

**MOLOKAI PLANNING COMMISSION  
REGULAR MEETING  
JULY 13, 2011**

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

**A. CALL TO ORDER**

The regular meeting of the Molokai Planning Commission was called to order by Chair Mikiala Pescaia at 12:03 p.m., Wednesday, July 13, 2011, at the Mitchell Pauole Center Conference Room, Kaunakakai, Molokai.

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

Chair Mikiala Pescaia: (Hawaiian translation introduction.) Welcome to our July 13<sup>th</sup> meeting of the Molokai Planning Commission. My name is Chair Mikiala Pescaia. Joining me today are Commissioners Buchanan, Commissioner Kelly, Commissioner Dudoit, Commissioner Davis, and Commissioner – Vice-Chair Sprinzel. Also, joining me on my left is our Corp. Counsel, Michael Hopper; and our Maui County Staff, Suzie Esmeralda and Clayton Yoshida, and Molokai Planner Nancy McPherson. Aloha to our public for joining us today.

**B. PUBLIC TESTIMONY ON ANY PLANNING OR LAND USE ISSUE**

Chair Pescaia: I call this meeting to order and open up public testimony on any planning or land use issue. If there is anything that you would like to bring to our attention that is not on our agenda, but you would like to see on a future agenda or addressed somehow, this is your opportunity to share with us any concerns out in the community. Or if you are wanting to comment on an agenda item but you are here for a limited time and you cannot wait for that particular item to come up, you can share your testimony now, though we cannot really comment on it until it comes up. We ask that testifiers please state your name for the record before beginning your testimony. Thank you. Come up to the microphone over here by the podium.

Mr. Paul Mullen: Good afternoon to all of the Members of the Planning Commission and to the audience as well. My name is Paul Mullen, and we've been living in our only home, our place on the West end for the last 12 years. I would like to comment on the proposed Bill 11-24. And my position is that from my house, I have direct vision of two currently illegal transient vacation rentals. That's been a matter of concern to us, but in general, we've sort of been able to use the fact that it's illegal as a bit of a brick bath over the owners' heads to keep things from getting totally out of line.

I really feel that 11-24 is bad mojo for Molokai for a number of reasons, but two in particular. The first is that it codifies a previously un-permitted use of agriculturally-zoned properties. And the second is that basically what that bill does is that it puts Maui County in a financial partnership with the property owner that has the TVR. So the result of that immediately is a conflict of interest in terms of the County's role in protecting the interests of the permanent homeowners there. You know, if they stomp on a TVR permit, they're cutting off their cash flow. So you can sort of expect how that's gonna work out. I can understand where Maui County would like to make a few pennies off of Molokai. They haven't made very much over the years, if anything. But this puts them in a position of really – it's a problem area because there won't be any enforcement. Granted, you supposedly have a telephone number of the caretaker or whoever's responsible for it, but they're employed by the property owner, so they've got a built-in conflict of interest. And then okay, your next line of defense is the County. Well, the County hasn't enforced any requirements that they've had on the books to date. So how can we expect that they're gonna do anything now? And how we can expect that they're going to go against their self interest? I just don't think that there's any way that this winds up providing adequate protections to the homeowners against potential abuse by short-term tenants.

And years ago in the '80s when we came here as tourists, we used to deliberately avoid the periods when the paddlers were here because the hotel and the condos were just chaos whenever they came. You know, you can have the same thing: institutionalize it out in our neighborhoods now with 11-24 going through. So for those reasons, we really feel that it's a bad deal for us. It's bad for Molokai. And we hope very much that the Committee will turn it down for Molokai. Maui can do what they want, but they really shouldn't come over here and tell us what we need. Thank you.

Chair Pescaia: Thank you, Mr. Mullen. Is there anyone else wanting to provide testimony at this time? Seeing none, we'll continue on with our agenda.

**C. APPROVAL OF MINUTES OF THE APRIL 27, 2011 and MAY 11, 2011 MEETINGS**

Chair Pescaia: Item C, with the approval of the minutes of the April 27<sup>th</sup> and May 11<sup>th</sup> meeting. I will entertain a motion.

Mr. John Sprinzel: Propose a motion to accept both the April 27<sup>th</sup> and May 11<sup>th</sup> minutes.

Chair Pescaia: Motion made by Vice-Chair Sprinzel, second by Commissioner Davis. Discussion? Does anyone see any corrections or clarifications we need to make? Seeing none.

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

*It was moved by Mr. Sprinzel, seconded by Mr. Davis, then unanimously*

**VOTED: To accept the minutes of the April 27, 2011 and May 11, 2011 meetings.**

Chair Pescaia: Motion carried. Thank you. On to agenda item D, Communications. Item no. 1 we have Mr. William Spence, our Planning Director who's requesting concurrence from the Molokai Planning Commission pursuant to the SMA rules, as amended, that an SMA exemption be issued for the following item no. A: Mr. Art Parr of Parr and Associates on behalf of Denise and Afa Tauheetia submitting an SMA assessment for enclosure of an existing 293 sq. ft. slab and roof addition to a 380 sq. ft. carport and conversion into a third bedroom for an existing one story – I'm gonna say a 4<sup>th</sup> bedroom – for an existing one story, three bedroom, two bath, 960 sq. ft. single-family dwelling on a roughly, 7,858 sq. ft. lot in Ranch Camp. No excavation or other ground disturbing activity is proposed. Planner McPherson?

#### **D. COMMUNICATIONS**

- 1. MR. WILLIAM SPENCE, Planning Director, requesting concurrence from the Molokai Planning Commission pursuant to their Special Management Area Rules, as amended, that a Special Management Area (SMA) exemption can be issued for the following:**
  - a. MR. ART PARR of PARR AND ASSOCIATES on behalf of DENISE and AFA TAUEETIA submitting a Special Management Area Assessment for enclosure of an existing 293 sq. ft. slab and roof addition to a 380 sq. ft. carport and conversion into a third bedroom for an existing one story 3 bedroom 2 bath 960 sq. ft. single family dwelling on a 7,858 sq. ft. lot in the Ranch Camp Subdivision, no excavation or other ground disturbing activity in the Interim District at 415 Ala Malama Street, TMK: 5-3-011: 088, Kaunakakai, Island of Molokai (SMX 2011.0101) (Valuation: \$16,154) (N. McPherson)**

Ms. Nancy McPherson: Thank you, Chair. Nancy McPherson, Staff Planner. This is an application for SMA assessment. Pretty much the whole project's described in the agenda item description. I really don't have a lot else to say about it except we do have Art Parr here who's the architect. What happened was that they originally bought the house with an extension in back of the carport. And evidently, that had never been permitted. And so

they are now applying for an after-the-fact building permit. And this was done by the previous owner, so they are trying to come into compliance. And that is why they are getting SMA assessment for the after-the-fact work, as well as the proposed enclosure to the carport extension. It meets all other codes, rules, regs, requirements, etc. And they are doing this because they would like to use a bedroom in their home as a family room and have an extra bedroom out by the – in back of the attached carport. If you have any questions of me or of the architect, we'd be happy to answer them.

Ms. Debra Kelly: I just had a question. So this is an after-the-fact of the extension?

Ms. McPherson: What happened before they bought the property was the previous owner put a slab in the back, extended the roof, and put supports. And we don't ask for fees for that because it was done by a previous owner.

Ms. Kelly: Okay, so, now – so there's no approval for that extension, but we're to approve the enclosure?

Ms. McPherson: What we're doing is we're doing two things at once. We're looking at the extension as an after-the-fact, and that's covered under this SMA assessment. And then we – they are also applying for building permit for that, after-the-fact building permit. And they are gonna have to pay fees for that. And then we are asking for the enclosure to the carport. Now, if you wanna ask what the status is of the building permit for the after-the-fact work, then Art Parr can answer that. My understanding is that it meets the building code, so they will be getting an after-the-fact building permit. And if they need to make any changes, they'll make those changes so that they can get the building permit.

Ms. Kelly: So you know the fees you were talking about, what were the fees going to be for?

Ms. McPherson: After-the-fact building permit fee. I think it's \$500.

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

Ms. McPherson: Yes. I believe so. I'm not sure.

Ms. Kelly: For what? I mean–

Ms. McPherson: Well, if you don't get a building permit, if you build something and you don't get a building permit, then when eventually the County gets around to actually enforcing the codes, and this is starting to pop up a lot with SMA review, because we do check for those things– We check that they conform with the zoning and we check to see if all construction has been permitted. So at that point, they have to pay after-the-fact

building permit fees. But Art's been handling the building permit side of it, so if you'd like him to come up?

Ms. Zhantell Dudoit: Actually, Nancy, I'm a little bit confused just for clarification so we no ask any more of these questions later on, but you said that the people cannot be penalized because they bought the house already with something that was previously there. So that's why they didn't get cited as a penalty or charges for having a structure for which they didn't get a permit. But then you wanna now charge them an after-the-fact fee for a structure that was there before they bought the house? So my question is, why not give the five hundred dollar charge to the people who sold the house? I mean, you cannot tell me that the County doesn't have a method or a way of billing somebody for – you know.

Ms. McPherson: Our Corp. Counsel wants to say something to this.

Mr. Michael Hopper: Property owners are liable for the condition of the property. They may have an action against the other owner, but the County doesn't have any connection with that person. So what would happen– The after-the-fact fees are mandatory, as I understand them. I don't know of any way to waive them in any case. This is not an uncommon situation where there's something that could be ten years ago was never permitted. Someone bought the house. As owner of that property, you are responsible for getting that property up to the codes. And that could include a notice of violation if the owner doesn't wanna comply, or if hopefully, they come into compliance. It could include an after-the-fact fee, which is not a violation. It's a fee set forth in the budget ordinance. But it is true that if you've purchased a property, and that's part of doing due diligence for a property, you need to see if all of your things have their permits. And potentially, if an owner makes a representation to you and say everything's okay, and you buy the property and it's not, you could potentially go after the owner for that, but the County isn't gonna track down the old owner who could be – I mean, they could be out of the country, in order to get compliance with the code. Typically, that would be with the current property because the main issue is the safety and getting that into compliance. And so that's how legally it works, anyway. In this case, it's obviously good they're coming in and trying to get permitted, but I think the after-the-fact fees, the reason they're being charged is because of something in the code that's required even if it's an owner later on that purchases the property that has an issue with it.

Ms. Dudoit: So you have to charge the after-the-fact fee, but is it mandated to the amount you have to charge? Or is there some way that we can reward people for trying to do the right thing? I mean, because they could've enclosed that stuff. If we didn't catch the after-the-fact stuff before, what's to say that they couldn't have just built the thing and not even come for a permit?

Mr. Hopper: The building permit fees, I'm not sure about. The after-the-fact SMA assessment fee, it can be up to, I think— What is it Nancy?

Ms. McPherson: A thousand dollars plus 1 to 50 percent of the project valuation.

Mr. Hopper: So there is discretion. You could charge up to 50% of the project valuation. The after-the-fact fee has to be to reimburse the County for costs of processing the permit. That's the requirement. So there's some discretion within that fee. The building permit fees, I'm not sure exactly where they're at for after-the-fact fees, but I think the fees are higher to – and the legislature sets them, the County Council sets them – is to deter people from coming in after-the-fact and getting their permits to begin with. But that's stuff is in the budget ordinance that the Council votes on every year. And they come around and do their budget. They set that ordinance. So that's where you get those from.

Ms. McPherson: And I don't deal with the building permit fees.

Chair Pescaia: Any more questions? No? Okay. Seeing none at the moment. We will open up public testimony on this item. Anyone wishing to make comment, you're welcome to do so now. Seeing none, public testimony is now closed. Commissioners, any further questions for Nancy or Art?

Ms. McPherson: We're recommending that you concur with our request for exemption.

Mr. Davis: I make a motion to concur.

Mr. Sprinzel: Second.

Chair Pescaia: I have a motion by Commissioner Davis, a second by Vice-Chair Sprinzel to concur with the recommendation to grant the exemption. Discussion?

Ms. Dudoit: So maybe this is for Corporation Counsel. She told me what the maximum amount was that we could penalize somebody for an after-the-fact. What jurisdiction does the Commission have to make a recommendation with a motion to lower the five hundred dollar fee?

Mr. Hopper: Well, first, it is considered a fee and not a penalty. So that's – it's supposed to be to compensate the County to – for the staff time it takes to process the permit. As far as your recommendations, if you're talking about the building permit fee or the SMA fee, I mean, I suppose in the motion you could make a recommendation to the Director to charge the minimum possible after-the-fact fee, if you – if that's your opinion. Again, that would only be a recommendation. It's still the Director. If the Director's giving discretion in the Council ordinance, then that's up to the Director. But, I mean, I don't think there's

a problem with you adding that if you feel as a recommendation to the Director. It would be non-binding, but you could give your thoughts on that issue.

Ms. McPherson: I can also pass your comments on to the Planning Director. We're looking at the SMA rules also.

Chair Pescaia: So any further discussion? Do we need to add that portion in or you'll carry that thoughts? Alright.

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

*It was moved by Mr. Davis, seconded by Mr. Sprinzel, then unanimously*

**VOTED: To concur with the recommendation to grant the exemption.**

Chair Pescaia: Motion carried.

Ms. McPherson: Thank you, Commissioners.

Chair Pescaia: Thank you. Next item no. B: Mr. Frank Skowronski of Territorial Architects on behalf of The Fathers of the Sacred Hearts, submitting an SMA assessment for an addition/renovation to an existing structure in Ranch Camp Subdivision.

- b. MR. FRANK SKOWRONSKI of TERRITORIAL ARCHITECTS on behalf of THE FATHERS OF THE SACRED HEARTS, submitting a Special Management Area Assessment for an addition/renovation to an existing 3 bedroom, 1 bathroom, 2,058 sq. ft. single family dwelling with 460 sq. ft. carport in the Ranch Camp Subdivision to add 1,166 sq. ft. of sunroom, laundry room office, renovation of kitchen & existing bedroom and excavation of less than 24 inches in depth for new footings in the Interim District at 410 Palapalae Place, TMK: 5-3-011: 059, Kaunakakai, Island of Molokai. (SMX 2011/0070) (Valuation: \$176,170) (N. McPherson)**

Ms. McPherson: Again, this is Nancy McPherson, Staff Planner, requesting that you concur with our recommendation for exemption for the item as described on your agenda for The Fathers of the Sacred Hearts. This is an addition and renovation to an existing dwelling in the Ranch Camp Subdivision. All of the changes meet building and zoning requirements. I provided you with exhibits to go along with the assessment and the— Let's see. Do we have the assessment? Okay, looks like you don't have the assessment. Did you get the assessment or not? Okay. Well, everything in the assessment was pretty much

summarized in the letter to – the memo to you dated July 13<sup>th</sup>, and in the letter to the applicant's representative, Frank Skowronski, dated July 6<sup>th</sup>. If you would like copies of the assessment itself, which is Exhibit A, we would have to take a break, and I would have to make copies of that for you. I apologize for the omission. That's why hard. I'm on Molokai. They're on Maui. And we do the best we can, but sometimes we mess up.

You do have the plans. You do have photographs of the existing dwelling. You also have best management practices, Exhibit 7, for slope protection, dust control, etc., etc. You also have a real property tax sketch of the existing dwelling. So what is your will? Do you need to see a copy of the assessment, or can you waive it for this item?

Chair Pescaia: If you'd like to see it, please raise your hand. Alright. Great.

Mr. Hopper: Nancy, for the record, what is the basis for the exemption? Which section of not development is this?

Ms. McPherson: Well, it's the same one for the previous item. That's – I forget the exact wording, but modifications to existing dwellings where otherwise permitted to residential.

Chair Pescaia: Structural and nonstructural improvements to existing single family residences where otherwise permissible.

Ms. McPherson: Yes, thank you.

Chair Pescaia: Alright.

Ms. McPherson: And I went through all the categories and you've seen my assessments before. I try to be very thorough. And we do have the architect, Frank Skowronski, here. And we do have a representative of the Catholic Church here as well. And if you have any questions for them, I'm sure they can fill you in, and show you plans, and all of that. It's actually across from The Sisters of Scared Hearts. So they're gonna be on the same street, but on opposite side of the street. And you previously exempted that in June.

Ms. Lori Buchanan: Chair? So, Nancy, what is gonna be the total square footage with the addition?

Ms. McPherson: You know, I did have to do the math for this one, and Frank helped me. And maybe he could answer that question because he did send me a summary of all of the totals.



Ms. Buchanan: Okay, well, we can . . . (inaudible) . . . on that question and go to second question. Since we significantly adding use, and this is still a single family dwelling, what's gonna happen to the sewer issue with the new bathrooms and bedrooms?

Ms. McPherson: Well, I did ask the architect that and he assured me that they had checked with the Department of Health, and that no changes to the existing system was required. But if you'd like to verify that with him, he is here today, and he can respond to that. My understanding is the existing wastewater treatment – I believe these are connected to the Kaunakakai Wastewater Treatment Plant.

Ms. Buchanan: I guess because I'm not on that system, I'm unfamiliar with if you can just increase the use from your facility or residence into the system without a permit.

Ms. McPherson: I can't answer that. I defer to the architect for that question, but that's a good question. Frank, would you like to come up here and respond?

Mr. Frank Skowronski: Good afternoon, Committee. My name is Frank Skowronski with Territorial Architects. The square footage question: there is an existing main house, and existing deck, and existing carport that totals approximately, 2,058 square feet. We are retaining the main house. We are maintaining the carport. And we're taking most of the decks off and adding approximately, 1,166 square feet to bring us up to a total covered area of 3,224 square feet.

As far as the infrastructure is concerned, the existing house, we're taking some of the bathrooms off the existing house, and adding bathrooms, and the – adding one bathroom, but the fixture count as to the net impact onto the sewer system and the size of the water meter has already been approved by the Department of Water Supply and Wastewater. So we are not adding any increase in water demand or sewer capacity.

Ms. Buchanan: Okay. Frank or Nancy, you guys have a copy of that memorandum from the Department of Water Supply that says it's all good because it's not an increase of water usage? Because we're significantly increasing the square footage and living space with bathroom, although I now the fixture count remains the same.

Mr. Skowronski: That's correct. Well, we have already obtained Wastewater and Department of Water Supply signature on our building permit. And that reflects the no increase in capacity. We're adding square footage, but we're not adding fixtures. We're adding fixtures – but we're adding fixtures, and low flow fixtures that we're taking out of older fixtures, so the next increase is zero.

Ms. Kelly: So how many total bathrooms? Because you said– So it's gonna end up with one– Okay, there is currently one bathroom. You're adding two new bathrooms?

Mr. Skowronski: There's existing two bathrooms and we're adding a third.

Ms. Kelly: Yeah, so the whole thing – I mean, it doesn't say that. It says–

Unidentified Speaker: Three-bedroom, one bath.

Ms. Kelly: Yeah, three-bedroom, one bath. And that you will be adding two new bedrooms and two bathrooms.

Mr. Skowronski: That's correct. There's a laundry in there that's got a laundry tray and a bar sink, so there is one bathroom, but there's extra fixtures. And the number of fixtures that are there now is not being increased with the new additions.

Ms. Kelly: Okay, I mean, I know what you're saying. I understand what you're saying, but that's not what this is saying. Okay. Because under the purpose of the application, it describes what the existing is and what the improvements will be, and it's not what you're saying.

Ms. Dudoit: So on this paper, the final improvements are increasing the house from a three-bedroom, one bath, to a five-bedroom, three-bath. That's what–

Mr. Skowronski: That's correct. And the number of fixtures and the allowable fixture count with the water meter meets the demands of the Department of Water Supply.

Ms. Dudoit: Okay, I sorry, but that letter needs to be included in the pamphlet because in all common sense, I cannot see how that's possible. You going add on two more bathrooms. You telling me the same amount of fixtures and stuff and supply you get out of one is still gonna be the same. So why you need two more bathrooms if you're adequately getting enough water and enough fixtures in one bathroom?

Mr. Skowronski: There's added bathrooms. Okay? There's added toilets. There's added sinks. Okay? The fixture count, not the fixtures, the fixture count, the allotment of water coming in and the allotment of wastewater going out has – is underneath the requirement of the existing water meter. In other words, the size of the water meter, and the size of the wastewater connection–

Chair Pescaia: And the new fixtures are more efficient, water efficient.

Mr. Skowronski: Exactly.

Chair Pescaia: So the old fixtures where one flushes three gallons, now you go 1.2 a flush.

Mr. Skowronski: Right. And so when you go into to get the building permit from wastewater or from the Department of Water Supply, you list how many fixtures. And they were older fixtures and they had more of a demand. And that fixture count– I know it's confusing, the difference between fixtures and fixture count, but the fixture count is an indication of the demand that is possible with the water meter. And we are underneath that demand. Even though we're adding fixtures, our fixture count is under the demand, and capacity of the water meter, and the sewer hookup.

Ms. Kelly: Okay. I mean, we understand all that. It's just confusing for us because the increase of bedrooms, the living space increases. So we're assuming more people will be–

Mr. Skowronski: Yes.

Ms. Kelly: Okay, so when you're saying it's the same, it cannot be the same because the usage is going to change.

Mr. Skowronski: Yes, the usage will change and increase.

Ms. Kelly: Okay.

Chair Pescaia: Yes and no. I mean, I see what you – what you're saying is say there's two people living in there. They use 20 gallons a day. I'm just making it up, 20 gallons total a day. If you have fixtures that only – that cuts it in half, you can have four people stay there, and still going come up to 20 gallons a day. That's what you're saying that the improved fixtures bring the usage down. That allows you to increase the bedrooms, increase capacity of people living there, but not go over the allotment of the water and sewage ability.

Mr. Skowronski: That's correct. The property now is underutilizing its water meter.

Chair Pescaia: Allotment.

Mr. Skowronski: And it's sewer allotment.

Chair Pescaia: Okay.

Ms. Kelly: Okay. And I understand that part, too.

Chair Pescaia: Now we need the paper to reflect that.

Ms. Kelly: Yeah, it doesn't reflect it, but the usage and the allotment is based on bedrooms, the number of bedrooms.

Mr. Skowronski: No.

Ms. Kelly: No?

Mr. Skowronski: It's based on how many sinks, how many washers and dryers, what the demand is. And as far as the water, as far as the water meter is concerned, the new fixture count, the new number of bathrooms, laundry rooms, the renovated kitchen are all under the capacity of the 5/8-inch meter.

Ms. McPherson: Yeah, we have our zoning code. They're allowed to build this. It meets the requirements of the zoning code. The Department of Water Supply reviews the building permit and it meets the water code. So that means – I mean, what you can do is you can use less, but you can't go over. So they evaluate the plans. I mean, they look at everything. And when they sign off on a building permit that means that it meets the water code and it's not going over. So they sign off on the building permit. I mean, in the past, we've transmitted these SMA assessments to the Department of Water Supply, etc., etc. And if you'd like me to start doing that again on a regular basis, I can do that, but the point was made in the Department that these are already going as building permit applications. And when the Water Department signs off on it, that means they reviewed it and it's meeting their requirements. And if it's meeting their requirements, then it's meeting our requirements because the way the County has evaluated the overall situation, it's not creating an impact. So that's what we go by. But if you'd like me to go ahead and start transmitting these to the Department of Water Supply, I can do that also.

Ms. Dudoit: I think I'm more concerned about that very accurate packet. It's given to us when we're reviewing applications. And right now, it's a matter of what he said and you said. And it's not in here whether or not the Water Department approved– I mean, I can hear what you guys saying about water usage, but sewage is going be one totally different thing. You know, you can be under the allotment of water that you going use, but more bodies in there means more sewage into our County system. And we're already having one problem with that especially, in the Ranch Camp area. And we haven't even figured out most of our drainage problems over here. So my – I'm worried about that. Every increase in sewage that you have, we have a tsunami, we flood all over there, we're gonna have sewage all over Kaunakakai Town. So if we allow this to be passed without having the whole packet in here, and everybody being responsible for what they approve, then we not doing our job.

Ms. McPherson: Well, the wastewater did approve the project.

Ms. Dudoit: But not in here.

Ms. McPherson: They signed off on the building permit. So if you would – again, if you would like to see a letter from Wastewater as well, I can transmit these to Wastewater for comment. What that's gonna do is it's gonna slow down the process. It's gonna take longer, believe it or not.

Ms. Kelly: Okay, but my question is, so they got the building permit?

Ms. McPherson: No, they've got it signed off by Water and Wastewater.

Ms. Kelly: Okay, so how would we have known that?

Ms. McPherson: Well, I look it up in KIVA. I can look it up for you right now and double check that if you'd like to take a break and let me do that.

Ms. Kelly: Okay, and that's all we're asking for, if we know that the other Departments signed off on it. Because they have – they would answer our question.

Ms. McPherson: Right. I could put that in there from now on. I'll double check and make sure that Water and Wastewater has already approved the plans as submitted and that I have the same plan. I can check with Anthony here on Molokai about that. So I'll be happy to do that for you.

Mr. Hopper: Nancy, just as a comment, I mean, they need the SMA exemption, permit, whatever before they can get a building permit.

Ms. McPherson: Right.

Mr. Hopper: Is there any requirement–? The Planning Department is one agency among others that would need to sign off on it. And I don't think the Department necessarily has. Is there any requirement that you know of in the law that would require them to have that checked off by Water or Wastewater before coming to you for an SMA permit? I can't think of any.

Ms. McPherson: Well, not exactly, but we are supposed to be evaluating cumulative impacts, etc., etc., but we're supposed to be evaluating those in terms of impacts to the shoreline and the coastal areas. So it's supposed to be an environmental impact. Now, if the Commissioners wanna make the connection between an overflowing wastewater treatment system– I mean, I would say we approve a new individual wastewater treatment system along the shoreline, we're creating a cumulative impact. But if the Department of Health approves it, then you would have to find grounds to find that that's creating a cumulative impact, and that people have to – we have to build another wastewater treatment system at Kamalo or some place.

Mr. Hopper: Do all of these have that sign-off before they come to you?

Ms. McPherson: No.

Mr. Hopper: They don't, right?

Ms. McPherson: No, they don't.

Mr. Hopper: And that's because – I mean, Planning has a sign-off among others, and a lot of times, they would come to you to get the approval, then go to everybody else, get their sign-offs, because you're one of several sign-offs. But I don't know. I just want to ask a question, because I don't know, if you have all of those sign-offs before you come here as a prerequisite. I was just asking.

Ms. McPherson: No, I don't. And I do encourage people to come in for SMA first because it's at the conceptual stage.

Mr. Hopper: The Commission could redesign the project or deny the project, and then the people would have to reapply for a different type of system or something. So just putting that out there is a reason why applicants may, since it's a conceptual plan at this point, not have all of that stuff signed off on at that point. I'm not saying it's not relevant to ask what are the requirements or are they going to meet the requirements as kind of a heads-up to the applicant. Just as a perspective of where we are in the process and why that might not be always be signed off. I guess in this case, it's signed off on or someone's been contacted, but I just wanted to get that for my information to advise the Commission.

Ms. McPherson: Yeah, I mean, we do it for commercial projects. We do it for SMA major permits. We do transmit to all the County and bunch of State agencies, and even sometimes Federal agencies. And if there's a possibility of the presence of wetlands, or fish and wildlife habitat, etc., I mean, even for something like this, I may transmit it to a Federal agency for comment. But because it's in an existing, previously approved subdivision, I did not transmit it to the Department of Water Supply and Wastewater for comment.

Mr. Sprinzel: I hate to give Frank a hard time because he's done such a wonderful job doing such a super church, but it says here it has an existing water meter and septic system.

Ms. McPherson: That may be an error on my part.

Mr. Sprinzel: Oh, okay. Thank you.

Ms. McPherson: Please strike that. It's connected to the Kaunakakai Wastewater Treatment System.

Ms. Kelly: Okay. And just to clarify, just to clear things up for the client as well as for ourselves, but because there's a significant increase of surface space, if there is an increase of runoff— And so the different issues do come up, and we're just trying to get clarification on a lot of these things just so we can make an informed decision. So, sometimes if the other agencies already signed off, and we see that, we might not have to answer or question these things.

Ms. Dudoit: So, Nancy, just to clarify, you said earlier that when people come to you to apply, you recommend that they do the SMA first, which is why we end up seeing it before all of the approving bodies would sign off on it.

Ms. McPherson: Well, it depends. It depends on the project. If it's on the shoreline and they've already done their site plan and they have no idea where their shoreline setback area is, then I would encourage people to come in and work with the Planning Department. Let's determine exactly where that shoreline setback area is. Maybe you need a State certified shoreline in order to determine where the shoreline is. You may have to redesign your project. And if people have already gone to the construction plan stage, that gets really expensive. So that's why I highly encourage people to come in early. And at least we can sit there, and take a mockup, and kinda play around a bit.

Ms. Dudoit: I'm trying to figure out if maybe where the problem is that you're giving us these to approve too early. They can start the process and go do what they gotta do, but if there's a lot of other issues that come up, and constant questions that we going ask about sewage and all this kind of stuff, you know, I mean, like you said, with the permits, we going often see the Board of Health letter to the applicant. We going see all those things so it's like a complete package, yeah? So I'm wondering how— And it's nothing to do with the applicant himself, but how we can fix that so that we not disapproving things because to us, it's not accurate and it's not enough information.

Chair Pescaia: Okay. Hold on. Right now, what I'm hearing from Commissioners is that they would like to see the paperwork that you say are already in place as far as approvals for the water and the sewage. They need to see that included in this package. Also, we have a site visit from SHPD, but we don't have anything in writing from them as well, and there will be excavation done 18 to 24 inches. I know that's another concern that's probably the next item of concern after the water issue. So let me just stop right here and say that I think this is incomplete at this moment. And it seems like we don't have the information we need to move forward. Is that an accurate summary, Commissioners? Okay.

Ms. Buchanan: So, I'm comfortable. I just have one question. Okay? The one question is to Nancy. What is the onsite parking requirement for five bedrooms, three-bath home?

Ms. McPherson: Well, again, I'd like to defer that question to the architect, if I may. He's been handling the building permit process. And our zoning comments on the building permit application, and the parking requirements, and landscaping. All that kinds of stuff come up. So I'll let Frank answer that.

Mr. Skowronski: The County requirement for a single family residence is two parking stalls. We have a two-car, two-vehicle carport that is existing on the property that will stay on the property. And we are providing two additional parking stalls offsite on the property.

Ms. Buchanan: Okay, now I have a second question. Corp. Counsel, what is the definition of a single family home?

Mr. Hopper: The requirement is two parking spaces for each dwelling unit, and I will find the definition of a dwelling unit for you. One moment, please. I'm sorry. Did you want a definition of dwelling unit for the parking purposes in the zoning code, or the definition of a single family dwelling in the—?

Ms. Buchanan: For the parking code.

Mr. Hopper: For the parking, okay. A dwelling unit says, "A room or group of rooms connected together constituting an independent housekeeping unit for family and containing a single kitchen."

Mr. Skowronski: May I enhance that? On Chapter 19.04.040, it goes on to define family. And after a definition of family it says, "A family may also be defined as no more than five unrelated persons living together in a single housekeeping unit." That's 19.04.040, page 554, under definition of family. So in the residential district, a permitted use is a single family dwelling. If you go to the definition of dwelling, dwelling is single family. And if you go under the definition of family, it's five – no more than five unrelated persons. And that's why we cap the rectory at five bedrooms in light of this definition.

Ms. Buchanan: Okay, Frank, excuse me if I didn't hear you earlier, but did you say in addition, you had offsite parking?

Mr. Skowronski: Yes. We're providing two tandem stalls on the side of the property because one of the side yards has got about 17 feet.

Ms. Buchanan: Okay. So for offsite parking, were you required to obtain an offsite parking permit?



Mr. Skowronski: I'm sorry. I meant to say onsite. On our site, there are two additional tandem stalls onsite that are in addition to the two paved vehicles in the existing carport. So there will be four automobiles, four vehicles onsite.

Ms. Buchanan: Okay. The only reason why I raise that question is because on the issues on Maui with what they call "McMansions," and it's a total build-out of property with – as maxing out to the rooms and stuff where you have additional family moving into a single family unit. And then there's overflow on the street for parking to accommodate those families. And so in Ranch Camp, it's a particular problem that we want to avoid. And so I'm happy with the four—the two and the tandem stalls. I'm happy with that because then you won't need to overflow the streets with additional parking. Thank you.

Mr. Sprinzel: Nancy, can I ask you a question? When we pass an exemption or approve an exemption, it then has to go to Planning permits, right?

Ms. McPherson: Well, what that does is that allows the Planning Department to sign off on the building permit, if there are no other outstanding issues. Now, they also check parking. They check for other things having to do with the zoning. And the Building Department will check and make sure that all the required agencies have signed off before they issue the building permit.

Mr. Sprinzel: Now, that was the next part of the question. So as long as they get or don't get the water approval and the sewage approval, they wouldn't get a building permit, would they?

Ms. McPherson: Right. Correct.

Mr. Sprinzel: So we are just a step. Those other things are then examined in detail by the expert professionals at the Planning Department.

Ms. McPherson: Yes, that's correct.

Mr. Sprinzel: Thank you.

Chair Pescaia: Okay, so at this point, do we need to see actual documentation from the water or sewage? Or we just taking their word that it is place?

Ms. Dudoit: I don't think it's a matter of taking their word. I just think it's a matter of, for me, a matter of accurately looking at everything that we get. So I agree with you. I would like to see more documentation. I also would like to go on record as stating that Nancy made a comment that if she needs to do all of this, we are gonna slow down the process. And I don't think that's one fair and accurate statement. You put things in the front of us to be

approved, and we need to have as much information as we feel comfortable with. So I just wanted to say that on the record. And my worry with us as the Commissioners is we setting one standard, yeah? If we going do this for one person, are we gonna do it for everybody? And when we nitpick when they come in, who we decide for ask for more detailed information? So this is just something that I feel strongly about.

Chair Pescaia: Thank you. Any other questions or comments? Public testimony. Alright, I would like to open up public testimony on this agenda item. Anyone wishing to express some thoughts, please do so. Come up to the mike and state your name. Alright, seeing none, testimony is closed. Commissioners, I will entertain a motion.

Ms. Buchanan: Chair, I'd like to move that we concur with the exemption for a single family dwelling improvements for The Fathers of the Sacred Hearts in Ranch Camp.

Mr. Sprinzel: Second.

Chair Pescaia: Motion by Commissioner Buchanan, second by Vice-Chair Sprinzel. Discussion?

Ms. Dudoit: No discussion. I just wanna go on the record as saying that I am going to vote against the motion just with the comments that I made earlier that I think it's a matter of precedence that we set on having accurate and full knowledge of what we make decisions on.

Chair Pescaia: Any further discussion?

Mr. Sprinzel: I'm happy that the water and sewage problems will be part of the building permit. So I'm not worried that we have to know in advance because if it's wrong, and they don't give their permission, they won't get a building permit. So I don't really see that that affects it.

Chair Pescaia: Nancy, would it be difficult to include the missing paperwork in the file like along with this packet?

Ms. McPherson: I have it in the file, and it is electronically filed on Maui, and it was supposed to have been printed out and included with your packets.

Chair Pescaia: So it is a matter of record with this application. Okay.

Ms. Dudoit: And then I can just make one more comment, which is kind of just bothering me a little bit, we never even went into addressing the excavation that going be done on the property. So a couple of weeks ago, we made one big deal about the digging that was

going be done in One Alii Park for our playground facility, but we not even as Commissioners addressing or even talked about the excavation that going happen on the property. Whether or not it's – you know, going be an impact, that's part of what we are commissioned to do when we looking at SMA approvals.

Chair Pescaia: I think the difference was One Alii being so close to the shoreline having sandy soil and having found human remains in the area, it was of more greater concern, and it's less – not less likely, but – yeah, it is likely to happen in the Ranch Camp developed residential area that has been graded and grubbed many times before. But the same standards apply. And I saw it in here. So it is worth noting and making comment to the applicant that we do take that seriously. And should– That's why that SHPD letter is not included in this packet. So I saw comments of it here that a site visit was made by SHPD staff in April, April 4<sup>th</sup> 2011. They did come and do a site visit, and that they would attach – verbally, they said they would attach the minimum ground disturbance, a determination of no effect to the historic properties in the area. Do you know? Is there an official letter or transmittal from them on this particular project?

Ms. McPherson: No. And what I'd like to do is get a letter from them regarding all of the properties in Ranch Camp because basically, that's what was stated to me is I've seen these properties in Ranch Camp. Based on the fact that it's an existing improved subdivision, not a paper subdivision, but a subdivision where the roads were graded, where lots have been cleared for the most part, previously cleared to create these properties – basically, these lots that are ready to build on. And in that case, it is highly unlikely that there will be the presence of historic properties. And so she could actually write us a – sort of a blanket letter of no effect, but it depends on how deep it's going. And I always look at each lot individually anyway. I look at where it's located in the subdivision. Is it backing up – is there a heiau right in back of it on the other side of the property line or what? So I always try to put in the greater context of the area. And so, no, we don't have a letter for this particular project, but I would like to get a blanket letter from the archaeologist soon.

Chair Pescaia: Okay, well, we tend to ignore those things anyway. So, Commissioner Buchanan, comments?

Ms. Buchanan: So we still in discussion?

Chair Pescaia: Yes.

Ms. Buchanan: And then right after this discussion, I am willing to amend my motion. Been so long, I forget what I was going discuss already. But the discussion about the footage is the norm for this Commission was anything over two feet. And so I noticed that they were clear in saying that the maximum would be 18 to 24. And so we require in a nonchalant way that anything over 24 that you have an archaeological monitor onsite. So

having said that, Chair, I would like to amend my motion to concur with the exemption of the single family unit, but hang on. Hear discussion, too.

This project meets all the requirements of the law that is current. So that's why it's difficult. Maui County has yet to address what they call the "McMansion" issue in the Statewide – I mean, in the Countywide. So until that loopholes are changed and other rules are changed, this project is consistent and meets all applicable rules and regulations for a single family dwelling. And that's why I have to concur and move it along.

So now, I will amend my motion to concur with this exemption with the amendment of Condition no. 5. And that's in your packet where it says the project will not impact historic sites or site remnants of archaeological and cultural significance. And at the end after the site visit by SHPD, if Nancy could add verbiage of the standard that's about if any human skeletal remains are uncovered, all work shall cease and the appropriate people will be contacted, which would be SHPD. You know that verbiage we always put?

Ms. McPherson: Yes.

Ms. Buchanan: And that's my amendment. Now, we need one second.

Mr. Sprinzel: I'll second the amended – whatever.

Mr. Hopper: Just again to remind you, since this is an exemption, this is not an actual condition. If the applicant is okay with that as a modification to their project, I think that you can say if that's okay, but otherwise you'd have to – if he's on record of saying that's fine, then we're good.

Ms. McPherson: For the record, the applicant has acknowledged that they are compliant with that addition and amendment.

Ms. McPherson: I will amend the assessment and letter to reflect that.

Chair Pescaia: Okay. Anything else? Alright. So we have a motion with an amendment to add that verbiage for approval of the exemption.

Ms. McPherson: Actually, it's in your memo, excuse me, under cultural and historic resources, on page 3. But I can add it elsewhere, too, if you'd like me to.

Chair Pescaia: Oh, that part. Well, that's where we read it off of, but it's not part of the— Yeah. I think it has to be repeated in that second—

Ms. McPherson: Oh, on the memo, the letter? Okay. And those are not conditions, by the way. Those are findings, but I can add that to Finding no. 5.

Chair Pescaia: Alright. Alright, any other concerns? Comments? Questions? No?

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

*It was moved by Ms. Buchanan, seconded by Mr. Sprinzel, then*

**VOTED: To concur with this exemption with the amendment as discussed.**

**(Assenting: L. Buchanan, J. Sprinzel, D. Kelly, R. Davis, M. Pescaia)**

**(Dissenting: Z. Dudoit)**

Chair Pescaia: Motion carries. Thank you very much.

Ms. McPherson: Thank you, Commissioners.

Chair Pescaia: Alright, moving right along. Agenda Item E, Unfinished Business. So exciting. Mr. William Spence, the Planning Director transmitting Council Resolution No. 11-24 referring to the Lanai, Maui, and Molokai Planning Commissions containing a draft bill amending Title 19 of the Maui County Code, relating to Short-term Rental Homes. The public hearing was conducted on June 29<sup>th</sup>. This is a continuance of this agenda item.

## **E. UNFINISHED BUSINESS**

- 1. MR. WILLIAM SPENCE, Planning Director transmitting Council Resolution No. 11-24 referring to the Lanai, Maui, and Molokai Planning Commissions containing a draft bill amending Title 19, Maui County Code, relating to Short-term Rental Homes. (G. Flammer)**

Ms. Gina Flammer: Good afternoon. I'm Staff Planner Gina Flammer. Did you wanna take public testimony first, or did you want me to answer questions that were left over from—?

Chair Pescaia: Alright. If we could have the – answers some questions first, and then we'll take testimony after. Thank you.

Ms. Flammer: Okay. I also sent an information packet, but I'll walk you through because it is a little bit cumbersome. For those of you in the audience that are interested in the bill that were not here last time, I did put some copies of my power point presentation on the

counter over there. And there is a short summary that's four pages where I tried to make it real easy to understand what the basic points of the bill are. Anybody that would like to get my card and call me afterwards, I'm more than happy to discuss it with anyone.

So at the last hearing, we left with some questions for me to get the answers on, and to provide you with some more information. The first one was information from 2006 and 2008—the same topic. I'm gonna do that at the end. I'll answer the other questions pretty quickly.

We had a question about loopholes for partnerships or corporations. Our law is pretty specific that it has to be a natural person. We did discuss that a little bit more in terms of discussions with our Corp. Counsel. Technically, they could put the name of an employee, but it's highly unlikely that they would do that. We felt pretty comfortable with the language that was in there. If anybody has any language they'd like to tighten it up, we'd be happy to hear that as well. It has worked pretty well for the B&B process.

Secondly, I was asked penalties that are collected for this type of violation. Where do they go? Are they used to pay for more enforcement? And right now the way it works is penalties collected go into our general budget. I don't know that we can change that in the bill. It's kind of a structural thing with the County. I understand what the purpose is. If this Commission felt like there needed to be more enforcement whether it be bodies or money, you could make that recommendation, and we can see what we could do with it.

Ms. Buchanan: Gina, my understanding is that there's no penalties ever issued yet for violations? Is that true?

Ms. Flammer: Oh, no, yes, there have been over the years. I can't tell you— I know there's a couple cases. I don't have a complete list of what they are, but, yes, there's been violations as well as times where we settled with a penalty.

Mr. Hopper: On Molokai?

Ms. Flammer: I don't know where those have been. I don't know if our Corp. Counsel does or not. I'd have to do some research on that.

Okay. I was asked about what is the role of the NRCS with our farm plans. And I did manage to find a little bit of information. That doesn't look like there's a real strong connect between our farm plans and review by that, and I can follow up with Debbie a little bit more on how to make that happen.

Looking into building on interim, well, the bill does allow these operations on interim land. It would have to be on a single family home that's already been built. So it would be

whatever standards. In the bill itself, it does list the interim zone, if you wanted to find out some more information about what's allowed in there. But it does allow— You can build on interim. So therefore, if you built a single family home, you could apply for a short-term rental home permit.

It was asked to put the staff report on the Planning Department page. That is up now for everyone to look at—all 177 pages for those who are really interested. It's right on the front page of the Planning Department website. A copy of the bill is also on there—the resolution and the bill itself.

So that's the kind of the meat of what I was asked to do, which was this Commission looked at – looked at two different bills or packages of bills on the same subject. You ask me to go back to 2006. That was the Bob Carroll Bill. And what was in that bill is they took our existing B&B law that did have a permitting process for B&Bs. And it allowed a resident manager. It expanded the areas that that could be into rural, into ag. There was a technical amendment about putting it into business. And it allows the use of ohanas.

The Department at that time did not recommend approval of the bill with a couple minor points on that. So when I went through to find the information, our Staff Planner is on vacation, so it's a real interesting process kind of to see what the public has to go through. So I will say DeGray was really helpful. We ended up going over to Council and kind of going through the information that's there.

So what I found is what I provided you, which on the page behind it, that little memorandum I sent to you, it shows on the bottom. Typically, we put the comments in a table format so it shows the date of your meeting. And then you voted to recommend denial of the proposed amendments. Talking again about the 2006 Bob Carroll Bill. And you voted to recommend that the matter be discussed during the General Plan process.

I thought maybe you guys want a little more background information than just that. So we kept digging. I gave you a copy of the bill itself so you could read that. And then a copy of the text of our staff report.

I did go through the minutes, and basically, when you go through the minutes, there was discussion, a lot of testimony on both sides. There was discussion about enforcement similar to what we heard at our last meeting. And there was a little bit of discussion about ag land. And it was only one meeting that this was talked about.

I'm gonna jump ahead real quick. I gave the Commission Members a copy of a letter I wrote for Lanai. And what that does is it gives the recommendations, a rationale behind it, and then I just put in there some proposed language if Council Members want to adopt

that. I would recommend for process for us moving on that I do a similar thing. It comes back to you. You can check it for accuracy, then we move along that way.

So for 2008, I took a look, and you guys talked about the actual B&B bill that did pass. At the time it was a package of bills: the B&B bill being one of them. And that was passed out of committee with many of your recommendations. As you know, the short-term rental bill we're discussing today is based on the B&B bill that was passed. A lot of your original recommendations were incorporated into that B&B bill, and that's in the short-term rental bill.

So to help you guys kind of figure out what you talked about back then, in the package, I put together the transmittal that went to Council for that. That was February 1<sup>st</sup> 2008. It does give a little summary of the bill to help you with that. And then I put together the table that was submitted that had your comments. You had four meetings. So you could see— I don't know if this helps at all, taking a look at what this page looks like. And then I thought you might want to see what the bill was itself.

So what I'd like to do to help you understand kind of the broad picture is I wanna talk about how the current bill was different than the B&B bill you discussed. And then I'm gonna talk about how the current bill is different from our current permitting system.

The B&B bill that was created, Chapter 19.64, was for the owners that live on the property. It does spell out restrictions and standards for that. So the short-term rental bill, their adaptation of that bill, the major, major change is that an owner does not need to live on the property. If the owner lives off-island, and we're gonna clear up this technicality because we thought there's a difference between off-island and being out of the County. It's a technical change, the Department will address. If you're on Maui, we don't see you managing something on Molokai. But what the bill does say is if you are not there, you need to either have someone living on the property, or you need to use a professional real estate manager who's licensed in the State of Hawaii. That is the biggest difference between the current B&B bill and this bill. There's some other minor changes such as we dropped the occupancy rate from two adults and two children, which is what the B&B law allows, to only have two per room. And then there's some other things about if you would like to have a party, you would need a permit to try to address something that the B&B bill doesn't even address at all pretty much saying you can't just throw – have a big wedding reception at your short-term rental home. There'd be another process for using it for that.

So what is the difference between what the bill proposes and what system is in place now? If you have a short-term rental home, if you would – if you have a single family dwelling, you'd like to use it as a short-term rental operation, right now, we do have a process for doing that. It's called a conditional permit process. If you are on ag land, you would need to meet State law, and that would require a separate permit, a State land use special use



permit. The conditional permit right now, that process requires that they come to the respective Planning Commission, but you can only make recommendations. The final decision is made by the County Council. It's seen as kind of a cumbersome process because of the two approving bodies and it does quite some time to get on both schedules. I believe Kip Dunbar is the only one right now that's operating though the Feeters did go through that process. I believe the Dunbar took maybe seven years to do that. Part of the reasoning behind this bill is to streamline. You hear a lot of about the County wanting to streamline permitting. So this would be one of the ways. It would also give this Commission final approval authority which is different than what you have now. You're only able to recommend now. It does set out restrictions and standards.

The conditional permit process is used for really anything that's not listed as a permitted process under the law be a home business. It could be a number of things. This ordinance, the short-term rental home is only for this type of use. It does list out all the restrictions and standards which you see in the beginning. It includes things like you have to have house rules that spell out you have to park onsite. You can't have any noise before 8:00 a.m. or after 9 o'clock. Many other restrictions they would have to meet before it even came to you.

So lastly, before we move on, I just wanna talk about the process of how this whole resolution, where does the bill go now. The bill was initiated at the County Council. It went to the Planning Committee. It was referred out by the resolution we're talking about, 11-24, to our Department to bring to the different Planning Commissions. Once I collect all the comments from the Planning Commissions, and I'm also going out to the community and collecting those, I will need to give a report back to County Council by July 22<sup>nd</sup>. That's 120 days from the day that it was sent to us from County Council. My report will include your recommendations. I'm gonna put it in the format that I did for Lanai. There'll also be a table that'll have everybody else, but I'd like Council to know a little more behind why. I think it's more powerful when they understand what you're saying. Then it will go into the jurisdiction of the County Council Planning Committee. The Department will continue to work with the Committee as a technical advisor. For this Commission, if you had additional comments, I did see in the past, you did send letters directly to the Chair with your recommendations.

I think that pretty much sums up what I wanted to tell you. I'm sure you have other questions, though. So my advice would be today, what I would need from you is if you have a recommendation, make it really clear. I think you guys know how to make motions, which is great. You know how to do that. But also give me a little rationale behind so that I can explain to the Commission where you're coming from.

Chair Pescaia: I will open testimony, okay? Okay. We would like to open public testimony. Anyone who has comments, you are welcome to come up to the mike. Please state your name before proceeding.

Ms. Zelig Duvauchelle: Aloha. My name is Zelig Duvauchelle and I have a home in Pukoo. Hey, howzit. And for a number of years, probably like – well, 15, over 15 years now, I've lived on the Mainland. And I like to come home to Molokai at least twice a year, and I make it home twice a year, and I'm really happy about that. Off and on I've had – I've done short-term rental at my house in Pukoo. I think for me, I think I'm unusual case, which is that I'm from here, and that that house has been in my family for many years. I do the short-term rentals. I have done them off and on because I like to come home, and then the house is available to me. If I do long term rentals, I cannot do that.

And I'd like to dispel the myth that you make plenty money. For me, I'm able to maintain my house and keep it in a certain condition that I like. Living on the ocean, there's just things that require maintenance. And I don't make a lot of money. I'm able to pay my property taxes, and like I said, maintain a certain level of the way I like my house.

There's a couple of things, a few things, that I'm concerned about. I'd love to apply for a permit. I've heard nightmare stories. I don't know if they're all true, but I've heard that it takes super long, and that it costs plenty money. And I don't have – I live on the Mainland so I cannot be flying back and forth to Molokai to get the permit. And I cannot – anyway, I cannot afford that kind of time. I cannot afford to hire an attorney to do that for me. So I continue to fly under the radar. And I have mixed feelings about that. I'm – as a local girl, there's a way in which staying in the gray area kind of and flying below the radar serves me because I don't need to get a permit, and I don't need to – I just kind of – I just do my own thing. Kind of like my family helps me. They manage – my mom does all the managing of the property for me, and my brothers and my sister helps me. Plus, whenever family comes over for luaus or anything like that, then I just block out times for that specifically so that my family – you know, my sister having a baby party or whatever, they can come and stay. And they do that quite often, actually.

So these are my concerns. One thing that – I made a few notes. I just got this paper from my neighbor. She came over there yesterday. She was, oh, look. I was like, oh, great. One thing is the rights of native tenants. Like I am concerned about that. I don't if everybody is familiar with that, but most deeds – I don't know if all deeds, but most deeds in – at least in the area that I know, the Pukoo area, that you – that the people who live in the same ahupuaa have rights. So all those people who live mauka of me have the right to come down to the ocean and gather. And if they like go fishing or whatever they like do, they can do that. And then I can go mauka if I like. If I like go pick kukui nuts up Pukoo Valley, if I like go get ulu, whatever, then we kind of reciprocate with each other. Pukoo, we don't have that much of a problem with that because we do have two public right-of-

ways in Pukoo. So most people, if they like go down the beach, they just use the public right-of-way. But a couple days ago, my nephew them came from across the street. Auntie Becky Kamakaaina came, you know, holoholo with her grandkids. Fine. That's how. And I just want to – I'm concerned that in other areas on Molokai that that not be enforced like that. So I think that's something that you folks can perhaps take a look at.

The other thing is that this thing about having a caretaker or somebody on the property, I wasn't clear about that. I think you're saying that somebody has to be living on the property. For me, that would be difficult, obviously, because I don't have another house on my property. And so, I no like build one other house just for get the permit. But my mom does manage the property, and she lives in the same ahupuaa as I do, so I would like some consideration to that that perhaps – because local families, I would – you know, that that could come up again that the families maybe live in the same ahupuaa. They don't maybe live on the property. So I'd like for that to be considered.

The last thing is real property taxes. I'm concerned that, of course, that if – I think it says here – it reads actually, "The Department of Finance, Real Property Division, replied to the agency comments that these properties will be taxed at hotel rates unless the bill provides for a separate category." So I would hope that there would be a separate category. I don't think that vacation rentals have the density of a hotel. You're talking about – you know, you don't have – Anyway, so there's residential, there's rural, you know, there's different zoning, there's apartment, and there's hotel. I don't know. I think we fall some place different in there. I'm not quite sure, actually. I don't know. Paying the transient accommodation taxes might be enough revenue. I don't know. I don't know what the Department of Finance, the Real Property people are looking at in that that I'd like for that to be considered that we perhaps have a different category. Thank you very much for hearing my concerns, and aloha to you all.

Chair Pescaia: Mahalo. Questions for the testifier?

Ms. Buchanan: I have one question. Wait. Hang on, Zelig I have one question. Earlier in your testimony, you mentioned about property taxes. Have you seen your property taxes increase over the past five years because of additional higher-end, more valuable homes being built adjacent to your property?

Ms. Duvauchelle: I would say the answer to that is yes. They have increased not substantially, though. I mean, to be honest with you, I was really scared when I first some of the houses that were being built on Pukoo Beach because they are substantially larger than mine and worth – you know, mine is just a regular beach house like same age as me that house, so kinda old, ah? But anyway, when I saw that, I was like, pretty concerned about the property taxes. And they have gone up, but not that much. I was quite surprised, happily surprised.

Ms. Buchanan: Okay, you wouldn't know if that's because you have applied from long time ago with an exemption on your tax status?

Ms. Duvauchelle: I have not applied for an exemption.

Ms. Buchanan: Okay. Okay, and one more thing I just wanted to share with you. You talked about the right-of-way to the beach and as a potential problem in the future. It's my understanding that the County of Maui has purview over providing right-of-ways, access, to beach. That falls under the County of Maui. So that beach access right by your house is a County of Maui beach access. And we've had the same problem in Kawela. When Kawela started to build up, I guess at the time of the subdivision approval way back when in the '70s, the beach access was then inadequate. And so now the problem we running into is people that used to traverse the street through properties that are now built up have had their access cut off. And so it is a problem, but it goes back to Planning, yeah? Whoever does the subdivision approval has to provide for access under the County. So it is one— And the property tax and hotel rates, it's my understanding, and we ask the Planner that the current TVRs are paying hotel tax rates, yeah? So, thank you, Zelig.

Ms. Duvauchelle: Mahalo.

Mr. Sprinzel: Just one more. Just one more thing. You seemed to be worried about if you did get a permit having somebody living on— I think the living, and I'm sure Counsel will correct me, is for bed and breakfasts you have to have somebody living there. For a permit for a vacation rental, you just have to have somebody responsible who they can get in touch with, I believe.

Ms. Flammer: Gina Flammer. I can answer both questions. Okay, for the bill, if you don't live on the island, you would need a professional real estate licensed manager in the new bill for this. Bed and breakfast, because you're required to be on the property, they don't address things like that.

For the tax rate, I think it was last year, the Council created a new tax category called commercialized residential. That includes B&Bs and the 12 conditional permits. And that, I don't know that rate off the top of my head. It's somewhere in the middle. Yeah, little lower than exactly— Yeah, it might be 4 percent. There's been discussion about these being put up higher closer to hotel, but the Council will be the one who decides that. But if you have recommendations, let me know.

Ms. Dana Harris: Dana Harris, Molokai Vacation Properties. I wanted to mention one thing. I know — I thought this thing said you had to have — live on property, have somebody on-island, or be a licensed real estate agent. Is that not what you're doing now for the TVRs?

Ms. Flammer: Gina again. For a conditional permit, it does not – each one is done separately and has its own conditions. There's no standard for requirements for a property manager. I believe some of the bills – some of the individual permits, they've addressed it before and they've stated who's gonna be – I think on Molokai, the Feeters talked about it was going to be family, but because it's such a broad permit, the conditional permit, the existing one, it doesn't list criteria. The new bill states that if you do not live on the island, you have to have a real estate licensed professional manager who's in the same community plan district, or you have to have someone living on the property. If you live on island, then you don't need either of those two. The Council could change that, but that's how the bill is right now.

Ms. Harris: So I am recommending that if somebody like Zelig has family, they should be able to watch over her house. It doesn't have to be somebody like me. I mean, I've got enough anyway so . . . (inaudible) . . .

Also, last week or the last meeting you guys talked about water. I just kinda wanted to address a little bit when you were talking about caps. I would love to see you guys be the ones to approve. I really do. It should be a case-by-case, but if these are not vacation rentals, they will be long term, and they'll be families with three or four kids. So I think you do need to take that into consideration when you're making your plans.

The other thing I really do wanna address, and I know you go back to ag, these guys on the West end, there's nothing they can grow. I mean, \$35,000 of what? How much water? So again, I would like you guys to look at some of these houses on a case-by-case basis and not just will allow – because if somebody could make \$35,000 on ag, I don't think they would do vacation rentals. Like Zelig, they're just trying to protect their property, pay for the expenses, and be able to come home or come visit because they love the island. Anyway, I said my other stuff. Do you have any questions?

Chair Pescaia: Thank you. Okay, next testifier?

Ms. Liana Brunnert: Hi. Good afternoon. I'm Liana Brunnert and I live on the West end. We do live right on Papohaku Beach. We border the beach park. We have a – we are the live-in, the property caretakers. The owners do live in California. And I do pay the taxes, the transient tax, at 9.25 percent and the GE taxes on all – the rental.

We are on ag land. Again, like Dana said, we have chickens. We have pigs on the property, you know, but we use them for luaus for the guests that do come in. I know the owners have applied for the permit. And it's been several years in the workings, and they're both doctors, and they still can't get through the loopholes of the permitting process. So hopefully, that will be addressed as well. I'm a little nervous here.

I heard you mention something about having a party permit. Is that like you're gonna limit how many people you would have to have before the permit comes because we have family functions, we have weddings, we have off-island people? And the house that we have is a six-bedroom, six-bathroom, three-living room house. And the maximum we keep in there is 12. But because of the lack of hotels and facilities for like the paddlers coming in, we have one whole team that'll stay in the house. They go to homes. We just had a group, two families, who said they heard about the meeting today, and said they would not have come to Molokai had they had not been able to stay in a house because it was the parents, the adult parents, senior parents, their two sons, their daughters, and then their two kids. And they were all able to stay under one house and together.

We're paying the taxes. We wanna do everything up and up. There's just no way on ag land. We raise pigs. We have all our fruit. We're – you know, chickens, got the eggs. We got everything. There's no way we make \$35,000 a year on ag land. And that goes back to the water fight. We need ag water. But that's a different thing. So anyway, we're hoping the process can be made easier and for everyone else.

Mr. Sprinzel: So to be clear, you're running an illegal, short-term, vacation rental?

Ms. Brunnert: Yes, but I am paying the taxes on it, quarterly, but we want to be legal.

Ms. Flammer: Did you want me to answer that question that she posed? Okay. The Department writes– I'm trying to find the section here. It says, "No parties or group gatherings shall occur without a special events use permit granted by the Department of Planning pursuant to administrative rules." Well, we don't have that kind of permit right now. We could create it through administrative rules, but when I talked with our internal team that's gonna be processing these applications, we had talked about the way that we'd probably handle it is it would come in with the initial permit. And that way, everyone could review it. Neighbors would be noticed and it would be reviewed as part of that permit. If we do create rules and create a special new type of permit, we could do it, but absent that, that's likely how it would be handled.

Ms. Dudoit: So I just wanted– Maybe I'm confused but I just wanted to clarify for everybody, including myself, what we deciding on is not whether or not we wanna have TVRs, or we actually have TVRs. We're making a decision on the process in which those applications to run a legal TVR can be made, right?

Ms. Flammer: Yes. Because right now there is a process, you could choose to leave that.

Ms. Dudoit: Right, that's what I'm saying. So I mean, listening to Liana's testimony, I just wanna make sure that everybody knows that this is not a matter of whether or not we going have TVRs or not, right?

Ms. Flammer: It ultimately comes down to who approves them.

Ms. Dudoit: Right, okay.

Mr. Hopper: I just wanna make clear there is a provisional law right now that says transient vacation rentals are illegal everywhere. The exceptions are hotel districts. And this conditional use permit issue is a bit iffy because under the conditional use permit law, it does not say you can get a transient vacation rental. They've been allowed by Council, though, because they feel that in some cases, this is something that is a use that could not have been anticipated ahead of time. It is not expressly allowed except in hotel districts. It is, in fact, expressly prohibited. And so to say that they're allowed— This, on the other hand, would be a very expressed permitting scheme. It says that this is allowed. And I think is a much better approach from a legal perspective than having a conditional use permit law that doesn't mention vacation rentals or their criteria versus this, which is an attempt to say where they're allowed, and under the circumstances in which they're allowed. So I don't wanna say that they're allowed right now because technically, with a conditional use permit, any use can be allowed anywhere. It's almost like a use variance. So if you live in residential, and you see them running a – I don't know, a high impact business, it's not allowed in residential. Well, technically, you can get a conditional use permit to run that high impact business in residential because the conditional use permit law is very broad. So that use is not allowed in that district, but technically, you can do anything with a conditional use permit anywhere. So right now, vacation rentals aren't allowed. They have been allowed by this conditional permit process, which is similar to kind of granting a variance from the code, in my view in a lot of ways. So this would be something that would expressly recognize vacation rentals where they're permitted, and I think from a legal perspective is a much better approach. So just to get that clarified. It also does not allow them, as proposed, on ag land on Molokai. And so that's to note. That's up to your recommendation. You could change that, or support that, or not, but based on the bed and breakfast law, ag land is not proposed to be allowed on Molokai on ag land. And that was I think based on the bed and breakfast recommendations. So just a couple of things to keep in mind.

Ms. Flammer: When we're done with public testimony, I can go over the areas where they're allowed. And Nancy did loan me or loan us, the zoning maps. I wish I could've gotten it small for you to look at, but if you wanna take a look, we can talk about specifically where they would go for Molokai.

Chair Pescaia: Any other testifiers?

Ms. Katie Leong: Hi. I'm Katie Leong. And I think this is the first time I've ever given public testimony. Hi, everybody. I know most of you. This is my husband, Timmy.

We moved into our house on the beach at Kawela 21 years ago. It took about seven years to build it, clear it. And the house next door to us that's now a vacation rental or last I knew as of two days ago, anyway, it wasn't a vacation rental at the time. There was a family living there. This bedroom side of our house is 21 feet from this vacation rental.

Now, I have nothing against the owners, the manager, whatever, but my situation is very unique. And you need to consider, I'm just putting it out there for, a certain kind of setback to the nearest neighbor. You know, Zelig, I don't know how close your nearest neighbor is. I'm sure every situation is unique. If you've got five acres and you're in the middle of it, you're probably not gonna bother too many people. But last Thanksgiving, I inadvertently partied with the people that were renting the house. It was a three-day, three-night Thanksgiving, all out, you know, microphone, local style. I love local parties. Now, the difference between a vacation rental and a local person, I told my husband I said, we'd be invited. I would've been over there. But it's just wrong. It's just not right. It's just not right. And who's going to enforce that? Well, I would love that noise policy.

Now, 90 percent of the people that have been coming and going over the years – now, it was a vacation rental. The previous owners, they kinda let it go as a vacation rental, but I had a couple of real nightmare experiences with them too: loud music and just crazy. And people that don't respect – I had one – there was one vacationer that called the police on a handful of local kids that were playing on the sand dunes out front, which was public property, but they don't know. So that's how it impacts you next door.

We've been kind. I know the people, they've been borrowed things from us. You know, we're not complainers, but I've been the nice old lady next door for quite a few years now, and it's time to say something. This particular situation, it's not right. And it's a lovely house and it needs – you know – I don't know. I'm just telling you about the bad experiences, and I don't know if too many people testified about that. But think about setbacks to the nearest neighbor, things like that. And so that's it. Thank you. Thank you.

Mr. Timmy Leong: You gotta excuse my voice because I lost it somewhere. I don't know where. My name is Timmy Leong. And I think the problem is when you got vacation and this vacation rental thing is not everybody, but most of the people are on vacation mode. And when you are not, and you living next door, and you gotta go to work the next day, and these guys are making noise, party, and talking loud, got their lights on, you know, I mean, is it my responsibility to go over there and go, hey, you guys, you know, cool it? You know, if it was my neighbor, I could go over there and say, you know, I work, you work, you know, yeah, fine, but they not going do that. They going be respectful of each other. When you have people like come, and they stay, and they don't know who you are, you don't know who they are, you know, some of them, they not gonna give a rip especially, when they're on vacation and they partying.



And the thing is also, I found not only the noise, but I think a lot of these people are very insecure in a new neighborhood. They don't know who's around you. They turn on the flood lights outside and it's blasting, I mean, in your window, in your bedroom windows, and you trying to sleep with these flood lights on. And I'm telling you, in a residential district, the minimum setback from a house to the property line, minimum, and this is only on the side and the rear, is six feet. This is six feet, okay? Six feet. That's my house to the property line. That's how close I can build. The next neighbor, he can build six feet to the property line. So I'm here, and you're there, and you making noise. I'm 12 feet away. I challenge anybody in this room to have a vacation rental 12 feet away from your house. See how you like it. I guarantee you guys going say, no way. Anybody in here.

So I would say as far as approval for vacation rentals is whatever property that they wanna consider, if it's in a residential district, you have to have 100 percent agreement of all the adjoining property owners, not 500 feet away. That guy 500 feet away, he not gonna care what's happening right next door. If I'm 12 feet away, I'm the one gonna take the jerk.

So – and the other thing I'm kind or curious about is, you know, all this stuff is illegal now. You know, why don't they enforce the laws that are in existence? I mean, I get in my car. I get one ticket for not wearing one seat belt driving from Misaki's to Friendly Market. Hey, how you figure? And these guys, they raising one ruckus next door to me. The County, on the books right now, there's a law: one thousand dollars fine for violation, illegal vacation rental. Who's enforcing that? What's the process you go through to enforce the laws that exist now? Hmm? Yeah, please.

Ms. Flammer: That's a great question. And it's something that we hear about at every hearing that we go to. Right now, it's done through our Zoning Division. And it's on a complaint-based system.

Mr. Leong: So who do I call?

Ms. Flammer: You would call our Zoning Division. Oh, what you would do actually is you would go on the computer. On the website it says "For Residents." I'm gonna give you my business card. And you're gonna call me, and I'm gonna walk you right through it.

Mr. Leong: . . . (inaudible) . . .

Ms. Flammer: So how it works is you would file a request for service. It's a broad form, but it's also used for complaints. And you would list your name and your phone number, contact information, and a short summary of the problem that you're having. And we can talk on the phone about you would wanna word that. What happens is then an Inspector would likely call the owner and we would go from there. One of the things we're trying to do with the bill is we recognize that with all the legal challenges that we've had over the

past so many years with this issue, we need some new tools, enforcement tools. And we're gonna try to incorporate that into the bill.

Mr. Leong: Well, I got the perfect tool for you: hire me. I tell you why. All you need is a computer. That's all you need. Google search vacation rental, Molokai, and everything pop up. Eh, if you guys short on money, I can make you guys \$50,000 in a day. You know? And yet, you know, I mean, I get a little seat belt violation driving a truck from Misaki's to Friendly Market. Come on.

You know, this enforcement thing is not good enough because if I gotta call the Zoning Department, they not open on Sunday night. They not open after hours. By then it's too late. Eh, these guys gone. It's my word against theirs. So that's all I'm saying is, you know, I think there should be a Countywide moratorium. Shut everybody down until you guys get this thing together. I mean, not like, eh, you know, you guys can go under the radar until, you know, we get something worked out. This is illegal. It's against the law. We have a law on the books that needs to be enforced. It's not like, you know, we working in some gray area. That's all I have to say. Thank you.

Chair Pescaia: Any questions for the testifier? Seeing none.

Mr. DeGray Vanderbilt: Somebody said I needed a wife, but that was impossible to find. I'm sorry, Madam Chair, but it's just when everything's last minute, it's hard to make the copies. While you're getting those, I might just say that my name's DeGray Vanderbilt, resident of Molokai. I had served on the Planning Commission for five years and I was Chair for one year. And, you know, we spent a lot of time – and there were four hearings before the Planning Commission when I was on the Commission in 2007. And the recommendation at that time from the Commission was to – if any bill was passed to say “except on Molokai,” because the Commission recommended that this was something that needed discussion. It deserved a lot of discussion and community input. And that it would best be handled under our review of our general community plan or our Maui Island plan.

Now, I guess the thing that – I wanna thank Gina for putting up that 177-page staff report. It's too bad that it was after our public hearing because you guys got the report I think only two days before the meeting. The people on Molokai didn't get it till the day of the meeting. And the people on Lanai and Maui didn't have access to it probably until the day of the meeting. And there was some good information in there, but on the last page 32 of Director Spence's report, he has four recommendations. And that's based on all the stuff that needs to be considered.

I would urge you to do no. 2, which is recommend of the proposed bill with amendments. And that amendment would be on each of the ordinances, they add a permitted use to the various zoning district called short-term rental homes subject to restrictions under certain

sections, blah, blah, blah. I would just add in front of that, "except on Molokai." And that – no, but that – there's many ordinances that have "except on Molokai." For instance, the zero lot line bill says "except on Molokai," because zero lot lines, we didn't want people just building zero lot lines all over. And there's probably ten or 12 other instances where that– And the Council's very, very responsive to what the Planning Commission says. And this would give us time to review this whole thing from a community wide perspective, and then go back and amend the ordinances, and to include various things after some good deliberation and make some informed decisions rather than rush into this to meet some arbitrary and I think contrary date of July 22<sup>nd</sup>.

I think if you look at the County Charter, one place it says you can have – you can wait until you get it to – you can send it to the Council 120 days after the last public hearing. And then in another place it says if you don't get it to them by July 22<sup>nd</sup>, which is 30 days after the public hearing, they can take action on it. So there's inconsistency in the charter which the Charter Commission is even looking at now.

But what I wanted to just say is I handed out three handouts. The first one was just to compare the impacts on Molokai with what the Planning Department feels is a reasonable position on Maui. And it shows that the Planning Department in his report to you on Exhibit – or on page 28, in Kahului–

Ms. Buchanan: DeGray, you gotta hold up your paper and show me where you stay because you gave me three papers. I'm assuming that one.

Mr. Vanderbilt: Oh, no, this one page.

Ms. Buchanan: Okay. And then when you reading about the recommendations where you say approve amendments?

Mr. Vanderbilt: Oh, that was on page 28 of that 177-page staff report that you got. You know that big staff report you got? Yeah, but that's just recommendations you have on any ordinance. You can recommend to approve it, deny it, blah, blah. But anyway, if you look at this chart, this one-page chart, in Kahului, Wailuku, where they have 54,000 people, the Planning Department recommends 18 short-term vacation rental houses, 18. On Molokai, on one website, we already have 50 in operation from the East end all the way out to Papohaku Beach, over 50. And a lot of them are – and there's several of them that aren't even listed on that. In West Maui – I mean, in Makawao, Kula, Pukalani with 25,000 people, they recommend 20 would be appropriate. We've got 50 here already operating at least. So there is an impact.

And I know Timmy Leong and Katie a long time. And they're very humble people that have been in this community and contributed so much to this community. And you could see the

frustration. I've never seen Timmy like that. And it hurts when— He built his home, too. He didn't have some guy from — come in and build him some place. He built it himself so there's a lot of roots there, and love, and he raised his family there. And to have to go through this, nobody should have to do that. And it's not just close by. At the last meeting I was here, there was a lady — Ms. Savidge from Friendly Isle Realty. She lives out on the West end, which are bigger lots. And she had the same complaints. There shouldn't be anything done until there's some enforcement. And so anyway, that was just the chart to give you some idea.

You know, I guess the thing is, on the bed and breakfast bill, which was passed in 2008, that was supposed to — people wanted to get legal. There's several bed and breakfasts on Molokai, actual ones, where the people live in the house, real bed and breakfasts. And none of them have come in for permits. So nobody on Molokai has come in for a permit since 2008 when the law was passed. So why are things gonna change on Molokai except maybe for Zelig who probably would get approved by the Planning Commission? I don't know. I mean, if I was on the Planning Commission, I would approve it. But it's gonna — all the pressure's gonna be put on us because the Planning Department has recommended no limit on TVRs for Molokai. And that was because they felt the Planning Commission would be able to review all the applications. But then that puts a lot of burden on you guys, too. What's the limit? In this bill, there's no provision for how many you can have in the neighborhood. Waialua's probably about 100 percent along the beach and even some on the mauka side of the road now. And so where does this impact have?

And I just wanna go to this next one, which was a letter from the County Parks and Recreation Department dated July 30, 2007. That's the last time the Planning Commission reviewed. That's that handout that says Exhibit 11 on the first page. In this he says, "We do not support allowing vacation rentals in ag or rural districts. Such would conflict with the purpose and intent of the agricultural and rural districts as stated in the ordinance." And he goes on to say that — well, he says that. Now, they've changed their mind. When this was sent out, the new bills, the new administration's Parks Department probably wouldn't take the same position. So it's just all political.

But I guess where — if you look on page 3 of that or page 2, it says the purpose and intent, for instance — page 3, sorry, page 2. It says, "The purpose and intent of the rural district—" "The purpose of the rural district is to implement the goals and objectives and polices of the Maui County General Plan and community plans." Right there you've got a problem because this is not consistent with our community plan.

And if you go down to the next line, a law that was adopted a few years ago by the Council, it's in the County code, it says "General Plan." "All agencies—" and you're an agency as is the Council and the Planning Department, "shall comply with the General Plan which includes the Molokai Community Plan." And it says, "All zoning ordinances and

administrative actions—,” which would be by agencies including the Molokai Planning Commission, “shall conform to the General Plan which includes the Molokai Community Plan.” And in that staff report, they highlight areas where the community – these laws are not consistent with the community plan.

I have with me a testimony from the Maui Farm Bureau. And they’re against it because it’s not consistent with the State ag laws. You’re not supposed to have any overnight accommodations. Now, if you want to, you gotta start changing some laws. You just can’t pass laws that are inconsistent with existing laws. And as I testified at the last meeting, I’m for short-term rentals in certain areas, but we gotta get some control over it. I know Dana’s very conscientious and aware of her local community, and Zelig is too. But for every two or three people like that, there’s 20 or 30 that feel that they can do anything they want on their property especially, on Molokai. So basically, I just wanted to provide that.

And the last thing is Gina. Gina has done a— I mean, she is a bright light at the Planning Department. And she’s got a good background. I remember when she was president of the Kula Community Association. And she does her homework. And I think on anything she does, she’s gonna try her best to get as much information out to you and the public as she can. But as far as after you do something like this, it goes up to the Council. And the Planning Department mainly – the Director Will Spence will advocate or give advice to the Council on behalf of you. That’s not gonna happen. And an example of that was July 11<sup>th</sup>. A bill, which was that last packet I gave you passed out of committee – oh, five to one, I think the vote was to amend the rural bills significantly. Number one, the bill was flawed. It was inaccurate. And number two, Molokai had recommended that it’s not appropriate for Molokai at this time, and we talked about it in our community plan, There was no discussion about the Planning Commission. Will Spence— Danny Mateo was in Korea with Mayor Arakawa. Will Spence did nothing to remind the Commissioners that Molokai had – the Planning Commission had made this recommendation. I talked to a couple of Councilmen. This is an old bill that happened a couple of years ago. So some of the new Councilmen didn’t even know. So as far as the Planning Department advocating for our Planning Commission, that’s been lacking at all Council meetings. Now they’ll say, well, that’s not our job. Well, whose job is it? Do I have to fly over there? Do you have to fly over there?

And the last thing I’d say is just – I just think this needs a lot of work. And I think people are willing to accept it in some situations. The TVR industry is good. But certainly, I would agree that one condition is if any of the contiguous neighbors don’t want it, you guys don’t even have to hear it. So anyway, I hope I haven’t bored you too much, but I was just trying to get as much information out as I can.

And oh, by the way, in that last – that handout—oh, excuse me—from the Water Department, on the back side of that is a – no, on the fourth page, Exhibit 13, is a letter from the Office

of Hawaiian Affairs. And it says, "Our only concerns are with the possible impacts on the local communities especially, in rural Hawaiian communities, which generally oppose the location of B&Bs in their communities. This opposition lies mainly with the increase of tourism, loss of affordable rentals, and possible increases in housing costs in their communities." I don't know if this was sent to the Office of Hawaiian Affairs this time. I don't think there's a comment package from this round. But I'm sure the Office of Hawaiian Affairs' position probably hadn't changed much since that time. So thank you very much for the added allotted time, Madam Chair.

Ms. Buchanan: Question. I have a question for DeGray before he run around. So thank you for spending the time, DeGray. I know you always – in all the records, the County. So in your recommendation in the beginning where you said to recommend approval with amendments, was that what you said to page 28?

Mr. Vanderbilt: No, it says, "Recommend—" One of the – the Planning Department says you have the following options. And it's just recommend approval of the bills with the amendments that you proposed, which would be adding on all of those areas, "except for Molokai," If Lanai and Maui want them at this point with everything in disarray, well, fine. And I think Molokai has been pretty good about the short-term vacation rentals. I don't think there's been a lot of complaints filed with the County. So, but still, if there's gonna be enforcement, I'd start with people that live next door to somebody. But no – but on the – but maybe on Maui first. They're the ones that really got this ball rolling. There's over a thousand or 1,200 of these vacation rentals there. But they make it legal. But I just think give us a chance. Give the community a chance to really look at this closely because this is the Friendly Island. And it's because everybody gets along, but if the tourism industry starts encroaching everywhere, it's gonna be hard for it to continue to be the Friendly Island. What? No? Is that it?

Ms. Buchanan: Thank you, Chair.

Mr. Vanderbilt: Thank you.

Chair Pescaia: Thank you, DeGray. Any–? Sure. Quick.

Ms. Harris: Do I have to say my name again? Dana Harris, Molokai Vacation Properties. That house that Timmy had the problem with, those are Molokai people that rented it. They had a party. So I go back to if there is rules, . . . (inaudible) . . . enforcement, I will be behind it. But I'd also like to know if they have a party, what is the minimum because the other day I did go to that same house and saw three cars and a cop car. And I thought, oh, my God, he called the cops. So I go knock on the door, and I ask, you know, "Is there a problem?" "Oh, no, no, we're just family here. We're just hanging out." So again, these

things you guys gotta all look at when you're doing these – you know, making your recommendations. Thank you.

Chair Pescaia: Sure.

Ms. Joanne Simms: . . . (inaudible) . . . Very unprepared. But I'm Joanne Simms. Lived, born and raised Molokai. Been home for 30 years. And I think we started vacation rentals maybe in 2004. Met a guy on a beach because we have a beach house in Waialua. And wanted somebody to watch over the house, and I said, sure, why not? Part-time job. You know, I'm teaching at Molokai Head Start at the time, and then into Kilohana. But however, we found that George and Marcia . . . (inaudible) . . . could no longer upkeep their house with just being on the oceanfront, I mean, corrosion, all this. And they said– He's a physician. He's the nation's number one orthopaedic surgeon this year. So anyway, he says, "You know, Jo, what if I send friends over?" I said, "I don't know, you know. I don't know how to handle this." So I opened up, get a GE license, and do an independent contractor. So I ended up taking care of his house, receiving his guests. And they always went home happy. Then I found that there were more homes in Waialua. And it went the same way. And I agree with you, DeGray, Waialua has a lot of vacation rentals. A lot of them are owned by – I would say, one, two, three, four are local families that choose– The Fukunagas is our hanai family. We have a home, but we do not vacation rent it. We have too many families that share it. We have owners that have been here for 38 years that want to probably look into a conditional use permit.

So I've been in this gray area for a very long time. And I've suggested when the permitting process did come up when it was an issue that they look into it. But the process was so painstaking. The paper work, the fees, were ridiculous. I, as a local, would probably say, oh, God, I'm not gonna do this. So I would say streamline your process.

My other recommendation would be give our Council right here, this Commission, who live on this island, who have the privilege, actually, to be invited to some of these locations. They can actually walk on property, see how it is, you know, see how it would affect the neighborhood, and all of that. So I would give our Commission the total regard and respect to make the decision and choices of what will function well on Molokai.

You know, as a teacher, you wanna illustrate because a lot of our kids are visual learners. They see things. They connect. Well, me, as an adult too. So if I had time today, I'd draw a chart. And on that chart, I would draw a house. The house would either be locally-owned, Molokai owner; locally-owned, State owner; owned, out-of-state owner; blah, blah, blah. And then I would trickle down from there a.k.a. the trickle down theory. I know so many people who are on the welfare system that our owners hire to work for them. They are unskilled laborers. A lot of them cannot get jobs for whatever their life choices have put them in. I applaud them for even coming out to rake up a yard for, you know, whatever.

But, I, as an independent contractor, I greet our guests. Yes, through the years, we've had people that, you know, you get a little hoo-hoo with because they're having a party or whatnot. Usually most of the time it's locals, which is fine. You just go down and say, "Eh, you know guys, you guys getting a little too loud. Can we like, you know, calm down?"

And a lot— And as far as the degraded or degrading community, Waialua Congregational Church is a very small rock church. Since these rentals did start to happen, there's a community. We have people that come from Minnesota. We have people that come from London. We have people that come from Missouri to play the organ and piano. They eat with the people that live there in Waialua Valley. They fish together. We have formed a community. Our children, their children, we've become families. I can, if I had the opportunity, to go through the list of all of our guest books to show you what the rental has done for our little Molokai. And it's very low impact. You know, B&B, you can rent every room. Two people per room you said for a B&B? That's a higher impact than a TVR because most of the time, you've got three bedrooms and you lucky if you get six. And the owners are, you know, four, four is enough. And I'm there to police that. And I have no shame because I live in my community and I want it to be the optimum community.

And people like Zelig, keiki o ka aina, this is where it's really— And then who knows? My sons, you know, we were privileged to buy property out there again. And who knows in the long run? They might wanna do a vacation rental just to support themselves. I don't know. But I would like to see the legalities of this fall into the Commission's hands, and that they can do onsite inspections, or whatever rule you can come up with.

I would have so much more to say, but anyway, basically, an average guest that comes to Molokai, three nights' rent, outdoor activities, gets goggles and fins, might have a — oh, definitely, dinner at Molokai, they spend an average between \$800 to \$1,500 on their stay. And the reason I know this is because I get the receipts on a lot of them. And also, some of these foods that they leave, we give it to the Food Bank at Waialua Church, or there's a family that we share with. So, you know, it's a give and take. I think if we just learn how to work together and communicate better— I feel for the people that complain about one next door. And Waialua is just as close. However, like I said, I go back to the sense of community. Every one or the majority of people coming back are people that have been here before and have established some roots on Molokai. And they know pretty much a lot of people.

So I hope you take the recommendation on looking at you guys taking the ball, and maybe Maui County can just kind of oversee it. Anyway, that's what I have to say. Thank you.

Chair Pescaia: Thank you. Is there anyone else wanting to offer testimony?



Mr. Tim Brunnert: Good afternoon. My name's Tim Brunnert. I'm the property manager down at Papohaku Beach Park. And first of all, I'd like to second Dana's motion on the West end of ag land. Obviously, we don't raise a lot of crops, whatnot, although, my wife testified we do have pigs and whatever, but no where near a proper ag land situation. So I understand it's illegal right now to have any kind of TVR on ag property. So I hope you do look at that as an individual case.

Obviously, looks like we need some rules, if we do keep this into play. I do understand— I certainly wouldn't want a neighbor next door to me keeping me up at night or whatever. So I understand the pain there. I live next to the beach park. I choose to live next to the beach park. So I do understand what late night parties are about.

So I just think a case-by-case situation is in play here. And just common sense I think is — which I think all of you are most capable of is something that needs to be looked at as part of this process. And I do believe it needs to be in Molokai hands, not Maui's, although Maui is overseeing this, but again, you people live here and understand this process. So anyway, good luck with the process. I know you've got a big job ahead of you and I appreciate your time and effort towards it.

Chair Pescaia: Thank you. Any other testifiers? Seeing none, I will close public testimony on this item. Commissioners?

Mr. Sprinzel: Before I start, I just have to repeat that I was a manager of a vacation rental in Kailua. I lived in amongst the cottages. And as I think I've said last time, we had one complaint in the ten years I was there. And that was locals who'd rented a cottage and had a graduation party. And at three o'clock in the morning, the police settled that one.

Anyway, we have, I think, three possible alternatives. The first one is we don't recommend the proposed bill. That's the first option we have. The unenforced infractions continue so that the conditions remain completely unchanged. As our Director clearly stated at the last meeting, we don't have adequate oversight. So nobody's looking out for these 50 places. So that's the first choice we have.

The second one is DeGray's suggestion that we pass the recommendation with the "except on Molokai." And exactly the same thing will apply. We'll have the same deal with enforcement. In other words, we won't have any. So the same 50 people will continue to illegally run their vacation rentals, the gray area, and they won't get dunked for not having a seat belt because there's nobody here to do them.

The third choice we have is to recommend the proposition that the Council has as it stands. We would then have the oversight. Every single application would come to us. So we would be able to address some of the problems that Timmy stated with the neighbors'

okay, perhaps, on a case-by-case basis. And we would have exactly the same deal with enforcement. So the same 50 people who we didn't give licenses to would still be doing it illegally upsetting everybody. So where do we go?

Well, I think of the three, probably the last one is the best if for no other reason that we have the authority. And we can then say no as many times as we want, or yes as many as we want. We can take into consideration, the neighborhood, the parking, the water supply, all the things that have worried us in the past. If we don't recommend it, nothing will change. If we say not on Molokai, nothing will change. So of these three terrible decisions, I think the last one is probably the least bad. Thank you.

Chair Pescaia: Thank you, Commissioner Sprinzel. Any other Commissioners would like to make a comment? Add to this delightful discussion?

Ms. Dudoit: Okay, so maybe I just need – I'm not sure if I have a question or I just need clarification. When we look at the three options that the Commissioner has stated, it seems clear to me that the problem is enforcement. But what we talking about is process and ultimate approval power, right? So where I stand I think what I looking at is if we deny, if as a Commission we deny and make recommendations for denial, it's not necessary that this is not gonna be passed, right, because this would be a blanket County ordinance? Am I correct? Because this is not just for Molokai. The way this is drafted, this is for everybody. So we could recommend denial, and then it still could be passed, and then we would have to comply to whatever the majority agreement was, right?

Ms. Flammer: Yes. If I could just clarify? I just got two quick things. One is you could recommend denial for the entire County, like your Vice-Chair had mentioned, or you could do it just for Molokai.

Ms. Dudoit: Yeah, okay, so the second option he was talking about was to pass it sort of what DeGray said, and do the "except for Molokai," in which case, we would be agreeing that we want the status quo for us, right?

Ms. Flammer: Essentially. Now, the other option would be amendments that you could offer. You don't have to just approve this in the format it's in. Like Lanai had several amendments.

Ms. Dudoit: But you have to turn in stuff by July, right?

Ms. Flammer: We can turn in supplemental information. And realize, the bill does not stop here. It goes – it just changes location for discussion. And so it would then go into the jurisdiction of the Council Planning Committee. If you gave me subsequent comments, I would forward them after July 22<sup>nd</sup>. I will be submitting to them by July 22<sup>nd</sup> the original

staff report, any updates, comments from any of the Commissions at that point, and then it's – and testimony. If something comes in from you after, I would then write another letter to the Planning Committee Chair with that information. I don't know when it will be scheduled on the agenda for them to discuss, but there will be a little bit of time.

Mr. Hopper: I would just advise that if you get comments in after like as another set, I kinda caution about that because you never know. The Commissioners could change. There could be different people. We wouldn't want a Commission to try to override the Commission's comments, necessarily. I'd recommend to try to get them in on time, if you can. If you need, I don't know, an extra bit of time, maybe you can get in your comments all together after that period if you wanna go through amendments. But sending two separate sets, I think it's been done before with the bed and breakfast bill, but it's just not – I don't think it's illegal necessarily, but it's – it can be iffy because, you know, can a year after the Commission votes on comments, comment again, and say we disagree with the previous comments or something because it's different people? So just as a note. I think Gina was right. You could also – you could add amendments. As far as DeGray's suggestion, I think either way, I think if you recommend Molokai be exempted, or you recommend approval with amendments, I think either way, you could be talking about putting "except for Molokai," in the different zoning districts. Substantively, I think that's where you could end up, if you go that route, but it's ultimately up to you.

As far as enforcement, that's something that the Planning Department is responsible for. I wouldn't change– You know, if someone isn't doing it with a permit, that wouldn't change depending on what your recommendations are here necessarily. That's still something that they would have to do under the charter. So I wouldn't feel necessarily that your actions on this would necessarily send a signal to them about enforcement either way because – you know. I don't know if Gina had enforcement suggestions as far as language to be added to the ordinance, if it's passed, but that's kind of a separate issue.

Ms. Flammer: We do have a couple. We're gonna get together and – the Department and Corp. Counsel and talk more. One has been if you have to add language, or if you have a website, it's–I forget the legal term–substantive proof– I'll let Mike–

Mr. Hopper: Rebuttable presumption. A bit of history, when vacation rentals – the bed and breakfast permit bill was coming up, and this was becoming an issue, there was a proposal before the Board of Variances, which is the Board that if you get a violation for a vacation rental, somebody can appeal to them and say, we disagree with the violation; we weren't operating. And that's where the standard of proof comes in these violations is the Department would generally have to show that the person is operating a vacation rental. It's more likely than not the evidence shows they're operating. And there's a proposed rule before the Board to say that if there was evidence found of an advertisement for a business, there was a – what's called a rebuttable presumption created that that business

was actually being conducted. In other words, if the Department showed evidence of an advertisement for that business, the burden was then placed on the business owner to show that they were not conducting the business. The Board of Variances and Appeals did not vote to adopt that as a rule because a lot of people came to the BVA and said that they disagreed with the rule. Kauai has that provision in a very similar provision in its code and maybe with the issue as well. So that could be a suggestion to add it. You could either add it as a BVA rule, which is not your jurisdiction, or you could look at it in the County code. If the Council passes that, then I think that's something that has to be looked as far as any enforcement on vacation rentals. So I think that's what Gina is suggesting.

Ms. Dudoit: So then my question is, if TVRs are illegal at the present time, when somebody comes to us with a conditional use permit, what are they applying for if they wanted to run an operation such as this? What would be the correct term?

Mr. Hopper: That's a very good question. And that's kind of a philosophical issue. You could legally get into a vacation rental through a conditional use permit. I can bring up that permit, the conditional permit law itself. In addition, if the person's in ag, they would need a State special use permit which is granted by the Planning Commission. That's because there's both the State and the County classification. Basically, a conditional use permit is something that can be approved by the Council. And I'm finding the language here. Basically, it can be approved if – it says:

Provide the opportunity to consider establishing uses not specifically permitted within a given use zone where the proposed use is similar, related, or compatible to those permitted uses and which have some special impact or uniqueness such that it's effect on the surrounding environment cannot be determined in advance of the use being proposed for a particular location.

So that's pretty broad language. And vacation rentals have been allowed via these permits before. It's broad and can apply to any zoning district. And so that's what the person's applying for, and that's the authority by which the Council has to grant vacation rentals. Again, it doesn't say anything about vacation rentals, so it can be hard to evaluate the standards for granting the permit because – versus this law which says short-term rentals, here's what they are, here's the standards under which they're allowed. So the conditional permit law now is kind of open and could be difficult for either the Commission making recommendations, if you have no standards for what it's supposed to be.

Ms. Dudoit: I guess the reason I'm asking is if say we said "except for Molokai" and we just keep our system the way it is, and people come to us – you know, Dana, whoever comes to us and says, okay – or the property owner, we wanna do – what do they say on the application? I wanna do a vacation rental? I mean, how do you apply for a special-? Because my next question is gonna be why is it so difficult to get?

Mr. Hopper: It's difficult to get because it has to go to the Council because the use is – the Council passed a law saying they're illegal everywhere, okay? And there's nothing else saying that they're legal under any other law. So this law, just the way it is, essentially, it lets someone do any use anywhere, and so it's a pretty closely scrutinized law because you have to go to the Council. This would be proposed having it go to the Planning Commission. But the reason it's like that is because it can really allow anything. I mean, you can run a slaughterhouse in the middle of a residential neighborhood under – with a conditional use permit if the Council decided it wanted to allow it in a given case. So it's pretty broad as far as the authority it grants the Council, but you do have to go to the Council.

Ms. Dudoit: But the step before the Council is that this Commission would review and give a recommendation, right?

Mr. Hopper: Yes. It would be similar to a change in zoning type of thing where it'll come to you for a recommendation, then go to the Council. For a State special use permit in ag, you're the final authority. And that would be required for doing any of these in ag.

Mr. Sprinzel: Did you just say for a special use permit on ag land we are the authority?

Mr. Hopper: That's correct.

Mr. Sprinzel: So in other words, if somebody on an ag land came to us with an application for a vacation rental, we would then be the people to decide it.

Mr. Hopper: Both you and the Council as well. The State law delegates it to you. The County law gives it to the Council. If someone's running a vacation rental on ag, they're both in violation of the State ag law and the County ag law. And so to become permitted under the State, they'd have to go to you, as the Commission, that's delegated from the State, and then to the County. And the reason this is complicated– You know, what you could do is just amend the zoning law and say vacation rentals are allowed in residential neighborhoods, but they're not. It says they're not allowed. You could say they're allowed by special use permits and then you would be the final authority for vacation rentals in that area. It's a relatively simple–

Ms. Flammer: I'm just gonna jump in real quick with the 15 acres. You review land use special permits for land under 15 acres. Any more it goes to the State Land Use Commission.

Mr. Hopper: You get concurrent jurisdiction with the State Land Use Commission. You have to approve it in both cases. If you deny it even if it's over 15 acres, the State cannot override you. And that's very clear in the law and they told us that.

Ms. Flammer: Thanks for the clarification. The other thing I want to just clarify, too, with the State special land use permit, the criteria or what you are looking at is the ag use whereas if you're looking at the conditional permit, you're looking at the operation, the short-term operation. Clear as mud, is it?

Mr. Sprinzel: I still feel that apart from whatever we decide about three desperate choices, we will never in seven days be able to come together with the suggestions, amendments, whatever. So this whole thing really – I mean, I blame whoever, the Planning Department, for not letting us know about this earlier. If we've had a couple of months, three months, to think about it, we could've perhaps done something, but there's no way we can do it in seven days.

Ms. Flammer: Yeah, I was thinking a little bit about the schedule and the 120 days. And I think it would help for you to understand what happens. It gets transmitted to the Planning Department and that could take a week or two to get routed to the person like me who gets the assignment. It's been my job to write a staff report. And it takes a little bit of time to put what I put together for you. So that could take a month to get together and it needs to get noticed on the schedules of the different Planning Commissions. I know you've already done your Charter Commission reviews, but that's how – our comments on that. But that's why you guys get scheduled towards the end is because the Department needs to put together the information and the analysis for you to make a decision on it. I know you only get your packets maybe a week in advance. And there's a lot of information in there.

Mr. Sprinzel: I wasn't blaming you, personally. I was blaming the system only.

Ms. Flammer: No, no, I agree with you because as the Planner, I'm rushing to get something like this to you for you to have a week.

Mr. Sprinzel: Because poor Nancy comes to us every two weeks. And while I didn't – she doesn't have time to do the stuff we ask her of the system. It just doesn't seem to work very well.

Ms. Flammer: Now, in all fairness, this was scheduled for an earlier meeting. It got postponed. It was discussed two weeks, two and a half weeks, however long ago your last meeting, and here we are now about six weeks after it was meant to be on your agenda.

Mr. Sprinzel: Well, I would propose my second option which is that we accept it and we are the people who decide – not we, I mean, the Commission if you–

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

Mr. Sprinzel: Yeah. We are the people who pass whatever it is the Council passes. At least we then have control over it.

Ms. Flammer: And I did include the Lanai rules just for more – than for you just to see how your comments will be transmitted. They struggled with a couple issues. One of the things they wanted to look at was revocation of permits. For them, a small community, they know everything. They wanted to have a little more control in there. One of the amendments addresses that. You guys might want to think about some rules and tools to give yourself that would be a little bit stronger. Right now, the bill says renewals are done by the Department. You may want to be the one that looks at renewals. You may not wanna look at every one. The Department's recommending if there's two or more complaints from adjacent neighbors or across the street that it gets reviewed by the Planning Commission. There may be things in there if you decide to go the route of recommending that you wanna give yourself a little more power. Or you may want to adapt it to your community. On Lanai, they didn't want a huge sign. Maybe that doesn't apply to you, but you may have other unique circumstances where you wouldn't want what's in there.

Mr. Sprinzel: Well, at the moment, there's not much point us putting anything in at all in terms of rules because there's no one to enforce them. So, you know, we–

Ms. Flammer: But they are enforcing now. It's complaint-based. Once the bill passes–

Mr. Sprinzel: Yeah, but as Timmy said, you know, you have a complaint at ten o'clock at night and who's there to hear it?

Ms. Dudoit: Madam Chair, we have a motion. We can second so we can have discussion?

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

Ms. Dudoit: Oh, he just said he made a motion.

Chair Pescaia: I thought you just was saying that you like your option number two. You didn't actually say I would like to make a – I propose, I make motion, dah, dah, dah so – formally.

Mr. Sprinzel: Well, I propose we accept it with us as being the ones who pass the permit or not.

Chair Pescaia: Is everybody clear what that motion means? I not sure how that really–  
Speak in terms of the–

Mr. Sprinzel: Okay, I'll say it again. I'll say it again. We recommend to the Council on the proposed bill as it has been presented to us.

Ms. Flammer: You're recommending approval of the draft ordinance as written.

Chair Pescaia: As written.

Mr. Sprinzel: Yes.

Chair Pescaia: Okay. Is there—? So a motion by Vice-Chair Sprinzel. Is there a second?

Mr. Davis: I'll second that.

Chair Pescaia: Second by Commissioner Davis. Okay, discussion.

Ms. Dudoit: Okay. So I think there's gonna be a time when it's important to have an ordinance like this and a bill like this, and it's gonna be of great benefit to our entire community to include Molokai. But the way it's currently drafted and the timeline that we're given to make the adjustments that need to be made to fit Molokai and maintain our quality of life and all that kinda good stuff over here on the island to address enforcement and those kinda things, I think it's just not afforded at this time. And there's a lot of stuff in the bill the way that it's drafted that going do a lot of good for Maui and bigger areas. And when we talk about Lanai and them agreeing with their special conditions, I just wanna make note that in Lanai, and I know this intimately because we're starting to do housing there, too, a lot of their homes are owned by the company. So vacation rentals up in a lot of their cases are gonna be just a different type of visitor accommodation than the hotels they offer for a different economic class of people. So that's not the same as Molokai. So I think, and maybe I just need clarification, if we pass this with the "except Molokai" on here, and the bill went through with "except Molokai," that would exempt Molokai. Is the idea that it would exempt Molokai from all of the things in the bill and we would go on with the status quo? Does that mean that you would now legalize TVRs and just the approval process would change for Molokai?

Ms. Flammer: If you were to write "except for Molokai," under those different zoning districts, people would not be able to apply for a permit. They wouldn't be eligible. They could continue to use the conditional permit process, which has its problems.

Ms. Dudoit: So it's not that they couldn't TVRs. It would be illegal. But it's not as if they couldn't have that use on their property. They would just have to go about doing it by a conditional use permit.

Ms. Flammer: Yes.

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



Ms. Dudoit: Yeah, which they doing now and whether or not we pass the bill. But I think what I just wanna say in support of passing it with “except Molokai” on it is the system we currently have right now is not–

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

Ms. Dudoit: Yeah, I know. I know that’s not his motion, but since we having discussion, I just wanted to say that if I were to vote, I would consider the pass with “except on Molokai” simply because even though the system we have right now is not the way that’s working best or whatever, and even though it does classify as TVRs being illegal, it may be just the title that is illegal at this point, because if you come to us with one conditional use permit, and we think that it’s gonna be a good use, a permitted use, on a case-by-case basis without us being regulated \$35,000 you have to make on ag land in order to have this permitted, or those kinda things, I think it gives us– Until we can come out with a good plan and give all the recommendations we need, it gives us the flexibility to look at things case-by-case, the neighbor situation, and all that stuff, and still be able to try to compensate for the good people – I mean, the good people who have TVRs. This is so confusing. I don’t even know what I saying, but anyways, so that’s what I think.

Mr. Sprinzel: But, Zhantell, you’re saying that you give away our right to listen to these proposals, these applications. Because if you say “not on Molokai,” then it doesn’t affect us. We’re not allowed to hear them.

Ms. Dudoit: I don’t think there’s any way, Commissioner, that Molokai ever gives away their voice. And it has been– The reason we don’t – TVRs have remained illegal on Molokai is because we agree that – we’ve agreed and we’ve kept that status quo, but it’s not as if – the Council almost always – and Councilman Mateo and those guys have done a really good job in taking our recommendations of what we recommend, and it’s not as if we no more one public process with this conditional use permit to look at a case-by-case basis. It’s not gonna just bypass us and be administrative. We’re still gonna hear it and recommend for approval, right?

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

Ms. Dudoit: Yes, under the conditional use, we still hear it. We still gather all the information. And we make recommendations to the Council for approval.

Ms. Flammer: Yeah. We’ve heard those people aren’t applying because it’s such an imperfect process.

Mr. Sprinzel: And that particular conditional use is a very long process. I mean, that's nothing like putting in an application for a license. That's gonna take like years and years and years.

Ms. Buchanan: I see no finding of fact to support that assumption. I've not seen any finding of fact to support that assumption which has been given in testimony time and time again. Yet I have not seen facts to support that assumption. I, myself, I've not seen – nobody's come to this Commission ever and handed me protocols and a process with time lines on what it takes to get a conditional use permit. Until such time, it will remain an assumption in my mind. And I can take hearsay but I have no finding of fact that that is true.

Mr. Hopper: I just want to make a comment about conditional permits. I don't know what the Council will do with a conditional use permit process with this. They're considering saying you can still get one even after this bill passes. I don't know if that's going to change. We've had at least one attorney challenge the authority of the Council to grant conditional use permits with regard, you know, to Molokai. So I'm just putting that out there that I don't know how secure that process will be in the future down the line. Right now, it's permitted. The Council can do it. But I don't know what the Council – is even considering anything with it, but it's hard if you don't have this listed as one of the uses you can get a conditional use permit for to have that be 100 percent secure. It looks like it's a proposal to keep it there and I don't know if it's going anywhere, but I just don't wanna rely on that – there's always – you know, that's definitely gonna remain in the law.

Mr. Sprinzel: But you have to go to the Council first for that, don't you? You don't come to us?

Ms. Flammer: Would it be possible to have a clause in there that said on Molokai, a conditional permit would be required for this use? Would that clarify it in any way?

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

Ms. Flammer: No, he's saying down the road that–

Mr. Hopper: Just a legal issue on that, I mean, it's a conditional permit, which is supposed to allow stuff that's not allowed. It would be very odd to say this is a use you can get through a conditional permit. Why not list it as a use that you can get the permit for in either a special use permit? And I'm not saying that's flat illegal, and we're doing that now, but it's hard to advise on that. I'm not saying you couldn't do that. You could say to the Council we recommend continued use of the conditional permit process, perhaps, but I'm not saying write that into the law because that could be confusing, I think.

Ms. Buchanan: We still in discussion. Okay, it's quarter to 3:00. You know, this is not difficult for me. It's cut and dry. It's black and white. This resolution to amend Title 19 to include this short-term vacation rental homes is bottom line inconsistent with the community plan on Molokai, period. There's no ifs, ands, buts, or whats about it. It is inconsistent with the purpose and intent, and it is inconsistent with our community plan. So it's really not difficult for me at all to heehaw about this and that because it is spelled out in the community plan. And we gotta go back to basics and remember that the Molokai Community Plan is the bible of this Commission. And we are here to enforce that community plan and its objectives and intent, which clearly states that this in total opposite of whatever is stated in our community plan. So this not difficult for me to say that this is not consistent. And I think by passing this, we would be downright illegal, because we'd be in violation of our community plan, if this was approved. So this big document that Gina took a lot of time to write, and I hope some of you have it and compiled it, it's the May 25<sup>th</sup> 2011, she goes into great detail to give us a general description of this ordinance, this resolution to amend. And the short-term rental bottom line is to provide overnight accommodations for guests for compensation. This would be allowed in every type of zoning pretty much that you can think of. On the Molokai Community Plan, it's expressly not used in the ag district. And our community plan states, and I quote for the record:

Objectives and Policies. Discourage developing or subdividing agriculturally-designated lands for gentleman estates or pseudo ag uses in which the residents would be the primary use and any nonintrusive ag activity would be secondary.

It goes on to say:

Limit the visitor accommodation center to the West Molokai, and require that any expansion approvals reflect employment needs of the island.

And the intent there was to expressly say that was for hotel accommodations. The State of Hawaii is a tourist attraction. That's why we have hotel zones because that's where tourists belong. I have a big family. I just went to Honolulu. Couldn't find no place to accommodate my family. And such is life. If I wanted to stay in Waikiki, I'd have to – we can't afford to stay there with my family. So that's why I save up for family vacations.

For me to go against the grain of my own community plan that was written up by a Commission of several people that I respect highly in this community would be a travesty. I would not do that to them. I would not expressly vote for any amendments, ordinances, new rules or regulations that was in complete violation of the community plan of Molokai. Until such time that plan is amended, I will not go against what is in the community plan. So I will not support the short-term rental amendment resolution at this time. And whatever

happens in the future happens. And we're in the – starting to write up the community plan again. And so that's it.

Mr. Sprinzel: Lori, I have to repeat. I'm not against this at all, against you at all. I agree with you all the way down the road. I think all three options leave us with no control whatsoever, which is why I proposed what I did, but I'm quite happy with your view too.

Ms. Buchanan: I think I'd have to be the first one to sue Maui County because they violating my community plan, if they pass this bill.

Chair Pescaia: Is there any further discussion on the proposal?

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

*It was moved by Mr. Sprinzel, seconded by Mr. Davis, then*

**VOTED: To recommend approval of the draft ordinance as written.**

**(Assenting: None)**

**(Dissenting: J. Sprinzel, R. Davis, L. Bu, D. Kelly, Z. Dudoit)**

**(Excused: N. Bacon)**

**(Absent: D. Williams)**

Chair Pescaia: Motion dies. It's dead. It's still dead. Okay, I will entertain another motion.

Mr. Sprinzel: As I see it, we're not actually proposing action. We're proposing recommendations on the bill.

Chair Pescaia: Well, yeah, okay, I'm sorry. So your recommendation – the motion to – this pass motion was to recommend acceptance of the proposed amendments as written without any additional recommendations or amendments. So that has died. Are there any other recommendations from this Commission to be proposed for transmittal?

Ms. Dudoit: I'd like to make a motion that we recommend that they pass this for everybody else except Molokai with the note that we don't wanna be part of–

Chair Pescaia: Motion by Commissioner Dudoit. Second?

Ms. Buchanan: I will second for discussion.

Chair Pescaia: Second by Commissioner Buchanan. Okay.

Ms. Buchanan: Question for Corp. Counsel. With this proposed motion, would that be synonymous with the same motion to approve with amendment stating “except on Molokai?”

Mr. Hopper: I don't think it's exactly synonymous, but that would be the result. They're saying exempt Molokai. Prove it for other areas. Exempt Molokai. I think Gina's clear on that. And the way to do that would be – we would have to figure out how to do that in the legislation. And I think DeGray's suggestion would be how we would do it. We would write “except for Molokai” in the zoning districts where it's allowed. So if someone on Molokai was in residential, they'd look at their permitted uses. It'd say, “short-term rentals except for Molokai.” They'd see they couldn't do it and would have to look for another option for vacation rentals. Gina, do you think that's clear enough? Okay. Yeah, I think if you would recommend denial, recommend that you be exempted from it, or recommend approval with “except for Molokai” written in, that's probably the way we'd recommend. Again, these are recommendations for the Council so–

Ms. Flammer: They can work out the nitty – well, it would be my – they can work out the nitty gritty details on the language. At this point, that's how I would write it up. They could choose to implement your recommendation with different language but the same intent.

Mr. Hopper: Yeah, as the legal advisor of that Committee, if they ask, that's what I'd recommend they do is they say “except for Molokai” on the zoning districts where it's allowed.

Ms. Dudoit: Okay, so I just like be clear. And if you say as opposed to denial, if we denied right now and recommended that they deny this, and then it passed, we would be blanketed under all these governing rules. If we recommend approval with “except Molokai” on it, then our hope is that they would go in and exempt Molokai from some of the stipulations that they're putting, but it would now – this resolution, this bill, would now acknowledge that TVRs can exist. It's just that for Molokai, they would need to come under a conditional use permit, or would they be illegal on Molokai?

Mr. Hopper: Well, I mean, they would still be illegal on Molokai. I mean, again, a conditional– It's hard to understand. And I know it's hard to understand because I've tried to explain it. And for myself, it's hard to understand. So I know it's tough. But a conditional use permit is to me is sort of a nature of a variance where you know in the law you cannot do that use, but you want an exception from that law to do that use. So, yes, they're still illegal. If this passes and you're excepted, then when you look at your list of uses, it would not be one of those listed uses, and therefore, would still be prohibited. So, yeah, it would be still be illegal. If it's passed for everywhere else, it would be legal on Maui, if they pass it there. And you could do it on Maui. But it would be illegal here, but you can get that sort of exception in the law with a conditional use permit still as it is now. Right now, it says

they're illegal. If it passes, I'd think they'd edit that section and say these are illegal except where allowed in the zoning district. And then your zoning district, it would not be allowed. So it would still be illegal here, unless you got that exceptional permit, which is – yeah.

Ms. Buchanan: Corp. Counsel, can you address Commissioner Dudoit's first two scenarios?

Mr. Hopper: If you were to recommend a denial, then the Council who would've heard your recommendation, I think would do the same thing. It would say "except for Molokai," if they wanted to abide by your recommendation. Typically if, you know, you recommend denial, they would take that as a denial for your district specifically. I suppose you could recommend denial for other areas, but I don't think that they would – I've never seen the Council look at that and say we should deny it for everywhere. That's how it would end up, I would predict. Again, this is if the Council agrees with that recommendation.

Ms. Buchanan: Corp. Counsel, could this Commission instruct and direct staff, too, if this motion passes to write a letter stating that in the consideration of this motion and our recommendation that they add "except for Molokai" in the different zoning districts?

Mr. Hopper: You certainly could, any recommendation you like. And giving that specific instruction is a good idea, I think.

Ms. Buchanan: Well, we have a motion on the floor. Unless that motion as amended by Commissioner Dudoit to say "except on Molokai," the motion stands as denial.

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

Ms. Buchanan: No? What was your—? Restate. Or approve?

Ms. Dudoit: Yeah, I think my original motion was to accept – to recommend that we accept the resolution but add on that it would exempt Molokai. And I wanna also just reiterate, and I don't know if it's an amendment or what, but maybe just supporting that staff draft a letter acknowledging our concerns and insuring that we were directing the recommendation to state that we want Molokai exempted from this bill.

Mr. Hopper: Just a comment because this is very nit picky, but the Council Services brought this up to me. They actually said – I think you said recommend approval of the resolution. I think you're actually recommending on the ordinance that the resolution has. That's a very subtle distinction, but Council Services asked me about the minutes of a previous meeting, and so I just wanna clarify that.

Ms. Dudoit: So just for clarification, correction, that we wanna approve recommendation to the ordinance – to – and–

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

Ms. Dudoit: Huh?

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

Ms. Dudoit: Yeah. And make sure that it states and has a letter from the staff on behalf of our Commission to exempt Molokai from that ordinance.

Ms. Flammer: What I have written down is you're recommending approval of the bill for other areas, but not for Molokai. It's basically the same. Okay. And then again, any background information – I mean, I've heard a little bit from one Commission about why it would be useful to put in the letter so they understand how you're unique, and how it would affect your community, and why you're recommending this.

Chair Pescaia: Would it . . . (inaudible) . . . our concerns over the alignment with the Molokai Community Plan being one of the main reasons? Our finding of fact, yeah.

Mr. Sprinzel: One little thing bothers me, Gina. That is that if the Council or the State is accepting all this tax money from these illegal places, does that not present some sort of a problem to everybody? I mean, aren't they kind of grandfathering in that way by accepting the tax? Aren't they sort of going, yeah, well– You understand what I'm saying?

Ms. Flammer: I don't think the State has jurisdiction over this issue. So I don't– Maybe our Corp. Counsel, Mike Hopper, can address that.

Mr. Hopper: The State accepting tax revenue has nothing to do with any of our zoning laws which you choose to allow and not allow whether it's a permitted use or not.

Mr. Sprinzel: Just asking.

Ms. Buchanan: While we're in discussion, can we also direct staff to forward any other comments and discussion on this issue to our Commission or through e-mail for our review? Ongoing discussion on the short-term rental?

Ms. Flammer: I think what the Commissioner is asking is if the Planning Department submits letters to the Council with other recommendations or supplemental information that you wanna be cc'd on that to stay in the loop. Is that–?

Chair Pescaia: Yes, please.

Ms. Buchanan: Yeah, and if there's any ongoing discussion that seems that this is morphing into something else. I mean, just to keep us in the loop.

Ms. Flammer: Yeah, I would also – I can make a comment to the Planning Committee as well that you're . . . (inaudible) . . .

Ms. Buchanan: Okay.

Chair Pescaia: Any further discussion? Everybody's clear on the motion? Okay.

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

Chair Pescaia: Yeah, Buchanan second, and then we had discussion. Okay. Yeah, for discussion. Alright.

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

*It was moved by Ms. Dudoit, seconded by Ms. Buchanan, then*

**VOTED: To approve the recommendation to the ordinance but to exempt Molokai as discussed.**

Chair Pescaia: Alright, five votes on aye. No one opposes. Motion carried.

Ms. Flammer: You did have a little bit of discussion earlier about how tourism affects your island. Did you want any of that enclosed? Did you want the only rationale behind this to be it's inconsistent with the community plan?

Chair Pescaia: It'll be included in the minutes, right, our discussion?

Ms. Flammer: Your discussion will be in the minutes, yeah.

Ms. Buchanan: You know, they probably not going read 'em but–

Chair Pescaia: You wanna summarize maybe a point or two?

Ms. Buchanan: Well, it took so long to get this point that we didn't even talk about the caps which I was interested in 'cause there's currently no caps for Molokai. But right now, it would be a moot discussion I think because we're not allowing it. So at that point, if for



some weird reason they don't take the "except on Molokai," we would want it to come back to this—

Ms. Flammer: Oh, no, I understand that. I'm saying when I write the rationale paragraph in the letter all I have right now really is that it's inconsistent with the community plan. But I did hear you guys talk a little more broadly. I mean, I can try to incorporate some of that earlier.

Ms. Dudoit: I would think that's enough for right now because the community plan does incorporate all areas of the economic and social – you know. I mean, for right now, I think that's it.

Ms. Flammer: I just wanted to make sure I understood exactly what you'd want forwarded.

Mr. Sprinzel: I'm wonder if the Commission would agree that you might put in your letter that we do need some enforcement on Molokai. I mean that really has been the – I mean, that's the reason why we aren't agreeing with anything is 'cause there's – nobody enforces anything here.

Chair Pescaia: Yes.

Ms. Flammer: That's consensus from you that you would like to make a comment on that? I can do that.

Ms. Buchanan: I guess so. That there's a lacking of infrastructure to support this new ordinance. And that encompasses all things including, enforcement and a whole gammit of the other initial problems.

Chair Pescaia? Administrative part.

Ms. Buchanan: Yeah.

Chair Pescaia: Yes, I saw all heads nod.

Ms. Flammer: Okay, I'll keep it broad.

Chair Pescaia: No objections? Seeing none. Put it in there. Awesome. Alright.

Ms. Dudoit: Can I ask a question real fast?

Chair Pescaia: Sure.

Ms. Dudoit: You know when we talk about enforcement, Gina – you know when – Gina, you know when we talk about enforcement for right now since you're understaffed and stuff like that, if we know that TVRs are illegal, and somebody calls the Police Department, and says, eh, I know for a fact that these guys are here, and . . . (inaudible) . . . right there, does the Police have the jurisdiction to evict the people out of there and stop business?

Mr. Hopper: Zoning violations are enforceable by criminal – by the police, but I have never seen it done. It's done by Zoning Enforcement Division, basically. They would be on the criminal end. So they could only get someone for a criminal penalty. For the civil penalties, the thousand dollar fines, that's gonna be the Zoning – the Planning Department, the Zoning Division. That doesn't mean if they've got a situation where someone's making noise in a vacation rental that they can't complain the next day. And then the inspector could investigate it over time. But, yeah, if it's a noise complaint or something, though, that's something totally different. Whether or not it's a vacation rental or just a noisy neighbor, the police, I think have jurisdiction there. So, yeah, they can enforce the zoning laws, but I've never seen them do criminal enforcement of zoning laws. It's typically done by the Planning Department and their Zoning Division.

Ms. Buchanan: When you guys look into that big pack, take a look at page 4 under Item 8, the neighborhood input. And it clearly states that, you know, you've got to have your neighborhood noticed within 500 feet. But it says, "If 30 percent–" and now they putting one percent, so now you gonna have to calculate percent, "If 30 percent or more of noticed owners file a protest then the application is reviewed by the Maui Planning Commission," but on Molokai, it would be us. So even for Maui, that would be problematic on how – 'cause I'm thinking – at the end it says, "The bill states that no home shall create any impact greater than existing and shall conform to the character of the neighborhood." So how determines that or insures that? Who makes the determination? It's so vague.

Ms. Flammer: The Department agrees. And we are recommending a stricter provision in the law which states that if two or more adjacent or across the street owners of properties file a written protest within the 45 days from when that notice is sent out that it gets reviewed by the Maui Planning Commission. The Lanai reviews all of them. You won't see any of them because they won't be able to apply. So that's how it would work.

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

Ms. Flammer: We do it with the B&B ordinance now. And we're looking to improve. So that's why we're recommending the change to the Council. The thought is then the adjacent neighbors are – feel the most impacts, and we wanna reflect that in the law so they have a stronger say.

Chair Pescaia: Alright. This Commission has already taken action on that agenda item so if you could be so kind as to allow us to proceed on to Item no. F., F-1, status of the Commission's subcommittee on rule changes report.

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

### **1. Status of the Commission's Subcommittee on Rule Changes Report**

- a. Rules of Practice and Procedure**
- b. Special Management Rules**
- c. Rules Regarding Special Uses in the State Agricultural and Rural Districts**
- d. Shoreline Area Rules**

Chair Pescaia: If there's no objections, can we just defer that one? I think– Oh, do you have something to say on that, Clayton?

Mr. Clayton Yoshida: No, we have additional information to report over our last report at the June 29<sup>th</sup> meeting.

Chair Pescaia: Okay. Then Item no. 2 is Commissioners Buchanan and Kelly could give us a brief report on the 2011 Hawaii State Association of Counties Conference they attended.

### **2. Commissioners Buchanan and Kelly reporting on the 2011 Hawaii State Association of Counties (HSAC) Conference - June 23-24, Grand Wailea Hotel.**

Chair Pescaia: Oh, you never know you was on the agenda? Oh, okay, we can defer that one, too, because they like make presentation, presentation. Awesome. Okay. G, Director's report, Clayton.

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

### **1. 2011 House Bill 117 - Changes to the Hawaii Coastal Zone Management Law. This is for information purposes only.**

Mr. Yoshida: Madam Chair, at the last meeting, we did inform the Commission about the change to the coastal zone management law, Chapter 205A, through House Bill 117 signed by the Governor on June 23<sup>rd</sup> effective July 1<sup>st</sup> where the – for the minor permit is up from \$125,000 to \$500,000. And that if you have a single family dwelling with a floor area of

more than 7,500 square feet, then that is a development. That is a development. And I hope copies of House Bill 117 was circulated to you.

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

Mr. Yoshida: Okay, we have circulated the list of pending and closed Molokai applications. If there are any questions on those?

Ms. Dudoit: So according to all the projects and open projects, our sirens are now properly installed?

Mr. Yoshida: Yeah, you could issue a minor permit for a development which has a valuation less than \$500,000 whereas before it had to be less than \$125,000.

Ms. Dudoit: Oh, so it's not installed. It just got taken off 'cause of the changes? Me and you talking about the same thing?

Mr. Yoshida: No. Okay. Sorry.

Ms. Dudoit: I hungry, Clayton. Okay. I was asking that you said about open and closed projects. So I looking on here and I don't see the sirens, so I was asking if they were finally, properly installed, and we're all good and ready for our hurricane season. The last four meetings we had, they had the sirens on there.

Mr. Yoshida: Yeah, the sirens, yeah, they'll be coming up at your next meeting on the 27<sup>th</sup> for those locations, which are within the special management area because the State Civil Defense applied for like Kualapuu Park, and we all know that that's not in the SMA area. So just for those within the SMA area. So any other questions?

- 4. Discussions with Maui Electric Company on liability for power pole installations on private property. (N. McPherson)**

Mr. Yoshida: Okay, moving on to Maui Electric liability for power pole installations on private property. Nancy, do you have anything? No changes, status, on that.

- 5. Status of Molokai Planning Commission vacancy**

Mr. Yoshida: So the status of the – which bring us to Item 5, the status of the Molokai Planning Commission vacancy. I believe that on June 29<sup>th</sup>, the Policy Committee, County Policy Committee, did recommend approval of the nomination of Janice Kalanihulia. And

that will come before the full Council at the next meeting, which formally would've been tomorrow, but it'll be hopefully, within the next week or so. It's not tomorrow – I mean, it's not Friday.

Chair Pescaia: What about our MIA Commissioner?

Mr. Yoshida: Oh, the other – yeah, I don't know what the status is on the – regarding Mr. Williams.

Chair Pescaia: I think there was a deadline to respond.

Mr. Yoshida: Yeah, we did, and he didn't respond. He didn't respond. So now the ball is in the court of the Mayor's Office to, you know, say, well, we haven't seen you at a meeting since July of 2010 so, you know, whatever.

Chair Pescaia: Okay.

## **6. Agenda items for the July 27, 2011 meeting**

Mr. Yoshida: So our next meeting is scheduled for July 27<sup>th</sup>. We have scheduled the SMA assessment for the State Civil Defense sirens installation and replacement, and also, for the Ke Nani Kai AOA SMA assessment on the West end. And if the Commission has any other items they wanna add to that?

Chair Pescaia: Right on. Okay, is that it?

Mr. Yoshida: Yeah.

## **H. NEXT MEETING DATE: JULY 27, 2011**

Chair Pescaia: Our next meeting date: July 27<sup>th</sup>.

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

Chair Pescaia: On which one?

Mr. Vanderbilt: The rules of practice and procedure?

Chair Pescaia: We deferred that item, but–

Mr. Vanderbilt: There was no ask for public testimony. I mean, if you don't mind, just a short thing. I was coming here because it said public testimony would be taken, but I

couldn't find the committee report. It's not online on our Planning Commission site or on the Planning Department site.

Chair Pescaia: We haven't gotten it yet that's why.

Mr. Vanderbilt: I have a copy.

Chair Pescaia: Of the report?

Mr. Vanderbilt: Yes.

Chair Pescaia: Or the staff report?

Mr. Vanderbilt: I have a copy of the amended bills, which you guys approved.

Chair Pescaia: No, we have – okay, so we have the report from the committee.

Mr. Vanderbilt: Yeah, but that's what I'm saying–

Chair Pescaia: And we have the draft changes. And then we sent to the Planning Department. And we're waiting to receive their comments back before we continue our discussion. So that's where we're at.

Mr. Vanderbilt: But as far as the subcommittee report that you mentioned you had, it says public testimony would be taken on that, but where does the public find it?

Chair Pescaia: We had it back in March.

Mr. Vanderbilt: It wasn't in the packet that came with this.

Mr. Hopper: DeGray, the report was a report back from that group that orally gave it to the Commission. The rules are still being drafted. There's been nothing adopted yet. So there's no actual written report by the Commission yet. It's been at the meetings themselves, there's been a discussion of the rules, but I and Steve–

Mr. Vanderbilt: I just didn't know what you wanted with public – it says public testimonies created, so I mean–

Mr. Hopper: You can testify about what you think about the rules typically under this item. So that's – yeah.

Mr. Vanderbilt: Oh, okay. I'm not gonna waste any time on that.

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

Mr. Vanderbilt: No, no. The only other thing, and I know it's sort of after-the-fact, but one of the things in the Planning Commission's letter on these TVR ordinances would be that she puts the reason that – we don't just wanna stay status quo forever is we all discuss it. The reason is that we wanna discuss this like we said in 2007 when our community plan comes up, and then we'll go back and amend the ordinance to what the community wants so it fits Molokai. If she could express that, that would be good because then they're not just saying, well, are they saying they want status quo. So that's all. Thank you.

Chair Pescaia: Thank you.

Ms. Dudoit: Madam Chair, is this the time when we ask to have things put on the next agenda?

Chair Pescaia: Yes.

Ms. Dudoit: Okay, so we had our community meeting on Wednesday night that addressed two important charter amendments to our Maui County Charter. Huh?

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

Ms. Dudoit: Yeah. And they were to – the recommendation to change our ruling districts in the way that we vote, and whether or not to dissolve the Fire and Safety Commission. And I think that's really important things. And if we can put that on the agenda so that together as a Commission we can make recommendations. The Lanai Planning Commission did send in their recommendations on issues of the charter amendments, and I think that that would be good for us, too, because if you start to research a little bit more into the change of voting districts, the proposed amendments include abolishing the Planning Commission and putting together township boards. So I think that it would be of great benefit for us to address that.

Chair Pescaia: Is there any objections to including that on our next agenda?

Ms. Buchanan: No, except two meetings, we gave our recommendations to the Charter Commission.

Chair Pescaia: Did we?

Ms. Buchanan: We did. We had one paper, if I not mistaken, that came, Clayton, maybe two meetings ago, and they was asking about if we had any input to the Charter

Commission. And it kinda took us off of our balance because it was kinda just here. And the only recommendation out of this Commission was rules on interim on the–

Chair Pescaia: Zoning?

Ms. Buchanan: No, was that this Commission Members can serve in one interim capacity until we have that fulfilled. And that's what I remember from our input to the Charter Commission.

Chair Pescaia: But now there's actual – other people have made proposals that now we like comment on.

Ms. Buchanan: So actually what should've been done was staff from the Charter Commission should've came here, and addressed us, and – to give us a workshop on it.

Chair Pescaia: Clayton, comments?

Mr. Yoshida: Oh, so, at the next – for the next meeting, they want – the Commission wants to discuss charter amendments regarding district voting and abolishing the Fire and Safety Board, Fire and Safety Commission?

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

Chair Pescaia: Yes. Does anyone have any objections to including that on the next agenda? Okay, good. Thank you. Oh, is this really important?

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

Chair Pescaia: So the comments from the crowd right now is that there were other amendments, proposals, made that may affect this Commission or our community where we would – our input would be valuable. Is there a way that you can agenda that so that when that time comes, July 27<sup>th</sup> comes, whatever proposals are made, we can discuss them? Or do we need to list them specifically? And where do we get that list?

Mr. Yoshida: I guess we can work with the Chair on the agenda, but we'll include at least those two.

Ms. Dudoit: Can I just clarify that the only reason I said about two those was 'cause it was such a hot topic at our community meeting for which we represent?

Chair Pescaia: Okay, so from now till seven days – from now to July 20<sup>th</sup>, if any of you hear of anything, any amendments or issues that need to come under that category, will you



forward it to Clayton, or myself, or Suzie for inclusion? We'll put it all together. Okay, great. Anything else? Right on. Next meeting: July 27. Meeting adjourned. Thank you.

There being no further business to come before the Commission, the meeting adjourned at 3:21 p.m.

Respectfully submitted by,

SUZETTE L. ESMERALDA  
Secretary to Boards and Commissions

### **RECORD OF ATTENDANCE**

#### **Present**

Mikiala Pescaia, Chairperson  
John Sprinzel, Vice-Chairperson  
Debra Kelly  
Lori Buchanan  
Ron Davis  
Zhantell Dudoit

#### **Excused**

Nathaniel Bacon

#### **Absent**

Don Williams

#### **Others**

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