

**MOLOKAI PLANNING COMMISSION  
REGULAR MINUTES  
RECESSED MEETING OF JUNE 14, 2017  
RECONVENED ON JUNE 28, 2017**

*\*On June 14, 2017, at approximately 4:45 p.m., the meeting was recessed to be reconvened on June 28, 2017, at 11:00 a.m., at Kalaniana'ole Hall in Kalamaula, Molokai. The Commission was conducting the public hearing on agenda item E.2 (Jim Sherrell STRH)\**

**A. CALL TO ORDER**

The recessed meeting of June 14, 2017 of the Molokai Planning Commission was reconvened by Chairperson Robert Stephenson at approximately 11:04 a.m., Wednesday, June 28, 2017, Kalaniana'ole Hall, 605 Maunaloa Highway, Kalamaula, Island of Molokai 96748

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

**B. PUBLIC TESTIMONY** - At the discretion of the Chair, public testimony may also be taken when each agenda item is discussed, except for contested cases under Chapter 91, HRS. Individuals who cannot be present when the agenda item is discussed may testify at the beginning of the meeting instead and will not be allowed to testify again when the agenda item is discussed unless new or additional information will be offered.

**C. INTRODUCTION OF NEW MEMBER – LORI BUCHANAN**

**D. APPROVAL OF THE MINUTES OF THE MARCH 23, 2016 and MARCH 24, 2016 SPECIAL MEETINGS**

*\*\* Agenda items B through C were completed on June 14, 2017. \*\**

**E. PUBLIC HEARING (Action to be taken after public hearing.)**

1. **MR. WILLIAM SPENCE, Planning Director transmitting Council Resolution 17-74 referring to the Molokai Planning Commission a Proposed Bill to amend the Comprehensive Zoning Ordinance relating to Short-Term Rental Homes on Molokai. (RFC 2017/0064) (S. Lopez)**

*\*\* On June 14, 2017, the Commission took action to defer item E.1. \*\**

2. **MR. JIM SHERRELL requesting a Short-Term Rental Home Permit in order to operate the Pukoo Polynesian STRH, a three-bedroom short-term rental home, located at 8778 Kamehameha V Highway, TMK: 5-7-007: 008, Pukoo, Island of Molokai. (STMO T2016/0007) (S. Lopez)**

**This application is being brought for review by the Molokai Planning Commission because there are at least 2 permitted short-term rental home operations located within 500 ft. of the subject property.**

Chair Stephenson: Good morning everyone. We'd like to reconvene our meeting that was recessed from June 14, 2017, and also I'll call to order the June 28, 2017 meeting of the Molokai Planning Commission.

At our last meeting, we recessed, we were in the middle of public hearing item for agenda item E.2., so we will continue our public hearing on that particular agenda item, so if there's anyone who would like to give public testimony on the June 14, 2017 agenda item E.2., Mr. Jim Sherrell requesting a short-term rental home permit at 8778 Kamehameha V Highway, anyone who would like to testify, please come forward and state your name.

Unidentified Speaker: ...(inaudible - not speaking into the microphone)...

Chair Stephenson: You bet. Pardon me. So we're reconvening the meeting. At our last meeting, we took a recess in the middle of public testimony for Jim Sherrell's application for a short-term rental home permit in -- on the east end of Molokai, at 8778 Kamehameha V Highway. So we're in the middle of the public hearing for that item, so anyone who would like to provide testimony on that particular item, please come forward and state your name, and provide your testimony. Thank you.

Ms. Zaidarene Place: Good morning. My name is Zaidarene Place. I am testifying regarding item E, no. 2. I am opposed to the issuance of a short-term rental home permit to Mr. Jim Sherrell. As a member of the east end community of Molokai, I urge this Commission to take into consideration that there are valid reasons and concerns regarding the STRH permit that has been brought to you for review. First, there are currently two permitted short-term rental home operations already located within 500 feet of the subject property. Also located in East Molokai is Wavecrest Resort. There are many units available year round at Wavecrest for short-term rentals. As a previous office manager at Wavecrest Resort, the number of units available for short-term vacation rentals have never been occupied at more than 50%. Per my phone call today to the Wavecrest office, it has never -- it never exceeds more than 50% occupancy. At the last meeting regarding capping, we heard from members of the Pukoo community testify that they're worried about the density of vacation rentals in their neighborhood along with others, including myself, throughout the east end community who don't want these types

of businesses in our community. When these people purchased their four properties, all of which are located in Pukoo, they were well-aware that they were purchasing land zoned for agricultural purposes as this is how the properties are being taxed. Also, in the East End Policy Statement, Exhibit D, under section 4, Cultural Resources and Traditional Land Uses, on page 8, no. 10 reads: A permanent moratorium against the development of tourist-related accommodations or businesses which will subsequently change the social infrastructure of the area. Why does this Commission keep allowing permits? The majority of the community strongly oppose. I ask you to listen. Thank you.

Chair Stephenson: Thank you, Ms. Place. Any questions for the testifier?

Ms. Buchanan: Thank you for your testimony. Commissioner Buchanan asking questions. Can you please cite the reference again in the Community Plan for me?

Ms. Place: It is no. 4, Cultural Resources and Traditional Land Uses, on page 8, no. 10 reads: A permanent moratorium against the development of tourist-related accommodations or businesses which will subsequently change the social infrastructure of the area.

Ms. Buchanan: And this is in the current Community Plan, yeah?

Ms. Place: Yes. In the East End Policy Statement, Exhibit D.

Ms. Buchanan: Okay, thank you.

Ms. Place: You're welcome.

Chair Stephenson: Any other -- any other questions? Okay. Thank you very much. Anyone else would like to testify on this particular agenda item, please come forward.

Mr. Dartagnon Bicoy: Good morning. My name is Dartagnon Bicoy. I live on East Molokai for five generations. I agree with the last testifier, and until Aunty Stacy Crivello's whatever she has, resolution or bill or whatever you wanna call it, trying to establish the total number of short-term rentals is discussed within our community, I think there should be a hold on any approval of short-term rentals until such time. Thank you. Yeah.

Chair Stephenson: Thank you very much. Any questions for Mr. Bicoy? Okay, thank you. Next testifier please.

Mr. Travis Tancayo: Good morning, Commissioners. My name is Travis Tancayo, lifelong resident here on Molokai. I am for allowing Jim Sherrell having being approved. I know Mr. Sherrell most of my life. He's been a family friend as far as I can remember.

Things I'd like to highlight about Mr. Sherrell is, since he's moved here, he has made special effort, whenever needing work done in his home, to seek local vendors and people to work on his home and that's important when people talk about money going outside, he goes out of his way to support the local community. Also, something that he did recently was, you know, supporting the local canoe team by providing a way to fundraise and that, right there, benefits the east end community. Any questions from anybody?

Ms. Buchanan: Thank you, Travis.

Mr. Tancayo: Okay, thank you.

Chair Stephenson: Thanks, Mr. Tancayo. Next testifier please.

Ms. Harley Tancayo: Hi, everybody. Aloha. My name is Harley Tancayo and I support the Sherrell's reasons that the -- I've been driving a taxi on this island for, gosh, for a long time, and I taking people to vacation rentals that -- that are not legal, and not to throw anybody under the bus, but, you know, even this particular property, at one time, I used to take people. It had no effect on nobody. People didn't even know. In fact, there's so many that you guys don't even know about that is out there, and I mean there's a difference between short-term, long-term, and an Airbnb. Long-term, you can bring anybody over there. Short-term, you get all these rules that you gotta abide by, you know. So the effect on what it's going cause, I don't see that. I mean even people renting Hawaiian Homes, but that's another subject, but I just for them and the reason is because of the things they do for community, the way they want to keep Molokai the way it is, and, you know, we have a chance here to -- to -- I mean if you put zero vacation rentals down, only people who going doing 'em is the illegal guys anyway, it's like when they took away alcohol, you know what I mean? Only guys who did prohibition was illegal guys so, yeah, so at least they trying to do things the right way and make it right and that's all I just want you guys to consider. Thank you.

Chair Stephenson: Thanks, Mr. Tancayo. Yes, John?

Mr. Pele: Eh, Harley, thanks for your testimony. I appreciate some insight from you. As a previous testifier said and you said they do things for the community, and much appreciated, in your opinion, since you did testify that, would that, and living on Molokai, do you feel that they do more than any other tenant of the island would do for the community? Is that what you see? Or -- 'cause I've heard it said in the testimony so I'm just trying to clarify that -- that point.

Mr. Tancayo: They go far, I mean if you talk about, you know, we get one certain style we get on Molokai, they exemplify that right there by going above and beyond for your neighbor, for giving respect for people around, you know. I mean they all the way in the

Mainland and somebody call them for come help them and they going try find one way for, eh, you know what? These guys stay stuck in the sand. I going find one way for help you, you know, and they all the way in the Mainland, but they living here now, and, you know, they do a lot for the people. And, you know, short-term rental, we get a chance to pick and choose what kind of people we want to come to Molokai, you know, not the kind that want to change our island, but the ones that wanna come here and -- and keep it the way it is because that's why they came to Molokai because it's not Waikiki, it's not Maui, it's not Kailua, this is Molokai. And I talk to everybody that come - why you came to Molokai? And they tell me because it's not that. And I say, well, keep it that way. You know, so I agree on putting one cap on short-term rentals. I mean we cannot have 'em all over the place, but we want the kinda people who -- who going get one short-term rental that going take care of our island, and I think these the best kinda people right there, not the kind that come over here just for make money, turnaround and flip their house, or whatever, you know what I mean? Thank you.

Mr. Lasua: Question, Harley. Do you think that, based on short-term rental homes, like when the canoe paddlers come over, since you transfer these people all over the island, do you find that their short of rooms when they come over?

Mr. Tancayo: When get canoe race, oh yeah. Get short rooms. I mean some guys come over, it's funny, from women to the men's race, you know, women they -- sorry, guys, but they all organized, they know where they going stay. When the kinds guys coming over, they like, wow, I don't know where I going stay. Try find them one place. No more. But then you get one minimum stay in one short-term rental, you know, it's not like one transient kind room that you going get people come one night, they stay one night; this one, you gotta stay there four nights, you know, and it's not the people going in and out, in and out. One long-term rental, you can have all your family and party, come over there every night. They no more rules about that, you know, so short-term, you get positives and you get negatives. Long-term, anybody can come.

Mr. Lasua: But in your opinion, would this help the canoe paddlers?

Mr. Tancayo: Yes.

Mr. Lasua: Thank you.

Mr. Tancayo: Thank you.

Chair Stephenson: Thank you, Mr. Tancayo. Anyone else like to testify on this agenda item?

Mr. Erman Tancayo: My name is Erman Tancayo. I live here all my life, and this guy Jim Sherrell, may I introduce to you guys Jim Sherrell. Please stand up. This one haole boy, but this haole boy I know all my life because we went school together. I bring him home Molokai back in 1961. Today, he buy home over here. Why? Because he love this place. He's here because he love this place. Now this guy like try improve the place he get, okay. He not here to make any kine because we going be after him. The locals going be after him. So Jim Sherrell I guess get enough kala to buy a property out there, and he wants to put a little short-term rental home up there in his apartment area. So far, that no going bother nobody over there. Only thing over there get is for the locals where the beach access is at, the right-of-way, and that's not close to Jim. Access, everybody go, everybody follow common sense rules. Now, this man is trying to improve his place and trying to make this place his home. For me, right on, bruddah. If can, welcome back to Molokai. Thank you.

Chair Stephenson: Thank you, Mr. Tancayo. Any questions from the Commissioners? Okay, thank you very much. Next testifier please.

Mr. Alapai Hanapi: Good morning. Aloha, Molokai.

Ms. Buchanan: Aloha.

Mr. Hanapi: My name is Alapai Hanapi, from Manae. I gave you guys our paperwork. I'm a member and adviser to Hui Aloha Aina O Manae, and you guys should have gotten my -- our paperwork the last meeting. We're against short-term rentals for a lot of reasons. One of them is the taxes, you know. We going have something commercial right next door to our residential and, you know, these guys may not even live there, they absentee landowners. Like I explained last time about the kolea bird and how they come over here and they get momona, they get fat, and then they go someplace else to enjoy their wealth. I don't believe that stays here, and I don't care how long they been here. I don't care. It doesn't matter to me how good they are or how nice a people they is. I believe everybody's nice and everybody's good in their own way. I got nothing personal against this, but this is Manae, okay. California, 1978, they had a Proposition done because of the same thing that's happening over here, okay, short-term vacation rentals, 1978, so they did a Proposition 13, check it out, okay, because everybody else around there, who were residents, were being taxed right out of their homes, right off of their lands, and so something needed to be done, so let's do our homework, let's check it out. I know this is out of state, but this is relevant. Now, we're descendent from the original awardees from King Kamehameha, signed by Keoni Ana Young, right from the originally down to us, okay, so we enjoy certain rights from mauka, makai, to the papa, and outside, a mile out into the blue ocean. We enjoy those rights, okay. Now I don't wanna have to fight for those rights or be burdened, you know, by having to deal with individuals who don't know. Now I don't know the Sherrells. The Sherrells, do the Sherrells know about

our traditions and customs that make up our culture? Are you folks going to explain all that if you know about it? Are you going to explain that? Are the people going -- are you going to be there to make that they're going to be doing that? I mean you say yeah now, but you only one. Now if we allow more than one, and we get uku pila, like Pukoo used to be a harbor town and it looks like that's what they're trying to do, and I know the people in Pukoo, the locals, the rootstock families, you know, we've been here thousand year, okay. So, you know, I think them should be asked first. Now, another thing is I don't know if you folks understand the land divisions of an ahupuaa. Now every ahupuaa on the East End, I know Lawrence know that, his family from Manae, Lawrence Lasua's family is from Manae even though he don't live there, and he lives on homestead, his family from Manae, and the land divisions between on -- in the ahupuaa, there's lele, what they call "lele," okay, now that goes over to the north shore. Every ahupuaa in Manae has a lele or a land division outside of our ahupuaa on the north shore. I'm not going to go into detail and explain why, I'm just letting everybody know that that's what's happening, okay. So we have these rights that nobody else has. Nobody's dealing with them. Somebody enforcing them? All I know is that the police are enforcing private landowner kine stuff, but they not enforcing our native rights, just like the so-called "Molokai pirates," you know, who are being fined and everything, well, excuse me. I think that's the State's fault and the County's fault. County's not enforcing. Police don't enforce. DLNR don't enforce. I mean who's enforcing? Ain't this a law? 'Cause if it ain't a law, take it off the books and quit fooling us, okay? Quit lying to us. All this is relevant from us natives from Manae. If anybody should be benefitting and prospering, it should be us. The people who are from Manae. I got nothing -- nothing against you people who are applying, but I'm against it. I don't wanna see -- I mean, you know, Stacy trying. She trying. She listening to the voice of the people. She come Manae. She listen us and you know what? She tried. She putting something. She putting a proposal in and, you know, at this later point, you know, I see a cap and maybe an amendment, but like I say, I say zero, and the ones who were grandfathered in, I say rescind those permits and make it - - just a second.

Chair Stephenson: Thank you. Please conclude.

Mr. Hanapi: Just rescind that so that we can -- so that everybody -- it's fair for everybody. That's all I have to say. Any questions?

Chair Stephenson: Thank you, Mr. Hanapi. Any questions for Mr. Hanapi? Thank you very much.

Mr. Tancayo: ...(inaudible - not speaking into the microphone)...

Chair Stephenson: Excuse me? Pardon me. A point of order. Mr. Tancayo, we need to continue with the meeting. If you'd like to have a conversation with Mr. Hanapi, if you can

please do so afterwards. I apologize, but we have the rules here to follow. Pardon me. Okay, anyone else like to testify on this agenda item?

Ms. Hoala Davis: Good morning. My name is Hoala Davis. I am a resident on the east side of Molokai. I live in the Mapulehu area, about mile down the road from where the Sherrells are requesting to put in another vacation rental, and I think that's something that is key. They already have a vacation rental and whether it's in Jim's name or his wife's name, the reality is they already have one; they're trying to get another permitted. The permit request isn't for an adjacent property to have an apartment for the residents. They're requesting that the residential building, the three-bedroom unit, be approved as well as the adjacent dwelling. To me, that's not I'm going to live there and somebody will be in the apartment next door where they can maintain and monitor, they're, you know, these are investment properties. To call it a home, to say you're living here on Molokai, that's not what it is. A property was purchased. It is an investment. It is a means to make money, which is, you know, it's a capitalist country that we live in, but call it what it is, and, you know, I don't know the Sherrells, they may be very, very nice people, they sound like they would be nice neighbors, but if they were buying a property to live in it to be a home, we wouldn't be having this discussion, we wouldn't be here asking for an exemption and a special permit to allow the commercial business that they wish to conduct there. They would move in and be neighborly, and the contributions that they do are the same expectations that all of us do in the community. We all support fundraisers. We all donate. We all volunteer our time. We all work at the schools. That should be an expectation of a good neighbor, not something special that someone does and comes into the community and says I did this. Now you should give me some special consideration so I can profit. You know, we could spend all day looking at the -- the numbers 'cause I've spent a lot of time, I've been looking on the Hawaii Tourism Association trying to find an accurate breakdown of where all this revenue is generated, but at the end of the day, when you look at the dollar amount that's actually brought in to the individual homeowners for these property rentals, you're talking \$2,000.00 and up a week in their pocket that they're taking, even the tourists that come, the majority of what they're spending is paying for that housing, it's a huge percentage of their income; some of it trickles down into our community, more of it would probably be beneficial to our community if it was going to our hotels, going to the condominiums where people have fulltime ongoing employment instead of someone coming in every other week to mow the lawn, you have maintenance staff. You have personnel that are there and that feeds back into our community more so. But there are so many issues and topics, but I think at the end of the day, it's not a popularity contest, it's not how nice these people are because they will be having people blocking out a timeframe online, we don't know who they are, we're not going to know if they're nice people, we're not going to know what kind of person comes in. You can't necessarily be selective. At the end of the day, they're just a credit card number that gets put in, blocks out a timeframe, and they're coming and going from our community, so it's, you know, granted you guys may be very nice but I -- I'd be highly

surprised if they were able to vet every single person staying in their home. And as far as the canoe clubs that come every year for the races, the numbers far exceed what supposed to be going into these vacation rentals so it wouldn't make a positive or as much of an impact. We all know. When they come, they put down the 8 people that are staying, but they have 15 or 20 people staying, which shouldn't even be allowable. It doesn't, you know, take care of the housing issue. You know, they still -- what they end up doing is compiling and putting a higher concentration of people in these areas that are already overrun. That's it. Thank you.

Chair Stephenson: Thank you very much. Any questions for Ms. Davis?

Mr. Lasua: Ms. Davis, when you say the number far -- you're talking about the hotels or you're just talking outright the places that they stay?

Ms. Davis: No. The -- so a lot of people come and they prefer to stay in the vacation rentals 'cause it's easier, it's easier because they're not regulated and they're not monitored, so you can put online that 8 people are going to be there, but when you show up, and we've driven by down Waialua, Pukoo area, there's people camping with tents out in the yard, the houses are filled out to max capacity. They're not renting it according to the regulations that everybody says right now with, as far as the permitting process, what's being put in, they're saying they won't exceed a certain number, that, you know, if there's only eight people, when people come over for the canoe teams, it's not enough accommodations for that group so the assumption would be they have to rent two or three houses in order to accommodate the entire group, that's unrealistic, and we know that's not what happens, so the enforcement, because there's no enforcement; in a hotel you have security, they know that constantly if there's, you know, even if you have six people in a room versus the two or three that are supposed to be there, at least they can maintain and monitor that and make sure it doesn't happen, keep the noise down, that kinda thing. In the vacation rentals, you don't have that enforcement, you don't have that kind of monitoring, especially not during those times of years when the population of the island swells because of the races and all the visitors.

Mr. Lasua: Okay, thank you.

Ms. Buchanan: Mr. Chair, I don't have a question for the testifier but I just wanted to mention, for the record, that that discussion is all hearsay, that I don't know of any report, funded report by the County or the State to currently track the current situation of canoe races and paddling on the island of Molokai, so I'm not taking any of that information to heart in reviewing this application, and that's not any part of the subject because it's outlined that there's a minimum -- maximum stay already on this in the rules. Thank you.

Chair Stephenson: Thank you.

Ms. Davis: Right, and I was just stating an observation based on what we see in our community on the numbers. It would be nice if someone would actually track that and let the community know really what the numbers are and how much of a positive impact or negative the housing, you know, the vacation rentals versus hotels versus condos have on island.

Chair Stephenson: Thank you, Ms. Davis. Any other questions? Okay. I'd just like to remind everyone that this, since we are in the public hearing, this is -- this will be your last opportunity to testify on this particular item before the Commission goes into decision making.

Ms. Judy Caparida: Aloha, everybody. My name is Judy Caparida, and I am still a resident of Mana'e. I've got land in the back of Waialau and Mana'e, and also I'm a homesteader. Thank you, Jesus. I'd like to let -- you know, I wanna ask questions. Really, I didn't have the kinda education that everybody has. But, you know, what is agriculture? Tell me what is agriculture? Is it for building? Is it for house? Is it for food? Is it for animals? I mean it kinda like make me like what is happening here? I know the difference between agriculture 'cause agriculture is to raise something for food, for animals, and yet they wanna put buildings up there. What is a residence? What is the rules of a residence? That's houses. Houses one by one. Families. That's what residence is to me. That's the way I was taught anyway. Okay? What is commercial? What is commercial? Commercial is someplace that you put buildings where you have to pay money for it, pay money for services. That's why we got hotels. That's why we got hotels. Now they wanna put it inside their homes which makes it a problem. A problem why? Parking. Taking all the space just for short-term. Just for short-term. We here for long-term. You know, I really love people. I really love people. And that's why I always give my time to know what's going on in my community, from the east to the west, to the north to the south, we not separated by water. But, you know, people get one, one rental maybe in West End, now they wanna put one in East End, put it down Kaunakakai, wherever, whatever excuses they have. Don't make sense. Done make sense to me because why? This is our lifestyle here. I was watching the TV the other day, in Honolulu, they're having a problem with these short-term stuff. Money is the problem. Greed is the problem. See, we cannot afford to what people wants here for themselves. We only can afford what we have every day of our life. This is not short-term. And this is why I need to say, I need to tell you that you guys make researches for every word that you guys get on this cute paper, plenty paper, but no make sense. It doesn't make sense. Who's hurting? Who's hurting? The people that's making the money or the families that need to be fed? Even the State, they no can do nothing. The DLNR no can do nothing. Yeah, even our County. You can go only to the sand and you halihali everything to the -- to the beach, then you have to what? DLNR outside the ocean. What fools. I need to tell you that God knows everything about us on Molokai because there were prayers that was

sent to the throne of God for this island. I know 'cause my dad was one of 'em. And you know what? And it's not pono. So every one of you on top that place over here, you better really consider what's going on in this paperwork. As good as the bruddah is, it doesn't make any difference if you're not going to follow the law. You guys better make laws that everybody can follow, not one, not because he's your friend, no. Because whatever goes for one goes for all. That's why I need to tell you. I sit in there and I look at all these. I said even if it's wrong, it's wrong. Why stand for something that is wrong? I know because, brah, we was raised over here. We know the lifestyle over here. And everybody forget that now that you doing good, you forget about all those ones that is suffering, all those one that need, all those ones that's committing suicide because why? Cannot handle. No can handle. What's coming up on them, they cannot handle, but I can. I can handle because Jesus give me the strength to handle for you to know that you know what? Everything you do, you are comfortable because everybody knows that is right and what is wrong. You don't take part just because somebody is good. Good don't mean nothing if you're not going to follow the rules. So I need to say that. I love all you. I love you guys. But you know what? I stand for righteousness. It doesn't matter what people say about me. The one over there, He's the boss. He's watching every one of us. I need to say that. Mahalo.

Chair Stephenson: Thank you, Aunty. Any questions for Aunty Judy?

Mr. Lasua: In your -- in your testimony, you mentioned that Oahu has the short-term rental home problems. Is that something that the State put out or did you see that on television or how did you get that record?

Ms. Caparida: Bruddah, it's on the TV. You can go ask for it.

Mr. Lasua: Okay, thank you.

Ms. Caparida: ...(inaudible - not speaking into the microphone)... people is moving out because they cannot live there, but nobody is moving us out.

Chair Stephenson: Thank you. Next testifier please.

Mr. Lance Tancayo: Hello. My name is Lance Tancayo. I'm here for Jim Sherrell, and all I've been hearing is just a lot of negatives. No positives. I will just think of -- mention just one. Although he doesn't come from Pukoo, his place is in Pukoo, there's a store in Pukoo. They know whoever comes to that place is not going to come all the way Kaunakakai only for buy groceries. They going support that store of Mana'e. They going buy the kaukau from up there. They going buy the ice, the beer, whatever. But I'm here because of the Sherrells. You have any -- any questions?

Chair Stephenson: So are you in support?

Mr. Tancayo: Yes.

Chair Stephenson: Okay, thank you. Any questions?

Mr. Tancayo: No. Oh, sorry. Thank you.

Chair Stephenson: Any questions from the Commission? Thanks, Mr. Tancayo. Next testifier please.

Mr. Charles Miguel: I wanna know why they have to make a short-term rental.

Chair Stephenson: Pardon me. Please state your name for the record.

Mr. Miguel: Charles Miguel from Waialua. What the purpose of making a short-term rental? If you move here because you like the place, you build one house. Why you need a short-term rental? Yeah? What the purpose of the short-term rental? Make money while they go back vacation or go back home? Commissioners no more answers.

Chair Stephenson: I'm sorry, Mr. Miguel. We don't have the ability to have a question and answer session. We're just here to accept public testimony so we --

Mr. Miguel: Yeah, it's a testimony but you guys -- you guys must know something, yeah? Why they come here and put up short-term rental when they already got a house?

Chair Stephenson: That might be a good question to ask to the -- to the applicant, but we're not able to answer questions. We're here to accept testimony.

Mr. Miguel: So maybe you an answer my question.

Ms. Buchanan: Mr. Chair? Mr. Miguel, on your behalf, I will ask that question when the Commission has time to ask questions of the applicant on your behalf.

Mr. Miguel: Oh yeah?

Ms. Buchanan: I will ask the question.

Chair Stephenson: Thank you, Lori.

Ms. Gladys Durante Naki: My name is Gladys Durante Naki and I oppose.

Chair Stephenson: Thank you, Ms. Naki. Any questions for the testifier? Okay, thank you. Next testifier please.

Mr. Gandharva Mahina Hou Ross: Hei aloha nui kakou ouwao. Gandharva Mahina Hou Ross, resident of Waialua, Molokai, taro farmer, and I guess my first -- I got a -- one main question to the -- the Planning Commission and that is -- is what is the zoning for Manae? Can you answer that question?

Mr. Stephenson: I believe that question's going to be covered in our -- in the presentation after we have the public testimony.

Mr. Ross: 'Cause I was under the assumption that Manae was zoned agriculture and conservation, and that is also part of a special management area, and that the East End Policy Statement, from 1981 kupuna, there was a lot of discussion about how it's moving forward or not, states that the purpose was to maintain the rural status of Manae and the lifestyle of the Manae community, so I might be wrong, but I thought there was some kind of SMA that was supposed to be no commercial activity in Manae and you need a special permit to do any commercial activity, and these are now asking for residential houses to be used as commercial activities; that definitely withdraws and pulls away from the rural -- the rural status of Manae, the agricultural conservation part of Manae. It's also a subsistence area where the people, who are there, lived there all their lives for thousands of years. They never left. We never left. We've been here forever. And these types of activities negatively impact our rights to do subsistence activities. It becomes a recreational area. We get commercial activities. I was under the assumption that Kaunakakai is zoned for commercial, so my personal belief is that all -- all vacation rentals, all hotels, all those kind of accommodations should be in the commercial zoned areas and not try to give out special permits and special rules and exceptions to allow exceptions to the rules that have been set forth, so I might be wrong in some of my assumptions, but I'm pretty sure that Manae is a rural community and I feel it should stay that way and so I'm against the application. Mahalo.

Chair Stephenson: Thank you very much. Any questions for Mr. Ross? Okay, thank you. Next testifier please.

Mr. Erman Keoni Tancayo: Aloha, Ladies and Gentlemen of the Board. My name is Erman Keoni Tancayo. I'm born and raised resident on this island, the second generation from my day, who first testified earlier. First of all, all you folks, I aloha every single one of you because I, for one, wants to keep the island the same. I don't want to see big buildings. I don't want to see commercial stuff because this is my resting place. I was born and raised here. I want to come back and remain the same and know every face that's available here. You know, it's hard for me. I'm on the chair tossing and turning because this one touchy subject. This man here, Jim Sherrell, he's been around from my

great-grandfather days. He's not one regular haole. I'm here to put my name on the line to say that this man is different. I know once, I hear you guys, you open the door, we don't want the door to be open for the rest of the other people to just drop stuff and build and doesn't benefit us. I hear you guys. But I'm here today because this man is different because I've talked to this man. Every time I come down and I explain to him how I feel, what the people feel, what the response of what -- what they're going to do and the repercussion, and by our family being a part of him and him would be a part of us, it'll kick back on us, so he knows exactly. If he don't follow the rules, like my dad said, we going be on him. So his -- his heart is different from the rest of the haoles. He wants to give back in any which way possible. One example was Manae Canoe Club, and he's talk to me about many different things that he wants to give back to the community. I know -- I don't know if I'm still making sense about the -- the short-term rentals, but like brother Harley said, canoe comes in, you know, people -- that's just one example of people needing a place to stay, and they do the transportation. But if he's not going to follow the rules, again, our family name is on the line, my face is on the line, he knows where I stand, we all know where we stand, and I think all of us have the same common, you know, interest that we wanna keep our island the same. I no like 'em change. I do not want it to change. And we'll make sure of that as much as possible. Again, this man is a little different, he not little, he's plenty different. He's been with our family, our grandfather, he was raised up with my dad's family, family of ten. He know what it is to run around with your underwear. You know, he knows what is to be in a fishpond. He know a lot of stuff, he may not look it, but he knows, and he's heart is pretty much same with -- with us on the island. Thank you for hearing me.

Chair Stephenson: Thank you, Mr. Tancayo. Any questions from the Commissioners? Okay, thank you very much.

Mr. Palmer Naki: Aloha, everyone. My name is Palmer Naki, and, you know, I'm in opposition, I know the man, but I am still in opposition because of all the reasons everyone said here, you know what I mean? You know, everyone, you know, like you say, he can be a great man, he can be a terrible man, but it comes down to the impacts and the negative impacts that's going to come to the east side, you know. He may -- I not too sure what testifier was earlier who said that, you know, he can pick and choose who he wants to go into there, or he can look who he wants, so, basically, I listen to that and I'm like say, okay, if I show up, and he didn't know me, would he let me go in? You know what I mean? He's going to say yeah or no. I don't know. So I don't like the short-term rental up east, west, central. We don't need that kinda stuff. I explain to him a few days ago, old style was you come to Molokai, you come to my hale, I take care you, I feed you, you do into my taro patch and you go pull my weeds, okay, and you come back into my house, you put your head down and you go sleep, not I put a money on there and I tell you you owe me \$500.00, okay, 'cause you stay staying in my house. Okay, so I am in opposition. Thank you.

Chair Stephenson: Thank you, Mr. Naki. Any questions? Okay, thank you. Next testifier please.

Mr. Shane Pale: Aloha, everyone. My name is Shane Pale. I'm actually from Molokai, I don't live here on the island right now, but we are kuleana landowners in the Pukoo area. I just wanted to say that I'm against this permit or any further permits in the future at -- at this time. I just want to just let you folks know that Pukoo is a very Hawaiian place, and what does that mean to Hawaiians. It means a lot of things to Hawaiians that I don't think you folks understand. First of all, I think that this whole thing is rigged. It's rigged to the point where people with money, outsiders with money who come to Molokai can actually come to a process that is really works for them and not for us in the community. I mean it's really clear because some of the -- some of the manao I get from people on the Commission is that, you know, if we don't do this, you know, they following the law, they crossing their T's, dotting their I's, you know the permit looks as good as it's going to be. Right there already you know that it's rigged because, again, I come back to this whole idea that it is a Hawaiian place, you know. We fish there. We get our food from the land, from the ocean. It is, don't forget this, but it is a Hawaiian place. A very Hawaiian place. Waikiki was once a very Hawaiian place, not so much anymore. Lahaina, at one time, was the center of all of Hawaii. It was the center of political, of merchant, everything in all of Hawaii and it was once a very Hawaiian place, and look it now. You know, we're at a place where if the system is rigged for people from the outside, who's going to protect the people's interest here on the island. I know it already came up, it is an agricultural zoned area, and that alone should be enough already for -- to give us a chance to at least stop anymore of the detriments that we see that is going to come in and hurt this very Hawaiian place, and I've been hearing that Mr. Sherrell is a very nice guy. I've been kinda looking, and researching, and I've been talking to attorneys, Earthjustice, the Native Hawaiian Legal Corp, looking at some way, because again, the system is very rigged against community, particularly Native Hawaiians, our interest are not being protected, it is a very -- it's a historical place. If you guys don't know till this day, Pukoo once was the place in ancient Hawaii, not so far ancient, where Queen Liliuokalani came and she stayed in Pukoo for about two weeks with our ohana, with Mahina, with the Duvauchelles. There is iwi in almost every part of that land, which tells you right now that we are subject or we are going to be subject to an EA or an EIS, and that is -- that is a fact. You guys are moving on something that is not -- nothing's been clarified yet as far as what the place is, and I'm telling you guys right now it's a Hawaiian place, there is iwi buried there that classifies the land even -- it protects it even more than it being an agricultural area. So I think, for you folks, just think, you know, be very careful as you move forward and think about those things because we are in conversation with attorneys in Honolulu, you guys are forcing us into this direction, we're looking at it, I've been talking to Paul Achitoff from Earthjustice, they're already working on it and looking at it to see if there's anything we

can do as a community to stop this onslaught of inundation of something that we do not want. You know, the economic interest --

Chair Stephenson: If you could please wrap up, please. Thank you.

Mr. Pale: Excuse me, sir. You gave everybody as much time as they needed. You're going to listen and wait till I'm done, okay. No sense -- don't tell me to wrap it up. The thing is -- the thing -- I tell you right now. This is too important for you to be limiting anybody's manao to be expressed. Mr. Sherrell, you're telling -- they're saying you're such a nice guy. You're such a nice guy. If you go read 343, which is the EIS and the EA statement, if you are such a nice guy, you would voluntarily go ahead and do one EA on your own, but that's not what you're doing. There are things in Pukoo and Manae that is going to be impacted by anymore inundation by these short-term rentals or bed and breakfast. So if you were really a nice guy, you would voluntarily do that, and I don't see you rushing to do that so it doesn't matter if you're a nice guy at this point. So, basically, what I wanna say is that I'm opposed to this all the way, we are seeking what we can do, if there's any recourse we can do legally, and everyone here, everyone on the board, in your capacity as a representative of the government will be held liable and responsible. So with that said, more later.

Ms. Buchanan: Chair?

Chair Stephenson: Thank you, Mr. Pale. Do you have any questions for Mr. Pale?

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

Chair Stephenson: Yes, go ahead.

Ms. Buchanan: I have a question for the testifier. Maybe you like go on the mike. I so sorry you went sit down. You moving too fast. I heard your testimony, and I want clarification. Are you stating for the record that you intend to enter a contested case hearing on this matter?

Mr. Pale: I'm saying that we are looking into the matter. I have spoken to several attorneys already. And again, I'm just telling you guys this 'cause the way I'm looking at it, it's really rigged against any -- so the only recourse we have at this point --

Ms. Buchanan: Okay, so I understand that the -- I just looking for a yes or a no.

Mr. Pale: The thing is we're looking into it right now. There's certain rules that we gotta look at when it comes to 343 of the EIS and the EIA, which is the State charter. There's a list of requirements that need to be met. We believe and the attorneys that I did talk to

do believe that Pukoo may be one of those -- one of those locations based on the fact that it is -- there's a lot of iwi there. I think that that is something that's in motion right now.

Ms. Buchanan: Are you --

Mr. Pale: And the only reason why is 'cause time is of the essence, and I've been trying to do as much as I could as far as research, moving forward, but I just wanted to put you all on notice that this is something that we working on and maybe coming forward soon.

Ms. Buchanan: Mr. Pale, I don't know if you're aware of the rules of the Maui County Code from contested case hearing, and I would like our legal counsel or our deputy to expound on your rights as a community person to enter into a contested case hearing, and my understanding is you have to do that before any decision is made today. So anybody in the public that has that concern needs to state for the record before any decision is made today that they intent -- their intent is to enter into a contested case hearing, which then, after this, you going go through the process of verifying whether you have standing, but that intent have to be made on the record before decision making today.

Mr. Pale: Okay, based on what you just told me --

Ms. Buchanan: And -- and counsel can correct me if I'm wrong.

Mr. Pale: Yes we are. So that's my answer is yes, just based on what you just -- what -- how -- what you just expressed and explained to me.

Ms. Oana: Okay, basically, if you want to intervene in this matter, there's a -- there's a provision for intervention in the Molokai Planning Commission Rules, and that's 12-301-25: Petition to intervene shall be in conformity with the rules and shall be filed with the authority, which is the Commission, and served upon the applicant no less than ten days before the first public hearing date, which was June 14. Untimely petitions will not be permitted except for good cause but in no event after the authority has taken a final vote on the matter before it. So there is a provision that you have to file a petition to intervene within the time period.

Mr. Pale: Yes.

Ms. Oana: And I'm not sure if that's exactly what you -- you were talking to Native Hawaiian Legal Corp and Earthjustice about, or whether you're talking to them about a global how can you take care of the short-term rental home process --

Mr. Pale: Yes, and part of it is --

Ms. Oana: And not necessarily this matter.

Mr. Pale: Yeah, part of it is we're -- they're looking at an EIS, Chapter 343, and seeing - and, you know, there's all these requirements, I don't know if you're familiar with the law. I'm not an attorney, but I have been doing a lot of research over the last few weeks, and I think that what you just explained was something that we did talk about, but we think at this time maybe an EA or an -- heading towards an EA might be more appropriate at this time. But again, like to answer what Lori said, that is definitely something that we would want to do, you know, so I think that is something that we are going to move forward on. I feel like, at this point, you represent the Commission 'cause you're a corporate counsel, so thank you for stating for the record what it is, but I think that, at this point in all fairness, we need to look outside of the council to respond to what you exactly said, so I'm going to be looking forward for the minutes. Yeah, so I think that's just kinda where we are right now. I think it's something for you folks to think about because I know there's other short-term rental permits in the hopper, and I think we need to address this at this time, and I know it's like you're right, from June till now, which should have been done ten days before for the -- but there's others that are coming through. So I feel like why do we -- if you're going to be voting on this in any way, it might be premature at this time, you know, based on that information.

Ms. Oana: Okay, so just confirmation, you're not intending to file a motion to intervene on this matter but you are talking to legal counsel with regard to a global resolution of --

Mr. Pale: On this matter. On every -- on this matter that we're presently -- I mean I'm at the meeting, with the hearing, with this particular item on the agenda, and that's what I'm addressing, so I'm addressing this matter.

Ms. Oana: Okay, so are you saying you're -- you want to file a petition to intervene in this matter?

Mr. Pale: Yes.

Ms. Oana: Okay.

Mr. Pale: And that's just saying for the record. You already said -- told me it had to be ten days before, June 14<sup>th</sup> or whatever, or stating for the record, that's what you said, this is what I'm saying, and please note it for the record.

Ms. Oana: Okay. We're going to have to, after public hearing, have a discussion on the petition -- the request for petition to intervene. There's some things that we have to go over.

Chair Stephenson: Mr. Pale, I want to apologize. We weren't clear at the beginning of the meeting explaining the time limits for testimony, so I apologize for interrupting you. I meant no disrespect at all so please accept my apology.

Mr. Pale: No problem.

Chair Stephenson: Thank you. Okay, anyone else like to testify and, for the record, we'd like to -- to say that if you could please limit your testimony to three minutes, and if you're not complete by three minutes, you'll be given an additional 30 seconds to wrap up. If you're still not completed with your testimony, after everyone has testified, then you'll be given an opportunity afterwards with another two minutes. Thank you.

Mr. Raymond Naki: Aloha. My English name, American English is Raymond Naki. They call me a Hawaiian name is Leimana Naki. I'm from the ahupuaa Moanui, this is between the 19.5 mile marker and 20 at east end, Manae. On this Resolution, I hope after this speaking that corporate counsel have a question for me. Thank you. And all others. Whereas the council is considering a bill, proposed bill to set a limit on short-term rental home permits on Molokai. This is the Resolution. Thank you. Whereas during the review of the short-term rental home bills in 211, 212, yeah, the Molokai be exempted from proposed limits on the number of short-term rental home permits.

Chair Stephenson: Excuse me, Mr. Naki?

Mr. Naki: Hang on. Hang on.

Chair Stephenson: I'm sorry for interrupting but what you're testifying isn't the agenda item right now. We're in public hearing for the Sherrell residence, and so that'll be coming up later, so if you'd like to testify on the Sherrell residence right now.

Mr. Naki: I'm against the Resolution, sir, alright. That's going to address your question. I'm against the Resolution because this is not pono because this -- you are ...(inaudible)... that you are taking this into consideration ...(inaudible)... answer.

Chair Stephenson: Excuse me. We're not discussing that part of the Resolution right now. The Resolution comes later. But if you'd like to give testimony on Mr. Sherrell's property --

Mr. Naki: Molokai is the home to some Hawaii few remaining rural communities with despite dramatic political and social change, Native Hawaiian culture and the way life have strived. Molokai, and Manae in particular, have been characterized as culture, kipuka, where kua ...(inaudible)... of Native Hawaiian's value, knowledge, and practices

for present and future generations. In ensuring continued access to the health of Manae natural and cultural resources, it's a critical for the preparation of -- perpetuation of traditional and customary practices, fishing, gathering, cultivating, lo`i, hunting, malama the iwi of the kupuna, spiritual practices, and Manae and beyond. Increase land speculation over the years, the loss of ancestry and kuleana lands to adverse possession and quiet title claims and increase building of luxury homes that serve as illegal transient vacation rentals, TVR, and short-term rental, STRH on the East End are impacting beach access, blocking traditional fishing trails along Manae's southern coast encroaching on, filling in, or building -- built on sensitive wetlands, springs, fishponds, or auwai, traditional irrigation ditches, lo`i kalo taro patches, and burdening local residents with elevated property tax assessment. These factors threaten food, vitality, and community ---- enjoy by Manae longtime residents. These factors underscore the importance of responsible planning to preserve the essence of what makes Manae special.

Chair Stephenson: Can you please wrap it up?

Mr. Naki: I'm going to wrap you up.

Chair Stephenson: Pardon me, sir, you're --

Mr. Naki: No, no, no, no.--

Chair Stephenson: Pardon me, sir, you're out of --

Mr. Naki: You're telling me wrap me up. What you mean by that?

Chair Stephenson: You're out of order.

Mr. Naki: You tell me what you mean by wrap me up?

Chair Stephenson: Could you please wrap up your testimony in the next 30 seconds, please. There'll be another opportunity afterwards to --

Mr. Naki: Wait a minute now. You gave everybody else to speak more than their time. I'm going to speak a few more.

Chair Stephenson: Excuse me, sir?

Mr. Naki: You are -- you are -- intrusion on my reading

Chair Stephenson: Excuse me, sir? You are out of order.

Mr. Naki: No, you're out of order.

Chair Stephenson: You'll be given 30 more seconds to wrap up your testimony.

Mr. Naki: Mana'e is the heart life source of Molokai. Understand that we -- that we came from Mana'e --

Chair Stephenson: Excuse me, sir?

Ms. Oana: Mr. Naki, can you please step back, please?

Chair Stephenson: Mr. Naki, please step back. We'll call the meeting to recess, please.

*(A recess was called at approximately 12:08 p.m., and the meeting reconvened at approximately 12:23 p.m.)*

Chair Stephenson: Okay, we'd like to reconvene the meeting of the Molokai Planning Commission. We're in the public hearing portion, and we'll take the next testifier please. Again, please keep your remarks to three minutes and you'll be given an additional 30 seconds to follow up and --

Mr. Bicoy: Excuse me, Commissioner?

Chair Stephenson: Yes?

Mr. Bicoy: For the record, my name is Commissioner Bicoy. I have a question for the last testifier, Leimana Naki. In regards to the Sherrell estate, are you opposed?

Mr. Naki: Excuse me, what's the question?

Mr. Bicoy: In regards to the short-term rental with the Sherrell, Jim Sherrell, are you opposed?

Mr. Naki: Yes I am.

Mr. Bicoy: Thank you very much.

Mr. Naki: Thank you.

Chair Stephenson: Thank you. Okay, next testifier please.

Ms. Linda Place: Hi. My name is Linda Place. I oppose today. I oppose this vacation rental and granting this permit would be a -- a disservice to the current and future residents who choose to live in this serene, beautiful residential neighborhood. I have a few things that I want to bring up today and I don't know if you're aware but - I just had it. I put it someplace else. I have one of these, and if you're aware, I wanna discuss this. On this paper here, I don't know, many of you don't have it, if you don't have a monthly input from the -- from the Commission and saying what is being permitted and what is not, and I would like to bring up that Sherrells already have a permitted property on Pukoo, and the number is 009, and today they're applying for 008, and on February -- and they have -- they bought four properties in 2016, and they might have bought more, but I have some things that I don't understand because on February 8, through Mr. Luigi, they put in for an SMA permit, and they weren't given -- they were given the permit, it was waived, and I -- and I say to myself: How can you ask for a special management permit and then turnaround and use it for a commercial use? So I know that there are places that you can do that, but that is not a business, a commercial area. And the other thing I wanna say is the Sherrell's property has one, two, three buildings. Their property, on their first building, is a bath, living, kitchen, and dining room, which is closest to the beach and a patio or a deck. Then they have a bedroom unit with two bedrooms and I don't know if they have a bath in there. And then they have a garage, a two-car garage, they have an office on one side and they have a room on the other side. And when I talk about February 8<sup>th</sup>, about the SMA, because they're building on the side of it, and that's a new structure, if I'm -- if I'm right, that's a new structure that they're adding on to the property. So if that's a new structure, how can they be permitted for a TVR? And I had mentioned this earlier but no reply on it so I had to come up to myself, and anyway and on the 500 -- there's two people already permitted, and Puccinnelli was on the register to have a permit and they were taken off because I don't know why, but they had them on for a TVR and they have been dismissed, but I know I had put in a complaint so I don't know if that's it or not, for Lonely Planet. But I know I'm jumping all over the place, I'm quite nervous, and I just wanna show you that this is the Puccinnelli's properties, they bought all in a circle, so if this is their intention to have one already permitted, is their intention to have another one permitted? Okay, and my time is up and I wanna bring something else, but anyway I wanna oppose. Earlier today, I wasn't able to testify on the public testimony because they shut it down and I wanna say I would like the Commission to consider having Mr. Robert Stephenson abstain from voting from the item no. 2. The reason I feel that this is a conflict of interest due to previously working with Mr. Luigi, and I'm sorry, I just had to say it because this is things that are happening that we're not aware of sometimes and we don't wanna say things because we kinda hold back and hold back, but I can't hold back anymore, and I don't have -- it's not that I don't like them, I don't know them, and I'm sure that they're good people as everybody says, but why would you come to Molokai and buy all these property, and then they're under different names, it's Sherrell, and then it's James and Kaaren, and then there's Peer Frank, Molokai, MLCC, and I'm going to say whatever, that's about it I have to say. Any questions? It's like I was working hard.

Chair Stephenson: Thank you, Ms. Place.

Ms. Place: I'm a nervous wreck.

Ms. Buchanan: Chair, I have a question.

Chair Stephenson: So in the interest of -- in the interest of the rules of the Molokai Planning Commission, rules of public and procedure, must upon disclosure immediately disclose a potential conflict of interest, so I will suspend public testimony, the public hearing at this time. I'd like to disclose a potential conflict of interest, we were going to address that after the public hearing had closed, but since it's been brought up, I have to disclose it immediately at this time, so, yes, I will be abstaining from voting on this particular item because I do provide outside consulting services for Mr. Manera and have had some work on this project.

Ms. Place: And I thank you for that.

Chair Stephenson: So thank you for bringing it up.

Ms. Place: And thank you.

Chair Stephenson: And please -- please understand and be aware that that was our next item of business immediately after the public hearing had closed.

Ms. Place: Okay, thank you very much.

Chair Stephenson: Thank you. I appreciate that very much.

Ms. Place: Okay, thank you.

Chair Stephenson: Thank you.

Ms. Buchanan: Chair?

Chair Stephenson: Any questions for the testifier?

Ms. Buchanan: Chair, I have a question for the testifier, but you just suspended public testimony to disclose something.

Chair Stephenson: Okay, we're going to re-enter into public testimony session or the public hearing rather.

Ms. Buchanan: Okay, but I have a question about your disclosure.

Chair Stephenson: Okay.

Ms. Buchanan: Okay, so we still suspending, but wait, I going come back and ask one question.

Ms. Place: Okay. Okay.

Chair Stephenson: Go ahead.

Ms. Buchanan: Did you disclose at the -- at the last meeting, which was recessed to this meeting, did you make any disclosures then about this matter or about the previous matter that was deferred, which was the cap on the ordinance for short-term rentals?

Chair Stephenson: As a matter fact, I did. I made a disclosure at the end of the meeting. I said we'll have a -- I have a potential conflict of interest that will be addressed when we resume the meeting.

Ms. Buchanan: Okay.

Chair Stephenson: As far the short-term rental home bill, I don't believe there's any disclosure or conflict of interest on a matter that's not a decision and order and only a recommendation and it's a general matter of law, not a specific project. That's my understanding.

Ms. Buchanan: Okay, with that, Chair, I'd like to move that we go into executive session so that I can consult with my attorney on my fiduciary duties as a Commissioner on this board.

Chair Stephenson: Do we have a motion to -- do we have a motion to enter into executive session? Motion by Uncle Billy Buchanan. Do we have a second?

Mr. Pele: I'll second.

Chair Stephenson: Okay, any discussion? All in favor of the motion to enter into executive session say aye? Any opposed? Motion carries. We'll recess to executive session.

Ms. Place: Okay, I can be excused?

**It was moved by Commissioner L. Buchanan, seconded by Commissioner Pele, then**

**VOTED: that the Commission go into Executive Session to consult with the Commission's Attorney on their fiduciary duties as board members.**

**(Assenting - L. Lasua; W. Akutagawa; X. Bicoy; W. Buchanan; L. Buchanan; M. Drew; J. Pele)**

**The Commission entered into Executive Session from 12:36 p.m. to 1:02 p.m.**

**Chair Stephenson reconvened the meeting at 1:05 p.m.**

Chair Stephenson: We're going to resume our meeting and turn it over to Corp. Counsel.

Ms. Oana: Okay, I'd just like to confirm to the public that the executive session was called in order for the Commission to consult with its attorney on questions and issues pertaining to the Commissioner's powers, duties, privileges, immunities, and liabilities pursuant to Section 92-5(a)(4), of the Hawaii Revised Statutes. There was no voting or no voting on any matter.

Unidentified Speaker: ...(inaudible - not speaking into the microphone)...

Ms. Oana: The Commission did not vote on any matter during executive session.

Unidentified Speaker: How would we know that?

Chair Stephenson: Okay, thank you. So we're back in the public hearing portion of agenda item E.2., and if anyone else would like to testify, please come forward at this time.

Ms. Buchanan: Chair?

Chair Stephenson: Yes?

Ms. Buchanan: Before we convened into executive session, I said I had a standing question for the testifier, Ms. Linda Place, who stay talking story right now, not paying attention. Nah.

Chair Stephenson: Yes. That'd be fine.

Ms. Buchanan: I sorry, Linda. I had one question about your testimony.

Ms. Place: ...(inaudible - not speaking into the microphone)...

Ms. Buchanan: I'm sorry we made you go out in the hot sun though.

Ms. Place: It's okay. Thank you.

Ms. Buchanan: Okay. Mrs. Place, you testified on something that I'm not aware of.

Ms. Place: Okay.

Ms. Buchanan: In my paraphernalia from the staff, which is the structures --

Ms. Place: Right.

Ms. Buchanan: Out there, and so I'm not aware of that, it's not reflected in any written stuff that I have inside my packet.

Ms. Place: Isn't it they have their buildings in their proposal for their permit?

Ms. Buchanan: Well, I'm not aware that you said that they building again, and then also the proximity.

Ms. Place: Oh, yeah.

Ms. Buchanan: So because of your testimony, I'm inclined to request a site visit.

Ms. Place: Oh, that would be good.

Ms. Buchanan: So because -- because I'm not seeing that. So if you're testifying to me that it exist, I'm not aware that it does exist.

Ms. Place: No.

Ms. Buchanan: Then I'm going to have to request a site visit.

Ms. Place: I don't know if they start building it, but that was what the waiver was for, the SMA, to build, whether they started to build it or not, that I don't know.

Ms. Buchanan: Thank you. That was ...(inaudible)...

Ms. Place: I would be trespassing.

Ms. Buchanan: Okay, thank you. Well, thank you for making us aware of that.

Ms. Place: Thank you.

Chair Stephenson: Thank you. Any other questions? Okay, next testifier please.

Mr. Luigi Manera: Hi, Commissioners. Good morning. Good afternoon, by the way. Luigi Manera, consultant for Jim and Kaaren Sherrell. Since Linda Place brought this subject up, we did apply back in -- at the beginning of the year for a SMA assessment application for the 600 square-foot cottage to be built on the same parcel. We applied for the building permit but it's not completed. We never start any construction whatsoever and the building permit is not even issued. Just to clarify that. The reason why they did that is because they wanna have a caretaker on the property when they're gone to secure the place. Now, there's also couple other things people say something not quite accurate. The property is not on ag land. Not at all. It's rural. And we never receive any particular exemption or any special permit. There is no construction going on at this time whatsoever. And I know people they mention about the EA. The reason why the EA, it doesn't click on this particular matter is because we don't do any disturbance. It's only for renting the house. If anybody got in the house, they do an EA, my God, we are in trouble. We not even receive any formal letter against this project. The closest was about a 1000 feet, so I don't see really what's wrong with this project. They have done everything they require by the law, by the County, and I don't know, you probably don't like short-term rental, I understand that, but if you do, well, go ahead and change the law, but I don't see how, okay, you go and punish somebody they follow the law. It doesn't make sense. After all, they going end up to pay more taxes and County -- County fee and permit, property tax. In the long run, it's going to help the economy. They're going to have somebody stay on the property, they take care the property, somebody gotta pay for it, and they're paying for -- I don't -- I really don't see any particular opposition enough to deny this project. Thank you. You have any question?

Chair Stephenson: Any questions for Luigi? Go ahead, John.

Mr. Pele: Thank you for your testimony. You mention just a few sentences ago about property tax, excise tax, so I'm asking you, in your opinion, the fact that somebody pays property tax, which I think a lot of people do, is the reason for approval. Is that what you're saying?

Mr. Manera: No. No. Absolutely not. What I'm saying is when you apply for this particular project, your property tax go triple just for that property. What I'm saying, from a financial

standpoint, they're going to pay, they contribute to the County with the huge amount of property taxes. That's all.

Mr. Pele: Thank you.

Chair Stephenson: Thank you. Lori, I think you had a question?

Ms. Buchanan: Hi, Luigi. So the only letter you got of opposition was not within the 500 feet. Is that correct?

Mr. Manera: Yes.

Ms. Buchanan: Okay. So the SMA for the 600-foot caretaker's home is located on the same property? So -- so --

Mr. Manera: Yeah, the same TMK they applied for the short-term rental. Yes.

Ms. Buchanan: So after building 'em, that 600-foot caretaker's home, then how many structures would be on the property?

Mr. Manera: It's going to be considered three the way it is now because it's attached to the garage.

Ms. Buchanan: Oh, so you're extending the garage area.

Mr. Manera: Yeah. Yeah.

Ms. Buchanan: So you adding 600 --

Mr. Manera: To the garage, yes.

Ms. Buchanan: Yeah, so you adding 600 feet to the garage, existing garage --

Mr. Manera: Yes, existing garage.

Ms. Buchanan: Which is -- what is the square footage of that garage? You don't know?

Mr. Manera: I don't know.

Ms. Buchanan: Okay.

Mr. Manera: I say 400, 500, somewhere in there. It's not something big.

Ms. Buchanan: So is there a bathroom in every one of those parcels then -- I mean structures?

Mr. Manera: No. Only -- not in the garage. Not that I'm aware. No.

Ms. Buchanan: Is the 600-foot addition going to include plumbing for sink and bathroom?

Mr. Manera: Yeah. It's just a little home.

Ms. Buchanan: Okay.

Mr. Manera: It's a 600 square-foot unit. They have one bathroom --

Ms. Buchanan: Okay.

Mr. Manera: And one sink, of course.

Ms. Buchanan: Is there going to be any bedrooms in there?

Mr. Manera: One.

Ms. Buchanan: Just one. Okay.

Mr. Manera: It's actually more like a big open --

Ms. Buchanan: Okay. Because there's a restriction within the short-term rentals about total bedrooms and peoples --

Mr. Manera: Yeah.

Ms. Buchanan: And in this case, even though the structures are separated, they're counting the bedroom totals.

Mr. Manera: We're only go for three bedrooms, nothing to do -- we never -- this is not part of that equation.

Ms. Buchanan: Right. Right. Okay, thank you very much.

Mr. Manera: Okay, thank you.

Chair Stephenson: Any other questions for Luigi? Okay, thank you. Next testifier please.

Ms. Mahina Poepoe: Mahina Poepoe. Before I start, I wanted to maybe -- I have this petition that I printed out and the paper signatures as well that I wanted to submit, I don't have 15 copies, but if you wanna look through them and look at the comments or something so -- okay, all of the -- a lot of the people testifying in support of this rental are not people from East End. They don't -- they're not from Pukoo. They don't live with the impacts that I feel every day. And I can tell that it absolutely does bother us. I've lived in Pukoo for just about 30 years. I live on land that has been in my family for generations, till the beginning of recorded land documentation. I've seen a lot of changes happen in Pukoo. The recent influx in the development of luxury properties, their turnover to new owners, and the subsequent near immediate action to turn these properties into income properties is incredibly alarming. The statement "I don't know who my neighbors are," or the statement when people come out and say "we don't feel comfortable going to the beach," those are really important things that shouldn't be disregarded, they're simple, but they're really important and demonstrate a shift in our communities as they're going from being ones that serve its residents to being ones that serve tourist and investors, a lot of the time absentee investors. Pukoo used to be filled with long-time fulltime residents and families who lived, worked, and raised children in our neighborhood. We all felt the same struggles that come with living in our environment and we all felt the same appreciation for it as well. We were friends, family, we were codependent in the best possible ways. So to say that some of these applicants or that the Sherrells contribute more so than long-time fulltime residents isn't accurate I don't think because we all do contribute, like Hoala said, and that's just our responsibility. It's not something that we use and would say like to promote ourselves. Where was I? So the Sherrells are a married couple who separately applied for two different permits, so I question whether this is in violation or a loophole of the intent of the permit rule that limits it to one per person. They are two separate people but as a married unit, is that kind of disqualifying them from the item G and item H in the application? Being that they did buy four properties, and they're all held by the same Peer Frank LLC and that both Kaaren and Jim are trustees, and they're mutually benefitting from both, so I don't know how they would be allowed to have two that are sharing a property line and they also have the four properties in that one small area. I was aware that the vacation rental, this one today, was operating illegally for a while before they purchased it, but back in those 17 years of illegal operation, or however many years, the frequency at which it was rented was not as bad as it is today because of the phenomenon of tourists seeking that real neighborhood experience or wanting that organic experience. It hadn't blown up yet. When we -- the platforms like Home Away, Airbnb, VRBO became available, the connection between the owner and the renter was more streamlined to advertise and facilitate the rental process, which now works to expedite and fill the rentals at a greater frequency than before so that kind of explains the progression of the problem and why it wasn't necessarily as much of a problem before as it is now. And also the density, there are two, the Sherrells have one, my Auntie Zellie has one, she's my cousin and I love her,

but, you know, I have to do this because it is affecting our quality of community. What owners and vacationers don't understand is that providing and seeking that neighborhood living experience diminishes the way we experience our everyday lives. The tourist leave with that fulfillment but the owners get a nice paycheck, and I wait for the next group of people to come through. My husband gets a few days to fish without being frustrated with kayakers. That is not the neighborhood I grew up in and that is not the neighborhood I should be forced to adjust to. And like just an experience that happened the other day, during recess time, we were cleaning fish in our yard and a group of four tourists that were probably staying at a house right up the road were walking by, and they stopped and were staring at us, and point at us, and talking amongst themselves, and we just like I felt like I was a roadside attraction. Okay, back to the application real quick. Just one thing I noticed was that a lot of these applications, including this one today, claim that they're in keeping with certain goals from the Countywide Policy, one policy in particular is to support home businesses that are appropriate or in character with the community, I have a couple of problems with applicants making that claim. First of all, there are numerous people coming out here time and time again telling you that short-term rentals are actually destroying the character of our communities which challenges the appropriateness of these commercial operations in our neighborhood. Second, if short-term rental applicants are going to make the claim that they are a home-based business, they should first make sure they're in compliance with Chapter 19.67 in the code that define home businesses. If you read the chapter, under general, standards and restrictions, it reads that onsite home business hours shall be limited to between 8 and 7 -- 8 a.m. and 7 p.m. And then under standards and restrictions, it reads: No more than two customers shall be at the home business at any given time. So unless guests have less than a party of two, and are checking out at 7 p.m. and back in at 8 a.m., I don't think -- I think that they should be disqualified from claiming that they're a home business.

Chair Stephenson: Ms. Poepoe, can you wrap it up in the next 30 seconds please. Thank you.

Ms. Poepoe: I'll try. So I'm also concerned for the already existing hotels and condos, but I'm going to have -- okay, a higher availability of short-term rentals means higher room vacancies at our hotels and that means lower revenue for the hotels, lower revenue means less employment opportunities, which is a dominated -- domino effect of an oversaturated market that doesn't have the demand to justify the supply. The hotels contain the tourists in areas that are appropriate and that we're accepting of so by allowing them to penetrate our communities or our small neighborhoods is another impact. These short-term rentals are being approved blindly without first determining and setting up responses for potentially -- potential problems with the need for mitigation.

Chair Stephenson: Thank you very much. If you can conclude and then we can, after everyone's finish, you can come back for two more minutes.

Ms. Poepoe: Okay.

Chair Stephenson: Thank you.

Ms. Poepoe: Okay, I'll conclude with like one sentence. I just wanted to say that I support Shane and his contested case hearing and that even with the -- what he was mentioning, the need for an EIS might be required because the provision of kayaks and all the ocean recreation activity happens on State waters in the ocean and so there may need to be an impact statement determining those impacts. And I'll come back for my two minutes after.

Chair Stephenson: Thank you very much. Any questions for Ms. Poepoe?

Ms. Buchanan: Chair, I have a question.

Chair Stephenson: For the testifier.

Ms. Buchanan: Ms. Poepoe, you just stated that you support a previous testifier's conveying his intent for a contested case hearing, are you also saying that you also wanna convey your intent to -- for a contested case hearing in this matter?

Ms. Poepoe: Would it be two separate things or would everybody just be on one?

Ms. Buchanan: Every -- I'm not your corporation counsel but it's my understanding that every person would have their individual questions that the County would ask you for standing, as to what is your standing in this case, so they would be on a case-by-case basis, and if that's wrong, then Corp. Counsel can interfere. I just asking you if that's your intent, yes or no.

Ms. Poepoe: Yes. I don't really feel like I have anything to lose saying no. Okay. Anything else?

Ms. Buchanan: No. Okay, so, for the record, you are stating -- it's kinda important, legally --

Ms. Poepoe: No. Yeah.

Ms. Buchanan: 'Cause contested case, every -- every hearing before this board is a -- is a potential contested case hearing because it involves permits and so -- and that's why people ask the County, like all these short-term people have to do million dollar policies for liability to Maui County because Maui County giving them the permit to run an operation, so they liable too, so are we, as Commissioners, so that's how come I just want

you on the record to say that it is your intent to enter into a contested case should you need to.

Ms. Poepoe: Yes.

Ms. Buchanan: Thank you. Thank you.

Chair Stephenson: Thank you, Ms. Poepoe. The next testifier please.

Ms. Kaaren Sherrell: Hello. I'm Kaaren Sherrell, and I spoke last time but this time I just wanna address some of the questions and things that people have been saying to try to clarify the record on things. So first of all, the four properties were sold as one property, they just have four TMKs, so there's two properties that are access properties, and then the houses themselves are in the Polynesian style, so they're separate buildings, so it sounds like there's a lot but the front is basically three bedrooms and two baths, and they're shared so --

Ms. Buchanan: Mrs. Sherrell?

Ms. Sherrell: Uh-huh? Hi.

Ms. Buchanan: Hi. No disrespect, but Council Chair -- I mean, Chair, if she testifying on this matter, because she's the applicant, we have a time for questions for the applicant that would be better a time for her to have the dialogue with us back and forth.

Chair Stephenson: Thank you. I appreciate that. I believe Jim Sherrell is the applicant on this one, so I don't know, would you be testifying as the homeowner or --

Ms. Sherrell: No.

Ms. Buchanan: So she can be testifying? Yeah --

Chair Stephenson: Yeah.

Ms. Buchanan: Just as a testifier, community testifier then.

Chair Stephenson: And -- and I was just reminded by Corp. Counsel, anyone may testify on the agenda item during the public hearing regardless of their interest or non-interest in any property or project.

Ms. Sherrell: So --

Chair Stephenson: Please continue.

Ms. Sherrell: Okay. So also, just to clarify, that that area was sold to different people and ever since that property was sold, those homes have been used for vacation rental, allowing visitors to come and enjoy the same beauty that that area provides. So we are trying to follow the rules, so the difference is, and I don't know if they understand that there's a lot of rules that go along with applying for a vacation rental; first of all, you're only allowed one car per unit, so that's only three cars, so there is no imposition on parking or increased parking; there's quiet hours between 8 p.m. and 8 a.m.; you're not allowed to have more than two people times the bedrooms, so that's six people at that vacation rental. So you have to follow the rules, you also get inspected, you pay extra taxes, and so I believe the impact is less by doing it legally, that's why they setup those laws, than by what's -- what has been being done ever since the unit had been rented out. And then also, we do spend a fair amount of time there, eventually we would like to retire here, and I see on the beach -- and I don't know what they're talking about by being imposed upon by kayaks and all that stuff because all I ever see are locals on kayaks, locals on kite boards, locals on boats coming in and diving and surfing, and all I see the visitors doing is walking down the beach at low tide, and all those people are providing income to the area, to all of Molokai. There's only 20 homes right now that are registered vacation rentals. I don't think that's a huge impact. We hire more than five people to do different things, we're providing income for them so they can spend their money on other things, the people come, they get massages from locals, they take the tour of Halawa Valley from locals, and so we're providing an income source for the locals, and we're keeping the property up to date, maintained, and the character of the area very nice. So -- so we're just, basically, we're just trying to follow the law, we feel like we've done that, we took money from our savings to purchase this place as a retirement spot, and we're just trying to help pay the bills, there's a lot more bills when you do this, and we're trying to donate to the community, and we do all we can to support the locals.

Chair Stephenson: Thank you very much.

Ms. Sherrell: Okay.

Chair Stephenson: Any questions for --

Mr. Pele: I have a question.

Chair Stephenson: Ms. Sherrell? Go ahead, John.

Mr. Pele: And correct me if I'm out of order, Chair, on this question 'cause it -- I know that Mr. Jim Sherrell is the applicant. You said that this, in your testimony, this particular

property has been operating for 17 years as a short-term rental. My question is: Did you cease operations until this permit is acquired or have you still been renting this property?

Ms. Sherrell: Absolutely not. We are not doing anything against the law, we do not want to do anything against the law, and so

Mr. Pele: So from the --

Ms. Sherrell: What the previous owner did has nothing to do with what we've been doing.

Mr. Pele: So from the time the STRH law was enacted, you ceased rental -- rental operations even though, I think, earlier, last meeting, you testified that it's been operating for 17 years, and, again, Chairman, forgive me if I'm out of line asking this question, I'm just trying to get a -- a grip here on -- if I'm asking the right person this question.

Ms. Sherrell: By previous -- by previous owners. We haven't owned the property for more than a year.

Mr. Pele: Oh, okay. And you -- there's been no --

Ms. Sherrell: Nothing.

Mr. Pele: Okay, thank you.

Mr. Lasua: I got a question, Chair. Kaaren, you had mentioned that income source to the locals and besides the tour, what else do they provide?

Ms. Sherrell: So when -- we're anticipating that when people wanna come visit, they're going to wanna get massages, they're going to wanna go on tours, we have a maintenance person, we have a manager person, we pay extra for insurance to the insurance person, we have cleaning, a local cleaning person that we have, and then just repair. We buy all of our stuff from Take's, you know, the cook -- there's a lot of supplies in there that we probably wouldn't -- wouldn't maintain but, like the coffeemaker, I don't use a coffeemaker but it broke, so we went to Take's and bought it, and there's -- I think it's a -- I think this economy, agriculture's going down, the military's going down, so I think it's healthy and good for the economy to have well-regulated, and tourists that come in, and they spend their money, and then they go home. I think it's a good thing.

Mr. Lasua: Okay, so my point was just to -- that you help the economy on the island and it sounds like that happens.

Ms. Sherrell: Okay, yes, thank you.

Mr. Lasua: Thank you.

Chair Stephenson: Any other questions? Okay, thank you, Mrs. Sherrell.

Ms. Sherrell: Thank you. Can we have the next testifier please?

Ms. Tina Thompson: Good afternoon, everybody. My name is Tina Thompson and, actually, my family owns three parcels within that 500 feet radius of this short-term rental. I submitted a written testimony at the last meeting and I'm hoping those that weren't present was able to read it. So I won't really repeat it. A lot of the things that I mentioned was said by the people here. You know, there's -- there's this Maui County Code, Chapter 19.65.30, it states - oh, wrong glasses - it states: Restrictions and standards. Short-term rental home shall conform to the character of the existing neighborhood in which they are situated. And I don't think that short-term rentals can abide by that only because their impact is really significant. You know, it's a two-road lane, long-time residents still practice traditional Hawaiian subsistence traditional lifestyles, and their unique way of life and sense of Hawaiian place is being threatened by the increase of short-term rentals. And, you know, cultural practices, you know, nobody lives on my grandmother's property right now, they're trying to fix up the house, but their intention is to do what my grandmother them did which is raise pigs, and imu, killing of the pigs, animals, ducks, geese, what have you, and I, you know, just from past experiences, I think that will create a problem with our surrounding neighbors, especially the pigs, but that was our lifestyle, raising of pigs. Oahu, before my grandparents even moved back to Molokai, they lived in just below St. Louis Heights, by Kaimuki, and they raised pigs, until they built a school in the backyard, then they had to stop. So when they retired, they continued what they love and that was raising pigs, and they raise pigs for us, we don't sell the pigs, it's for us 'cause we do a lot of parties, you know, things like that, so that's what one thing that I believe that the neighboring people won't go for, they'll say yeah, but I don't think so 'cause, you know, the smell and all this kinda stuff, but anyway, they may even take away that from us doing that. And also, another thing, you know, I get all the applications that come that affects within the 500 feet radius, and I seen the first one that came by, I didn't really bother it, but when the second one came by, that's when I kinda went do more research in the area and I'm thinking why two, one not enough, you know, that should be help them to pay their bills or what have you, I don't know, but two is -- I don't agree with having two. And there's, you know, they're taking away long-term rentals, and when you take away long-term rentals, you take away places for the locals to rent and stay, and they have to move further or even go off island, and, you know, it has a ripple effect 'cause the schools will be effected, less children, less attendance, the closure of the school, and it has been talked about, same like Maunaloa School, it was talked about but they somehow went stand firm and the school is still there, but it can happen to Kilohana. And I did some research last night, and I know it's not current yeah, but I did the research

previous too, but, you know, right now, they show, in the Pukoo area, permitted, I found there's six -- five, five permitted STRs, and then in the pending application, I find there's three, so there's only eight, okay, but if you look at the map, and I believe this in that packet, yeah, where the Sherrells are, you try look over there, and that's just Pukoo to Kupeke. Now, you know where Kupeke is right? Not even a far distance. I counted eight that's permitted and pending, some might be taken away or stopped, I don't know, but this is what it shows online, that's too much for just one area. I mean would you like it in your backyard? I don't think so. I don't live here, okay, but I am when I retire, that's my goal, you know. I don't want them all in my backyard. You know what I want? I want all the locals back in our area, but, you know, what it is it is. There's Zellie, like she mentioned, and then the Sherrell's has one, and then, you know, by Peace Corp? There's a pending application for the Peace Corp area, which is just a walk away. And then right above my grandmother's property, on the mauka side, right above, there was an applicant, and I don't know what happened to him, that was Purcenili, Percelie, or whatever his name is, okay, and then when you going up by the -- by the turn, you know, by the pond, there's a blue tile house, they had a short-term rental and I don't know if it's valid or whatever, or they pulled back; then you keep on getting -- going, there's Hale Ku Peke, and then you go further, there's Kupeke Beach House, you know. Come on, that's -- that's too much just for that small area. I think that's less than a, what, a mile? That's too much. And, you know, I have nothing against the Sherrells 'cause all I've heard is good things about them, and I have nothing against them, it's just the short-term rental that I don't like. Okay, and, you know, we used to have access to the beach where my grandmother's was, you know, we just go through the bushes even though other people own it, we can't even do that now. We have to go to the public access by the fire station side. And then, get so much but I --

Chair Stephenson: Okay, if you could please --

Ms. Thompson: I get time limit. Okay.

Chair Stephenson: Wrap your testimony up in the next few moments please.

Ms. Thompson: Okay, okay, okay.

Chair Stephenson: Thank you.

Ms. Thompson: Anyway, for the record, I would like to state my intent to enter into a contested case hearing on this matter. Okay? Any questions?

Chair Stephenson: Thank you. Any questions for Tina?

Ms. Buchanan: Chair, I had --

Chair Stephenson: Go ahead.

Ms. Buchanan: I sorry, Tina.

Ms. Thompson: No problem.

Ms. Buchanan: Your testimony was really good because you put your saying what you intend to do with your land, and you have three properties within the 500, three oppositions in one 500-foot radius is enough to really look at denying a permit already, but the purpose and the intent of what has historically occurred at your parent's residence really put -- it reminded me of what the earlier testifier said, Shane Pale, he said this is a Hawaiian place, so raising pigs, kama puua and traditional practices of Hawaiians for imu and all of that kinda stuff, and because we're a subsistent culture, that is really important because we saw the same thing transpiring in other neighborhoods, so thank you for reminding of -- us of what that looks like and how our practices may not be okay in some certain areas should the neighborhood change, so I really appreciate that. Thank you.

Ms. Thompson: Anybody else? No? Okay, thank you.

Chair Stephenson: Thank you very much. Okay, next testifier please.

Mr. Laa Poepoe: Laa Poepoe. In opposition to this application, for the record. Any questions?

Chair Stephenson: Thank you. Next testifier please. I'd just like to remind everyone this is your last opportunity to testify under the public hearing item for the agenda item E.2., Mr. Jim Sherrell short-term rental permit. Okay, come back, Mahina. Thank you very much for being patient. Appreciate that.

Ms. Poepoe: Okay, where did I leave -- Mahina Poepoe. First, I wanted to just note that cars, quiet hours, things like fire extinguishers, fire alarms, aren't what we're concerned about or what I'm concerned about. I'm more concerned about the impacts that radiate outside. I also wanted to say about my proximity to these short-term rentals, I'm about six feet outside of the 500-foot boundary from their first vacation rental, the bungalow, and 108 feet outside from the Polynesian Beach House, and also half of the boundary for the Polynesian Beach House is in the ocean. Also, people who stay at hotels also get massages, also go on tours, and it's better because they usually have like an agent at the desk who will send them in the appropriate way to like they don't just go off on their own anykine places. Okay, so I wanted to talk about that the impacts haven't been officially identified by any department and that there needs to be a comprehensive study that looks at the entire picture of short-term rentals, both pros and cons, because the impacts are

social, they're economical, environmental, they affect health, Native Hawaiian rights, housing, and the overall sense of community. So I just wanna know what are you going to do to mitigate those impacts that we're all here telling you about and how are those going to be reflected in your decisions. I've been reading a lot about zoning and I found this thing called "spot zoning." By permitting commercial type uses and allowing the subsequent commercial type impacts in an area that isn't zoned for it is spot zoning, which could be very illegal. Spot zoning may be ruled invalid as an arbitrary capricious and unreasonable treatment of a limited parcel of land by local zoning ordinance. While zoning regulates the land use in whole districts, spot zoning makes unjustified exceptions for parcel or parcels of land within the district. Small size of parcel is not the sole defining characteristic of a spot zone rather the defining characteristic is the narrowness and unjustified nature of the benefit to a particular property owner to the detriment of the general land use plan or public goal, which may be the East End Policy Statement. The rezoning may provide unjustified special treatment that benefits a particular owner while undermining the preexisting rights and uses of adjacent property owners. So that would be what spot zoning is and I feel like in a lot of these cases that is what spot zoning is because there's one here, one here, it's one by one they're uses are being changed just for their little piece and it's affecting outside. I am a small business owner with a storefront in town and I could potentially benefit from tourists, these tourists if they come to my shop, but, for me, the economic incentive isn't worth the tradeoff of compromising the integrity of our island and making sure that, first and foremost, the welfare of local residents and our way of living is protected. I get asked all the time if we rent out surfboards or scuba gear, and I say no, and we don't. I see the opportunity to make money off of it, but I don't want to contribute to the crowding of surf spots and affect other people's experience in that way, other local surfers or divers with people just going, don't know what they're doing. So, in closing, I see in here applicant after applicant come out and say we love Molokai, we don't want to change it, but they are changing it. They're changing the dynamics of our rural neighborhoods one house at a time, they don't want to make big changes, they wanna keep it marketable but they wanna tweak it kind of to fit their ideals. You know, they come and they say it's so beautiful and pristine, I love it, and then they -- the first thing they, you know, I'm thinking, they ask themselves how can I sell it, what can this place do for me; well, I say the same thing that it's beautiful and I love it, but I ask how can I protect it.

Chair Stephenson: If you could please -- please wrap it up shortly.

Ms. Poepoe: Yup.

Chair Stephenson: Thank you.

Ms. Poepoe: So the first thing is -- well, there is all these sayings that we have: Don't change Molokai, let Molokai change you; keep Molokai Molokai; Molokai is not for sale;

Molokai is the most Hawaiian island. Those aren't just catchy phrases made up to sell stickers. Those are defining statements of who we are and people have fought very hard to keep them true. So just to be clear, I'm asking to deny the permit.

Chair Stephenson: Thank you.

Ms. Poepoe: Oh, and also, I would like you to answer, in your discussion, how the -- how the -- they are not being or in violation of the thing where they're a married couple and they have two vacation rentals, like 'cause I feel like they should be disqualified for that. Okay, thank you.

Chair Stephenson: Thank you very much. Any questions? Yes, Lori.

Ms. Buchanan: I have a question.

Chair Stephenson: Go ahead.

Ms. Buchanan: Sorry, Mahina. You cannot run away that fast. I have a question. First I have a feedback, a statement for you, and then I have a question. So, number one, I am so proud of all of your time that you spend on this. I'm especially proud of the time it took you to gather nearly 200 signatures on a petition that states opposition on this matter because I know what it takes to get community and 200 signatures on a permit, okay. So, with that, I wanted to know how much time, just off -- off -- just out of space, about how much time have you spent researching, thinking, petitioning, doing community outreach, all of this stuff, how much hours you think you went put into this? That's my question. And then I get one follow-up question.

Ms. Poepoe: I wanna say hundreds of hours. I don't know. I feel like it's -- it's all I think about a lot of the time and all the writing the petition, researching. Researching take a really long time.

Ms. Buchanan: Okay. In your testimony, I heard you tell me how it's impacting you, and your children and your family. Now days when you do environmental assessments and environmental impact studies whether it's the Watershed Partnership or an action that someone is trying to do, they also include cultural impact studies, and what they call "health impact studies," so, for me, I can already tell that you've been impacted even before the action has occurred, you're already impacted, and so I know what spot zoning is, I kinda know what all the zoning means, so I'm really happy that, at your young age, you get plenty wisdom, and I can tell that you're reading and you're trying to educate yourself, so keep up, keep on going because you need to replace us up here as a watchdog sometime, but that's my feedback to you. I'm so proud of the many hours you put into this, okay, so keep on going. Good job. Thank you.

Chair Stephenson: Thank you. Yes to -- go ahead. And this will be a follow up to your previous testimony --

Ms. Naki: Yes.

Chair Stephenson: Correct? Okay. And please state your name again, please.

Ms. Naki: Yes. My name is Gladys Naki Durante, and as a ku aina of the island of Molokai, I also feel that, as growing up as a child here through my grandparents, they have, in our home, we would practice lomi lomi, we would do huli opu, which is considered for the baby. Growing up with this skill that was practiced among ourselves in our home, it's perpetuated, it was held honorable, and all this talk about massage and it sounds glamorous, it sounds beautiful, but with that come along licensing, which will take away from the people that practice it on a daily basis within our own family. As a healer, this is -- this hits me in my heart because we do -- I practice with my own ohana as something that is perpetuated in our own home and it's not to sell, I believe, to the outside, it's not to make a commodity of it, it's to healing, it's for healing, medicinal purposes that I hold highly in my -- in myself, in my ipu, in my heart, in my ohana, in my community, among my people. So with that said, yes, it is a follow up on to the opposition of this bill. Thank you.

Chair Stephenson: Thank you very much. Any questions? Okay, would anyone else like to follow up on their previous testimony? Okay.

Ms. Place: I just wanted to, 'cause I was the first one who brought up the agriculture land zoning, I got it from the County of Maui, it's not -- it says "agriculture," so it doesn't say "urban." It does say "rural" in the packet, but they are being taxed for agriculture, at the agriculture, that's what it says. And then another thing was Ms. Sherrell stated that she pays -- well, she hires people, she has a caretaker, a manager, and she pays these people, and she said something about insurance, but I didn't hear clearly if she provides them insurance, her workers, or if she just had an insurance person because our people should -- should get paid -- well, should be provided with medical. And I just wanted to restate our East End Policy Statement and the importance of it came from our kupuna, and we're trying to keep -- keep East End East End and that's it. Thank you.

Chair Stephenson: Thank you very much Ms. Place. Yes, sir?

Mr. Hanapi: Hui Aloha Aina o Manae also wants to intervene on this, so if I could get the proper paperwork from whoever it is and sign that by the end of the day be cool. Thank you.

Chair Stephenson: Thank you very much. Okay, it'll be a last call for public testimony on the public hearing. Yes, please.

Ms. Ross: Aloha, my name is Tammy Lynn Ross. I'm a resident of Manea, Waialua, Manea, and I also oppose the proposed established and short-term vacation rental. Any questions?

Chair Stephenson: Thank you. Any questions for Ms. Ross? Okay, thank you very much. Okay, if that is all our testifiers -- Mr. Tancayo.

Mr. Tancayo: I just like say long time I know this man for a long time, 50-plus years he come Molokai, and, today, he buy a home Molokai. So this guy not stranger here on Molokai. He been here long time, in and out. Fortunate enough, he more better than me, he can buy one nice place out there, so he make improvement every time. If you folks look, improvement, improvement, and improvement brings revenue to Molokai. Molokai no more. We on the lowest list as far as improvement. We stay behind time. Yeah, we like that. I like that. But we need some kind accommodation sometimes and this guy provide first class provision, not mediocre kine. I just like let you guys know. He's not here to destroy. Any questions?

Chair Stephenson: Thank you, Mr. Tancayo. Mr. Naki, go ahead.

Mr. Naki: There were calls made this morning to my home and to other places in the Manea community, so I just want to be on record to say that some of this ohana and families in Manea pau work at 12:00, and some later, so the question is: Is this would be open later on this afternoon where they can come, if they are coming?

Chair Stephenson: I believe for this particular item, once we close the public hearing on this particular one for the Sherrell short-term rental, then it will be closed for public testimony, however, coming up later on the agenda is the short-term rental cap ordinance bill that we've been talking about, so there'll be an opportunity to testify at that point.

Mr. Naki: Hello.

Chair Stephenson: Thank you, Mr. Naki. Okay, last call?

Mr. Paul Kauka Cullen: Good afternoon, all you guys. My name is Paul Kauka Cullen. I am a Crown Land owner, I'm not a kuleana. The land I reside on today is Crown Land, and I'm here to oppose this short-term rental. Thank you. God bless you all.

Chair Stephenson: Thank you, Mr. Cullen. Any questions for Mr. Cullen? Okay, if there are no other testifiers, then we will close the public hearing, and we need a motion to close the public hearing. I'd entertain a motion.

Mr. Sherrell: ...(inaudible - not speaking into the microphone)...

Chair Stephenson: You'll have an opportunity during the presentation after our -- in our discussions if you'd like to wait or you may now. Either one. Okay, go ahead.

Ms. Buchanan: Chair, I would prefer you to close the public hearing because otherwise they're still going, so if he's the applicant and he has -- if he's the applicant and he's presenting his application --

Chair Stephenson: That'll be fine then.

Mr. Pele: I move -- I move that we close public testimony.

Ms. Buchanan: I second.

Chair Stephenson: Moved by John Pele, second by Lori Buchanan, any discussion? All in favor say aye? Any opposed? Okay, our public hearing is now closed.

**It was moved by Commissioner Pele, seconded by Commissioner L. Buchanan, then**

**VOTED: to Close the Public Hearing.**

**(Assenting - L. Lasua; W. Akutagawa; X. Bicoy; W. Buchanan; L. Buchanan; M. Drew; J. Pele)**

Chair Stephenson: So we're going to let Corporation Counsel talk to us a little bit about the contested case hearing.

Ms. Oana: Okay, first of all, before I get to that, I just want to address, because we started this public hearing and called this item at our June 14, 2017 meeting, have all the Commissioners who were not present at that June 14, 2017 meeting reviewed the material that the Department staff sent to you, it included the link to the recording by Akaku? Has -- can I get acknowledgement on the record that all of the, one by one, I guess, all of the Commissioners who were not present did review fully the entire materials that were presented at the June 14 meeting?

Mr. Drew: As I was absent from the last meeting, I did have the opportunity to review all the material that was presented including the complete video recording of the session.

Mr. Buchanan: I also wasn't present at the June 14 meeting but I have read all the information that was given to us prior to this meeting today.

Mr. Bicoy: I was also absent at the June 14<sup>th</sup> meeting. I did have time to review all the information given.

Ms. Oana: Okay, I think that's all of the Commissioners. Now, I just want to address the mention of the petition to intervene into a contested case, it was mentioned by a number of testifiers, I believe Shane Pale first, and then Mahina Poepoe, and I think another person, I do want to just start with the Commission because there are some rules in your Rules of Practice and Procedure for the Molokai Planning Commission, and that you can find in chapter -- sub-chapter 3, called "Intervention and contested case hearings," I'm not sure if you have it in front of you, but, basically, 12-301-25 says: Petitions to intervene shall be in conformity with section 12-301-16 herein and shall be filed with the authority and served upon the applicant no less than ten days before the first public hearing date, which is June 14, 2017. Untimely petitions will not be permitted except for good cause, but in no event after the authority has taken the final vote. Further, in 12-301-26, there's some further rules with regard to intervenors, all persons who have a property interest in land subject to authority action or who lawfully reside on the said land or can demonstrate they will be so directly and immediately affected by the matter before the authority that their interest in the proceeding is clearly distinguishable from that of the general public shall be admitted as parties of untimely application for intervention, and again "timely" means no less than ten days before the first public hearing date, and should also be filed with the Department and served upon the applicant no less than ten days. So, basically, there are those rules. There is a mechanism to allow an untimely motion to intervene but only for good cause, and good cause, basically, has to be something other than I'm not ready but I will be tomorrow. So, at this point, also there is no motion to intervene on the agenda, so there's not -- there's no action to take for a motion to intervene, there's no petition to intervene, which is a filed document, in front of this Commission.

I also want to point you to 12-301-28, there is rules with regard to what shall contain in the motion to intervene, or the petition to intervene, and there's a number of things, I can read it to you if you want: The petition shall contain the following: One, nature of petitioner's statutory or other right; two, nature and extent of petitioner's interest and if abutting property owner, the tax map key description of the property; and, three, effect of any decision in the proceeding on the petitioner's interest. If applicable, the petition shall also make reference to the following: Other means available whereby petitioner's interest may be protected; extent petitioner's interest may be represented by existing parties; extent petitioner's interest in the proceeding differs from that of the other parties; extent

petitioner's participation can assist in development of a complete record; extent of petitioner's participation will broaden the issue or delay the proceedings; and how the petitioner's intervention would serve the public interest.

Based upon the reading of the Molokai rules, I don't feel, at this time, that the Commission can take action on an oral motion of an intent to intervene at this point. You don't have a filed petition to intervene in front of you; it's not on the calendar. Depending on what you guys do today, they may have time to file something that shows that they have good cause to file an untimely petition, but at this point, I don't -- there's nothing on the calendar for you guys or the agenda for you guys to take action on with regard to a motion to intervene.

Chair Stephenson: Thank you very much. Yes, Lori?

Ms. Buchanan: Chair, can I respond to that?

Chair Stephenson: Yes, please.

Ms. Buchanan: Okay, with respect, Corp. Counsel, I -- I don't agree. Because every hearing is a contested case hearing, the mechanism and the provision to provide for the intent to intervene with good cause is there. I -- I think it -- it just exist there. I think it's an opinion. For myself, I've heard good cause from at least three of the testifiers that have entertained the intent, especially for the property owner within the 500 feet as well as those impacted by culture and health, and so I respectfully disagree with that analysis, and it does not have to be an agenda item 'cause I, like I said, the mechanism and the provisions are there for -- for this to occur in a public setting.

Ms. Oana: Thank you for that, Commissioner. With regard to good cause, it's not good cause for their interest, but it's good cause for failing to file the petition to intervene within the time period, so the good cause has to be shown why they didn't file the petition within the -- the time period; that's the issue with regard to good cause. It's not good cause 'cause they live there or anything like that; the good cause is I could not file the petition to intervene within the time period because I was dying, or something like that. That would be good cause and other things as well, of course.

Ms. Buchanan: That determination cannot be made at this time because you don't know the good cause at this time, so the intent has be taken in order for you to validate the good cause after the effect, but it's definitely in the rules that they have to state the intent before the decision is made, either that or no decision needs to be made and they have to do the intent and that would cause this permit to recess again or to defer, and if we defer, I'm concerned about the time running and whether this permit is going to be permitted because it's going to run out of time. That would be my concern.

Chair Stephenson: Thank you. So, at this time, based upon the advice of Corporation Counsel, we don't have anything before us. Could you please explain that?

Ms. Oana: So, again, my opinion is there's no filed motion to intervene before you for you to take action on. There was a general intent to intervene after I guess I developed the discussion a little bit, so it's -- it's the Commission's call what you want to do whether you want to start the deliberation and decision making now on this short-term rental home permit, you want to defer, that would be highly, I think irregular to defer waiting on a motion to intervene that, you know, we weren't aware of prior to this and it was kinda more developed on -- during the public hearing testimony. So, again, it's completely within the Commission's discretion to do what it wants to do under the law, but, again, there's no filed motion to intervene in front of you to make a decision on. If you have any questions, further questions, I'd be happy to answer.

Ms. Buchanan: Chair, I'd like to respond again. This community has every intent to intervene in this case 'cause, like I said, every case is a contested case hearing, but the good cause could be argued that this particular case is now on its third agenda, and it's been very confusing to this community because I get calls all the time asking me when this application is going to come forward, so the posting of the agenda has been very confusing concerning the short-term rentals and that, to me, is enough as a good cause. As my duty as a commissioner and as a servant of this community, I cannot not adhere to the intent of my community saying that this is problematic for them, that they want to intervene, and they should be allowed to follow the process that we have with the County of Maui in order to intervene.

Chair Stephenson: Okay, with that being said, then is there a motion?

Ms. Buchanan: I am confused, and if I need to call another executive session in order for my Corp. Counsel to explain my duties as a commissioner, then that's what I'm going to do. So I move to -- to recess for executive session.

Chair Stephenson: There's a motion on the floor to recess to executive session. Is there a second to that motion?

Ms. Oana: Sorry, Chair, can I just qualify that?

Chair Stephenson: Yes, please.

Ms. Oana: Ms. Buchanan, can you just confirm that you're moving for executive session to consult with the attorney on questions and issues pertaining to the Commission's

powers, duties, privileges, immunities, and liabilities pursuant to section 92-5(a)(4) of the Hawaii Revised Statutes.

Ms. Buchanan: As stated, yes, that is my intent. Thank you for the executive session.

Chair Stephenson: There's a motion on the floor. Is there a second?

Mr. Bicoy: I second that motion.

Chair Stephenson: Okay, seconded by Xavier Bicoy. Any discussion? Okay, all in favor say aye? Any opposed?

Ms. Buchanan: Chair, can I call for a roll call vote, please, and a show of hands?

Chair Stephenson: Raise your hands if you're in the affirmative. There are three votes in the affirmative. Raise your hand if you're opposed. There are four votes in the negative. So motion fails.

**It was moved by Commissioner L. Buchanan, seconded by Commissioner Bicoy, then**

**VOTED: to recess for the Commission to go into Executive Session to consult with the Commission's Attorney on questions and issues pertaining to the Commission's powers, duties, privileges, immunities, and liabilities pursuant to Section 92-(5)(a)(4), Hawaii Revised Statutes.**

**(Assenting - X. Bicoy; L. Buchanan; J. Pele)  
(Dissenting - W. Akutagawa; W. Buchanan; M. Drew; L. Lasua)**

**MOTION FAILED**

Ms. Buchanan: Point of order, Chair.

Chair Stephenson: Go ahead.

Ms. Buchanan: Can the Chair please, for the Commissioners and for the public, please let us know where we're standing and what is the process moving forward.

Chair Stephenson: There was a failure to -- for the motion to -- for executive session to carry, therefore, we won't be going into executive session, and it looks like we'll move forward into the presentation of the project by the Department staff and the applicant.

Ms. Buchanan: Okay, Chair, then, for clarification either by the Chair or by Corp. Counsel, it is my understanding that the Corporation Counsel is not accepting testimony from the public of the intent to intervene in a contested case hearing. Also, and that's her advice, also, that she is advising this Commission that we have the authority, and the duties, and the power to do what we want to on the subject of accepting the case hearing. I am not clear. Can either the Chair or Corp. Counsel please expound?

Chair Stephenson: We'll turn that over to Corp. Counsel. Thank you.

Ms. Oana: Okay, so it's not that I'm not accepting the testimony on requesting a intervention, that is in the public hearing record already, what I am doing is I'm advising you that there is no filed motion in front of you to make a determination on with regard to a petition to intervene. Like I said, parties have no less than ten days before the first public hearing to file with the Department a petition to intervene and -- and serve it upon the applicant. That hasn't been done. The first public hearing was June 14<sup>th</sup>, so they had June 4<sup>th</sup> to file the petition. Further, we had, you know, as everybody knows, we continued that meeting till today, so they had additional time to file a motion and to show good cause why they didn't file the motion within the time period; still that has not been done today even though we didn't conclude this meeting on June 14<sup>th</sup>. So my advice to the Commission is there is no written motion to intervene in front of you for you to act on and, again, there's a rule in the rules that says the petition shall contain the following, and it lists the things that it shall contain, you don't have anything in front of you to make a decision on. Now, what you could do is, and I don't want to put any words in your mouth, but you could move to defer this matter. You could do that. And so that would give opportunity for people to file a motion to intervene, which would address why they have good cause to file an untimely motion to intervene as well. So you could do that. You have to vote on that. Or you can continue with this item, presentation by the Department's next, the applicant will get a -- his chance to address the Commission, and then discussion and deliberation on this matter, and you can approve or deny based on your discussion. So -- so there's things that you could do. Again, you can defer this matter or you can go forward with this and make a decision today.

Ms. Buchanan: Chair?

Chair Stephenson: Yes? Yes, Lori?

Ms. Buchanan: This Commissioner is not inclined to move on an action item that will either approve or disapprove this permit if we do not resolve the matter of the intent to intervene because while the County of Maui provides legal support for me, as a Commission member, this Commissioner is very clear that when five people come and state their intent to intervene in a contested case hearing, and you blow that off, that you

better sure what you blowing off here because I am not inclined to do that to this community, and so I think that their concerns need to be addressed seriously. I believe the mechanism and the provisions in the law do allow for this whether it's an agenda item or not. I have done it myself. I have been a party to several contested case hearings. I am well aware of the law and the provisions and mechanisms that do support. So I will make, again, for -- because once we make the motion and accept the intervention, I am happy to go forward with a decision because it's going to come up in a contested case hearing anyway.

Chair Stephenson: Thank you. Your comments are noted. So let's move forward. The Planning Department has put together a presentation and the applicants are here, along with their consultants, so out of respect for everyone's time that's been here, let's move forward with the presentation.

Ms. Buchanan: Whoa, whoa, whoa. Okay, point of order, Chair, okay. What are you doing because --

Chair Stephenson: Would like to make --

Ms. Buchanan: You just said we going move with staff -- so on the agenda, we moving forward with staff recommendations, which going be followed by one action item --

Chair Stephenson: Not unless a --

Ms. Buchanan: And the action item going be the -- that --

Chair Stephenson: Not unless a -- not unless a motion is made.

Ms. Buchanan: So we're not --

Chair Stephenson: So what we're doing --

Ms. Buchanan: Addressing the elephant in the room. We're not addressing --

Chair Stephenson: Our Corporation Counsel has told us that we don't have a legal mechanism by which to do so.

Ms. Buchanan: Okay, this is all on the record.

Chair Stephenson: So would you -- would like to -- would you like to make a motion to defer this item so we can address those items? We could -- we could entertain a motion to defer this item.

Ms. Buchanan: I will entertain a motion to defer after a question is answered. The question is: If we defer, is the time running? And I pose that question to the deputy.

Chair Stephenson: So, if we could get Corp. Counsel --

Ms. Buchanan: Is the time running on the 180 days in order for them to administerily get their permit if we're unable to make a decision because of whatever issues come up we not able to make a decision? A deferral is different from a recess --

Chair Stephenson: Yes, we'll turn that over to the Corporation Counsel.

Ms. Buchanan: Chair.

Chair Stephenson: We'll turn that over to Corporation Counsel. She can explain that in detail.

Ms. Oana: Okay, so in your rules, there is a maximum time period rule, 12-301-68, the authority shall review and make a decision on business and development, related permit approvals and licenses within 120 days from, and there's three things: One, the date the application is deemed completed by the director, or the closing of the public hearing on the application, or conclusion of a contested case proceeding, whichever is later. You are correct, Commissioner Buchanan, this is a contested case hearing regardless if we have an intervenor because the rights and duties are being adjudicated, so based on that, that this is a contested case proceeding, regardless if there's a intervenor, then the 120 days would not start after today's close of the public hearing.

Ms. Buchanan: So I'm to understand that the clock never start ticking yet? Okay.

Chair Stephenson: Might I propose a compromise here. If your intent is to make a motion to defer this item, might you hold that motion until after we've heard the presentation from the applicant and the Department of Planning. Would you be open to that?

Ms. Buchanan: Sure. I'm amenable to that. Thank you, Chair.

Chair Stephenson: Okay, thank you. So at this time, let's move forward with the presentation by Sybil and the applicant and consultant on this particular project. Go ahead, Sybil. Thank you.

Ms. Lopez: Is it okay that I stay here because I have to work the laptop.

Chair Stephenson: Which is fine. Thank you.

Ms. Lopez: And so I'll -- I'll, for the Commissioners that was not present, I know that you seen Akaku but this is mainly to kind of repeat for those that were not present, and then I'll turn over the time to the applicant, which is here, and also if the consultant would wanna say anything additional.

So we are -- the project in front of you is called the "Pukoo Polynesian Beach House," STMO T2016/0007, in front of the Molokai Planning Commission with a continuation from June 14<sup>th</sup> to today, as June 28, TMK: 2-5-7-007, parcel 8, located on 8778 Kamehameha V Highway, in Pukoo, on the island of Molokai.

So the Pukoo Polynesian Beach House is in front of you today to seek approval to operate a three-bedroom short-term rental home. The parcel -- total parcel area is 18,190 square feet. The State land use is rural. The Community Plan is rural. However, the County zoning is interim. Other would include that it is within the special management area. It is located east of the island of Molokai in a area called "Pukoo." This is a more map view of how the parcel is positioned, and this, what you're looking at is the short-term rental site and parking plan. You see that there's the garage, the main house, the sleeping quarters, and the proposed short-term rental gravel parking, and there is a shed, which both the garage and the shed is not for any short-term rental use.

So just to put a more aerial perspective, that is the two-bedroom accessory dwelling, which has the proposed short-term rental two-bedroom, and we have the main dwelling, which is the third short-term rental home proposed bedroom, which both -- so the main dwelling, within the main dwelling you have the kitchen, the living room, and a bathroom, so with the two-bedroom accessory dwelling, you have the two bedroom, which shares one bathroom. You have the short-term rental home parking, and you also have the garage. So the garage I wanted to clarify that this garage unit is not for short-term rental use. They did come in and submit an application back in October of 2016 for an SMA permit to permit a 684 -- hold on. Let me get my information. So in front of the Molokai Planning Commission on February 8, 2017, Mr. Luigi Manera, the consultant, on behalf of both Jim and Kaaren Sherrell, submitted a special management area assessment requesting the Department to exempt an application for a new construction of a 680 foot square cottage which includes a kitchen, a living room, a bathroom, a bedroom, and a covered deck at this property, which will be an attachment to the garage. It will be a new construction, therefore, as part of the short-term rental home restrictions and standards that any new construction has to be built five years prior to coming in for a short-term rental home application; on top of that, according to the short-term rental home procedures, that only on Molokai that you can have no more than three bedrooms on one property. And you also have the driveway.

So why are you reviewing this STRH? You are reviewing this STRH according to the Maui County Code 19.65.060(2)(e), which states: Two or more existing short-term rental homes are operating within 500 feet radius of the proposed short-term rental home. I know you probably cannot really see the legend on the right-hand corner, but those represents the shapes according to what the short-term rental application status, so the triangles represent that those are pending applications within that area, the squared shape represents the short-term rental homes that are permitted as of the report that was submitted I think it was of May 26<sup>th</sup> report, which you have in front of you, and the circled one represents the short-term rental home that is in renewal, which they've already got permitted and their time is up for renewal and, right now, they're going through the renewal process, and the green circle represents the 500-foot radius, so you can see that those are within the 500 feet radius.

So a little bit more zooming in within the 500 feet radius, another trigger is the Maui County Code 19.65.060(2)(f), which states that limited liability company member of the entity which holds title to the lot is also an ownership interest in a lot with a short-term rental home permit, and so, as you can see both in the map and the aerial view, you have STMO 2017/0001, which is the Pukoo Plantation Bungalow that is under the Peer Frank LLC, which is owned by both husband and wife, Jim and Kaaren Sherrell, and you do see on your bottom screen, sorry, Pukoo Polynesian Beach House, which is being proposed today as we speak, STMO T2016/0007.

So the Pukoo Planation Bungalows is adjacent to the proposed short-term rental home project, so as you can see, the left is what was -- what is permitted, their driveway, the short-term rental home, which as two bedrooms, the short-term rental home parking, and the gravel. So this is 25 -- TMK: 2-5-7-007, parcel 9.

And you have the testimonies. So these are the testimonies that have come -- that have been submitted or has been in oral testimony within the public testimonies that were allotted for May 10, May 24<sup>th</sup>, and June 14<sup>th</sup>. The 133 signatures supporting the Pukoo petition, which you've heard testifiers speak on behalf of today, you also had the 82 letters submitted through Malama Molokai, which represents this stack that we -- that the Department condensed for your -- for your clarification, which is within your report document. The spreadsheet is in your report, but if you'd wanna see it, it is filed with the Department if you wanna see the full disclosure of those letters, those 82 letters. So you -- you have one letter of opposition submitted to the Department, which was outside, and one letter of deferral submitted to the Department, which was outside of the 500-foot boundary, but you had three of the 24 properties within the 500 boundary submitted written protest against the short-term rental during the time of testimony on the June 14, 2017 meeting, recessed meeting.

And at this time, I would like to turn the time over to Mr. Jim and he can conclude with the full presentation.

Chair Stephenson: Thank you. Mr. Sherrell.

Ms. Sherrell: Jim Sherrell, from Pukoo. So, Rob, am I to testify or you want me to answer questions?

Chair Stephenson: Well, the floor is yours so if you want to talk to us about the project, about your -- about your intent, just give us maybe kind of an overview of -- of how you've come about this and -- and then we'll open it up for questions from the Commissioners.

Mr. Sherrell: Okay, I understand.

Chair Stephenson: Thank you.

Mr. Sherrell: Well, first of all, I'd like to say that the opposition, I understand your position. I know a lot of you. I work with you. And one of things I hear is that tourists are bad people. I come out of the San Juan Islands for 13 years, we run an airline, and I serve that community, and tourists are not bad people. They're coming here on vacation. They do less than the locals, and I'm one of the locals, any way you wanna cut the pie. I've been here as long as she has. So what I see is when I'm here, I can hunt, I can fish, I can use the ocean. Tourists don't do that. They come to relax. I've seen it in the islands, and I saw tourism in the islands develop the San Juan Islands, and if it's done correctly, if it's done correctly and you have the right people, it's very successful. Sure, we could back off and say, okay, we do not want long-term rental, but then I'm going to let down the people that work for our property. There's a reason we spend the money that we spend with the locals on keeping that pristine - it's for people to enjoy it. So the tourists that come in have to know our culture, and I tell them that if you're going to come visit us, Molokai is not like Maui, it's not like any of the other islands, it's a quiet island, and don't come here thinking it's going to be Maui and you're going to have glitz because here it's family, it's relationships. I understand that. I recognize that. So just to let you know about security, we have cameras, live cameras on our property, so we monitor it. We use locals. Nobody gets anything by Harley Tancayo or Bill, Bill Caster. They're our friends. We love 'em. We love the people on this island. I would never do anything to hurt the people on this island, but one of things I see on this island, and I've been around for 73 years, I've been in a lot of communities, I watched the San Juans grow, is that economy needs to flourish in some way, shape, or form, and one of the best forms I've ever seen is tourism. They come here, they bring their money, they leave it, and the people that come to our place are not going to be people that do not have money because we charge a lot of money, so these people can spend the money here. They do the Molokai, Kaunakakai, which we brought our friends to do. One of the best ones I have is I like to take our people

down to Halawa and have Greg give them a whole tour and explain the Hawaiian culture because that's what Hawaii is. It's Molokai. It's not the -- it's not the glitz. So the tourists are not bad people; they're good people. They're like you. When you go to the United State on the Mainland, do people look down at you?

Unidentified Speaker: ...(inaudible - not speaking in the microphone)...

Mr. Sherrell: Well, that's wrong. Okay. I don't agree with you on that. But that's okay. That's alright. We don't always have to agree, and I honor your positions, and I'll talk to any of you. It's I'm open. I'm upfront. And this property is going to be very, very nice, and it's going to bring in extra revenue and some -- some people say, well, how much revenue you're going to bring in?

Ms. Buchanan: Mr. Sherrell?

Mr. Sherrell: Yes?

Ms. Buchanan: If you can address the Commission please, and not the audience.

Mr. Sherrell: Okay.

Ms. Buchanan: Thank you.

Mr. Sherrell: Okay. So I hear a lot of concern about the short-term rental and these are tourists. They're coming here. You don't see 'em. You don't hear from 'em. They go in and they relax. They go downtown and they buy food. So I'd like to open it up for questions because I wanna -- I wanna address what you want me to talk about.

Chair Stephenson: Thank you, Mr. Sherrell. Do we have any -- any questions from the Commissioners? Go ahead.

Ms. Buchanan: Thank you.

Mr. Sherrell: How would I know you were the first one up?

Ms. Buchanan: Well, I was waiting, you know.

Mr. Sherrell: I know. That's --

Ms. Buchanan: Trying to be the nice guy and trying to give --

Mr. Sherrell: That was meant as a compliment.

Ms. Buchanan: I think I the only woman on this board, yeah, now that I looking at. Maybe let they ladies go first. But thank you, Mr. Sherrell. I really appreciate your testimony. Had you been here today with an application for the good guy award, you would win. But we not -- we not here to review who you are, what kind of person you are. There's a lot of hearsay we heard today in testimony whether it be tourism or rooms, all of that, as far I'm concerned, is unsubstantiated hearsay. I know my own experience being born and raised on Molokai. I've read a lot of documents that came out of Molokai that say that tourism is not the number one economy on Molokai. And so there's multiple paraphernalia that stresses that including the East End Policy Statement. So when you filled out the application, it kinda looks like this, for a short-term rental, on page 2, it ask you -- it says: Pre-application steps and application form preparation. So they giving you things to think about, and I promised Mr. Miguel that I was going to ask you the question, but -- but this is aligned with his question, and it ask you on the application, on page 2 of 15 pages that you filled out for this application, it says: Before applying for an STRH permit, short-term rental home permit, property owners must analyze for themselves whether a short-term rental home permit is appropriate for their individual property. So right up in the front row, they putting the onus on the property owner to make that assessment. So in keeping with Mr. Miguel's question, and actually hearing all what you heard, putting you through the ringer for these past two, what is your response to that question, did you analyze that it was an appropriate use for your property?

Mr. Sherrell: Yes.

Ms. Buchanan: Okay. So the question from Mr. Miguel was, and I heard you touch on it was the reason why because you have multiple properties that you wanna do the same thing for?

Mr. Sherrell: I have a property and my wife has a property. Because we have four lands, we have a driveway that comes in, we also have a driveway in the back, we call it the "garden lots," so that's why we have four properties if that's what you're asking. My wife owns one and I own one.

Ms. Buchanan: Okay, so the reason you wanted a short-term rental was for economic development reasons and to help promote the economy on Molokai and tourism?

Mr. Sherrell: Yes.

Ms. Buchanan: Okay.

Mr. Sherrell: That's part of it. Yeah.

Ms. Buchanan: There your question. You got your question answered. Okay. Okay, well, so we went ask the question why, you went answer. The application also multiple times kinda eludes to leading the people who want to do this really to do their homework so this stuff wouldn't occur, so a lot of the community wouldn't come out in opposition, and I have a question for staff, and I think that's all the questions I have for you so if anybody get questions for him, and then I'll come back and ask staff for questions.

Mr. Sherrell: It didn't seem like that was the question you were asking me. It's a statement that you were making. Is that true?

Ms. Buchanan: Which one? The --

Mr. Sherrell: When you just finished.

Ms. Buchanan: I sorry --

Mr. Sherrell: We're just talking about all that, but were you asking me a question or you're making a statement?

Ms. Buchanan: I was asking you the question of -- because they asked you and you said that you thought it was an appropriate use for your property, so you answered the question.

Mr. Sherrell: Yes, that's correct.

Ms. Buchanan: Yeah. And then the reasons why you answered that, so thank you very much.

Mr. Sherrell: Okay, I just want to make sure that --

Ms. Buchanan: But don't move because I think somebody else get question.

Mr. Sherrell: Okay. I just want to make sure I got your answer.

Ms. Buchanan: Thank you very much.

Chair Stephenson: Thank you. Any questions on this end? John, you look like you have a question. No? Wiliama, do you have any questions? Lawrence? Michael?

Ms. Buchanan: Chair, if nobody has questions, then we can reserve the right to bring -- ask the applicant again if we have questions after we question staff.

Chair Stephenson: Yes, I was --

Ms. Buchanan: Okay.

Chair Stephenson: Checking with the other Commissioners if they had any questions. Thank you. Uncle Billy, any questions? Okay. Thank you, Mr. Sherrell. Go ahead.

Ms. Buchanan: So I have a question for staff.

Chair Stephenson: Sure.

Ms. Buchanan: And the -- the question is to Counsel, and even the Deputy if he wants to, but I'll ask Counsel. Counsel has sat through several of these types of permits on the island of Maui, and I don't know if Lanai, so I wanted her opinion, based on what she's witnessed over the couple of meetings that we had from public testimony and from the analysis and recommendation, what has been the outcome on Maui when you see this type of testimony given?

Ms. Oana: Are you talking about the multiple opposition --

Ms. Buchanan: Yeah.

Ms. Oana: Testimonies --

Ms. Buchanan: Yeah.

Ms. Oana: And petition in opposition?

Ms. Buchanan: For the short-term rentals on Maui.

Ms. Oana: Okay. I just wanna kinda correct you. I'm not assigned to the Maui Planning Commission so I don't sit on that board, commission, nor do I sit on Lanai Planning Commission, so I'm strictly assigned here. I did -- I was informed either last week or the week before, there was a STRH in front of the Maui Planning Commission and they denied the STRH permit based on the community input and -- and adverse effects to the -- the character of the neighborhood or -- or it wasn't going to fit into the character of the neighbor so, again, I wasn't present at that Planning Commission, but I did talk to counsel who was and they did, from what I understand, they did deny a permit based on community input.

Ms. Buchanan: Thank you, staff.

Chair Stephenson: Okay, does anybody else have any questions for staff or consultant or the attorney? John.

Mr. Pele: Is this -- is this discussion time or --

Chair Stephenson: Is there questions -- questions for --

Mr. Pele: Okay, I do have a question and, as a matter of fact, for staff. So Sybil mentioned 19.65.060, when an LLC is owned by more than two people, and we also have three testifiers, you mentioned, I know one isn't here, within the 500-foot radius, can you kinda touch base on are those within themselves justification for either a denial or permit? I know we do a lot of things on law and conclusion, and our packet is written up and give suggestions, I'm trying to figure out those things if within themselves would they be reason, a just cause to deny a permit? Yeah, I just -- I'm trying to ask, yeah. Basically, on 19.65.060, about the LCC and two ownerships, and the 500-foot radius, now that we do have people within the 500-foot radius opposed to the STRH, I'm asking if those, by themselves, would be a justification for a Commissioner to deny? When I was -- as a board -- a Commission member, we say that we have to have a just cause to follow law and conclusion, so I'm just asking that question.

Ms. Oana: Thank you for that question. With regard to 19.65.060, permit processing, the -- the 500-foot radius trigger and all those things, those are triggers for -- for the application to come before the Planning Commission. If an application doesn't have a trigger, then the Director can administratively approve the permit. But for that section you're talking about, those are only the triggers that make it come before this Commission. I wanna turn your attention to 19.65.030, section N, and that's the -- the section where it has the criteria on what the Planning Commission shall consider when reviewing a short-term home rental permit. And I just -- I wanna clarify what I told Commissioner Buchanan, when she asked me the question, I did say community input was a reason why the Maui Planning Commission denied a permit, I can't say that's the sole reason, so I just wanted to qualify that, but there was discussion that at least one of the things, the reasons why they denied a permit on Maui was because of community input and the number of protests, I can't say that that's the sole reason, so I wanted to qualify that. So, Commissioners, I would turn you -- your attention to 19.65.030(N), and I believe Sybil put that section completely in your materials, and that's the criteria for you to determine whether you should grant or deny a permit. Again, no. 4 does say community input, and then, Commissioner Pele, you asked about the 500-foot radius thing, there is a section, section 6, which is the number of permitted short-term rental homes surrounding the proposed short-term rental home property and their distance to the property, no. 7 is the number and substance of protest to the short-term rental home application, and protest related to the cumulative short-term rental homes in the neighborhood or area. So -- so

there is kind of that criteria you're talking about but it's in a different section, so I'd turn your attention to 19.65.030(N).

Mr. Pele: That, yeah, that's the criteria why it comes to this Commission. I'm asking is that criteria acceptable for -- for a Commissioner to say I'm against this project.

Ms. Lopez: Yes. Can I add?

Ms. Oana: No. No. Okay, so you're asking me about 19.65.060, the triggers of -- of it coming before the Commission, the 500-foot radius, and all those kinds of things, that's just the triggers for it to come. When you analyze a permit for approval or denial, the justification would be from 19.65.030(N), and the justification for denial would be something like there are hundred protests to this short-term -- so I want you to turn your attention to that N section, that's what you should refer to when analyzing this application.

Mr. Pele: Okay. Thank you.

Ms. Lopez: Can -- can I add? Okay, so can I add to your answer, Commissioner Pele? So I just wanna read it to you so you can have an understanding why those code was -- that I stated in my presentation and the code that is in the report of the analysis part so under --

Ms. Buchanan: Where you reading from?

Ms. Lopez: Permit processing no. 2, 19.65.060.

Ms. Buchanan: We -- we get 'em over here?

Ms. Lopez: It should be, but it's under 2, so how I stated it was 2F and 2 -- 2E and 2F, but you don't know what 2 is, so can I read 2? So permit processing 2, so the director shall approve or deny the application pursuant to the requirements of this chapter provided that the applicable planning commission shall approve or deny the permit pursuant to the requirements of this chapter when any of those following occur, so it's stated that 2F and 2E has been the trigger or the criteria for this applicable planning commission to see this short-term rental home project. So I hope that was clarified.

Chair Stephenson: Thank you. Any other questions for Sybil or Corp. Counsel?

Ms. Lopez: Which the analysis, what Corp. Counsel did say, it is in your report and it has been analyzed under N and from 1 through 9, yeah, from 1 through 9, so then you can connect.

Ms. Buchanan: So, Chair, with the understanding that it is a contested case hearing and those filing intent on the record, can we move forward if they wanted to 'cause it's stated on the record? Is the Chair open to a motion?

Chair Stephenson: Let's make sure that we're -- we're done with --

Ms. Buchanan: I'm sorry. Yeah.

Chair Stephenson: Done with --

Ms. Buchanan: Last question.

Chair Stephenson: And that's -- that's fine. Let's see if we're done with our discussions. Are there any other -- any other questions? Go ahead, Wiliama.

Mr. Akutagawa: Oh yeah, in all due respect, yeah, shoots, I went bid on this project like some time last year, so due to conflict of interest, I gotta stay out of this vote, yeah. Yeah, sorry. Thank you.

Chair Stephenson: Thank you, Wiliama. So just for the record, you have a potential conflict of interest and do you want the Commission to decide whether or not you have a conflict or do you want to recuse yourself? Okay, so Commissioner Wiliama Akutagawa will recuse himself from voting as well as myself from voting, so there'll be two of us not voting on this. And I think, again, for these types of -- for this particular application, the only thing that we can look at is what was presented to us today by the public and the information that's in front of us. I know we've heard a lot about people who may be opposed to this, but what seems to be missing is specific items, like an increased number of so many cars, an increased number of so much traffic, an increased number of so many things, and so although there may be some opposition, it would be nice to see some more specifics to that opposition as well.

Mr. Pele: Can I ask you a question on that?

Chair Stephenson: Yes, please.

Mr. Pele: That's -- that's exactly my point. That's the question that I was trying to ask. If they're here because the triggers were set off, my question is: Are those triggers justification for denial? That's specifics to me. The triggers are the specifics. That's what I'm asking if those can be used as the specifics to deny this permit or am I not doing my fiduciary responsibility as a Commissioner by using the -- just like saying, well, I don't like the guy, I can't do that as a Commissioner say, well, I'm not going to approve it 'cause I don't like the guy, that's -- that's not what I'm here for. I'm here to look at conclusions of

law as -- or, you know, what's put in front of us. So my question is the fact that they're here is because there's triggers, can I use all those, and we did have testifiers come with the 500-foot radius, so where -- where do we put that? Where does that land as a Commissioner and maybe I should -- maybe I'm not getting it, but that's what I'm trying to ask.

Chair Stephenson: Sure. And thank you for that, and I think we can get some clarification from Corp. Counsel.

Ms. Oana: Okay, so the triggers are not the justification for denying. The triggers are just to bring it here. The justification for denying would be found in -- in N, and just apply -- apply what you heard in public hearing and the development of the facts on the record and apply it to the -- the criteria in N, if you find any reason to go one way or the other. So for -- for example, the 500-foot radius, the people who are here who live within a 500-foot radius, that would fall under 6 and 7 of N, it's related.

Ms. Lopez: And I -- I do have a correction that has been brought to my attention that I need to correct in the report. Oh, can I continue, Chair? Sorry.

Chair Stephenson: Go ahead. Thank you.

Ms. Lopez: Okay, so the correction is on page 11, it's within D, no. 3, and the response that the Department made that the applicant holds a minimum of 50% interest in the legal title of the subject property lot, and that Raymond Miller is a licensed real estate agent is listed as a property manager on the manager designation form. The manager designation for is in your Exhibit 9, so the correction is Exhibit 9 because Exhibit 9 still states Edward Onofrio because he was the previous at the time of the submission of the application, he was at that time the designated manager, but as of today, the applicant or the consultant has -- they changed it to Raymond Miller and the Department is still waiting for that information. Thank you.

Chair Stephenson: Thank you. Go ahead, Jen, please.

Ms. Oana: Okay, thank you. I just wanted to add one thing. Commissioner Pele and -- and Chair Stephenson is correct, basically, what happens if -- well, if the Department had recommended approval, and Sybil's report recommended approval and had a findings of fact, conclusions of law, decision and order written up for the Commission to approve, then that's what -- that's basically what the Commission would have to do is just approve it. If, however, the Department recommended approval but the Commission wanted to deny it, then you're not adopting the Department's findings of fact, conclusions of law, and decision and order, therefore, Sybil, after your denial, would have to write out findings of fact, conclusions of law, decision and order, so if you are going to deny, I implore you

to develop the record, the facts as it relates to section N, that way Sybil can write out the findings of fact. Without some kind of discussion on the record with regard to that, it'll be very difficult for her to create that document.

Ms. Lopez: So, Commission, would you want to hear the recommend -- the Department's recommendation or are you still in discussion?

Chair Stephenson: I think we're still in discussion here so go ahead, John, please.

Mr. Pele: I was just going to say I don't see the recommendation written here or am I missing it?

Ms. Lopez: It is located right after the exhibits.

Mr. Pele: Oh.

Ms. Lopez: So you would have to go to the last exhibit, well, sorry, the last exhibit is 13, but you do have more written testimony so it's after the written testimony, then -- you'll see the Maui County Planning Department's Amended Recommendation as for the June 14, 2017 meeting.

Chair Stephenson: So it's the third page from the back of the packet.

Mr. Pele: Got it. Is it me or is this the first time it's been written in that language? That this is the first time -- usually, it just comes as a recommendation, correct?

Ms. Lopez: Correct.

Mr. Pele: Alright.

Chair Stephenson: So I guess, at this point, we've got any more questions? Okay, if we don't have any more questions, we have -- we have several options available to us. The first option is we could accept the Department's recommendation and approve -- we can accept the Department's recommendation -- under the recommendation period of the -- of the presentation, the Department makes no recommendation but if the Commission should choose to approve the short-term rental house, they have recommendations in there. That's a little bit confusing. So we can do -- we can either vote to approve the short-term rental permit.

Ms. Lopez: Wait. We did not hear the staff's recommendation.

Chair Stephenson: Right.

Ms. Lopez: So you guys still in discussion?

Chair Stephenson: Yeah.

Ms. Lopez: Sorry.

Chair Stephenson: We're not, yeah, we're not to that point. So we -- we can go to that, we can lean toward disapproving, in which Corporation Counsel said that we would need to establish the findings of fact and conclusions of law based upon the items that she shared with us in determining whether or not to approve or disapprove, or we could defer the matter to a later meeting. I believe those are the three things that are available to us. Is that correct, Corp. Counsel?

Ms. Lopez: Four. Four in the report. So on page 18, alternatives, you have deferral, approval with no conditions, approval with conditions, and denial.

Chair Stephenson: Thank you. Thank you very much. So if we could hear the -- the non-recommendation from the Planning Department please?

Ms. Lopez: So Sybil Lopez, Molokai Staff Planner. Conclusions of law, so under the short-term rental home permit, should the Planning Commission favor approval of the short-term rental home permit, the Commission should conclude that the application for a short-term rental home permit comply with the applicable standards for a short-term rental home in accordance with Chapter 19.65.030, under Restrictions and standards, of the Maui County Code, fully listed in the applicable regulation sections of the Planning Department's report to the Molokai Planning Commission for the Commission's June 14, 2017 meeting regarding this docket no. STMO 2 -- 2016/0007. Should the Planning Commission favor denial of the short-term rental home permit, the Commission should conclude that the application for a short-term rental home permit does not comply with all applicable standards for a short-term rental home in Chapter 19.65.030, Restrictions and standards, and identify which -- with which standards it does not comply. The Maui County Planning Department has no recommendations regarding the requested short-term rental home permit, however, should the Commission choose to approve it, the Department would recommend that it be approved subject to the following 22 conditions, and that would be the standard conditions. So in -- so in consideration, if the Molokai Planning Commission chooses to approve the permit, the Commission adopt the Planning Department's report and recommendations prepared for the June 14, 2017 -- I would like to conclude that the Department did, however, change their recommendation because the Department felt that it was this Commission to make that determination and decision, and not on the Department. Thank you.

Chair Stephenson: Okay, thank you very much. So it looks like we have all the information before us, if anyone have any further questions? Okay, I would entertain a motion.

Ms. Buchanan: Chair, I'd like to make a motion.

Chair Stephenson: Yes, please.

Ms. Buchanan: I would make the motion to deny this application, and if I have support for that motion, I will state the reasons why.

Chair Stephenson: Thank you. There's a motion to --

Ms. Buchanan: In discussion.

Chair Stephenson: Thank you. There's a motion to deny by Lori Buchanan. Is there a second?

Mr. Pele: I'll second.

Chair Stephenson: Okay, seconded by John Pele. Discussion, please.

Mr. Pele: Basically, 'cause I wanted to discuss it, but I'm very concerned. Sorry, do you wanna speak, Lori? Do you wanna speak?

Ms. Buchanan: No, go ahead.

Mr. Pele: I'm very concerned about, you know, I'm starting to get my feet under here with the Planning Commission and I am very concerned. I have no personal interest in this. But we did hear from a number of people and that section N, 7 and 8, especially 7, the number and substance of protests to the short-term rental home application that protest the short-term rental home application and protest related to the cumulative short-term rental homes in the neighborhood of the area. I think we heard a lot, not only this meeting, but the previous meeting, I still have my list here, there were 23, some of them might have been duplicates, but that's my reason. I mean it's -- we gotta start listening. I don't know what else to say.

Chair Stephenson: Okay, thank you. Any other -- any other discussions?

Ms. Buchanan: Chair, I would like to discuss the motion.

Chair Stephenson: Yes, please.

Ms. Buchanan: So like I said earlier, we not in -- in this -- this is an application for a short-term rental. The reason why this short-term rental was allowed in Pukoo was because of what we call "interim zoning." So interim zoning had allowed for comprehensive zoning, and in the comprehensive zoning for Maui County, which included Molokai and Lanai, this permissible use of short-term rentals, bed and breakfasts, and transient vacation rentals was an allowable use in areas previously not allowed. So that's why we're here. That was done without much input from this community, so we was sleeping, basically. When this comprehensive zoning law came down, we was all sleeping, I was sleeping, and it got passed, which said, yeah, this is okay now in interim zoning. Well, more than half of Molokai is in interim zoning, so interim zoning, if you look at what is interim zoning, it's kind of like a emergency zoning to protect, this is my own interpretation by the way, for when we get real zoning, but the interim zoning was really to protect for good planning, so when you fail to change that zoning, then you do what Mahina calls "spot zoning." So good work, Mahina. So spot zoning is arbitrary zoning that just says, ugh, come to this Commission every time, oh, this is good over here or what? Not good? Not good? Okay, that's spot zoning. So the Planning Department Long-Range Division is supposed to be the one that come and tell you we going do this community plan. Community plan is the bible of this Commission. That is our bible. We supposed to follow the community plan. Why? Because that's where the makaainana grass root feedback come from the community over 17 weeks and 13 people and hundreds of testimony, so right now, we operating under the Molokai Community Plan that got adopted 2001, not the community plan update we have now. Currently, in that community plan, there is a East End Policy Statement. In that East End Policy Statement, it clearly conveys the sentiments of the community of Manae. That was derived from countless hours by kupuna and residents of East Molokai. So for us to throw that out -- the baby out with the bath water and say the thing no good anymore would be a disservice and a disrespect to the kupuna who spent countless hours conveying all of their concerns for the place they live to the County. So when we did the community plan update, this Long Range Planning Division said no, we not going to talk about Manae. We get no business in Manae. But guess what? I guess we get business in Manae because who said that short-term rentals was okay by ordinance? Was the County of Maui. Why am I providing a million dollar insurance policy bond to the County of Maui for permitting issues? Because they're liable for this permit. So let me -- let me tell you what is the facts. This is law. This is why this permit needs to be denied, and this is for Commissioner Pele. So if you look in your handout, the reason why this application came at all, because there was some stuff that was triggering this application. If not, we would have never seen this. We need to fix this whole Planning Director administrative approvals of short-term rentals. That's how come you get Tina testifying, oh my gosh, get eight. Where this came from? We never see that. We need to see each rental application as they come in if the ordinance passed and we decide we going have 40. So finding of facts, in your application, the one that we had to begin with, the triggers, as staff had presented, is the reason, the main reason for denial, and then

under that section, on page 6, item N, so the reasons for denial is under item N, particularly items no. 4, community input, so this is the law now, this is they telling you, this is -- you gotta follow this, so community input, what has been the preponderance of evidence of community input? I say opposition. That fat thing right there is all opposition. Okay, no. 5, potential adverse impacts including excessive noise, traffic, garbage, whatever. Potential adverse impacts also include cumulative adverse impacts. What is a cumulative adverse impact? It's multiple commercial uses in an area that does not have the infrastructure or design to begin with to support a commercial entity. Manae Goods and Grinds, the only reason why Manae Goods and Grinds continues to exist is on a special use permit, period. They gotta come in to this Commission every so often to get their permit renewed, and that's when we say problem, you get problem? It's non-transferrable. Okay. Item -- under N, no. 6, the number of permitted short-term rental homes surrounding the proposed short-term rental home property and their distance to the property. Bang. That's the main reason. We were talking about density. Talking about multiple commercial uses in less than a mile. That's density. That is in direct adverse to item 6, okay. We all know what is the -- we all heard hours of testimony for no. 6. No. 7, the number and substance of protests to the short-term rental home application and protest to the short-term rental home application related to the cumulative short-term rental homes in the neighborhood or area. No. 8, existing or past complaints about rental operations on the property. I, myself, have heard past complaints, maybe not specific to the area, but for Pukoo. So that is all reasons for denial. The other denial and the other trigger was about ownership, and Sybil was really good about doing the ownership part. Let me look for it. I don't know if was in the analysis. And even if you look in your analysis, yeah, there's a bunch of reasons why. Under H, on page 12, an applicant may hold no more than one short-term rental home permit. Then it says except when. So really you only supposed to have one short-term rental permit, okay. The exceptions are very, very limited, and it tells you right here, the valuation 3.2 million dollars or higher. Also under N, item no. 3, applicable community plan. Okay, we just said the community plan is the 2001 that has the East End Policy Statement that is -- is specific about this type of commercial uses and that's adverse to that, okay. I looking for the -- the item N.

Chair Stephenson: Pardon me, Lori. Jen would like to address that.

Ms. Buchanan: Yeah.

Ms. Oana: Commissioner Buchanan, I just wanted to address something, I don't want there to be any error. With regard to what you said about the -- an applicant may hold no more than one short-term rental home permit except when, and you said, you know, there's two exceptions, I just wanted to inform you that that is not a criteria for which the Planning Commission shall consider denying approval, and I believe the Department has

taken the position that the applicant is a natural person, so it's not -- so Jim Sherrell is the applicant and not his wife even though the --

Ms. Buchanan: Okay, so that's okay.

Ms. Oana: Lot is owned by an LLC.

Ms. Buchanan: Okay. Thank you for that.

Ms. Oana: I just don't want you to base any --

Ms. Buchanan: Okay.

Ms. Oana: Decision on that.

Ms. Buchanan: So, in their own testimony that I wrote down, when Mrs. Sherrell gave her testimony, she said "we." I wrote it down. She said "we." Okay. But she is -- when you go to the Board of Land and Natural Resources, Division of Bureau of Land Conveyances, the first question they ask you is are you married. That's the first question they ask you. Are you married? There's legal reasons why they ask you are you married because Hawaii law you have an interest if you are married, and should that interest end up in a legal court with land, in land court, it does matter whether you married or not, and I would argue the point that that same law applies here since State law sometimes trumps this law, County law, but it -- it doesn't matter 'cause it's either pono or it's not. You know, we all know you married, but you not. We can call your multiple properties whatever you want, but in testimony, I hear we. I hear us. And I write that down. And I know because I worked in the Bureau of Conveyances. I do a lot of land stuff. So being married does make a difference on land ownership. Okay, so that said, thank you very much.

Ms. Oana: I'm sorry. One more thing. May I --

Ms. Buchanan: Okay.

Ms. Oana: Address that? Okay, so I just want to ...(inaudible)... the Department's taking the position that the applicant is a person and --

Ms. Buchanan: Yep.

Ms. Oana: Not LLC, and it deals with an applicant and not necessarily full ownership.

Ms. Buchanan: Okay.

Ms. Oana: So the applicant doesn't have to be the full owner of the property. I do want to turn your attention to 19.65.060(D), and it says: In addition to any enforcement action, the rules of the planning commission and the rules of the department, the permit for a short-term rental home shall be denied and the owner/applicant may not reapply for another permit for two years after the date of denial if it is shown that the owner/applicant provided false or misleading information during the application process. So I just wanted to point that to you if you feel that something is not right.

Ms. Buchanan: Okay. So I think without even going into the rest, gee, which I can be here all day, I think we have a lot of findings of fact and conclusions to deny this permit. I think anything short of a denial would be a tremendous disservice to this community and would be a total failure of our fiduciary duties as Commissioners. Thank you.

Chair Stephenson: Thank you, Lori. Any further discussion by any of the Commissioners? Okay, so, Sybil, did you get down all of the findings of facts and conclusions? Okay, so if you could restate those for the record.

Ms. Lopez: So I -- I have a question. Commissioner, are we striking - where is it? Are we striking that previous, I don't know if it's Corp. Counsel or Commissioner Buchanan, are we striking that letter H as a finding of fact?

Ms. Buchanan: Okay, what letter - H of what?

Ms. Lopez: That an applicant may hold no more one -- than one short-term rental home permit because Mr. Sherrell is a natural person. Are we striking that as a finding of fact? I mean just --

Ms. Buchanan: Is it 19.65.060(2)(F)?

Ms. Lopez: No, you stated H, which an applicant may hold no more than one short-term rental home permit except when additional permits are for short-term rental homes that each have a County assessed -- so we're not adding that, right?

Ms. Oana: My opinion is Mr. Sherrell is applying for this permit. He is the applicant for this permit, I believe his wife was the applicant for the other permit, and so I do not feel that that is warranted.

Ms. Lopez: Okay.

Ms. Buchanan: It would be my purview as a Commissioner testifying and the maker of the motion to leave it in.

Ms. Lopez: To leave in?

Chair Stephenson: That will be fine.

Ms. Lopez: Okay. So --

Ms. Buchanan: That's a determination. I haven't seen any of that -- that process of determination made in order to have that conclusion.

Ms. Lopez: Okay, so with that being said, as a finding of facts, with the inclusion of H would be 19.65.030, letter N, as stated, no. 3, the applicable community plan; no. 4, the community input; no. 5, potential adverse impacts including excessive noise, traffic, and garbage to include cumulative adverse impacts such as multiple commercial usage, which segues into no. 6, that the number of permitted short-term rental homes surrounding the proposed short-term rental home property and their distance to the property which defines their density, and the no. 7, the number and substance of protests to the short-term rental home application and protests to the short-term rental home application and protests related to the cumulative short-term rental homes in the neighborhood or area justifying its density, as findings of facts.

Ms. Oana: I believe that a little more development on the facts in some of those conclusions should -- a little facts should be developed on some of those conclusions; that's just my advice.

Ms. Buchanan: I guess for discussion, I don't know what that would be. How -- what would you want me to address specifically if it's too vague and too broad?

Ms. Oana: Well, for example, for the community input part, your fact was there was multiple opposition, and the record will show how much opposition that would be, so that's -- that's, you know, a fact that represents that.

Ms. Buchanan: Okay and so --

Ms. Oana: Potential adverse impact, you mentioned lack of infrastructure, that --

Ms. Buchanan: Yeah.

Ms. Oana: Would address that.

Ms. Buchanan: Okay, add in that.

Ms. Oana: But when I heard no. 7 and no. 8, I didn't hear any qualification, so if you could maybe elaborate a little more on 7 and 8. No. 6 you said the number of STRHs and you said density, so I would just image you meant it's just too -- it's getting to dense --

Ms. Buchanan: Yeah.

Ms. Oana: With STRHs. But 7 and 8, I didn't hear anything, so if you could elaborate.

Ms. Buchanan: Okay, so let me expound on item 8, existing or past complaints about rental operations on the property. What is today, today is Wednesday, on Monday evening, at 5 p.m., at Kilohana School, there was a community meeting attended by I would have guessed about 75 residents of the area, specifically, they were there for complaints existing in the Pukoo right-of-way, which is within the 500-foot boundary of this application. There was a preponderance of testimony given to Councilwoman Stacy Crivello, Division of Conservation and Resource Enforcement, Department of Aquatic Resources, and Land Management, under DLNR, about existing uses within the Pukoo area, and the testimony was that their rights were being infringed upon and they felt it was because of the changing demographics within the area in Pukoo. And I believe some of the people in here were -- was at that meeting and can substantiate that. They were there too, the --

Ms. Oana: I'm sorry, Commissioner Buchanan, now that I'm reading it out loud and I was just writing my notes, no. 7 was numbers and substance of protests, and I think that's been established, there's multiple things in the record with regards to --

Ms. Buchanan: Okay.

Ms. Oana: The numbers. So I apologize on that.

Ms. Lopez: And so did you want to include for the applicable community plan, no. 3, the East End Policy Statement, Exhibit D, page 9, no. 10?

Ms. Buchanan: Yes, please, because that is the current community plan.

Ms. Lopez: Is there anything that you wanna include in regards to the analysis of the report, letter N?

Ms. Buchanan: Just specifically that the -- the plan does not support tourism or commercial uses in East Molokai.

Ms. Lopez: Okay, wait. Sorry, can you repeat that?

Ms. Buchanan: Specifically, that the -- the plan does not encourage or support tourism in East Molokai nor commercial development of any kind in East Molokai.

Ms. Lopez: Thank you.

Chair Stephenson: Okay, so we've got -- you have all the findings of fact and conclusions of law? Any further discussion? Okay, we'll take a -- there'll be two Commissioners abstaining from voting, that'll be myself and Commissioner Wiliama Akutagawa, so we'll take a --

Ms. Oana: I think we -- we had a motion to deny that was seconded, and then Commissioner Buchanan went into the findings of fact and conclusions of law, I think, right now, it just stands as motion to deny, so maybe if the maker of the motion as well as the seconder can agree to amend the motion, motion to deny based on what was stated in ...(inaudible)...

Ms. Buchanan: Chair, a friendly amendment to the motion to deny this application and to include the -- the findings of facts that I provided as part of the motion.

Chair Stephenson: Great. And then second to that?

Mr. Pele: I'll second that.

Chair Stephenson: Okay, any further discussion on the motion before us? Okay, as indicated, there'll be two abstentions. You asked for roll call votes, so all in favor of the motion to deny the permit, raise your hands please? We have four votes to deny. All opposed to deny the application, please raise your hands? There are two opposed to the motion. There was one abstention so -- I'm sorry, there were two recusals. There were four in favor; two opposed. Motion -- hold on one moment, please.

Ms. Lopez: Yeah, that was -- he was the fourth.

Chair Stephenson: So the motion fails. The motion fails.

Ms. Oana: For everybody's information, the majority of members entitled to this board has to vote affirmatively to take any action as a body, so for any action to go forward whether it is to deny or approve, it has to be at least five votes.

**It was moved by Commissioner L. Buchanan, seconded by Commissioner Pele, then**

**VOTED: to deny the application and to include the findings of facts provided during the discussion.**

**(Assenting - X. Bicoy; L. Buchanan; W. Buchanan; J. Pele)  
(Dissenting - M. Drew; L. Lasua)  
(Recuse - W. Akutagawa; R. Stephenson)**

**MOTION FAILED**

Chair Stephenson: Okay, so the motion failed. So we need the -- we would entertain -- anyone else have another motion?

Mr. Pele: Commissioner -- I mean, Chair, can we -- I would like to move that we defer this action to allow our public testifiers today to bring forth their intentions to file a contested case hearing -- sorry, contested case action or --

Chair Stephenson: The -- for a motion to intervene.

Mr. Pele: Huh?

Chair Stephenson: For a motion to --

Mr. Pele: Motion to intervene. There you go. It was in there somewhere. I --

Chair Stephenson: So there's a motion to defer to allow the public testifiers opportunity to intervene in a contested -- to file a motion to intervene in the contested case hearing. So let's -- let's make sure we get that stated specifically. Could you -- could you state -- could you restate the motion, please?

Ms. Oana: Okay, I'm restating Commissioner Pele's motion and I believe it's a motion to defer to another meeting to give the public testifiers time to file a motion to intervene with the Department. I'd also like to put on a deadline for them. Like I said before, this is a -- it's untimely, and they can argue that they have good cause to file an untimely motion, but I don't think we should wait too long --

Mr. Pele: Should I add that in?

Ms. Oana: So I would recommend a deadline for that to happen, and then we can reconvene subsequent to that.

Mr. Pele: Are -- are you going to set the deadline or would like me to set the deadline?

Ms. Lopez: Do you want that to be as a discussion --

Ms. Buchanan: How I -- how about I second your motion --

Ms. Lopez: Before we make that motion carry?

Mr. Pele: Okay.

Ms. Buchanan: So we can discuss.

Mr. Pele: Okay, that's what I did with the last motion. I just wanted to discuss.

Ms. Lopez: Thank you.

Chair Stephenson: Okay, motion by John Pele as restated by Corp. Counsel to place a date on the time limit to file the motion to intervene, seconded by Lori Buchanan, discussion please.

Ms. Buchanan: So I won't be inclined to support that motion, and the reason is that we've -- I just think that a lot of evidence has been presented that clearly indicates what the outcome needs to be, and I think anything short of that is really -- so I'm not inclined to support that. If anything, I would support a site visit only to rehash this again, but I would also, for discussion purposes, I would like the -- the applicants to consider withdrawing their application because they've sat through countless hours of this Planning Commission, they've heard the public, and while they're -- like again, this is nothing about personalities, it's about commercialism, it's about density, it's about uses in areas not appropriate for that use, has nothing to do with what color you are, I no care if you purple or you stripes or whatever, it's nothing to do with that. It has to do with inappropriate uses in inappropriate places for those uses. That's it. It's really simple. And so that's why I get hard time. The intervenors, believe me, I know how it is to intervene in a contested case hearing. It's going to put the onus on all those people to file papers, follow procedure, it's going to be a long drawn out application, and now that we're all eyes are on Pukoo, I think more development within that area is going to be very hard pressed, very, very much so. So I would hope the applicant, hearing all of these hours of testimony from the public, and loving Molokai the way they say they do, would -- would be considering to withdraw their application, which is probably maybe, you know, some people think that's a pono thing to do. So that's my discussion on this motion. If it does go through, I would hope that the friendly amendment in this would also include a site visit so we can all see the stuff that everybody grumbling about in person. Thank you.

Chair Stephenson: Thank you very much. So if we were to put a deadline on the time in which to file that motion to intervene in two weeks, then we could possibly be able to get

it on the agenda for the following two-week period of the Planning Commission, which I believe is the end of July, the 26<sup>th</sup>, is that something that would be acceptable to you?

Ms. Buchanan: Corp. Counsel, if I'm not mistaken, you have ten days following this meeting for your intent to file, and then that -- then there's a whole process, it's in black and white, that you follow, step one and step two, so the deadline for intervene is -- it's like -- I'm really asking that we not have to do there because I can see this occurring for every other permit that coming in until we finish the cap, so go ahead, John.

Mr. Pele: No, thanks for sharing that, but I really, on the flip side, I think we hold them to their intervening status. I mean they came up, they testified, I know it's unorthodox, but they gotta say -- they gotta do what they say they going do. You know, that -- that's the flip side of the coin. And if they do it, we'll hear it. If they don't do it, I think we should have some stipulations that if they don't follow through, that this, you know, that it doesn't drag out. That -- that's just my opinion.

Ms. Lopez: So the Department just wanna let you know on the upcoming Commission meetings, if that's okay, so you guys can make your deliberations and decisions better, so the next Molokai Planning Commission meeting is agendized for July 12<sup>th</sup>, we don't have a public hearing on that date but, however, we do have minor communications. In the event that we do not finish this agenda item, and the agenda item of June 28, those will be carried over to July 12<sup>th</sup> on top of the agenda items for July 12<sup>th</sup>. The next upcoming scheduled meeting after July 12<sup>th</sup>, we have two public hearing items for July 26<sup>th</sup>, which is Mr. Stanley Wada's hotel and which -- and the other would be the Gartlands for the County special use permit, which is scheduled for July 26<sup>th</sup>, and so the next agenda, which is July 12<sup>th</sup> is 14 days after today. So if you counting calendar days, it'll be 14 days; if you're counting business days, it'll be 10 days to July 12<sup>th</sup>. So that will be the next -- that will be the next scheduled meeting.

Ms. Oana: I'm sorry, Ms. Lopez. What are you talking about the days, the 14 days?

Ms. Lopez: For July 12. So today is June 28, our next scheduled meeting is July 12. That's it.

Ms. Oana: And it's unlikely we are going to finish the June 28 calendar today, so that will be moved mostly likely --

Ms. Lopez: Pushed over to July 12.

Ms. Oana: To July 12, and then you said you have two public hearings for --

Ms. Lopez: Two public hearings for July 26<sup>th</sup>.

Ms. Oana: July 26.

Ms. Lopez: Which is the agenda meeting after July 12. Then you'll be looking at August.

Ms. Oana: And then the August dates are clear?

Ms. Lopez: August, we don't -- we don't have anything scheduled as a public hearing for August.

Ms. Oana: Okay. So it's up to the Commission, but if you wanted to set a reasonable deadline for them to file a motion, and then we can set this -- this item on the agenda in August, and I do wanna say that their timeline -- their deadline to file a motion to intervene has passed, it was on June 4<sup>th</sup> because June 14<sup>th</sup> -- it's ten days before June 14<sup>th</sup>, which was the first public hearing. You, as a Commission, are giving them an opportunity, kind of an extended deadline to do so, and it's not saying that the motion to intervene will be granted, this is just allowing them to file a motion to intervene. The motion would be heard by this Commission and a decision whether to allow the intervention or not to allow the intervention, according to the law, would be made by you folks when it's on the agenda.

Chair Stephenson: So I guess probably an amendment to the -- to your motion, John, to place that -- that deadline on when they have to file their petition for a motion to intervene.

Mr. Pele: I so move that we defer this -- this matter until a motion for intervention is filed within 10 days after this meeting -- 14 days after this meeting.

Ms. Buchanan: I'll second that motion for discussion.

Chair Stephenson: Motion by John, second by Lori.

Ms. Buchanan: He's amending one -- yeah?

Chair Stephenson: Go ahead. Discussion.

Ms. Buchanan: Okay, if we go that, then I probably going be filing an intent to intervene as well, if we going do that, so you going add -- I going file one -- one intent to intervene since -- since we never make one decision yet on this item, and we in discussion, I'm disclosing for the record that I intend to intervene in this case, and I going figure it out whether I can or not, but on the record, as what I saying.

Ms. Oana: If I can make a suggestion because I think everybody is uncomfortable with putting on a deadline for something that the deadline has already passed, and I know you

folks want to be reasonable with allowing people to file a motion to intervene, how about the intention would be to take up this matter at a -- at the August meeting, the first meeting in August, that's the intention, some things can happen with the Department and it may not happen, but how about an intention to set this on the agenda for continuation of this matter on the first Molokai Planning Commission meeting in August, and whether those people have filed the motion to intervene or not by then, you guys just proceed. If they have, then you can take up that matter; and if they haven't, you can just proceed anyway. So no deadline. You are giving them time without stating what they have to do.

Mr. Pele: Yeah, it's on -- am I -- and I'm doing that in the form of a motion? Is that what you're looking for?

Ms. Oana: How about you change it to a motion to defer, at the earliest, to the first August meeting in -- for the Molokai Planning Commission.

Mr. Pele: Can I ask you a question first?

Ms. Oana: Yes.

Mr. Pele: I'm a little concerned. You keep saying and you keep referring about them not doing what they're supposed to have doing by June 4<sup>th</sup>, which I understand, and I don't want to -- I'm kind of conflicted because, as a Commissioner, I wanna make sure that I'm doing things that are doable just as I wouldn't want to go against any other thing that came up whether one side thought it was right or the other side, you know, I don't wanna -- we heard -- we heard the word "rigged" today when we talked about the system, I've heard testifiers say we gotta stick to the County laws, I just don't wanna be construed that way when we're talking about this motion to allow them to intervene. I'm getting kind of a mixed message from you as far as --

Ms. Oana: Okay, so, basically, under the rules, it says a motion to intervene shall be filed and served upon the applicant ten days before the first public hearing date.

Mr. Pele: Yeah, but you're telling -- you're telling me, as a Commissioner, we can change that.

Ms. Oana: Then there's another sentence right after that that says something, but I'm trying to find it as I speak, untimely motions may be filed upon a showing of good cause. So, basically, when they file, if they file, they're going to have to address the good cause in the motion for you guys to legally say okay.

Chair Stephenson: And we don't need to put a deadline.

Mr. Pele: But I'm approving, I'm not approving, sorry, I'm moving to give them that right to intervene but I haven't determined good cause yet. The good cause will come when they -- when they bring it to us.

Ms. Oana: So you're not approving their ability to intervene. You're giving them an opportunity to file a motion to intervene, to move to the body if they can intervene, and what that is is a document and they have to address the things that I've mentioned previously, and according to that document, you're going to review it as a Commission and decide whether the Commission will allow them to be intervenors. So you're just giving them the first avenue to get there, you're not granting intervention status yet.

Mr. Pele: Okay, I move that we defer this matter to the first meeting in August, or soon thereafter, regardless of whether an intervention has been filed or not, we will take up this matter for discussion again.

Chair Stephenson: Motion by John.

Ms. Buchanan: I'll second that motion for discussion.

Chair Stephenson: Second by Lori. Discussion.

Unidentified Speaker: Can I say something? You asking for discussion from the --

Ms. Buchanan: No.

Chair Stephenson: No, from the Commission.

Ms. Buchanan: Okay, discussion. I'm -- I'm disappointed, and I'm disappointed not with anybody in this room, but I'm disappointed in my County agency, and I'm disappointed with Planning Staff, and the reason why and -- and all the powers that be that created an action that has put my community at odds. I'm really tired of that. As an advocate of this community, my whole life is spent in fighting reactively to top down laws and regulations put upon me without my consent or my input, just like this comprehensive zoning law that made it okay, so I said that earlier, so if I'm really disappointed it's not in my community, I'm disappointed in the powers that put my community in this predicament. To me, the law is clear. SMA permits under Current Division is very clear. There are laws. You hear them talk about the State Constitution. I know the State Constitution. I know it well. Chapter 343, I know it inside out. Chapter 205A, coastal conservation zone law I know. So I know my good cause. I know I get standing. That's not one issue for me. The issue is why we going waste our time going there, putting our community through the ringer when, right now, it's in black and white why we here today. It's obvious. It's really obvious. And I continue to be disappointed that -- that this board does not recognize that when it's

right there in front for all to see. So I'm disappointed in deferring this item. That's all. That's my discussion. Thank you.

Chair Stephenson: Thank you for that discussion. Is there any other discussion? Okay, seeing none, there will be two Commissioners who will be abstaining, I'm sorry, recusing from voting on this one, myself and Commissioner Wiliama Akutagawa. If there's no further discussion, all in favor of the motion as stated, and seconded, raise your right hand or raise any hand? One, two, three, four, five. Motion carries. Thank you very much. Our next item on the agenda --

Ms. Buchanan: Excuse me, Chair?

Chair Stephenson: Yes?

Ms. Buchanan: For the record, can you do a roll call vote because I did not vote and you did not ask me what my vote was?

Chair Stephenson: Pardon me, going by Robert's Rules of Order that --

Ms. Buchanan: Can you direct Commissioners to shut their phone off during -- during -- I know it's kupuna and I love them, but that should be law.

Chair Stephenson: Thank you. Let's restate the roll call vote. All in favor of the motion raise your hand, please? In favor Xavier Bicoy, in favor John Pele, in favor Lawrence Lasua, in favor Michael Drew. And, Uncle Billy, are you in favor of the motion? Uncle Bill in favor. Any of those opposed to the motion raise -- Lori Buchanan opposed to the motion. The motion carries. That item is deferred.

**It was moved by Commissioner Pele, seconded by Commissioner L. Buchanan, then**

**VOTED: to defer this matter to the first meeting in August, or as soon thereafter, and regardless of whether an intervention has been filed or not, this matter will be taken up for discussion again.**

**(Assenting - X. Bicoy; W. Buchanan; M. Drew; J. Pele; L. Lasua)  
(Dissenting - L. Buchanan)  
(Recuse - W. Akutagawa; R. Stephenson)**

Chair Stephenson: The next item on our agenda is item F.

Unidentified Speaker: Can you explain to the community what you guys went ... (inaudible - not speaking into the microphone)...

Chair Stephenson: Yes. Thank you. Thank you very much for that.

Unidentified Speaker: ... (inaudible - not speaking into the microphone)...

Chair Stephenson: Okay, so just real -- real briefly, what the Commission did is the Commission had a motion to deny the application, there were not enough votes to approve that motion so the motion failed. So there was a subsequent -- there was a next motion made to defer the item until the first meeting or soon thereafter in August where we will take up the matter again and, in that time, if the people who -- the testifiers today had indicated that they wish to intervene in a contested case hearing have an opportunity to do that before the next meeting. So for this particular agenda item, it has been deferred until the first meeting in August or soon thereafter.

Unidentified Speaker: Didn't the majority of who could vote vote to deny the application ... (inaudible - not speaking into the microphone)...

Chair Stephenson: I'm sorry about that but there is a quorum and there was not enough votes on the Commission to be able to carry the motion, that motion. So we'll be moving on. The next item on our agenda --

Unidentified Speaker: What is the date for the -- for the intervention?

Chair Stephenson: I think the best thing to do at this point would be talk to -- talk to the staff of the Planning Department or talk to Corporation Counsel or get together with I believe Commissioner Buchanan had said that she was going to file a petition to intervene so she may be able to be a resource as well, but we need to move on with our agenda at this time.

Ms. Lopez: Chair, excuse me just to let you know --

Chair Stephenson: Yes, Lori?

Ms. Lopez: Oh, it's --

Chair Stephenson: Sybil. I'm sorry. Pardon me.

Ms. Lopez: The time is at 4:00 p.m. right now.

Chair Stephenson: Thank you very much. I appreciate that. Lori, did you have something to add?

Ms. Buchanan: I was just going to say that you should not instruct the public how to respond. They know how to respond so just saying that we deferred to August, that this item is deferred is enough without instructions on what they supposed to do.

Chair Stephenson: Thank you for the clarification. Out of an abundance of wanting to be accommodating, so I -- I appreciate your comments. Thank you very much.

## **F. COMMUNICATIONS**

- 1. CHRIS HART & PARTNERS on behalf of KALUAKOI POOLSIDE, LLC and KUKUI (MOLOKAI, INC. requesting a Special Management Area (SMA) Minor Permit for the removal and demolition of an existing luau pavilion and a rock wall structure located at 240 Kepuhi Place and 0 Kakaako Road, TMK: 5-1-003: 005 and 5-1-003: 021, Kaluakoi, Island of Molokai. (SMX 2017/0048) (Valuation: \$120,000) (S. Lopez)**

**The scope of work also includes the repair and maintenance of existing sidewalks and curbs, necessary accessibility requirements, as well as native plant restoration.**

**The Commission may take action on this request.**

Chair Stephenson: Okay, moving on with the agenda item F, on the agenda, Communications, Chris Hart & Partners, on behalf of Kaluakoi Poolside requesting a special management area minor permit, since our long meeting last time --

Mr. Yoshida: Mr. Chair, the applicant has requested that that matter be deferred to the July 12<sup>th</sup> meeting because I guess they didn't want to send the consultant from Maui and not be heard again.

Chair Stephenson: Thank you very much. I appreciate that. So that item will be deferred until the July 12<sup>th</sup> Planning Commission meeting.

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

- 1. Pending Molokai Applications Report generated by the Planning Department with the June 14, 2017 Agenda Packet (Appendix A)**

- 2. Closed Molokai Applications Report generated by the Planning Department with the June 14, 2017 Agenda Packet (Appendix B)**
- 3. Agenda Items for June 28, 2017 Molokai Planning Commission Meeting at Kalaniana'ole Hall, Kalamaula, Island of Molokai**

Mr. Clayton: Oh, yes, we have circulated our list of pending and closed Molokai applications report with the July 14, 2017 packet if there are any questions. If not, item G.3. is moot, items for the June 28, 2017 meeting so --

Ms. Buchanan: Chair, I have a question on the Director's Report.

Chair Stephenson: Yes?

Ms. Buchanan: On the pending applications, if staff could -- I just would, in good planning, on Appendix A, I'm sorry I'm looking at the -- the June 7, 2017 open projects, yeah, I'm sorry, that's the last time I looked at it, and my notes are on there so please forgive me, but I am requesting a site visit for every bed and breakfast, TVR, STRH application in the open projects that might help --

Chair Stephenson: Okay.

Ms. Buchanan: And so I want that put on the agenda. I'm requesting, humbly requesting that all these applications get scheduled on the agenda for a site visit and that staff make accommodations for staff for sites visits for the pending applications.

Chair Stephenson: So could we get the Corp. Counsel's understanding of the reasons why a site visit would be necessary?

Ms. Oana: If the Commission feels like the materials are not enough and they have to visit the site to gain a feeling for what the application is and it's just not enough what's being provided by the Department, I think reasons on the record should be made for a particular site visit, I'm not sure do you -- do you want to address that as the applications come up or what -- what is your request?

Ms. Buchanan: No. I can address 'em right now if you like.

Chair Stephenson: So I guess if we wanted to do that, why don't we address those moment by moment because we won't know until something comes before us whether or not we have enough information in the packet to be able to make those determinations?

Ms. Buchanan: Chair, with respect, I was born and raised on Molokai, I'm well aware of the issues on the island, I can already tell from the pending application KIVA database printout that I already have issues with some of them and I think in order to save staff time, and the community a lot of grief, that good planning would be to identify those and make accommodation for those well in advance and that is the reason why and if you want me to go through each item of what site visit I wanted, I'm prepared to do that.

Ms. Oana: I think my suggestion at this point would be as these short-term rental home permits come before the Planning Commission, and if there is a public hearing, we can have the public hearing, have the presentation, and at that time, if the -- any Commissioner feels that they don't have enough information or they need more information by way of a site visit, I think at that time a Commissioner can move to have a site visit. I think that's the best way to -- to address this.

Ms. Buchanan: Thank you, Counsel. With that said, Chair, I'd like to request that the August meeting of the deferred item also include a site visit 'cause I do not feel that I have adequate information especially since this item has now been deferred three times. I think a site visit would help me in making determinations for that project.

Chair Stephenson: Very well. Chair would entertain a motion. Okay, seeing no motion, we'll move on with the agenda.

Ms. Buchanan: You mean seeing no second for the motion? Did I make a motion for --

Chair Stephenson: I didn't -- I didn't hear a motion.

Ms. Buchanan: Oh, I'm sorry. So I'm sorry, Chair. I'd like to move that we make accommodations for a site visit for the August meeting of the deferred item for this short-term rental in Pukoo.

Chair Stephenson: Okay, there's a motion to have a site visit at the deferred item for Sherrell at Pukoo. Is there a second to that motion?

Mr. Wiliama: I second that motion.

Chair Stephenson: Okay, there's a second to that motion. Any discussion?

Ms. Oana: May I?

Chair Stephenson: Yes, please.

Ms. Oana: I just wanted to let you know site visits are considered meetings, we need a quorum to convene.

Chair Stephenson: Thank you. Okay, since there's no discussion, all in favor of that motion, please raise your hand? I think we need to -- so we have one, two, three. All opposed to a site visit, raise your hand? One, two, three. The motion fails. Thank you.

**It was moved by Commissioner L. Buchanan, seconded by Commissioner Akutagawa, then**

**VOTED: that the Commission make accommodations for a site visit for the August meeting of the deferred item for the short-term rental in Puko`o.**

(Assenting - X. Bicoy; L. Buchanan; W. Buchanan)  
(Dissenting - M. Drew; L. Lasua; J. Pele)  
(Recuse - W. Akutagawa; R. Stephenson)

### **MOTION FAILED**

Chair Stephenson: So move forward with the -- with the agenda.

Ms. Buchanan: Chair?

Chair Stephenson: Yes?

Ms. Buchanan: She did bring up that it was already 4:00, but I would like Corp. Counsel to tell me in what capacity am I able to visit the site on my own since I feel I don't have enough information.

Ms. Oana: Basically, your decision and deliberation -- decision, deliberation has to come from what the materials have in front of you, however, if you pass by that place, you know, it's your -- it's your freedom to drive by that place.

**H. NEXT SCHEDULED REGULAR MEETING DATE: June 28, 2017**

### **I. ADJOURNMENT**

Chair Stephenson: Thank you. So we've come to the end of the June 28, 2017 meeting so I'd like to have a motion to adjourn that agenda --

Ms. Lopez: 14<sup>th</sup>. Can I have a correction?

Chair Stephenson: I'm sorry, yes.

Ms. Lopez: Thank you.

Chair Stephenson: Thank you very much. The June 14. I was looking at the next meeting date. Thank you. Motion to adjourn the agenda for June 14?

Mr. Pele: I move that we adjourn the meeting.

Chair Stephenson: I'm sorry. We're not going to adjourn the meeting, we're going to adjourn the agenda.

Mr. Pele: I'm sorry. I move that --

Chair Stephenson: We adjourn the agenda.

Mr. Pele: We adjourn the agenda.

Chair Stephenson: Yes. Any second to that?

Mr. Pele: Try say that ten times.

Ms. Buchanan: Chair, I do not second that motion because I do want to request that the Kaunakakai Drainage that we request a site visit for the Kaunakakai Drainage application.

Chair Stephenson: Okay, that's not part of this --

Ms. Buchanan: Site visit.

Chair Stephenson: That's not part of this agenda.

Ms. Buchanan: It's not, but I would like staff to convey to the consultants that we're going to -- that I would like to request a site visit. If you can just convey that, maybe deputy can convey that.

Chair Stephenson: Thank you very much. Is there a second to adjourn the agenda?

Ms. Buchanan: I second the adjournment.

Chair Stephenson: Okay, second by Lori Buchanan. All in favor, raise your hand please? Any opposed? Okay, the agenda -- we have adjourned the agenda.

**It was moved by Commissioner Pele, seconded by Commissioner L. Buchanan, then**

**VOTED: to adjourn the June 14, 2017 recessed meeting.**

**(Assenting - L. Lasua; W. Akutagawa; X. Bicoy; W. Buchanan; L. Buchanan; M. Drew; J. Pele)**

**The June 14, 2017 recessed meeting, reconvened on June 28, 2017, was adjourned at approximately 4:06 p.m.**

Submitted by,

SUZETTE L. ESMERALDA  
Secretary to Boards & Commissions

**RECORD OF ATTENDANCE:**

**Present:**

Robert Stephenson, Chairperson  
Lawrence Lasua, Vice-Chairperson  
Wiliama Akutagawa  
Xavier-Kaniaala Bicoy  
Lori Buchanan  
William Buchanan  
Michael Drew  
John Pele

**Excused:**

Marshall Racine (**Resigned** Effective June 13, 2017)

**Others:**

Clayton Yoshida, Planning Program Administrator, Current Division  
Sybil Lopez, Staff Planner, Molokai  
Jennifer Oana, Deputy Corporation Counsel  
Suzette L. Esmeralda, Secretary to Boards & Commissions