think at this point, all we can really ask is for everybody just to do their best. I think that's all we can really ask for and I think that's all we can really hope for. So let's just look for better days ahead and we'll address this, you know, at a future meeting, and see if we can't improve on the situation. Thank you.

Alright, the next item -- let me go through one more thing on my Chairperson's Report. I know we got some Commissioners that have some other commitments. And that was -- was a couple more things on my Chairperson's Report, but we did have a -- that Item No. 2 is a memorandum dated 3/27 of '08.

2. Memorandum dated 3/27/08 of meeting with Chair and Vice-Chair with Director and Staff

Mr. Chaikin: And this is where myself and DeGray, we traveled to the Planning Department and spoke to the Planning Director. Nancy was there. And we came up with a whole long list of potential improvements for this Planning Commission. And we sat down in hopes of getting a lot of those things implemented. And today, I think we're sitting at zero implementation rate. So I've had this thing on our agenda and I understand that everybody's working hard, and it's hard to put a lot more burden on people because they're already kind of maxed out. So what I thought as the Chair is to try to pick out some really simple and easy things that we can achieve. And if we can do that, then just start nibbling away, and trying to make some improvements. And we had talked this before, Clayton, about providing the community the opportunity to receive the agendas via email because

we know that the County has the legal requirement that anybody that wants to get our agenda can contact the Planning Department and can get an agenda mailed to them through the mail. In this day and age, that's not a particularly efficient way of doing it. Email is much more efficient. And we've been trying to make that simple improvement for quite some time, and we have not yet been able to do that. Now, the County website does provide an opportunity to do that. You can go there. You can sign up. You can even get a text message for it to come out. And I've signed up about five times and so far I've gotten nothing back from that website. But that's not the only way to do it. You could have one of your staff just collect email addresses, and just put the link, and boom, every time an agenda comes out, that's another option if you can't get the system to work. But it's been kind of so dysfunctional and not being able to move forward that I suggested, hey, why don't we just get the IT person from the County here? Cause then we could address a bunch of concerns, not only how we can get the email -- the agendas emailed to us, but we could figure out how we could get our own email address, because right now, people email the Planning Department, not the Molokai Planning Commission. So we wanted to have our own email address, which is -- you know, everybody's got email. It shouldn't be that difficult. Okay so that's another thing we could address. The other thing was the County's starting a new website, supposedly. I don't know where that is, but we wanted to make sure that we had some input. If they were actually gonna come up with a new website, we wanted to have input on what that might look like, and how it would best serve the community. So that would be another reason for an IT person to show up, but I don't know. Clayton, do you have any -- do you have any comments on that? Or how we can get these things moving forward at a little bit more productive pace?

Ms. Buchanan: Chair Chaikin, do you have that list of recommendations?

Mr. Chaikin: Yes, I do. I can give you a copy.

Ms. Buchanan: You can give me one copy.

Mr. Clayton Yoshida: Yes, thank you, Mr. Chair, Members of the Commission. As we had reported earlier, I think at a previous meeting. We do, through the County website, we did provide the link as to how people can order -- get on the mailing list, and be automatically notified of any new agenda that's posted for a specific board or commission, or specific Council committee. Whether that works on Molokai, I don't know, but it works on other parts of Maui County. I think the -- probably our Management Information System people have to check on whether the infrastructure is here to support that. As far as the website, the County is moving to a new website next month. We are looking for suggestions. If you have suggestions on how to make the website better, we'd certainly welcome that. In terms of equipment, you know, we have on order getting the Molokai Planner a desktop with all of the GIS capabilities that the Long Range Planners have. That's on order. I don't know. One of these days it'll be installed here. Oh, on the 20th of June. So by next week

Friday, it'll be installed here for the Molokai Planner, a desktop computer with GIS capabilities.

Mr. Chaikin: Thank you, Clayton. It seems as though, you know, this really is actually gonna happen, it sounds like, this new website. And there really is a lot of things that, you know, we can do with our website to make it easier for the community. I mean, a lot of it – right now, it's kind of a scavenger hunt. If you wanna find something, it's pretty difficult. I mean, and really should have a lot of links on our page for the community to be able to easily access things. Plus, all the documents and the agenda should be easily linked. And even the agenda should just be interactive. So when you see the agenda online, you should be able to click on something and provide testimony. That's what makes it simple, and easy, and user-friendly. But whether or not we can do that, we don't know. So that's why it would really be helpful to get an IT person here from the County. Do you think that's feasible to do that?

Mr. Yoshida: I think we can make the request to the Management Information System Division. They're under the Office -- the Managing Director's Officer and see if they can come out here to a Planning Commission meeting and address some of your concerns.

Mr. Chaikin: Perfect. Maybe you could give us -- at the next meeting, you can give us a follow-up on this and see what you had found out?

Mr. Yoshida: Yes.

Mr. Chaikin: Okay, thank you. Let me suggest one more issue. The Director was here at our last meeting. And we had sent out a letter to Malama Pono O Ka Aina and my objection to the letter was that it wasn't on a letterhead cause the Molokai Planning Commission doesn't have a letterhead. And so I had asked the Planning Director, you know, if we could get a letterhead together so when we send out letters, it looks a little more official. It looks -- more authority behind the letter. And he said, we will check into that. So do you have any follow up from the Director?

Mr. Yoshida: No, I don't have anything new to report on that, but I can check with him and report at the next meeting.

Mr. Chaikin: Okay, thank you. cause what we really wanted to do is use the Maui County Seal and we just wanted to get something like a formal okay before we start, you know, going out and sending stuff, and it says "Maui County" written all over it. So thank you for that. Does anybody else in the Commission -- you wanna make comments?

Ms. Buchanan: No, but I have a suggestion, Steve. Not reviewing this beforehand what you bringing up today, I suggest on all action items, you put a timeline and a date so your

staff knows when you want back a report on a specific item. Like the letterhead, I want it by June 25th. I want, you know, whatever. Because if you just throw it up for discussion and you don't have an action item, and you set a time to it, it never gets done. So as far as the website is concerned, I would like to charge you with the responsibility to review the new website because I have a website for our ...(inaudible)... and all we do is submit our changes and stuff to the web master who then puts it on and okays it with whoever they gotta do. It's not that difficult. You can also have a master list like Molokai Planning Commission all list that they have, that Suzie has, and if she press a button, that email goes out to everybody. That's what you asking for. As long as it's okay with the information officer. So all that kind stuff is easy. It's just charging them with the responsibility giving them a specific action item and a date when you want it delivered by.

Mr. Chaikin: Okay, so, I mean, if we put those items specifically on the agenda, is that what you're talking about? So then it would be there, and they would have to address it at that -- is that what you're referring to?

Ms. Buchanan: Charge staff with the responsibility and give them a time frame.

Mr. Chaikin: Oh, maybe that's why it's been a year and a half, and we haven't gotten any production because we haven't put any deadline on it.

Ms. Buchanan: Or you need a report back by the June 25th meeting. I wanna report back on this and we wanna know when it's gonna get done.

Mr. Chaikin: Thank you, Commissioner Buchanan. So just to reiterate on that, Clayton, by the next meeting, can we get your follow-up on whether or not we can get the IT person here, and whether or not we can get the -- use the letterhead that we design? It would basically be the same as your letterhead that you use, but it would say, "The Molokai Planning Commission" at the top, and it would have all the Planning Commissioners' names on it, and maybe the Mayor's name, and I think that would be it. That's what we're looking for, for the letterhead, unless anybody's got better ideas.

Ms. Buchanan: Steve, I think you have to be more specific when it comes to what you wanna see on the website. Remember, people who design this website are savvy, so if you're just a normal user and you go on, you say it's trying to navigate through hell, then maybe you need to come up specific recommendations on what you would like to see.

Mr. Chaikin: Yeah, absolutely. I mean, basically, we wanna find out from the IT person how far we can take this because really on an agenda, you should be able to go through the agenda, click it on all these different things on the agenda. Like if it has ordinances, boom, just click right on the agenda. There's a lot of things that can make it a lot simpler to do. And if you wanna provide testimony on any item, it should say, "click here," and

boom, you can testify on that item. There's a lot of ways to simplify it, but we really need to have the IT person here to see how far we can take this cause there's, you know, I can come up with all these grandiose ideas, but really, the Planning Department has some limitations that we need to be aware of, I think. Alright, anything else on this before we move on from this agenda item? Okay. Alright, seeing none. Okay, let me just -- I've got one more thing. It's the Molokai Planning Commission recommendations to the County Council regarding transient vacation rentals and bed and breakfasts.

3. MoPC Recommendations to the County Council regarding Transient Vacation Rentals (TVRs) and Bed and Breakfasts

Mr. Chaikin: We had talked about this weeks ago. And we knew that this particular item was gonna be coming up before the County Council. And we had spent a lot of time, energy, and effort as a Commission coming up with our recommendations, and we did send them to the Council. But a lot of time has passed, and they have a lot of people yelling into their ear, and we're not one of them. So what we wanted to do is to stand up and basically, make some noise. I just we just came to the conclusion that I would write a letter and that we would send the letter to the Council so it's fresh in their mind what our recommendations are and it's not at the bottom of a huge stack of papers. And I did write that letter. Each of you got a copy of it. There's -- I did get some feedback. I got some feedback from our Counsel Hopper, and he said, "Did you guys agree to that?" And when I was writing the letter, I really wanted to say a lot, but it's such a controversial issue that I really had to limit what I could say because everybody on this Board probably has a different view of vacation rentals. So I wanted to be as generic as I could but still be forceful and support our recommendations. There was one thing in there that Corp. Counsel brought to my attention. And he said, "Did you guys vote on that?" And I looked at it, and in fact, no, we didn't vote on it. And so did you guys each read that letter? I mean, did you guys -- do you have any circles, or cross-outs, or don't say this, or say that, or while you guys are looking at it, I've got somebody from the -- did you wanna say something on this issue or -- I got some copies here.

Mr. Bacon: Okay, Nat Bacon, and representing Malama Pono O Ka Aina. And we're much in favor of having home rule here, and having you guys have the control over this, which I assume this is the draft that we're talking about, right? That's it. Anyway, so we're in favor of having you guys having the authority to do all this, and not having, you know, Maui doing it because you're here and you can do it. Our concern is the first page is really great up until B&Bs. And that should be the end of it. The places that are closed are sort of irrelevant, I think. The other thing is, is that as our Planning Commission, we would, hope that you would as a home rule kind of an organization, really appreciate the fact that as Malama Pono has been pushing for a long time is that the East End policy statement clearly says that we don't want tourist accommodations and things like that in our neighborhood. It's a rural community and we don't want that. And we've also said that

even though we don't want that here, there are other places on the island that these are allowable. And that's where these things should be going on, you know. And that's our only caveat on the whole thing, but we do think that it's important to have home rule. And we're anxious to get, as you guys have tried over the last few years, getting more authority here, and having these meetings which is really important.

Mr. Chaikin: Thank you. Commissioners, you had some comments on some of the verbiage in there you might wanna change or alter or --

Ms. Buchanan: Is it because you're gonna resubmit this to Gladys?

Mr. Chaikin: Yeah, basically what it is, is that, you know, this stuff got submitted a long time ago, so we wanna have this fresh in their mind. They're gonna look at it on Tuesday, some of the B&B stuff. So we wanna send a letter to them and say, hey, you know, we're here. We're alive. We're kicking up. We care. We spent a lot of time, and energy, and effort on these issues, and we really want you to take our recommendations into consideration rather than just saying nothing and hoping for the best. Did you wanna have some testimony? Go ahead.

Mr. Vanderbilt: Thank you, Mr. Chair. My name's DeGray Vanderbilt. I testified at the last Council hearing. And I made the point that the document they were working from was the document that was submitted by the Planning Director and it had none of our recommendations in there. Now, Corp. Counsel came up with a new draft format. They didn't change anything of substance in there, but there's a new draft format that was out at the last meeting, and they're gonna pick that up. And I did -- I don't know if you all received this transmittal to the Council on February 1st, but it has a chart of all the Molokai recommendations in here. And I went through the minutes, and Joe picked up -- he did pick up all the things that we voted on. So what I did was go back and put what we voted on into the actual ordinance. And I said that that's just my interpretation. So they have before them the new format, the format of the ordinance with our changes just right in there. And I gave that out to the Commission, I think, last time. You remember? I gave those ordinances with the Molokai recommendations. So they said they're aware of that now. And Gladys said she's going to really focus cause Councilmember Michelle Anderson brought it up: Why did we just ignore everything Molokai said? So they're looking at it now. And I'm gonna be over there on Tuesday.

Mr. Chaikin: Thank you, DeGray. And -- and -- yeah, I mean, when you read -- it's important to understand that when the Planning Department sends our recommendations up, they're coming from a totally different point of view than we are. And like for instance, when I read their -- their correspondence with the Council, it said that most of the Planning Commissions recommendations have been incorporated. And when I looked at ours, almost none have cause there's three Commissions. So it gets really -- you know, they

distort it a little bit from what we're sending up because they have a different agenda. They have their own things that they wanna see it pass their way. We have a different point of view. And they send our point of view to the Council. And in that interpretation, it can get a little bit changed. And I brought this up before. You know, when you read what they send up to them, it'll just say -- instead of saying, you know, "maximum six bedrooms for B&B," we say "three." And that's what they do for each thing that we said, but it really doesn't have a why or the argument of why we feel that way because that's the most important. That's how people make decisions. It's not just that you want three, or you want six, or what, but why do you want that. And that's what I started to do with this letter, but it gets -- it's so controversial because everybody's got different views that I tried -- I scaled it way back, and tried to be as simple as I could just to send a letter to them, and say, hey, please, you know, please recognize, you know, our recommendations.

Mr. Vanderbilt: Mr. Chair, I think one other thing the Councilmen all asked the Planning Department, asked the Planning Director, why can't there be -- I mean, this is a major thing for smaller communities and bigger communities. Why can't there be different rules for different communities? And he said he likes to keep the laws pretty standard. Well, the Council didn't go for that argument. So they said they were gonna seriously look at the Molokai.

Mr. Chaikin: Yeah, I appreciate that. And that's in the letter. I specifically addressed that because I wanted the Council to say, hey, isn't it, you know, isn't it appropriate for, you know, each island community have their own rules rather than one size fits all? So I did put that in there, but thank you, DeGray, for that.

Ms. Buchanan: Okay, Commissioner Chaikin, having just read the letter, DeGray, if the ...(inaudible)... has dated February 27 has the up-to-date draft that has the additions from the Molokai Planning Commission? Is that correct? That's what you're saying?

Mr. Vanderbilt: No, this was a transmittal from the Mayor to the Council of the minutes and all what the Planning Commissions from Lanai, and Molokai, and Maui had.

Ms. Buchanan: With our recommendations?

Mr. Vanderbilt: Well, they weren't in the ordinance that was sent.

Ms. Buchanan: Okay.

Mr. Vanderbilt: The Planning Director sent his. He looked at all the recommendations, came up with his own ordinance draft, and sent it up. And then they had somewhere in the staff report, they had a list of this. But when the Council was looking at the board, they weren't looking at all the stuff that was in the staff report. They were looking at the -- only

at the Planning Director's recommendations which didn't have any of ours but --

Ms. Buchanan: But Gladys is in receipt of our recommendations?

Mr. Vanderbilt: Incorporated into the actual ordinances.

Ms. Buchanan: Okay, so they have that?

Mr. Vanderbilt: Yeah.

Ms. Buchanan: This Commission has copies of that?

Mr. Vanderbilt: I gave them at the last meeting.

Ms. Buchanan: Okay, cause I started in March. So if it was in February, I don't have a copy of it.

Mr. Vanderbilt: Oh, no, no, no. This was just something -- when I went over there to testify, I noticed that. And then they deferred for two days. So the next day I went back and incorporated into the actual ordinances and gave it to them.

Ms. Buchanan: Okay. So then, Commissioner Chaikin, I would caution at this point to resubmit this letter as drafted. And the reason is, if this letter says anything other than we support what they have now, and try to explain that in this letter, then that would have to be approved by this Commission. It would probably add to the confusion of their review, of the project, other than stated of what it is now. So it would be my recommendation that if we send a draft at all, it would just be simply stating that we support our recommendations that they already have. Another recommendation would be to send you or someone else on Tuesday to testify from this Planning Commission to reinforce or to personally state why we feel strongly about our recommendations. And that's allowable.

Mr. Chaikin: Okay, yeah, yeah, it was never my intent to change any of the recommendations, but part of our problem that we run into is that what they are proposing is an ordinance to do away with the conditional use permit for TVRs. And for them to -- for them to say -- the Council, for them to say that they don't want to use the conditional use permit, there has to be some rationale for why the conditional permit might come in -- be handy, the current thing that's currently in use. So that was my only, you know, thing that I had put in there that, you know, is something that, you know, we weren't looking at. And I agree that I did take it a little bit beyond where I might've by saying that:

We are confident that we can protect neighborhoods while allowing for the opportunity to share in the economic benefits of the State's tourism industry.

Limiting the use of TVR conditional permits in neighborhoods that specifically allow TVRs in the community plan and requiring a simple majority of the neighbors to approve will provide protection for our neighborhoods.

Now, that's something that, you know, is maybe going too far because we didn't approve it, say that, hey, we're gonna require a simple majority if we approve it - a conditional use permit. But, I mean, the rest of the stuff is fairly generic. I mean, it's just, you know, kind of a cheerleading kind of a thing just saying, you know, here's our recommendations attached, you know. Please have a look at them and recommend them. So either we can drop the letter altogether -- I was just trying to make the point, hey, we're out of mind. We're out of, you know, we are not on Maui. We're over here on Molokai. And these people are having all these people giving them -- testifying up there. They're screaming for their particular point of view, and we're sitting over here, and we don't have as much a visual impact on them. So the thought was just send a letter to remind them, and say, hey, we're here, and you know, we care. So that was the real gist behind the letter. But do you guys have any, you know, feelings one way or the other? You guys wanna go forward with this and just maybe revise it a little bit? Or you guys wanna scrap it? Or any opinion at all? I'm sorry. Yeah, go ahead.

Mr. Hopper: I just figured I'd give you the same advice I gave Steve. I talked to Steve privately, but I didn't talk to you guys in general because there's something in the Charter that basically states that the Planning Commissions, one of its duties is to review proposed land use ordinances and amendments thereto prepared by the Director or the Council, which you did. And after public hearings, transmit such ordinances with its findings and recommendations to the Council for consideration and action no later than 120 days after the final public hearing. You guys reviewed the ordinances. You gave your recommendations. My only concern is if a letter that you would send to them now says anything other than we reiterate these recommendations. You've got a different Planning Commission now that may have a different perspective than the Planning Commission that made these recommendations in the first place on these ordinances. If you get into that situation where a future Commission may disagree or may have a different perspective than that previous Commission, and I'm not saying that that's the case now, and then sends a letter to try to clarify or whatever what those recommendations were that go beyond simply stating here were the recommendations that were transferred to you, I would just caution. That's kinda the reason for the 120-day time period. And the reason, you know, generally you can send letters on whatever you want, but I just had a little bit of a concern on that issue that the letter, you know, cause you wouldn't want -- I mean, not necessarily in this case, but in the future, making recommendations on a proposed ordinance, and then a different Commission or maybe when different Commissioners are present sending a letter on a controversial item stating that, well, what we really meant was this, or the main reason we did this was because of this, because you never know. If they do adopt specific recommendations for Molokai, then in the future, someone could be

looking back thinking why were they -- these recommendations made could look at that statement and actually could rely on that statement for interpreting why you had that law. So that's basically the same advice I gave to Steve. And that he, I think, reiterated pretty well to you, but I wanted you to know that since I did talk to Steve about that earlier. I figured you all should know that.

Mr. Chaikin: Thank you, Michael. And I'm not suggesting at this late date that we would even wanna consider any of the recommendations, only supporting the recommendations that we had made. Any other comments? So, Lori, what do you think? I mean, should we just put this in the round file, and forget it, and hope for the best? Or should we send this and have something right on their desk, you know, right before they go into the meeting?

Ms. Buchanan: I feel that you're the Chair. If you feel that it's important for you to reiterate something, be very basic about it. Just say we support the recommendations already submitted. I would also go to the meeting and be there in person, if I could have, to make that point across. But I think what I do in most cases on an issue that I really want clarification and the gist of what came -- are verbatim minutes. And I always read verbatim minutes. And that's why I support the County having verbatim minutes cause you get a clear, concise picture of what was being conveyed at that meeting. And I tend to review those on really controversial issues. So, it's up to you, Steve. It's your call, but they going have to confer. But my recommendation if you really wanna send a letter is to just say we really support our recommendations.

Mr. Chaikin: Alright. Is there -- any of you guys have any feelings on that? Alright. So why don't I -- I'll redo the letter a little bit, take out some stuff that might be a little bit controversial stuff that we didn't talk about and vote on. And --

Ms. Buchanan: I think you going have to decide that right now. Otherwise, you would have to submit it again and time is running out.

Mr. Chaikin: Okay. I mean, you can always give the Chair some discretion to send out a letter. You don't have to -- I mean, I don't think we have to approve verbatim, you know, exactly, just in concept what it is I'm going to do. There's only -- you know, I just read the thing that was to me, seemed to me, to be a little controversial cause -- and that's the second paragraph from the end where it says "We believe that there are unique and special situations," and then it goes on. If I took that out, do you have any other language in there that might be problematic?

Ms. Buchanan: No, but think the gentleman in the back was correct. The stuff about the closing of the different resorts are irrelevant. And I would hate to wordsmith right now, but --

Mr. Chaikin: Why do you think the closing is irrelevant? I mean, that's what we're talking about. We're talking about vacation --

Ms. Buchanan: Well, because status can always change.

Mr. Chaikin: Huh?

Ms. Buchanan: Status can change overnight, so you never know. And you don't wanna give -- when I read this, I'm having the impression -- it's setting an impression in my head that we need this, but we're telling them we really don't want it. So it's, you know, it's kinda wishy-washy where I'm saying, well, all this stuff is closed, you know, and we need it, but we don't want what you guys are recommending.

Mr. Chaikin: No, we approved. I mean, we came to the conclusion that, you know, B&Bs are okay in certain areas. That's what, you know, that's the conclusion that we came to. We just wanted to be able to review them. But anyway, I can do that. I can just make this a lot simpler, take out all that stuff about the B&B, not tell them what's closed and what's opened, you know, just make it a real simple letter, and send that off. Okay. Anybody object to that? Fine. Okay, thank you. So we'll move on here. We'll go on to the -- the only other thing that I had in my report, then I can finish up my report is that do you have an update? The very first meeting that I ever Chaired, I requested the maps so we would have some --

- 4. Molokai SMA Maps**
- 5. Molokai Zoning Maps**

Ms. McPherson: We're requesting those from the Long Range Division. They have been consumed with the Maui Island Plan Update so GIS has been in the trenches. But we're just getting to a lull where they're kind of past all the major work for the Island Plan, and they're kinda shifting gears, and they're actually shifting them towards Molokai. So I think they'll be able to produce those maps for us in the next month or so. So I will get those for you. I promise.

Ms. Buchanan: Can I make a suggestion especially, affirmative action? Nancy, if that maps cannot be available by the first meeting in July, can we make a request to contract that out with an organization that does maps?

Ms. McPherson: Okay. And just to let you know, we need to make these orientation presentations because Thorne has an early flight. What time do you have to leave here? Okay.

Mr. Chaikin: Four o'clock? Okay, well, I'll tell you what, we're done with my Chairperson's

Report, so we can move right into that. I mean, I was gonna take a five-minute break, but I think everybody can take a break on their own. And if they have to, they can leave for five minutes and then come back. And that'll give Thorne the opportunity since he flew all the way over here, and we don't really wanna put anybody in that position when they fly over here and they can't do what they came to do. So, Thorne, the floor is yours.

D. ORIENTATION WORKSHOP PART IV

- 1. Special Management Area Permits**
- 2. Shoreline Setback Permits**

Mr. Abbott: Thank you very much. We'll try to go through your SMA training and your EA training. I think your meeting ends at 4:00 anyhow, so I don't think there's any -- makes any difference. Clayton Yoshida is gonna talk about the environmental assessments. I'll talk about special management area and shoreline rules. And we'll try to go through this expeditiously.

Mr. Chaikin: Okay, well, I guess we're mandated to take a break. So we'll just do that until one of the Commissioners come back. Sorry, Thorne.

Mr. Abbott: No worries. Always glad to come to Molokai especially, if I can go to Paddler's afterwards. That's better.

(A recess was then taken at 3:09 p.m., and the meeting reconvened at 3:12 p.m.)

Mr. Chaikin: Alright, Thorne, you're up.

Mr. Abbott: The gang's all here, so thank you very much. Special management area -- June 12th 2008, shown in pink here on the slide. These were -- just have some technical -- Nancy, would you just hit the down arrow for me? And you're gonna have to slide a little to the right. That would be your left, yes. Don't ask a Planner left from right. We don't know. Okay, so under the State Constitution is the Coastal Zone Management Act. And pursuant to that, is your Special Management Area Rules and your Shoreline Setback Rules. And you review special management area major permits. Minor permits are done in-house, but you review those as well as exemptions. Next, please.

The SMA boundaries were adopted in 1979 by the Molokai Planning Commission. The State and Federal governments subsequently approved those boundaries and the program. And all development within the special management area requires a permit. There are ten different categories of goals and objectives: provide coastal opportunities to the public; protect, preserve, and restore Hawaiian and American cultural and historical resources; conserve aquatic natural resources for sustainable development; reduce risks to new

structures and enhance public safety under coastal hazards; protect, preserve, and restore coastal views, open space, and scenery; enhance public beach access and minimize beach loss due to erosion and site hardening. Site hardening would be things like sea walls, or geo tech style bags, revetments. Minimize adverse impacts to coastal ecosystems and protect them—taking away things like fish ponds. Provide and co-locate coastal dependent facilities while minimizing negative impacts. A coastal dependent facility would be something like your port, or your harbor, or if you had some industry that required a lot of shipping, you'd want that to, you know, not locate it in a new part of the island or at a new harbor. You'd like to cluster all those coastal dependent uses together. Streamline the permitting process and enhance public awareness. And finally, stimulate public outreach education and participation.

In the SMA permitting process, and this we'll have a lot of discussion on, we covered a little before, but basically, we assess whether a proposed activity is included in the definition of development. Now, one of the handouts you have from Nancy is HRS 205A with the definitions of development. It actually has what is development. And it has a series of categories, five categories. If it's over \$125,000, it's considered a major project. And that comes before the Commission for review. And you can put conditions on there. If it's under \$125,000, it's considered a minor project. Now, many times people argue about the \$125,000. It's an arbitrary number. It was made up a long time ago. The legislature has thought about changing it many times. It probably isn't gonna be changed any time soon.

The second step that we do is we assess whether the activity is excluded care of the definitions. There's a definition for development and a definition for not development. And there's 15 categories. One of those categories is a single family home. Now, let's say something is proposed, and it's actually not development. It's a single family home. Then the third step we do is we actually check to see if it has any cumulative impact or any significant adverse ecological or environmental impact. And that would also include cultural impacts, as you pointed out earlier, Commissioner Buchanan. For example, somebody is digging in a site that may have some archaeological remains or cultural remains. One way to mitigate that impact is to have a trained archaeologist onsite. So if you meet all three of those, if it has the potential to impact the coastal resource, then we assess if it has sufficient mitigation measures to avoid, minimize, or mitigate those impacts. So let's say the applicant represents, you know, SHPD says there's unlikely to have any historical artifacts here, but just in case, you're gonna have somebody, a trained archaeologist onsite. In case we run into anything, we'll stop. And they represent that. We'll stop, and we'll call SHPD, and go from there, and they've avoided the impact, or they've mitigated that. So if no impact, then the project is deemed exempt. And previously, we approved that in Maui. Now, Nancy brings it up to this Commission for review. If an impact exists, then the project requires an SMA major permit if it's over \$125,000; an SMA minor permit if it's under \$125,000. And the Department's recommendation is reported to the Commission at its next regular meeting. And the applicant can challenge that

determination.

An exemption cannot have conditions. So when Nancy brings recommendations for exemptions, you can't condition it because what you're really saying is these rules don't apply. So we can't condition exemptions. The proposed activity may be exempt if it includes measures to avoid, minimize, or mitigate any adverse impacts. So there's three terms: avoid, minimize, mitigate are kind of key words you wanna keep in mind when looking at the potential impacts from any proposed activity or project. In contrast, a permit may contain conditions to avoid, minimize or mitigate. So if a project comes to you as an SMA major, you can say, you know what? We want an archaeologist onsite. And we want some evidence of compliance. For example, we want a copy of the bill from the archaeologist showing the day they were there, how many hours they were there. We want a bill from the guy or woman running the grading machine or the bulldozer. So those are conditions. And then you have to show how you've complied with those conditions. I think we've pretty much covered major, minor. I will say major permits require all landowners within 500 feet are notified by certified mail by the applicant. They have to put an ad when they make the application in the paper. Then they have to put in a -- the Department actually puts in ad in the paper notifying people of when the public hearing is. We put it on the website. And again, the applicant has to send by certified mail to all the neighboring landowners when that public hearing is gonna be so they can show up and testify.

There's also emergency permits. Emergency permits are really if there's some imminent or substantial harm to public welfare, or public health, or if somebody's living habitable structure is imminently threatened by coastal erosion. Say we have a big storm event, people can get emergency permits approved by calling the Planning Department, but it has to be truly an imminent threat. And an imminent threat, for example, on the shoreline issue is you have to -- the ocean has to be within 20 feet of your habitable residence before you can take action.

Ms. Buchanan: Chair, can we ask question now or you want us to wait 'til the end?

Mr. Chaikin: I'd say go ahead and ask otherwise, you might lose it down the road.

Ms. Buchanan: Emergency permit. Somebody builds a house in the fish pond. It's sinking. They come in for an emergency permit because of imminent danger to property loss. Maui County grants the permit. How does that work because the permit was granted in the beginning to build within inside on a fish pond?

Mr. Abbott: Okay, I don't -- I'm not familiar with that particular case, but this would be -- this would be a situation where if there was a failure of that residence or that house, or say their septic tank was leaking or something, if there was a clear imminent threat to public health, then they might be able to get an emergency permit to repair that septic tank as is. They

wouldn't get a permit to build something new, but they could probably repair it. A good example is the Alawai Canal. As you know, the wastewater line broke. And it dumped millions of gallons of sewage. That's somewhere where you wanna issue an emergency permit over the phone two o'clock in the morning. Get that new sewer line in now. So it would have to be a very high level concern. It has to show some real clear nexus with a public health or safety concern.

(Commissioner Pescaia was excused from the meeting at 3:30 p.m.)

Ms. Buchanan: But the County could not deny an emergency permit if you need to shore up your house cause it's sinking.

Mr. Abbott: Yes, we could. It would depend on the circumstances. It would only be if there was first off, the structure would have to be habitable. Second, it would have to be the best management option. For example, an alternative might be to do beach nourishment in front of that location rather than jack the house up. A third alternative might be jack the house up, put it on a trailer, and move it mauka. So it has to be -- to be candid, we've only issued three emergency permits on Maui. And that's when the ocean was within eight-foot of a ten-story structure in one case, and an eight-story structure in another case. So imminent failure of a huge condominium into the ocean, that's when the emergency permit is. Now having said all that, the Director can approve, but the applicant still has to come back and apply for an SMA major permit which goes to the Commission. So you have the end say.

Ms. Buchanan: Okay. I just was gonna -- I was just thinking about that because I never understand how you could grant one emergency, how the Planning Director can grant one emergency permit. But at what point, if any, would still come back here for review?

Mr. Abbott: Within 180 days. Now, if someone, for example, your example, somebody's house is sinking, maybe they have to do some protection on the shoreline say, sandbags to stop the waves from inundating their house, those have to be removed within 180 days. If they're not, the County can actually go in and remove them at the owner's expense, if they had not got all their permits from you folks.

Ms. Buchanan: Thank you.

Mr. Abbott: Okay. Lastly, I'll mention one other thing. You can deny a project if it's inconsistent with its State land use, its General Plan, its community plan land use designation, or its zoning, or if the action will have an adverse impact on a coastal resource. Having a negative impact on, for example, drinking water systems is not regulated directly under the Coastal Zone Management Act. So you're looking at coastal resources. You know, fish, wildlife, habitat, beaches, sand, coral reefs. What, you know,

drainage, for example, as we all know, can have a negative impact on coral reefs. Okay? Using a lot of water or using pools as fire suppression, that's not a direct coastal impact or coastal resource. It may not be something we enjoy or like, but that's regulated more under zoning, or building code, or something to that effect.

Ms. Buchanan: But diverting water that would normally go into the ocean for a project would be?

Mr. Abbott: That would be correct. So you need to make that connection between coastal resources and this law. There are other laws to regulate, you know, where you wanna have pools, where you wanna have vacation rentals. Those are your community plan laws, your zoning, those kinds of things.

There is some decision-making criteria you have to adhere to. You can't have any adverse ecological or environmental effect. Or if it does, those effects have to be minimized in light of some compelling interest. A good example, Maui had a big earthquake. It was about two years ago. The highway got -- down by Kaupo was just covered with rock. They needed a shoreline setback variance and an SMA major use permit. As far as I know, they called Director Foley in the middle of the night, said we need this right away, we need to get dozers in there, and they went. There was negative effect. They pushed rocks into the ocean, but the compelling public interest was we need to get crews down here. We need to get people in and out of Kaupo. So hopefully nothing ever comes -- like that happens here, but you can have a negative impact. It just has to be outweighed by some compelling public interest.

It has to be consistent with all its land use designations. And it has to be consistent with the SMA guidelines. Those guidelines are adequate access to public land, beaches, recreational areas, wildlife and nature reserves, adequately and properly located public recreation areas. You have to control, manage, and minimize impacts of pollution. For example, if you're building a house, you need to have some kind of individual wastewater system that's recognized by a licensed engineer and also accepted by some government authority such as the Department of Health. You have to minimize adverse effects to water resources, and scenic and recreational amenities. And finally, you have to minimize any risk to coastal hazards. And that's where you get -- your shoreline setbacks get involved and your FEMA regulations. Finally, you have to seek to minimize where reasonable any dredging, filling, or altering of coastal areas; reductions in beach size; impediments to beach access or coastal recreation; loss of coastal view planes; adverse effects to water quality, fisheries, wildlife and habitat. That would be fish ponds as well. And lastly, the loss of existing or potential agricultural uses.

And you can deny a project, but as Corporation Counsel has mentioned, you have to really explicitly state what measurable thing will negatively impact a coastal resource. For

example, say somebody is gonna build a housing lot. It's next to a fish pond. They're grading the whole lot. They're not using any silt fences at all. Okay? It's pretty reasonable to think if they do that in the rainy season, that's gonna wash mud into the fish pond. That will hurt fisheries within the fish pond. That's a direct negative impact. You could deny a project for that. Now, if the applicant said, well, I'm gonna put up silt fences to capture any runoff, I'm not gonna do it in the rainy season, those are mitigation measures. So you probably wouldn't deny that project, right? Because they've avoided their negative impact.

Regarding shorelines, basically there's coastal erosion and there's beach erosion. Coastal erosion is shown on the right-hand -- the left-hand side. Planners don't know right to left. It's really a natural process for the shoreline retreating over a long period of time due to sea level rise, wind and water, and wave action. And while the shoreline is retreating inland, the beach is maintained in width from sand that comes from sand dunes or from up and down the beach. And so the beach maintains the same width even though everything is moving inland and you're losing land.

Now, on the right side is beach erosion. And you can see somebody put up a wall, put a revetment to protect their house. So beach erosion is where the sand has basically eroded away, eroded away, eroded away because all the sand that's meant to replenish the beach is held behind that sea wall, and it's kinda taken out of the system. So it's kind of like your checking account. You keep withdrawing. The sand dune is the money and you keep withdrawing that, withdrawing, withdrawing, but you're not putting any sand back in because it's held behind that sea wall. That results in beach erosion and you lose your beaches. So you can protect the land and lose your beach, or you can keep the beach but you lose your land.

Your shoreline rules -- there's basically two ways to regulate building in the shoreline area. One is to fortify. And you had asked about this, Chairman, that you can build in the flood zone all over Maui. The Federal government allows you to do that. It's kind of like flood pants I had when I was a kid. If you're gonna build in the flood zone, you gotta build on post and pier. So your first floor has to be raised up a little bit so the water can flow underneath the house. Or you have to fortify the house so it can withstand a big wave coming in. There's two ways to deal with coastal hazards. One is to fortify and, you know, build it real strong, or lift yourself out of the hazard zone. The other way is get out of harm's way and move inland. So your shoreline rules are about moving inland. The FEMA guidelines and the flood development permits, those are about fortifying your structure. So that's a -- you wanna keep that in mind. If you have a flood development permit, it means you're building in the wrong place, but you're gonna build with the proper design so you can withstand it. Our shoreline rules are precautionary in nature. And what they say is don't build there. Get out of harm's way. Move back. Move inland.

So you have two shoreline setbacks. You have 25-foot for lots less than 100-foot deep and

that were created prior to 1989, and 25% for all lots up to 150-foot setback maximum for lots created after 1989. So for after 1989, a 25-foot setback for lots less than 100-foot deep; 100-foot to 160-foot deep would be 40-foot. And then greater than a 160-foot would be 25% of the lot up to 150 feet. And the idea is, you know, you have three-quarters of your lot to build on. You might as well move out of the way if you can. If you have the space, move back further. So the bigger your lot, the more space you have to move back. Okay?

We do shoreline setback determinations that determine the location of the shoreline and the shoreline setback. It's valid for one year. And it requires a State certified shoreline survey. It's surveyed by -- the surveyor takes it to the State, and the State actually stamps it, and marks it approved. And that's valid for one year as well. So you can't use a survey, Chair Buchanan, from say, 1982. Okay? The only time you can use an older survey is if you have a legitimate lawfully authorized shoreline hardening device like a sea wall because that sea wall is not moving. So in that case, you might be able to use that.

We also do shoreline setback variances. That requires a public hearing. All neighbors within 500 feet have to be notified. I'm sorry, all abutting landowners need to be notified of one, the public hearing date was, and also when the application was made. It also requires a State certified shoreline survey. You're the final determinate on whether somebody gets a variance or not. I don't know of any time you've approved of a variance in the last five years.

You can also deny a permit. If, for example, somebody has a sea wall, and they can't prove that it was lawfully authorized, or they've changed it. A lot of people think, well, I have this old sea wall. You know, it's grandfathered in. Well, surprise, we don't grandfather things in. There's a good reason for that. My brother had a really great barracuda car and I loved that car. And the day before I turned 16, he wrecked it. And that barracuda was really fast and it had a shaft from the steering wheel right to the drive shaft. So all he had to do was hit something at about 15 or 20 miles per hour and it whacked your chest. Now, you wouldn't really wanna put your 16-year-old behind a car that had a big sphere that could go into their chest hitting something at 20 miles per hour. Now we want something with air bags. Well, we don't want you to park your million-dollar investment of a home behind a rock wall built with 1920's or 1910 technology. We'd want you to use modern technology. So your old sea wall may not be grandfathered in. And if you made repairs to it along the way, then that definitely may not meet the qualifications for grandfathering in. That's how we bring people into compliance with more modern technologies. You can also deny a permit if it blocks public access to the shoreline or along the shoreline. And finally, if something encroaches on State lands, which it frequently does, then the people have to resolve it just like if somebody built something on my property, they either have to buy an easement or they have to remove it.

Basically permissible structures are anything that doesn't adversely affect beach

processes, it doesn't artificially fix the shoreline, doesn't interfere with public views, and doesn't block public views or public access. Any new structures that are built in the setback area have to be elevated on pilings or post and pier, as we call it. The County can't be held harmless. The applicant actually has to sign a liability waiver, and then they can't harden the shoreline.

I won't run through all these except the last two, which is repairs of legal structures up to 50%. You can repair, you know, an older sea wall, but you have to get a permit to do that, and there's a pretty stringent criteria as to whether we're gonna allow you to rely on that older technology. Now, some of the older technologies like your ancient Hawaiian fish pond walls are way better than, you know, the technologies we use today. So it depends on the circumstances, but you can repair things up to 50% or structures that are already in the setback like an old home or an ohana as long as you don't enlarge it, expand it, or intensify its use, but you have to get a special management area assessment permit. And then presumably you get an exemption, and that exemption would be approved by you.

There are some final mandatory conditions that you have to put on any variance you approve. First, the applicant has to maintain safe lateral access to and along the shoreline for public use, or adequately compensate for its loss by, for example purchasing an easement from the State. You have to minimize the risk of adverse impacts on beach processes. You have to minimize risk of structures failing. You have to minimize adverse impacts on public views. And it has to comply with FEMA flood code regulations. And with that, I think that wraps that up.

I will mention a few things that the CZM Program, the Coastal Zone Management Program, is doing. We do have a website. It's a little hard to find, but if you go to mauicounty.gov, it has a little search engine. Type in "Coastal Zone Management Program." It brings up all this information. It also brings up all your applications. You can download those right away. They're not fillable. You can't fill them out on the web. You have to download them, and print them out, then fill it out. They're all pdfs.

We do have mandatory performance standards that the Federal government has required us to do. We use to say, well, we processed 800 SMA permits so we're doing a good job. And the Feds said, nah. Really, what's that mean? What's the output? Or what's the outcome because we're just measuring output? The outcome is how many miles of shoreline did you protect? How many new access points did you make? How many fish ponds did you restore? How many wetlands did you protect? How many acres of that wetland did you protect? So the Federal government is holding us to a higher standard now and not giving us any extra money to do the work, of course, so it keeps us busy.

Another thing, we do have an SMA and a shoreline setback brochure that you can download off the web. You can also get it from Nancy or me. We also have a --

purchasing a guide book to purchasing real estate in Hawai'i that's excellent. Anyone buying or thinking of buying property along the ocean should get a copy of that. It's free. You can get it from DLNR or from our website. We've updated the Beach Management Plan. We've updated the Ocean Resource Management Plan. We're having a proposed view plane analysis policy so you can deal with views to the ocean cause that's kind of, you know, kind of subjective. What's a -- is a pink house a good thing or a bad thing? That's kinda subjective.

Finally, we did conduct a study regarding expansion of the SMA. And for the East End, we had recommended that you include all flood and tsunami inundation zones within the SMA. For Papohaku Dunes, we recommended that you include the entire parcel within the SMA, and also have a policy for use of pools for fire suppression. And finally, we also recommended the use of erosion rate setbacks along the shoreline. The setbacks have already been done. They're in Chip Fletcher's study and University of Hawai'i's study that Nancy was very actively involved in. And with that, I thank you very much for your time. I welcome any questions.

Ms. Buchanan: Actually, I have a question.

Mr. Chaikin: Thank you. Yeah, Commissioner Buchanan.

Ms. Buchanan: Let's go right back to the end of that one. So now that you guys made the recommendations for East and West, where do we go from here?

Mr. Abbott: The Commission is welcomed to take action on that, or if you want to change your rules, which I strongly encourage you to change your shoreline rules because they're pretty weak, frankly, you know, then you should recommend -- you should take -- make a motion asking the Department to come up with some firm recommendations and, you know, what recommendations there should be as far as changes to either the SMA Rules or the Shoreline Setback Rules for the Molokai Planning Commission.

Mr. Chaikin: Well, thank you, Commissioner Buchanan. And thank you for offering that cause usually we don't get that from the County where they're actually saying that we should request something of them. But as you just said --

Mr. Abbott: Nancy's not busy so --

Mr. Chaikin: But, you know, I concur. I mean, this is something that's been on our agenda many times in the past. And it's one of these unresolved issues going way back. And the thing that we're really waiting for is for you to complete your study. And it looks like you've completed your study. And we haven't -- I know you had -- you came here before to do a more formal report on the conclusion of your study, but what is this? Basically the

snapshot of what the study was gonna -- what you were gonna say?

Mr. Abbott: That's the snapshot. I know a lot of people felt that the whole island should be put in the special management area. What we found was there's not a good relation between -- remember, the law is to protect coastal resources. It doesn't have to do with sidewalks, or pools, or whether a building's two-story high, or it's a pink building, or a bright red one. We looked at, for example, in Kaunakakai Town, there are many, many, many projects that had lots of conditions. And of all those conditions, I think we looked at 25 different permits. We only found five that had a -- let me rephrase this. There were 20 permits that had conditions that were already addressed through other mechanisms such as zoning, community plan restrictions, building restrictions, those kinds of things. There were five that had conditions that were slightly more relative to coastal resource protection. And of those five, only one actually had something clearly connecting it with protecting a specific coastal resource.

Mr. Chaikin: Let me just ask you, I was reading some stuff from the State Planning Department and I think it was the State Planning Department, I think they were alluding to the fact that what they do mauka affects makai. So can you address that in terms of what we're talking about here?

Mr. Abbott: Well, as we all know, you know, the Ocean Resource Management Plan, you know, very much incorporated and was built on the idea of ahupua'a. You know, what happens up on the mountains is gonna affect your reef. And while that's true, you -- the regulatory paradigm is you have to make some connection between those two. So if somebody is grading a farm lot or grading a housing lot from on top of the mountain, and they're already meeting the zoning code for sediment control, then they're already mitigating the negative impact they're probably gonna have on a fish pond. So it's a difficult, you know, it's nice to look at the whole island and say, well, we should regulate everything within the SMA, within the island, but unless you can actually show that whatever somebody did on the top of the mountain with their grading, if you could take a test tube down, and measure in the fish pond, and say, oh, I have a piece of sediment that I can prove it's from the top of the mountain in care of that specific project, that's the only way you can regulate through SMA.

Mr. Chaikin: Okay, so can we request of you to put together a list of recommendations to this Commission of how we can -- what? Improve the -- What are we talking about? The SMA rules and the --

Mr. Abbott: The shoreline rules.

Mr. Chaikin: And the shoreline rules? Yeah, if you can put together a list for us for us to take a look at and -- both of you will work on that? Thank you, Nancy.

Mr. Abbott: And there's one other thing I'd like to mention about the SMA and the whole island within the SMA. And it was very interesting. Recently, we had to go back to the post office, the old post office, and clean it out. And I found some articles from the original 1977 meetings. And there's this big fight between, you know, the local home rule and the Federal government because if you put everything in the SMA, and someday you wanna contract it, make it smaller, then you have to prove to the Federal government that you can protect coastal resources through your existing -- other existing regulations like the Department of Health, your zoning, your community plan, those kinds of things. Otherwise, you can't contract the boundary, which means the Federal government now is defacto regulating your whole island, and I don't think any of us want that. We want home rule. So it was very interesting. I'll try to get those old articles and include those in my report to you so you can see the genesis of why the Commission is the regulatory authority and not the folks of Maui, not the folks of the State, and not the Federal folks.

Mr. Chaikin: Thank you, Thorne.

Mr. Abbott: Sure.

Mr. Chaikin: Any other questions on this subject before we move on? I have a couple. You talked a little about what we were talking about -- the SMA, and then we were talking about all the things they've gotta do when they're in the SMA. How do we handle a situation like we saw today where there was actually a lot, and the SMA line ran through the lot, and what happens if they're actually building just beyond outside of the SMA line, but their lot also incorporates the SMA? How do you handle that?

Mr. Abbott: Usually we refer to Corporation Counsel, but we've already had that circumstance happen in Papohaku. Fortunately, in that case, their lot was half in and half out of the SMA. What they were planning -- they were building a farm house. The farm house purpose is to support a farm. The whole lot is the farm. So you would look at the effects of the whole lot. Their farm plan was to plant an evasive species of grass that actually helps create fires. I don't think we wanna have fires out on Papohaku Dune. So we were able to regulate that farm building, that farm dwelling, even though it was outside of the SMA because there was a nexus with the farm plan, and the farm plan covered both lots, and the farm plan was gonna have a negative impact cause it was an evasive species, and it created fires.

Mr. Chaikin: Thank you, Thorne. Just one more quick question. We had talked a little about -- you said about building within the shoreline area or the flood area, and that people had to build up on pillars to get above --

Mr. Abbott: Stilts.

Mr. Chaikin: Yeah, stilts, or to get above the flood line. And they also had to sign a waiver for the County which would not, you know, put the County liable if something should happen. Does that -- does the reciprocal of that work? Say they're upstream, and there was no requirement for that, and they got wiped out by some flood, is the County somehow liable?

Mr. Abbott: Not that I know of, but I know with the -- when you build in a FEMA -- when you build in a flood zone, you can't get -- most people need a mortgage. You go to the bank. The bank says we want insurance. You go to get insurance. The insurance company says, you have to meet Federal guidelines because the Federal government's gonna subsidize your insurance rate because we already know you're building in the wrong place although you're building stronger and smarter.

Mr. Chaikin: Okay, anybody else have --

Mr. Abbott: So the reverse of that, I don't know. Maybe Corp. Counsel --

Mr. Chaikin: Well, that's okay. I mean, we don't need to get into a big explanation. I was just wondering if you felt as though the County had any liability for when they issue building permits and then the next day they get wiped out.

Mr. Abbott: I think it's just to make doubly darn sure cause we know you're building in a hazard area.

Mr. Chaikin: Alright. Well, seeing no other questions, we can move forward then.

Mr. Abbott: Thank you very, very much for all your time. Aloha.

Mr. Yoshida: Thank you, Mr. Chairman, Members of the Commission. It's about 12 minutes to 4:00, and I don't know if our time constraints -- from our side, we probably would have to end the meeting about four o'clock because one of us has a five o'clock flight out. So anyways, I was wondering if you go to the Director's Report, and we'll come back at a subsequent meeting to talk about environmental assessments and environmental impact statements although I think that's what the Commission has been talking about for the past year and a half with the La`au Point I and II draft EIS.

Mr. Chaikin: Okay, Commissioners, do have any objection to that? Seeing none. Okay, yeah, go ahead with your Director's Report.

F. DIRECTOR'S REPORT

1. Pending Molokai Applications

2. Closed Molokai Applications

Mr. Yoshida: We've circulated the list of the pending and closed Molokai applications. And if the Commissioners have any questions?

Mr. Chaikin: Commissioner Feeter?

Mr. Feeter: The Molokai Veterans – what's the status on that project? It's been going on since last fall.

Mr. Yoshida: I would have to defer to the Molokai Planner, Nancy.

Ms. McPherson: That application has been circulated to agencies for comment. And I'm in the process of getting those comments back, developing the staff report, and it's an SMA minor permit so it doesn't need to be a public hearing, but getting it read for Commission. And I'm hoping to have that done within the next 30 days, have it ready for Commission.

Mr. Feeter: Okay, thank you. One other question on the application by the Pawn Family. That's been since last October, last of October. And I know they're anxious and they seem straightforward.

Ms. McPherson: That application was submitted for a demolition and an individual wastewater treatment system, but it actually also includes a new home. So one of my challenges is when I get incomplete applications or applications that don't actually describe what's gonna be happening. So then I have to follow up with the applicant, the person preparing that assessment application which I've done. And so we've had that scope amended. And that is -- I'm processing that now so -- I had a little bit of a backlog accumulating here. There's been some big stuff going on, but I'm working very hard to catch up now, so --

Mr. Feeter: Thank you.

Mr. Chaikin: Anything else on either the pending or -- alright. Seeing none. Go ahead.

3. Registration for the 2008 HCPO Conference

Mr. Yoshida: If there aren't any questions on pending and closed Molokai applications, the Department is hosting this year's Statewide Planning Conference, Hawai'i Congress of Planning Officials in September 10th through the 12th at the Grand Wailea Hotel. We would ask that the Commissioners, if they know that they're going, register as soon as possible as some of the mobile workshops are proving to be very popular such as the tour of the wind energy farm at Kaheawa Pastures and are filling up quickly. Or I think we may have

a waiting list on that mobile workshop because of the interest in doing the site tour of that. So we would ask that, you know, if you know that you're going, if you could submit the registration information say within the next week or so.

4. **Public Hearings on June 25:**
 - a. **Amendments to the Off-Street Parking and Loading Ordinance**
 - b. **Service Business Residential Bill**
5. **Agenda Items for the June 25 Molokai Planning Commission meeting.**

Mr. Yoshida: As far as the June 25th agenda, we do have two public hearing items. We'll have our Administrative Planning Officer Joe Alueta here to talk about amendments to the Off-Street Parking and Loading Ordinance, as well as the Service Business Residential Bill. You deferred on the Goodman SMA assessment today. And we may have the DJ Ocean Farms SMA assessment at Keawanui. So we'll have two SMA assessments and two pieces of legislation for that meeting. And that's all we have to report.

Mr. Chaikin: Thank you, Clayton. One other question: We do have a vacancy on this Planning Commission. Can you give us an update on whether or not that's been filled?

Mr. Yoshida: To the best of my knowledge, I don't believe that the Council has confirmed any nomination from the Mayor. All that was -- the Council was notified by the Mayor's Office that Commissioner Kauhane did submit a letter of resignation and there is a vacancy. I would have to check with the Mayor's Office as far as whether she had submitted a name to the Council.

Mr. Chaikin: Thank you. Can you give us an update at the next meeting on that?

Mr. Yoshida: Yes, we can do that.

Mr. Chaikin: Alright, thank you. Alright, is there any further business that the County has? Seeing none. Commissioners, do we have any further business for today?

Ms. Buchanan: Yeah, please. Since Thorne just finished his presentation, if he had a result of the report that they did. He's citing what and what in -- a justification for not expanding the SMA. Also, if we could put it on a future agenda to address that, what we were talking about, implementing the recommendations for East and West Molokai SMA.

Mr. Yoshida: We can do that, but probably not the June 25th agenda because --

Ms. Buchanan: In July.

Mr. Yoshida: Yes, we can do that.

Ms. Buchanan: Okay.

Mr. Chaikin: Okay, and you're gonna get with Thorne and get us more information. I know he came here to do a -- sort of a workshop on this whole study that they did. And that included a power point and stuff. So maybe you could get that -- ask Thorne for that information and see if you can get that to us?

Mr. Yoshida: Yes, I believe that they had planned to do that back in January, but we got -- we were dealing with the swimming pool at Papohaku that took a while.

Mr. Chaikin: We lost quorum is what happened.

Mr. Yoshida: Yeah, and basically the agenda items were switched. So the person from the Office of Planning who was here to make a presentation, because he had been here in the morning to talk to people about -- what was it? The Aha moku or whatever management. He was pre-empted and we had our graduate student who worked here last summer who was going to do her report, but I guess we were pre-empted because we spent a lot of time talking about the swimming pool at Papohaku.

Mr. Chaikin: Thank you. Commissioners, any further business? Alright, seeing none. I'd like to thank all of the public for coming today. You guys have been very patient. And I'd like to thank Akaku for being here. Thank you, Dan.

G. NEXT REGULAR MEETING DATE: June 25, 2008

Mr. Chaikin: And our next regular scheduled meeting is June 25th, and it'll be at 12:30, and over here in Mitchell Pauole. This meeting is now adjourned. Thank you.

H. ADJOURNMENT

There being no further business brought before the Commission, the meeting adjourned at 3:55 p.m.

Submitted by,

SUZETTE L. ESMERALDA
Secretary to Boards and Commissions

RECORD OF ATTENDANCE

Present

Steve Chaikin, Chairperson
Mikiala Pescaia, Vice-Chairperson
Lori Buchanan
Lynn DeCoite
Bill Feeter
Sherman Napoleon, Jr.
Don Williams

Excused

Joseph Kalipi

Others

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