

**MOLOKAI PLANNING COMMISSION
REGULAR MINUTES
SEPTEMBER 27, 2017**

A. CALL TO ORDER

The regular meeting of the Molokai Planning Commission was called to order by Vice-Chairperson Lawrence Lasua on Wednesday, September 27, 2017, at approximately 11:04 a.m., at Mitchell Pauole Center, 90 Ainoa Street, Kaunakakai, Island of Molokai 96748

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

Vice-Chair Lasua: Good morning, Commissioners. I'd like to call the meeting to order. First on the agenda is election of chair for the remainder of the 2017-2018 board year. Any nominations for chair?

B. ELECTION OF CHAIR FOR THE REMAINDER OF THE 2017-2018 BOARD YEAR

Election for Vice-Chair may also be conducted if the current Vice-Chair is elected as Chair

Mr. Buchanan: I nominate Mr. Lasua.

Vice-Chair Lasua: Any second? Second by John. Discussion?

Ms. Buchanan: I sorry. I never hear the nomination.

Vice-Chair Lasua: Nomination by Bill --

Ms. Buchanan: Okay.

Vice-Chair Lasua: And second by John to nominate me as the chair.

Ms. Buchanan: To move vice-chair to chair. Okay.

Vice-Chair Lasua: And we're in discussion now. I'd like to, I appreciate your -- your support for me to be the chair but I'm going to decline that. I'll stay as the Vice-Chair, but I would like somebody else to take the chair. I appreciate your support. So if there's another nomination?

Ms. Buchanan: Acting Chair?

Vice-Chair Lasua: Go ahead.

Ms. Buchanan: I would humbly beg the Vice-Chair, Acting Chair, to reconsider acting as the chair because, currently, we're down to six members and it seems that we're in transition, and it would be good for the long-standing member to act as chair, and -- and I can understand, well, maybe I don't know the reasons why you maybe feel strongly you no like chair, is it time, Chair?

Vice-Chair Lasua: Are you asking me if it's time consuming?

Ms. Buchanan: Well, no, it's just for you the reasons as to not wanting to.

Vice-Chair Lasua: The reason I don't want to be the chair is because I, you know, I have -- I have a business that -- that I run and a lot of these people out here are members of that business, and it's -- it puts a lot on me and so, as Vice-Chair, I'm satisfied with that part of it, but at some point, you know, there's certain things that I can't do because of that job, but part of my job is to be involved in a community and that's why I'm involved in this community as far as, you know, being involved on a Planning Commission; prior to that, I was On OHA Native Hawaiian Revolving Loan Fund, and that's another community function, so that's part of my job, but I don't want to head a Commission only because I'm -- I'm hit by other responsibilities. I'm willing to stay on the Commission, but this is where the Commissioners, who's new on here, regardless whether they're new or not, they should -- now is the time to step up, and I appreciate you guys being on the Commission, but now is the time to step up and be the Commissioner so -- John, are you interested? Okay.

Mr. Pele: Thanks, Lawrence, but at this time, being a new Commissioner, I know you want me to step up but I am not comfortable in the role of chairman at this time.

Vice-Chair Lasua: Okay, I'll make it easy for you guys. I'll take the remainder of the year, okay, which is now till the end of the month, but after that, we need to look for another chair. Is that satisfactory to everybody? Okay? Till the end of the year, not the end of the term. Okay? So discussion is over. All in favor, say aye? Opposed? No? Motion carried. Thank you.

It has been nominated by Commissioner William Buchanan, seconded by Commissioner Pele, then

VOTED: that Commissioner Lawrence Lasua serve as Chairperson for the remainder of the 2017 calendar year.

(Assenting - X. Bicoy; L. Buchanan; W. Buchanan; J. Pele; L. Poepoe)

Chair Lasua: Next item on -- is the Public Testimony. Oh, excuse me. Excuse me, we need to elect a vice-chair since I'm going to be -- and that'll be for the end of the year, okay. So any nominations for Vice-Chair?

Mr. Buchanan: I nominate Lori Buchanan.

Mr. Pele: Second.

Chair Lasua: Okay, moved and seconded to nominate Lori Buchanan for Vice-Chair. All in favor? Oh, discussion? Go ahead, Lori.

Ms. Buchanan: Thank you for your confidence. I would be willing to serve in that capacity. Thank you.

Chair Lasua: Thank you, Lori. Any other discussion? Ready for the question? All in favor, say aye? All opposed, nay? Motion carried. Thank you, Lori.

It has been nominated by Commissioner William Buchanan, seconded by Commissioner Pele, then

VOTED: that Commissioner Lori Buchanan serve as Vice-Chairperson for the remainder of the 2017-2018 board year.

(Assenting - X. Bicoy; W. Buchanan; L. Lasua; J. Pele; L. Poepoe)

C. 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. **Testimony will be limited to a maximum of three (3) minutes, with 30 seconds to conclude.**

Chair Lasua: Now that we have a Chair and a Vice-Chair, the next item of business is item C, Public Testimony. Any public testimony at this time? Public testimony will be limited to a maximum of three minutes, so if you're willing to come up now? Okay, seeing none, we'll move on to the next item of business, D, Resolution Thanking Former Commissioners Rob Stephenson and William Akutagawa, and I'd like to give that to who? Clayton? Clayton, can you do that, please?

Mr. Yoshida: Yes, Mr. Chair, I guess due to some difficulty, I guess the Staff can print out the reso, but if so, if we could do it later in the agenda?

Chair Lasua: Okay, Clayton, we'll do that later and move on. Next item is the approval of the minutes of the May 10, 2017 meeting, can I get a motion to approve the agenda -- I mean the minutes for May 10th?

**E. APPROVAL OF THE MINUTES OF THE MAY 10, 2017 MEETING (Draft minutes were distributed with the August 23, 2017 agenda packet.)
(Commissioners: Please bring your copies.)**

Mr. Pele: So moved.

Mr. Poepoe: Second.

Chair Lasua: Moved by John and second by Laa. Any discussion? If there's no discussion, all in favor -- all ready for the question? All in favor say aye? All opposed, nay? Motion carried.

It has been moved by Commissioner Pele, seconded by Commissioner Poepoe, then

VOTED: to approve the minutes of May 10, 2017.

(Assenting - X. Bicoy; L. Buchanan; W. Buchanan; J. Pele; L. Poepoe)

Chair Lasua: Next item of business, Director's Report, Mr. William Spence. Clayton? Let me read the item 1:

Chair Lasua read the following agenda item description into the record:

F. DIRECTOR'S REPORT

1. MR. WILLIAM SPENCE, Planning Director, notifying the Commission pursuant to the provisions of Section 12-302-13.1(a) of the Molokai Planning Commission's Special Management Area Rules that the following proposed action located within the Special Management Area is not a "development" and therefore exempt from the requirements of the Molokai Planning Commission's Special Management Area Rules:

a. MR. DAVID MIRELES and MS. WAILANI TANAKA submitting a Special Management Area Assessment (SMX) application to reroof 1,100 sq. ft. of the existing single family residence and perform interior renovations and exterior renovations, which include fencing, painting, gravel infill, and plumbing conveyances on property located at 215 Ala Malama Street, Ranch Camp, TMK: 5-3-009:021, Kaunakakai, Island of Molokai. (SMX 2017/0309) (Valuation: \$17,700) (S. Lopez)

The Commission may act to waive or not waive its review.

Ms. Buchanan: Mr. Chair?

Chair Lasua: Go ahead, Lori.

Ms. Buchanan: I have questions on this permit, I mean this request for SMA permit. Am I missing something? There was no paraphernalia other than what is on the agenda for item F.a. that explains what was in the permit request. Is that correct? So I'm asking Staff on item F, no. 1.a., Mireles and Tanaka submitting SMA application to reroof, is there any other information other than what is given in item 1.a. on the permit application?

Ms. Lopez: Sybil Lopez, Staff Planner, Planner on this project that we're talking about today, SMX 2017/0309, in regards to parcel 21 located in Ranch Camp, Ala Malama -- actually, Ala Malama Street, and the question is if, to Commissioner Buchanan, if there were any forms or paraphernalia regarding this exemption, this is a request to exempt this SMA, so with exemptions, as of your SMA Rules for the Molokai chapter that to be in front of the Molokai Planning Commission requesting for exemptions, under your SMA Rules, it -- it says that we just come forward to ask to waive or not to waive, and if the decision is to not to waive, however the Planning Commission wants to review the SMA application, it is under the discretion of the Planning Commission, but for exemptions, the description, as stated on the agenda, is what is presented to the Commission.

Ms. Buchanan: Okay. Thank you, Planner Lopez. So under item 1.a., and I guess then I'm not going to concur with waiving the exemption if I don't know what type of exterior renovations are being asked for. The fencing, what kind of fencing? Where the fencing is going to be included? The gravel infill, I would like to know where they're putting it, and the plumbing conveyances on property, what is a plumbing conveyances? Is it actual digging of plumbing? Is it in excess of two feet? Does it require oversight? That would be my questions so I guess I am not, given the brief description, and I have more questions, I would choose not to waive the review and exempt the project as stated in 1.a.

Ms. Lopez: Can -- can I, Commissioner, can I try to answer the questions that you have piece by piece? So I wanna, first, before I explain the application, I just wanna refer back to 12-302-13.1, under Commission review of special management exemption, letter (a), that the Director may determine that a proposed action within the special management area is not a development and is therefore exempt from the requirements of this chapter. Prior to the Director's determination becoming final, the director shall notify the Commission of the assessment application at the Commission's next regularly scheduled meeting receipt of which shall be acknowledged by the Commission. Such notification shall include, but not be limited to, the name of the applicant, the location of the subject

property, and a brief description of the proposed action, and the Commission shall vote to either review the assessment notice or waive review of the application. If the Commission votes to waive review of the application, the Director may issue a final determination that the project is not a development and is therefore exempt. So being that this development is not -- this application is not a development, so for the interior renovations, which you asked for, the interior renovations shall include changing of cabinets, changing of wall partitions, changing of flooring; as far as exterior renovations, which you probably know here it's located, as you're going up this hill right in this gym area, it's the corner house going up to Ranch Camp, and so it's already fenced, they do have dogs on the property where they wanna fence the dogs up in a more -- to the rear of the property and so that's where the fencing will go, no more than six feet high and no more -- no more than five feet wide just to protect the dogs in that area and be secluded in that such. Other exterior renovations does include exterior painting, which the applicant did state that it's kind of old and it needs to be more updated and cleaned out, and reroofing. They do have solar panels, which they would have to have a license contractor to remove the solar panels and to put reroofing because I guess the last time they said that there was bad weather, their shingles were coming off, so they had to -- they have to do reroofing on the top, exterior painting, plumbing conveyances including redoing of the pipes only on the inside so existing piping within the exiting house and structure, and existing piping in the garage area. It also includes putting infilling, it would be one foot deep by 4,000 square feet because they wanna put 20-foot containers as storage, and so they will be outside of the yard setback, which is 15 feet from the front and 10 from the -- 10 from the rear and 6 on the side, and they would wanna do a carport enclosure because, as the applicant was stating, there's a funnel wind that comes through, and so every time that wind comes through their carport, the wind brings all of the debris within that area so they just want that area to be enclosed. I hope I answered your question.

Ms. Buchanan: Thank you, Planner Lopez. It does. The 20-foot container storage is not part of the assessment?

Ms. Lopez: It is in the application but, I'm sorry, it is not noted in the agenda.

Ms. Buchanan: Okay.

Ms. Lopez: So we included it as exterior renovations.

Ms. Buchanan: Okay, so after public testimony is done, then I'll make a motion and we can discuss whether to waive or not waive or concur with the Planning Director's exemption.

Ms. Oana: The definition of "development" is in HRS 205A-22, if anyone wants me to read that definition if you don't have it in front of you.

Ms. Buchanan: I'm well aware of the definition. I do not agree with that exemption or with the Planning Director's findings so that's my concern.

Ms. Lopez: And the value is less than 20,000, so it's 17,700, and just to let you know that the whole Ranch Camp is in SMA so if any time any homeowner would wanna put a fence or even paint their house, they would have to come in front of the Planning Commission to request exemption, or even put on any type of reroofing, and so this is the place that they come into SMA. Just for your information that this whole Ranch Camp above area, they're all in SMA. So every homeowner that decides to do anything to their property would need an SMA permit.

Ms. Buchanan: Thank you, Planner Lopez. I am aware of that Ranch Camp is all within the special management area. I am not aware that the applicant has to come to this Commission for simple repairs but to go through the process, which is then followed by the applicants in item 1.a., which is to go and get an assessment and then to either be waived from development or exempted by the Director, so I'm aware of that process so -

Ms. Lopez: Thank you.

Ms. Buchanan: So that's a separate process and in that, if the applicant does have to come before this board for an SMA permit, then that's when they come before us. Is that correct?

Ms. Lopez: The applicant was going to be here today, I don't see him in --

Ms. Buchanan: Okay, so let me make this really simple. What I would have liked to see what was done in the past is a simple one or two page part of the assessment that was applied for by the applicant to the Department showing the lot, the plot plan, a simple schematic of where the improvements were occurring since there are multiple improvements being made, there's never an issue with an existing footprint, but when you have multiple and now adding fencing, my concern, now that I -- I don't even, up until now, I didn't even know which home it was, but now that I know which home it is, my issue of concern with the placement of the fencing and the infill is that that corner lot is subjected to storm water drainage runoff that I've been witness to that comes down when it rains really hard and flows directly into the old Fire Department, existing Maui Police Department, and floods the Police Department, so if I'm having a one-foot infill of I don't know what, gravel, blue rock, one inch, half-inch, I don't know, 'cause it's not stated, my concern would be that it's placed in a way that it would not end up on the road and into the police station, and so that's the kind of things that most people don't think about when you asking for this. Also, I'm aware that 20-foot container storage also need an SMA permit in a SMA for placement, and I don't see -- I don't see anything. I don't know where this container is going. I don't know if any of these exempted projects would have an effect on neighbors, and I think that's why we sit here to make that determination with

whatever expertise that we bring to the table. And so, as it stands, this is a public review, it's a director's report, it says that it has been determined that it is not a development, so I disagree and, therefore, exempt from the requirements, so I disagree with the exemption that it's not a development and that it should be reviewed. I think some existing issues that we have that are really hot button topics within this community have come from administratively exempted projects that should have come for review and did not, so I'm not just picking on this, I just saying that if I had a little bit more information, I would be comfortable. Right now, I am not comfortable.

Mr. Yoshida: Mr. Chair, I would say that the SMA rules were amended in 2014 to allow for this streamlined process for exemptions because, prior to that, say if someone wanted to do interior renovations at the Wavecrest, they would have to file an assessment, Staff would have to write a report, it will be circulated to the Commission, and they will have to review it and make a decision on that. I mean, basically, if it's clearly exempt, like interior renovations, then this would allow for the Commission to waive its review without having Staff write a report and present it to the Commission. If the Commission feels that it wants to review the assessment, then they could chose not to waive its review. But prior to the 2014 amendment, every action in the SMA for interior renovations had to come to this Commission for them to say it's exempt and Staff would have to write a report for each and every interior renovation.

Ms. Buchanan: Chair, can I respond to Mr. Yoshida's comments?

Chair Lasua: Can we do that after the --

Ms. Buchanan: Okay.

Chair Lasua: Public testimony? I'd like to go to public testimony. Any public testimony on this item? Seeing none, is there a motion or any further discussion before the motion or any questions from the Commissioners? Can I -- can I get a motion?

Mr. Pele: Sybil, can I ask you a question? Just reconfirming that if we were to waive this review, it does not exempt the applicant from any County building requirements, permitting, setbacks that are currently in place?

Ms. Lopez: No, it doesn't. They would have to follow all regulations. The exemption is only for the SMA permit.

Mr. Pele: Okay. Thank you.

Ms. Lopez: And I do have the applicant here that I had to kinda text on my phone to get him here so that he can ask -- answer any of your questions, so I would like to bring the

applicant, his name is David -- Mr. David Mireles if he has anything that he wants to say to the Commission if it's okay that he can speak, Chair?

Chair Lasua: Yeah, go ahead.

Ms. Lopez: Thank you.

Mr. Mireles: Aloha. My name is David Mireles. I'm the property owner of 215 Ala Malama Avenue. I'm just here to answer your questions.

Ms. Buchanan: Mr. Mireles.

Mr. Mireles: Yes.

Ms. Buchanan: I -- I really appreciate the attempt to do improvements and upgrades on that corner lot. I really do.

Mr. Mireles: Thank you.

Ms. Buchanan: I don't think that there's anybody on this island that will disagree that improvements to the corner lot is needed, warranted, and appreciated. However, this is a legal board with enforcement capabilities, and so my issue doesn't lie with -- with you and your application, it lies within the process.

Mr. Mireles: Okay.

Ms. Buchanan: So -- so the Planner has clearly explained what the project is about, it's just that I would have liked to have seen it, so I really don't have questions for you more than she's already said you're going to be infilling, plumbing, solar, exterior painting, 20-foot container, and fencing, partial fencing.

Mr. Mireles: The container is temporary right now, so, ultimately, I'm going to take that out of there. I don't want it to be an eyesore for my neighbors. The gravel is actually for the benefit of my neighbors to keep the dirt down from blowing into their house as well as my own. Most of the other stuff that I put up, like the -- the fence was more for privacy, you know, I do live on a corner so everybody can see what I can do and, you know --

Ms. Buchanan: Yeah.

Mr. Mireles: Mainly for my own, like I said, just to have a place where I feel like I can be safe and nobody is looking at me when I'm trying to enjoy dinner or --

Ms. Buchanan: Yeah. So exactly where would that fencing go since it's a -- so I'm assuming it's a -- it's a complete fence, it doesn't have holes in it?

Mr. Mireles: No.

Ms. Buchanan: So it's a privacy fence.

Mr. Mireles: Correct.

Ms. Buchanan: And it's six-foot and where would it be constructed?

Mr. Mireles: It's actually on the side of my house, but I do have a --

Ms. Buchanan: Between you and neighbor, between you and road, between --

Mr. Mireles: No. I can -- I can present that to you if you'd like to see that.

Ms. Buchanan: Okay, great. I would love to see it.

Mr. Mireles: The fencing is right here. So I already have fencing all around my house, but this is just a privacy fence. These busses are all out of there. This is -- this is ...(inaudible)... so the only thing I'm -- well, maybe I'll speak into the microphone.

Ms. Lopez: Tell them the front fencing was already existing ...(inaudible)...

Ms. Oana: Can you state everything you said to Ms. Buchanan into the microphone?

Mr. Mireles: Yeah, I will. I already have fencing around my whole property, so I'd just basically put a fence within my fence to block my neighbors from, like I said, in just checking over when I'm just trying to enjoy my -- my night when I get home. So the fence, like I said, is within my own property. And some of the stuff that I did to my house, I was unaware of the SMA process, and when I did become aware of it, that's when I talked to Sybil about doing the right thing and just making sure that everybody was aware of what I was doing and that I would get approved.

Ms. Buchanan: I sorry. I just trying to locate myself. You see why it's a problem?

Ms. Oana: And just for the record, what did you hand to Ms. Buchanan, just for the other Commissioners' benefit?

Mr. Mireles: It was just a picture of actually my -- my property itself, so you guys can pass it along to everybody to see.

Chair Lasua: Mr. Mireles? Mr. Mireles?

Mr. Mireles: Yes?

Chair Lasua: Maybe Staff can answer this. Because of all this waive and not waive, were you required to have a building permit?

Mr. Mireles: If I was, I was unaware.

Chair Lasua: Okay. Thank you.

Mr. Mireles: And -- and when I did find out, this is when I did talk to Sybil about what I need to do to make sure that I was up to code.

Ms. Buchanan: Mr. Mireles, were you issued an after-the-fact fine or ...(inaudible)...

Mr. Mireles: Yes. I did pay \$1000.00 after-the-fact fine for this.

Ms. Buchanan: Did this Commission see an after-the-fact permit for those SMA improvements?

Mr. Mireles: But, basically, what I did was I ratted on myself for the after-the-fact permit, you know, I was the one that brought it to Sybil's attention and, basically, what I found out what I did was that I needed an SMA permit and after-the-fact. I was unaware that I had to get a permit to paint my house. If you saw the color of my house prior to me painting it, you probably would have paid me.

Ms. Buchanan: I fully understand, totally, where you coming from, and the multitude of people who come in and saying that they didn't know that they needed a permit, it happens all the time, all day, every day, so, okay, I think I have some indication of what the projects include.

Mr. Mireles: Yeah, and I -- and what I'm doing, like I said, is just to make my neighborhood a little bit nicer, you know, and I'm at fault for that too as well, so, ultimately, like I said, I just wanna do what's right and most of the things I was unaware of and had I been aware, I would have done it from the get-go, but since I didn't, I had no problem paying the fine and making sure things were right.

Ms. Buchanan: Okay, thank you, Mr. Mireles. Anybody else?

Chair Lasua: Thank you, Mr. Mireles. Is that it, Lori? I'd like to get a motion for that -- for this item, please?

Ms. Buchanan: Mr. Chair, I wanted to point out that item 1.a. is not properly agendized so I'd like to defer this and come back with a properly -- and but -- but I'm also happy to make a motion now on this as it stands because everything is not included in item 1.a. that should be.

Chair Lasua: Is that a motion to defer or a motion --

Ms. Buchanan: Yeah, I'll make a motion.

Chair Lasua: Not to waive?

Ms. Buchanan: I'll make a motion to not concur with the exemption --

Chair Lasua: Okay.

Ms. Buchanan: To waive the exemption or to -- yeah.

Chair Lasua: Okay.

Ms. Buchanan: Was that the motion?

Chair Lasua: So your motion is not to waive. Can I get a second? Second by Laa. Okay. Any discussion?

Ms. Buchanan: Yeah, I have discussion, Chair, please.

Chair Lasua: Go ahead.

Ms. Buchanan: If I may?

Chair Lasua: Go ahead.

Ms. Buchanan: Mr. Chair, this is my third serving this community on the Molokai Planning Commission. I cannot tell you the number of times Mr. Yoshida has told me what he just stated earlier on the record. I'm well aware that, in 2014, when I was not in service to this community, that the rules were amended to, basically, save the Department time and due diligence in reviewing applications. It has always been -- I've been very strong on this Commission not giving up their authority to review projects to the Planning Director and Planning Staff, and there's many reasons why that's never a great idea and part of that is the number of short-term rentals that we now see in East Molokai that were administratively permitted but also the multiple exemptions in the special management area that were also deemed not development that being part of the short-term rental applications as well. Through working with Planning Staff, and Planning Staff changes

through the years, we always -- well, I always said that if we have a simple assessment done, that it would be not time-consuming for Planning Staff taking into consideration the number of actual permits that are applied for on the island of Molokai that it's really not that time-consuming to bring what Mr. Mireles handed me earlier, which was a plot plan, and a description of the project. The Director and Staff had to see something that made him determine that it was not a development and all I was asking is that same information be conveyed to this Commission. I know the rules in 2014, so the next agenda item I'm going to ask for, Chair, is for us to make -- to form a committee to review those rules amendments again. So I don't have -- and like I told Mr. Mireles, it's not -- it's not him and it's not personal, it's a matter procedure and if we ask everybody to follow the same procedure, then it should be fair for everybody, the law is fair for everybody, or the law is not fair at all to anybody. So in the matter of consistency and I think just for consistency for this board, I think we need to go back to following policies and procedures and the rules, and if we need to amend them, then we should start working on amending them. I'm still not -- I'm still not comfortable with waiving this as not a development.

Mr. Pele: I can --

Chair Lasua: Go ahead, John.

Mr. Pele: Confer with Sybil right?

Ms. Lopez: Oh, okay.

Mr. Pele: So my question here is, and I agree with Commissioner Buchanan on some items although I do feel differently about punishing our individual citizens for maybe our lack in Departmental procedures. Did Mr., in your opinion, did Mr. Mireles follow the procedures after he paid a fine?

Ms. Lopez: Yes.

Mr. Pele: He came to you?

Ms. Lopez: Yes.

Mr. Pele: And did he fulfill all the procedures that your Department required of him?

Ms. Lopez: Yes.

Mr. Pele: So I have a hard time saying that he didn't follow procedures and punish him especially after he paid \$1000 fine after the fact, that's, you know, he got his hand slapped for not following the procedures, so I'm not comfortable with punishing a resident of the island because of our lack of planning with our departments. I don't think they should --

I'm -- I'm very clear on what he wants to do with his -- with his lot. I think there's a big difference from what he wants to do and reviewing STRHs that we have. I think we have the -- the ability to discern that. But my question is: Did he follow all the procedures that the Planning Department set before him when he did his application?

Ms. Lopez: Yes.

Mr. Pele: So I have a hard time saying that he didn't. That's just my -- my opinion.

Mr. Spence: Comment, Mr. Chairman?

Chair Lasua: Go ahead, Mr. Spence.

Mr. Spence: Okay, the procedures for applying for an SMA assessment are not all that simple. You have to -- there's a filing fee, there's an entire worksheet that you have to fill out, there's a considerable amount of information that needs to be provided, a copy of your deed, it's not a simple procedure at all, and there's analysis that's required by the Planning Commission rules that the Planning Commission adopted, required analysis for the Planning Director and Staff to go through in order to make a determination, and it's State law as well that -- whether something is exempt or is not exempt. The -- I can appreciate the motion made, Ms. Buchanan, and seconded that you do not believe that this is an exempt action, but these -- the applicant followed the Planning Commission's rules, the Planning Department followed the Planning Commission's rules that were adopted by this Commission. We're following what you ordered us to do in order to make this determination, and it's fine if -- if the Commission disagrees, this particular application can come back to the Commission, but the applicant and the Department are following exactly what the Commission laid out, voted on and approved to do in their rules, so if -- if the Commission wants to revisit their rules, that's a separate matter, but we are doing what the Commission said to do.

Chair Lasua: Thank you, Mr. Spence. Sybil, I have a -- I have a question. If this doesn't go through, then what -- what's the alternative for Mr. Mireles as far as bringing it --

Ms. Lopez: So I'll read 13.1. So if the Commission votes to waive review of the -- oh, if the Commission votes to review the application so -- or does not vote to waive review of the application at this meeting, which includes taking no action or voting to defer action, then the Department shall schedule a time on a future meeting agenda for the Commission to review the application in its entirety and make an exemption determination, pursuant to subsection (b). And just to let you know, our October 11 and our October 25, the two Octobers and November 8 are already filled. We don't know if the applicant can get on any of those agenda, so you may not see this application until December, so what we'll do for the applicant, he will have to wait until it's been seen until that December agenda date. Mister --

Chair Lasua: Thank you, Sybil.

Ms. Lopez: I don't know if you want Mr. Mireles to speak, he's waiving his hand to me, so I don't know, it's up to the Chair. Chair, would it -- would you mind if Mr. Mireles add -

Chair Lasua: Hold on, Sybil.

Ms. Lopez: Okay. Sure. Sorry.

Chair Lasua: Mr. Mireles, I'm just going to ask the Commissioners if they have any other questions for you 'cause we have a motion here, we're in discussion, so does the Commissioners have any questions for Mr. Mireles? Mr. Mireles, I do. Explain to me what you were going to say.

Mr. Mireles: What I was stating was the reason why this whole application started was I had a leakage in my roof and I decided to talk to Sybil about, you know, fixing my roof, someone else told me that there was an SMA process, so I went down and talked to her, so what I did was, me and my wife are small business owners over here on the island, and we took out a loan to actually get all this stuff done before the rainy season came around so we could fix the leaks in our roof so we didn't have to worry about sleeping in water, so the process of this is I've been waiting for three months to get this done already, and I'm paying interest on a loan that I can't do anything with because I'm unable to do repairs to my home, so in the event, when I talked to Sybil, I laid out all the other things that I did too as well not knowing about SMA to advise her of what I had done to the property, but the main reason was, like I said, to fix the leaks in my roof from wind damage, so not only did I have to file a claim with my homeowners insurance but I actually had to take out an extra loan to cover the cost of what they couldn't cover, so that is the reason why I'm here and that is the reason why I'm asking you guys to pass this along because, like I said, during the rainy season I might have to stay with one of you guys.

Chair Lasua: Thank you, Mr. Mireles. Any more questions from the Commissioners?

Ms. Buchanan: I don't have any questions for Mr. Mireles, but we're still in discussion is that correct?

Chair Lasua: Right.

Ms. Buchanan: Okay. So I would like to add to the discussion, and I wanted to -- I think I wanted to convey how sad and disheartened I am at the process because, first of all, I wanted to state for the record that this Commission does not, never ever punishes their community. Never. This is not a punishment, but I hope it's a education to Planning Staff and the County of Maui that they need to do their due diligence. They need to follow the

procedure. They need to work with their community because they servants of this community, okay, so this Commission is here to help our community but, most of all, it's here by mandate, under law, to protect Chapter 205A, okay, that's why here. It's also to be in check that we are consistent with the Molokai Community Plan, which is our bible for planning. So this is not a punishment to Mr. Mireles and Wailani, and anybody who comes in and wants to make improvements or establish a business or build a hotel or paint a house, okay, we here to simply say that this board reviews that any development within the special management area is consistent with the protections of Chapter 205A and with the Molokai Community Plan. It also says, and this is arbitrary, we use the agenda when we like and we don't like to punish people too, and so, in this case, I'm sitting here asking myself why did I have to ask the applicant if he had an after-the-fact permit, that should have been conveyed to this Commission, I shouldn't have had to go on a fishing expedition for information. Information is so important to this board for us to do our duties as servants to our community. So when somebody say who went approve this and who did that, and they go, ah, the Commission did 'em. That's me. I take my job serious. I read all night and all day, so when I make one decision for my community, it's the right one. So, Mr. Mireles, I am not punishing you when I'm asking to waive the -- to disagree with the Planning Director and his assessment of the project, which is five sentences for me today. So that's all I have to say. Please, for my community, it's never a punishment but maybe education for my County. Thank you. I still like waive 'em -- not waive.

Chair Lasua: Thank you, Lori. Anymore discussion?

Mr. Pele: I'd like to add to the discussion. I'm sorry, but I was on the opinion of punishment, those were my words, and that's how I feel. Obviously, we determined that Mr. Mireles did everything that was asked from him, that's what we can ask for, for him to do what he needed to do. He paid his fine. So to have procedural disagreements with Staff is fine and my, this is just my opinion, I'm not trying to -- I didn't mean any disrespect when I say "punishment," I feel like we're punishing this man as a body. He did what he needed to do. The Planning Director said he did what he needed to do. Sybil said he did what he needed to do. So what is he to expect as a community member other than to do what he needs to do, pay his fine, and come before us to ask for a permit? That's all I was trying to say. I didn't mean to offend anybody. I didn't mean to offend this community either. I do take this job seriously. I do do a lot of reading also. And I didn't mean to offend any of the Commissioners by saying you're punishing them, but I also did have a Commissioner tell me at one meeting always speak my heart, and that's what I did.

Chair Lasua: Thank you, Commissioner.

Ms. Buchanan: I sorry, Chair. Again, I gotta say something. When we have a 25-year water rain, and the infill of gravel is on the roadside, and people say what the hell, who's going to clean this up, who gave this person a permit to put gravel that is now all over the

road, they going say I did, but I never. Planning Staff did. So I am not disagreeing that with Mr. Mireles that he never do his due diligence because you know why? We have Planner IVs, Planner Vs, they go school forever, they take economics from the university in order to be able to be the professional within the structure to support this community when they need to do something. Okay? They the professionals. I run one small business. I own a mortuary. I'm a professional. I know the laws that govern my profession. I better before I going get in trouble. Okay, so all saying is it's not punishment but there should have been certain things that had occurred and, on the next agenda, you better believe I going take up the 2014 amendments that waived this Commission's process to review. And that's it. Thank you.

Chair Lasua: Thank you. Anymore comments from the Commissioners? None? You guys ready for the question? All in favor, say aye? Oh, let's -- the motion is to waive -- or not waive the -- the Planning Director's recommendation for the Commission's review. Sorry. Okay. We'll do it again for all in favor, please raise your hand? Two. All against, raise your hand? Three. Motion denied. Oh, we need five for a motion so motion fails.

It has been moved by Commissioner Lori Buchanan, seconded by Commissioner Poepoe, then

VOTED: to not concur to waive review of item F.1.a.

(Assenting - L. Buchanan; L. Poepoe)
(Dissenting - X. Bicoy; W. Buchanan; J. Pele)

MOTION FAILED

Chair Lasua: Is there another motion?

Mr. Pele: Chairman, I move that we waive the review of this application.

Ms. Buchanan: Second.

Chair Lasua: It's moved and seconded to waive the review. Any discussion?

Ms. Buchanan: Mr. Chair, I will not be voting in the affirmative on that.

Chair Lasua: What was that, Lori?

Ms. Buchanan: We're in discussion.

Chair Lasua: Yeah.

Ms. Buchanan: On the motion. So I will not be voting in the affirmative for that motion because of my statements earlier that I just wanted to see a little bit more on the project. That's it.

Chair Lasua: Anymore discussion? Okay, all in favor of the motion, oh, the motion stated is to waive the -- the Commissioners' review, all in favor, say aye? Oh, raise your hand I mean. One, two, three. All against the motion, raise your hand? Two. Motion failed.

It has been moved by Commissioner Pele, seconded by Commissioner Lori Buchanan, then

VOTED: to waive its review of item F.1.a.

(Assenting - X. Bicoy; W. Buchanan; J. Pele)
(Dissenting - L. Buchanan; L. Poepoe)

MOTION FAILED

Chair Lasua: Any motion or defer?

Ms. Buchanan: Mr. Chair, maybe legal counsel can, at least for the benefit of the public, state that if no decision is made, what happens to the application that it's automatically approved.

Chair Lasua: Okay.

Ms. Oana: If there's no motion that passes today, then -- then it can be deferred to the next meeting. I have to ask Planning Staff whether there's a deadline on the Commission's time on this matter.

Mr. Yoshida: Well, it will be -- we have two public hearing items scheduled for your next meeting, so I don't know if we -- we could possibly fit it in, but this is the, right now, this is the maximum amount of Commission Members that we have so --

Ms. Buchanan: Mr. Chair, can I ask Mr. Yoshida what is the time --

Chair Lasua: Go ahead.

Ms. Buchanan: From the -- from the time the application was deemed complete, if no decision is made, what happens?

Ms. Oana: Okay, Chair?

Chair Lasua: Go ahead, Jen.

Ms. Oana: Section 12-302-13.1 states: If the Commission votes to review the application or does not vote to waive review of the application at that meeting, which includes taking no action or voting to defer action, then the Department shall schedule a time on a future meeting agenda for the Commission to review the application in its entirety and make exemption determination, pursuant to subsection (b), so if there's no action or a vote to defer, then the Department will set this on a future agenda to review the application in its entirety.

Chair Lasua: Okay. Okay.

Ms. Lopez: Chair, can I speak?

Chair Lasua: Go ahead.

Ms. Lopez: So the applicant just informed me that he is willing to take the gravel out of the application if that is bothersome. His main priority right now is to do his roofing, and if gravel is a concern, that he would not put the gravel on just for the sake of not having a leaky roof.

Ms. Buchanan: Mr. Chair, I don't believe we do on the fly arbitrary amendments to applications or request agenda item requests that was just suggested, and I appreciate - I appreciate the willingness to try and help Mr. Mireles out, so in that line, could I suggest for to see if Corporation Counsel has any issues with deferring this pending -- see, the problem I'm having is with the motion, it's a either/or motion. It's either we waive or not waive, and I think if this goes on and on and on, we going end up in December anyway when the person should've just came in with one two-page this is my project, there's multiple things included, and can you waive or exempt this. So every time I think something is simple, the Department doesn't see it as that simple and that's been status quo for the past 15 years. So we need to work on our rule amendments. But I'm suggesting that we may defer this pending more information at such time, but if we cannot, then I would suggest in the Director's Report, item 1.a., b. removed, and that the application -- the applicant come to Planning Staff for the improvements.

Ms. Lopez: Sorry, Commissioner, was that a question for Staff? So I can --

Ms. Buchanan: I think it's a suggestion to think about because, right now, you giving this Commission an either/or, it's all or nothing, and I don't feel that it is all or nothing, so maybe the Director wants to give us a feedback.

Mr. Spence: Well, again, we are following the direction that is given to us in the Molokai Planning Commission rules, exactly the way that they are written, and exactly the way

that the Molokai Planning Commission reviewed and approved these rules. They gave us specific direction on this is either/or. The Commission's either going to waive the review or they're not. And if they're not going to waive the review and they want the applicant to come back, that's fine with us. You know, and then if the Commission wants to modify the rules, that's a separate matter, but, right now, we're following the Planning Commission rules as they are written.

Chair Lasua: Can I get a motion?

Ms. Buchanan: Mr. Chair?

Chair Lasua: Go ahead.

Ms. Buchanan: I'd like to move that we defer item 1.a., under F, of the Director's Report, for a further Molokai Planning Commission meeting. As part of that deferral, I'd like to add to direct Staff to provide just a bit more information that includes a plot plan, a list of the total improvements being asked for that shows the placement of the container and the fence, clarification if more than two feet of earth will be removed or dug up, and that there will be no additions to the existing footprint.

Chair Lasua: What was the one before that, Lori, before the no addition and after the container and fence?

Ms. Buchanan: Yeah, just a plot plan --

Chair Lasua: Plot plan.

Ms. Buchanan: That shows where everything is going to go.

Chair Lasua: Okay.

Ms. Buchanan: And for the digging, because we historically have said, in the SMA, if you're digging more than two feet, that you need someone to monitor for burials, for iwi, and just to state that that it's not going to be more than two feet.

Chair Lasua: Go ahead.

Ms. Oana: Chair, according to the rules --

Ms. Buchanan: Cannot.

Ms. Oana: Same rule, 13.1, if the board takes no action or votes to defer, the Department will schedule this for entire view at the next available meeting, so there's no option, according to the rules, to do anything otherwise.

Chair Lasua: Okay. So the motion is to defer. Any second? Any second? Okay, moved and seconded to defer this -- this agenda. Any discussion?

Ms. Buchanan: Sure, I have a discussion. This is the definition of punishment right here. The inability to make a decision, okay. That's punishment in my definition. Okay, so efforts within the past four commissions by this Commissioner has been multiple motions made on multiple items that have not gone through fruition, so this is punishment to your community when you cannot make one damn decision. So my first motion was shutdown, that's fine. Second motion shutdown, great. So now we in a motion to defer and we still cannot make one decision. So that's what I like us think about that stay sitting up here today, yeah, when we talk about punishment.

Mr. Pele: Can I add to that?

Chair Lasua: Go ahead.

Mr. Pele: I agree. 'Cause my motion was to approve and not punish. So the motions were not just one-sided. We could have come to an agreement, so just I wanna add that also.

Chair Lasua: Any other discussion, Commissioners? Okay, ready for the question? All in favor, raise your hand, your right hand? All oppose, raise your left hand? So -- so it's the Commissioners' voice not to take any action.

It has been moved by Commissioner Lori Buchanan, seconded by Commissioner Poepoe, then

VOTED: to defer item F.1.a.

(Assenting - L. Buchanan; L. Poepoe)
(Dissenting - X. Bicoy; W. Buchanan; J. Pele)

MOTION FAILED

Chair Lasua: Any further motions or we can move on?

Ms. Buchanan: No, Mr. Chair, but I wanted to apologize to Mr. Mireles. Mr. Mireles, I'm sorry, okay. I deeply am really sorry that no action was taken on your permit, it's not a reflection of you trying to be transparent, so thank you very much.

Chair Lasua: Does the Commissioners wanna take a ten-minute break? Commissioners? Five-minute break to use the bathroom. Call a recess.

(A recess was called approximately 12:12 p.m., and the meeting was reconvened at approximately 12:20 p.m.)

Chair Lasua: Commissioners, can we get back to the table, please? Okay, I'd like to call the -- I'll wait for Laa. Okay, I'd like to call the Molokai Planning Commission back from recess, reconvene. Before we go into the next item, I'd like to finish up the previous recognition that we were going to do, the Resolution thanking former Commissioners Rob Stephenson and Wiliama Akutagawa, so go ahead, Clayton.

D. RESOLUTION THANKING FORMER COMMISSIONERS ROB STEPHENSON AND WILIAMA AKUTAGAWA

Mr. Yoshida: Yes, good afternoon, Mr. Chair and Members of the Planning Commission. We have Resolutions thanking former Members Robert Stephenson and Wiliama Akutagawa for their service on their -- on this Commission. Mr. Stephenson, who served from April of 2016 to August of 2017, and as chair from April 2017 to August 2017, commending him for his dedication and untiring public service to the people of Maui County, especially the people of Molokai, and be it resolved that the Commission expresses their sincere appreciation for Mr. Stephenson's services and extends their best wishes in his future endeavors, and that copies of the Resolution be transmitted to the Mayor, the Honorable Alan Arakawa, and the Council Chair, the Honorable Mike White.

Similarly, we have a Resolution for former Member Wiliama Akutagawa, who served as a member of this Commission from February 2016 to -- till September of 2017, thanking him for his dedication and untiring public service to the people Maui County, especially the people of Molokai, and that the Commission expresses their sincere appreciation for Mr. Akutagawa's services and extends their best wishes in his future endeavors, and that copies of the Resolution, similarly, be transmitted to the Mayor, the Honorable Alan M. Arakawa, and the Council Chair, the Honorable Mike White.

So if the Members could sign the reso, we can have it transmitted to the Mayor and the Council Chair, and the original to Mr. Stephenson and Mr. Akutagawa.

Chair Lasua: Thank you, Clayton. So, Commissioners, the Resolution will be coming around for you to sign, and I'd like to thank Mr. Rob Stephenson and Wiliama Akutagawa for their -- for their volunteering work for the community. Thank you.

Ms. Buchanan: Mr. Chair, I would also like to send out a heartfelt gratitude to Mr. Stephenson and Mr. Akutagawa for their service to their community. Thank you. Appreciate it.

Chair Lasua: Okay, next on the item is G, Unfinished Business.

Chair Lasua read the following agenda item description into the record:

G. UNFINISHED BUSINESS

1. **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) (The public hearing began on June 14, 2017 and was closed on June 28, 2017. On June 28, 2017, the matter was deferred to the August 9, 2017 meeting. On August 9, 2017, the matter was deferred to the September 27, 2017 meeting.) (Commissioners: Please bring your documents.)**

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

AN EXECUTIVE SESSION MAY BE CALLED IN ORDER FOR THE COMMISSION TO CONSULT WITH ITS ATTORNEY ON QUESTIONS AND ISSUES PERTAINING TO THE COMMISSION'S POWERS, DUTIES, PRIVILEGES, IMMUNITIES AND LIABILITIES, PURSUANT TO SEC. 92-5(a)(4), HRS.

- a. **Requests to intervene on the subject application. (These matters were deferred at the August 9, 2017 meeting to the September 27, 2017 meeting. Requestors were given to August 29, 2017 to file any amended or supplemental pleadings.)**

Chair Lasua: And I'm turning this over to Corp Counsel.

Ms. Oana: Thank you, Chair. Because this matter, this Jim Sherrell matter, has been on the agendas for the Molokai Planning Commission a number of times, I'd just like to confirm with all the Commissioners that each have reviewed all of the materials that was presented to the Molokai Planning Commission, reviewed the minutes of each meeting that this matter was on or watched the Akaku broadcast for all the past meetings involving this matter. Has anyone not -- has anyone not done that? Okay, so there's no one saying that they have not done that. Okay, thank you.

Mr. Buchanan: Chair, point of clarification. On one of the petitioners -- the petitions, there's a William Buchanan there. That is William Micah Buchanan, my grand-nephew. That is not me. Okay, thank you.

Ms. Oana: Okay. And I also passed out the rules for intervention, the same thing I passed out to you previously, Subchapter 3, Intervention, as well as the section on filing requirements. I also kinda made a cheat sheet with those filing requirements pursuant to Subchapter 3, Intervention, just so that you can see the requirements laid out for you, you don't have to use that, you can go straight to the rule, but just -- I just wanted to provide that to you for your ease in determining the matters before you.

Chair Lasua: So, at this time, we'll go ahead and take public testimony on all intervening requests, and if you're an intervenor, you don't have to.

Ms. Oana: You will be provided an opportunity to speak when your intervention request is being heard, so you can testify if you want, but you will be given an opportunity to talk when your time comes up.

Ms. Buchanan: So, yeah, Chair, point of order.

Chair Lasua: Go ahead.

Ms. Buchanan: So we taking public testimony on the agenda item for the contested case hearing for Sherrell. What are doing?

Ms. Oana: Public testimony on the intervention requests 1 through 5.

Ms. Buchanan: On the intervention requests. Okay.

Ms. Place: I don't understand ...(inaudible - not speaking into the microphone)...

Chair Lasua: We're asking for -- for these people who -- who submitted their intervention.

Ms. Place: You said public testimony.

Chair Lasua: Right. General public --

Ms. Place: ...(inaudible - not speaking into the microphone)... take public testimony. I didn't hear what ...(inaudible)...

Ms. Buchanan: Can the public come up to the microphone so we can all hear what the question or if the Chair is allowing questions from the public.

Ms. Place: Good afternoon. I just wanted to ask the question is --

Chair Lasua: Go ahead.

Ms. Place: My name is Linda Place. I just wanted to know what is public testimony for at this time? That was the question. 'Cause you asked for public testimony.

Chair Lasua: Yeah.

Ms. Place: We already started on the issue and then you asked if there's anybody that wants to speak. So what are we speaking about? About the contested? About Sherrell? Or what are we talking about? What are we going to -- public testimony. That's all I was asking.

Ms. Oana: Okay, so this is public testimony on the intervention requests that were listed in agenda 1 through 5.

Ms. Place: Right.

Ms. Oana: So there are five intervenors.

Ms. Place: Okay.

Ms. Oana: If there's any public testimony on the intervention requests.

Ms. Place: So -- so they have -- they are going to give testimony, not the public, right?

Ms. Oana: Well, we're asking if the public has any testimony that they want to provide. If there's none, there'll be done --

Ms. Place: No.

Ms. Oana: And we can move on to the intervention requests.

Ms. Place: Not at this time. Okay, thank you.

Ms. Buchanan: Chair, I think the question for the community should be are they going to have a chance to testify after they've heard the cases presented by the intervenors. Will you give the community another opportunity to comment?

Chair Lasua: Yes.

Ms. Buchanan: Okay, so you heard that? You going have one opportunity to comment again because, based on what was just said, I would assume somebody from the public would come up and say, yeah, I approve the intervention; no, I no approve the intervention. I'm assuming. Is that correct? I mean that's what I think.

Chair Lasua: Everyone is the public whether you're an intervenor or not so --

Ms. Oana: So does anyone wanna testify now? If not, Chair will allow testimony when each intervention request is presented. So you can testify now, or Chair will let you testify when the -- each item comes up, each intervention request comes up.

Ms. Mowat: Okay, can I?

Chair Lasua: Step up to the mike. State your name.

Ms. Mowat: Aloha. My name is Bridget Mowat, and if this is public testimony to come up and say whether I'm in support of the interventions or the intervenors, then that's what I'm here for right now. I am in support of the intervenors and I -- that's all I have to say.

Chair Lasua: Thank you. Anymore?

Mr. Naki: Aloha. My name is Palmer Naki, and yes, I'm in support of the intervenors. In fact, we are one of 'em, and I guess, on behalf of Hui Aloha Aina O Manae, you know, I just came across some information, I not too sure if you folks have it, maybe you guys do, but this is kinda hard for me right but I'm going to say, you know, two members within our Hui, you know, in this piece of paper that I'm reading, you know, they emailed someone and stated that we are stepping down, okay, and for me, personally, I don't wanna step down, okay, so -- and I not too sure if we met the deadline, we needed the deadline, or we didn't, but, you know, I not too sure if it's possible to ask for one extension or to something or whatever, but I'm not about to give up. I love Molokai. I love Manae. And I ain't about to stand down for no one. It's touching for me because I kinda believed in my elders, you know, and I trusted, and I put my trust and faith in them, and for them to -- to go ahead and step down, you know, and to just give up, you know, it really hurts me, so I'm not too sure if you guys can, you now, or how it's going to work or what, but I'm not giving up. Okay. Thank you.

Chair Lasua: Thank you. Anymore testimony?

Mr. Naki: Aloha. Good morning.

Chair Lasua: State your name please.

Mr. Naki: Leimana Naki. You know, this is -- I wanna do this fast as possible, maybe three minutes, thank you. We are cultural people and traditional people. We from the land, mauka to makai, rivers and valleys, and the ocean moana and the kai. To bring us in here and to bring this to us about ordinance and rules and regulations, tell -- come to tell us that when it's going to rain and when it's not, when is to harvest and when not to harvest, when to get fish and not to get fish, yeah. This is what your ordinance is really telling us, we, the kanaka maoli, how to live, and your rules and regulations, they say it's not. When you look at real define how deep your meaning is. So, for the record, as the Vice-President of Hui Aloha Aina O Manae, we will go forward with this. This has not had to do with just this committee, yeah, the kanaka maoli in this matter, it pertains to the whole east, from Kamalo to Halawa, and the whole north side. This is not about we, yeah, it's about us. Yes. Know that just two that say I just give up. There are other duress and stress because the Molokai Planning Commission has take this Hui and other hui to distress point, and however individuals in this room is taking this personal, yeah, and taking this to the law that's higher than just you, what is going be land, land commission, or the water commission, or the Governor, whoever, it will be done because we are the people of this land and Molokai. So I hope that camera is running. This is to you. Yes, we are here from generation to generation, and this Molokai Planning Commission is doing their best. Is their best enough? Is their best good? Is there best better? That's the question they have to ask themselves. We, the community, is still here and we will remain here. We are the kanaka maoli.

Chair Lasua: Thank you, Mr. Naki. Any other testimony? Just one more.

Ms. Poepoe: I'm just going to talk now instead.

Chair Lasua: Okay. Go ahead.

Ms. Poepoe: My name is Mahina Poepoe. I'm one of the intervenors. I have decided to withdraw my petition or intervention request. I've given so much testimony for this one issue and all of it, like everything I wrote in my intervention request, it still remains the same. Subsistence fishing is still negatively impacted because of the increased water recreation. That's still happening. The feeling of safety of knowing who your neighbors area is still being removed as the transient traffic increases and permanent residency decreases. Transients, tenants are still -- well, they haven't picked fruits for a while but that has happened before where they walked into my yard to pick fruits, asked at 6:00 in the morning and asked if they could come back with a ladder to help me cut my bananas down. So that has happened. So I think a lot of the frustration is with the process and that has allowed the administrative approval on Maui without the public consent or consultation. The only reason we're starting to see the short-term rentals come through Commission is because of the density created by the administrative approval process where there are two or more within 500 feet. I'm still fully in support and behind who are still moving forward with their interventions. With this specific property, the Pukoo

Polynesian, the Sherrells, they bought four properties within two -- a few months, two of the houses, two of the properties with houses were applied for short-term rental. The one they already have a permitted short-term rental so that one actually triggered them to come into the Commission for this one, which is interesting. So, essentially, they are tiny little hotels imposing resort area impacts on our small rural subsistence communities, so my feelings have not changed, I just can't continue to move forward with my application. Thank you.

Chair Lasua: Thank you, Mahina. I'm not seeing any other public testimony, I'm going to go ahead and read the people that intervened, and we're going to be doing it one at a time. So the first one is:

Chair Lasua read the following agenda item description into the record:

- 1) CHRISTINE "TINA" THOMPSON on behalf of YIP KONG ESTATE owner of TMK 5-7-007:013, and WILLIAM KAIawe, owner of TMKs 5-7-007:014 and 5-7-007:034, by letter dated July 3, 2017 and received by the Planning Department on July 5, 2017.**

Chair Lasua: Is Christine Thompson here?

Mr. Pele: Chair, can I ask a question? Did she not testify at a meeting that she withdrew her application?

Chair Lasua: Yes.

Mr. Pele: So we're still hearing it?

Chair Lasua: Okay. Because she's not here presently, and she did testify previously to take action on it that she was going to withdraw, that we'll take it as a -- oh, the Commission will take no action on that. The next one is:

Chair Lasua read the following agenda item description into the record:

- 2) WILLIAM BUCHANAN, by letter dated July 3, 2017 and received by the Planning Department on July 5, 2017.**

Chair Lasua: William Buchanan, are you present? Because Mr. Buchanan also -- go ahead. Go ahead.

Ms. Oana: Excuse me, Chair. I think we were just handed out today a letter from --

Chair Lasua: Right.

Ms. Oana: Mr. Buchanan indicating his request to withdraw.

Chair Lasua: Yeah, I got it. Okay, because we received the letter, the Commission will take no action on that either.

Chair Lasua read the following agenda item description into the record:

- 3) MAHINA POEPOE, by letter dated July 3, 2017 and received by the Planning Department on July 5, 2017.**

Chair Lasua: Oh, and under testimony she indicated she would withdraw as well. So the Commission will take no action on that. The fourth one is:

Chair Lasua read the following agenda item description into the record:

- 4) SHANE PALE**
 - a) By letter dated July 3, 2017 and received by the Planning Department on July 5, 2017.**
 - b) SHANE PALE submitting a Petition to Intervene for NATIVE TENANT KULEANA LANDOWNERS of Puukoo, Molokai Island, Hawaii TMK (2)570070560000, TMK (2) 570070470000, TMK (2) 57007014000 to the Maui Planning Commission, received by the Planning Department on August 29, 2017.**
 - c) LUIGI MANERA, Consultant for JIM SHERRELL, submitting a Reply to Petition to Intervene from SHANE PALE Received on September 5, 2017. This document was received by the Planning Department on September 12, 2017.**

Chair Lasua: Oh, Mr. Pale, you can make your argument.

Mr. Pale: So I just wanted to also, in addition to what you have there, I did submit a response to Luigi's letter representing the Sherrells in this matter, and that's what I'm going to be reading from and referencing from. I'm not going to really address my petition. I will say something about it at the very end. But a lot of what was in my petition is in my responses to what Luigi had brought up.

So I'm just going to start with the first one. In Luigi's response to my petition, he said that I misidentified the manager, so I just wanted to point out, and what I'm doing is I'm actually not covering everything that Luigi, representing the Sherrells, actually pointed out in his letter or response to my petition. I'm just looking and responding to things that I feel is relevant to this contested case. The reason why Edward Onofrio was identified as the designated manager is because Exhibit 9 list him as the manager. The document was included in the STRH application docket that was distributed at the August 9, 2017 MOPC meeting. I have not received any update document that showed a manager designee which the change was made so that is exactly why, according to Luigi, that I -- it was an error but that is why I put this guy's name as the -- as the designated manager, not that it matters, but I just wanted to address that.

Okay, number two, first bullet, and this reading directly from Luigi's letter: Proposed STRH permit application is not associated with a development. All structures are existing. My response: I am not referring to a structure or development as -- as the Sherrells are applying for a permit to structurally change the urban residential zoning of the structure to allow for commercial purposes for a limited amount of time. This is a new development in terms of changing the existing dwellings from its -- from its, according to Luigi, "current entitled use." So that's my response to him on that.

Number three. Luigi: Generate 1,000 vehicular trips per day. There is no engineering or scientific basis. And my response: You are correct that there are no engineering or scientific study that exist that provides accurate AADT, AADT is the acronym for annual average daily traffic, counts for Manae. The 1,000 vehicular number was based on data that I, myself, retrieved from the State Department of Transportation. Data from 2016 shows that the AADT for Molokai was 6,000, that's every day, 6,000 cars. The AADT count on Molokai was collected in Kaunakakai, Ala Mala Street at mile point .079, just in case you guys wanna go check it out and find out. That's giving you the information. Go look for yourself. I was able to look up other comparable Hawaiian places that were somewhat similar in size and population, so what I did was I looked on Maui and I looked at Paia, Paia, Maui. Let me see. I don't wanna read word for word. Because it was similar in size and population. The width of Paia is about seven miles long. The total AADT on Hana Highway -- Hana Highway that runs through Paia is 14,900, according to data collected in 2013. Another reason why I looked at Paia 'cause they are pretty much going through a whole bunch of woes with short-term rental housing problems there as well, so I'm just kinda looking for something that gave me an idea on what we could be looking at if more short-term rentals were -- permits were actually issued. The AAD -- the AAD count in Paia was collected at mile point 7.106. In another very Hawaiian place, the AADT count in Hana, Maui, population about 1200 people, was 1900, and that's just one part -- one road on the airport. The AADT count in Paia was collected at mile point 7.106. Based on these two locations and the amount of traffic that could potentially expand as a result of more short-term rental home permits being handed out, a thousand AADT count

is only one-sixth of the total number of AAD -- AADT, which is 6,000 for the island of Molokai, hence, that's why the number 1,000 to me make sense. The point here is that there's no finite data where anyone can conclude with surety the total impact the STRHs will have on AADT counts in Manaa.

I cannot address Luigi's reference in that letter, if you guys look at the letter, to the 16-unit apartment complex with total -- with 40 total bedrooms that he's building in Manila Camp as I know nothing about that

Luigi's letter talks about and he states that the 40% increase, and I mean density, 45% increase in density is nonsensical. At the present, we do not have a cap on STRHs on Molokai. Right now, there are 88 STRHs allowed for Paia-Haiku, and a total of 30 for Hana. There are seven permitted STRHs on the east side with another six pending including the Sherrell permit. The potential impact of increasing the density in this area of 45% or higher is in fact -- is a fact and not nonsensical, as Luigi dismisses in his response.

My question here -- Luigi also asserts that the proposed STRH permit will result in a reduction of impact. Somehow STRH will result in reduction of impact. So my question was or is: Where is he getting this date from and exactly how will it result in a reduction of impact and "reduction?"

Number five, the third bullet. The proposed STRH permit is not in violation of the Coastal Zone Management Act nor the STRH rules. In a letter dated August 24, 2017 that I received from Clayton Yoshida, in behalf of William Spence, in response to a letter that I sent over or email I sent requesting information, Mr. Yoshida asserts that there have been no cultural or environmental impact reviews conducted in Pukoo in regards to STRH permitting. In addition, the letter also states that there are no environmental or Federal laws that applies to the issuance of a STRH permit. I believe that since no environmental impact review at the State or Federal levels have ever been conducted that the Molokai Planning Commission has the kuleana to request, on the community's behalf, that an environmental impact review be completed prior to making a decision on issuing any further STRH permits. There are ancient fishpond structures that are considered a cultural, environmental, and natural resource located on the coastal shoreline fronting the proposed redevelopment request from rural to commercial use of the Sherrell's existing residential buildings.

On page 10 of the permit application, under economic activity goal, it states that a balance economy should provide for the "respecting of cultural and natural resources" and shall be "in harmony with Molokai's rural quasi-subsistence lifestyle." While the Planning office affirms this directive, to date there has never been a cultural impact study or review performed to investigate the effects of commercial activity, such as an STRH, short-term rental home, both -- both individually or as an industry.

Number six. Luigi asserts the proposed application is not associated with any alteration of existing ocean access nor is it associated with any activity that would affect the native tenant kuleana landowner's ability to gather food from the ocean. My response: Will the Sherrells -- will the Sherrells provide access to the shoreline through their property? The Hawaii State Constitution 7 states the following: The State reaffirms and shall protect all rights customarily and traditionally exercised for subsistence, cultural, and religious purposes and possess by ahupuaa tenants who are descendants of Native Hawaiians who inhabited the Hawaiian Islands prior to 1778 subject to the right of the State to regulate such rights. This is a law in the State Constitution. Has the constitutional right of the native tenant ever been included in discussions in how the nature of the business of an STRH will impact Native Hawaiian tenants? I have seen no evidence of this in any part of the permit application process. References to Section 7, of the Hawaii State Constitution, is nowhere to be found in the permit application. How is the PASH decision enforced at a STRH? Will the Sherrells inform, educate their paying guests of these important laws? STRH owners must address the impacts that their commercial activity will have in a distinct Hawaiian place where families continue subsistence fishing and gathering along the shoreline and ocean.

Number seven. This is Luigi's -- Luigi says the proposed application is not associated with any alteration of Allodial rights for public access to land. See my previous response for this in number seven.

Number eight. There are no physical changes to the property associated with the proposed application and it will not alter the plain view of the area. There are no provisions cited in the STRH application that will guarantee the continual existence of the plain view of the area in the STRH permitting process or other building permitting processes. I question the exception being made to land use, under number 5.H., on page 12, of the Sherrell STRH permit application, where it states, "An applicant may hold no more than one short-term rental home permit." Is it -- it is still unclear to me the trustee relationship between Kaaren and Jim Sherrell with Peer Frank Molokai LLC. Kaaren was given an STRH permit on March 29, 2017, for an adjacent property, TMK: 2-5-7-007-009. All three names or entities appear identical on both properties. How is possible that Kaaren and Jim and Peer Frank Molokai LLC can be granted two STRH permit -- permits in the same area? The Sherrells also own two additional parcels in Pukoo.

Number nine. Luigi states the property is currently served by an individual wastewater system approved by the State of Hawaii. My response: Is there a document signed off by a State or County official that ensures all rules and regulations have been adhered to? Was there a physical inspection of the wastewater system? The structures were built almost 20 years ago. Are you basing this response on a 20-year old building permit? Are there other more recent Federal or State environmental code requirements for the redevelopment designation from urban to commercial use?

Okay, number ten. The parcel identified as being owned by the Petitioner, myself, on page 5 of the submitted petition, was purchased on 3/15/2017, and according to all available public records is not owned by the Petitioner. My response: An interest in the property was purchased on 3/15/17 by Floyd and Frances Heimbuch for \$75,000.00 without our knowing. Me and my ohana are heirs to the property 5-7-007-056. The original landowner, Ulu, is my great-grandfather. He got the land in 1853, through the 1853 Mahele. His daughter Emma Ulu is my grandmother. Her daughter, Nalauhala, is my mother. Title to the property has never been conveyed out of the original landowner Ulu. His undivided interest -- he's never -- there's no quiet title on the land. All of his descendants, that one ancestor, according to kuleana land laws, we are -- we are all heirs to that land, any -- any of his descendants, and we -- I am -- I'm a descendant of that original recipient of that land. Okay. The land was conveyed, excuse me, back to me and siblings on March 24, 2017. This property is one of six parcels of lands in Pukoo, and in Halawa and Waialau Valleys that my great-grandfather obtained at the time of the Mahele. I have my genealogy that traces my ohana to this land. I also have certified copies of the Land Commission Award and the Royal Patents. I have an official signed and recorded deed with the State of Hawaii Bureau of Conveyance that is part of the public record contrary to Luigi's assertion that my ohana's ownership to the aina does not exist.

I have begun the long process to obtain a property land -- kuleana land tax exemption through the County for all six parcels. Two leading abstractors in the State have confirmed by genealogical ties and title to the land.

I would like to end, and I need to -- I need to say something about his last paragraph, so I'm just going to read that, I would like to end by addressing Luigi Manera directly so, hopefully, he can watch at some point, in his closing paragraph, Luigi -- Luigi says that I possess an "aggressive, intimidating, and threatening behavior at the meetings." This type of accusation is reminiscent of what white people used to say to black people in the south who were speaking up against racism through the -- during the time of the Civil Rights Movement. These similar verbal assaults continue to be evident to this very day as seen in the Black Lives Matter Movement. Similar type descriptors are said by while police officers to justify actions against innocent black citizens following very deadly altercations. The implication Luigi is making about me, a big brown Hawaiian man, is that I am naturally prone to violence when I am not. Let me say this: I have lived my life as one who is dedicated to peace and disarmament. I belong to a Hawaiian organization that's part of a larger international organization called the "Unrepresented Nations and Peoples Organization" of the world, or UNPO, which is -- which was funded by the Dalai Lama who promotes global peaceful dialogue and interaction. I have personally met the Dalai Lama and I'm also been lucky enough to spend time with indigenous Guatemala leader Rigoberta Menchu, recipient of the 1992 Nobel Peace Prize, when she came to Hawaii in the -- in the early 2000s. I want to state for the record, and I'm going to look straight in

the camera, Luigi Manera, your comments about me are totally out of order and irresponsible. Most people who know me will tell you the same. You need to understand that passionate, clear, straightforward, critical, and honest speech only comes from a place of aloha and you must not mistake or try to rebrand it to forward your own economic gains. Even though my testimony and interaction with the Molokai Planning Commission was filmed and can prove that what you have written about me is not true, you need to understand and acknowledge that your statement against me will be viewed as "legitimate" and probably a fair character assessment just based, quite frankly, on your white privilege whether you realize it or not.

All I can ask at this point is that you recognize that we're not equal in terms the dominant power structure that prevails in Hawaii. At this point, I believe it is too late for you to do -
- to undo any potential damage that your libelous accusations will cause against my reputation as a written comment is now part of the public record.

In closing, I just wanted to also address some of the things that he actually said in the -- in his letter, response, that, you know, I understand that I did have some errors in my petition. There is a story behind that, which I'm just going to share with you really quickly. Just to give you an idea on what it took to get to this point, you know, I'm not a rich person, I have friend -- I have attorney -- I've been talking to attorneys. One attorney actually helped me to do a petition. I had a petition already done, you know, he did it for me, I was ready to send it in, then he sends me the invoice, and he gave me a cut rate of \$75.00 per hour; what that amounted to was 20 hours, which the total of \$1500. So what I did was I said mahalo but I'm sending you back this petition and I going do my own petition. So if you see these errors, there's some errors within it, but just know that those are just formality errors. The substance of what I'm saying in my petition is exactly what it is. I just wanted to share that just to show you guys a little bit of what it -- what it is taking. I do have kids. I have my oldest son getting ready for college in two years. I rather put \$1500 to his college education than to do a petition to some attorney I thought was my friend.

But anyway, let me see. Oh, and I also just wanna say before I leave, I know it not pertains to anything, but I just wanna support Commissioner Buchanan's effort to re-review the permitting procedures 'cause it really needs to be re-reviewed. I heard Mr. Spence say that he's just following the rules, following the rules. I don't know when was the last review. I mean we've just had three commissioners resign, you know, off of the -- so really it's time for us to look at that, you know. I mean there was an SMA SMX that was approved administratively and not brought before the council. I agree with Lori that, you know, these are things that's important and put in place for the protections of the community, making sure everybody's following a fair process, and, for that, I just wanna commend Lori and, yeah, I got punished enough already just coming and flying over and everything. But that is all I have to say. That was my -- my response to the petition. If you guys have any questions and need documents, I know part of it is to prove that I do

have a lineage, I do have all of my paperwork, I did not make any more copies for anybody, I feel it's private, I'm willing to show you folks what I have in terms of my genealogy, the deed, and the LCA, and the Royal Patent. Mahalo.

Chair Lasua: Thank you, Mr. Buchanan. Any questions for Mr. Buchanan from the Commission?

Mr. Pale: Mr. Pale.

Chair Lasua: Oh, okay. We'll open it for public testimony and then we'll ask -- ask questions.

Ms. Buchanan: Mr. Chair, I think I have a question on process, and maybe legal counsel can help me out with this. So we just heard the opening statement by the petitioner. Is there now a rebuttal or will, after the rebuttal, there be another comment period by the -- by the community? I'm just worried about structure of the proceeding and the time that we have.

Chair Lasua: Yes, Commissioner Buchanan, we'll do the rebuttal first and then public testimony. So any representative from -- for Mr. Sherrell?

Ms. Lopez: Chair, Luigi Manera is not available today but we do have Rob Stephenson that is -- will be speaking on behalf of Luigi Manera. Is that okay?

Mr. Lasua: Yeah. Thank you.

Ms. Lopez: Thank you.

Ms. Buchanan: Mr. Chair, for the record, Mr. Manera and Mr. Roberts -- Robinson is going to be representing the applicants, Jim Sherrell?

Ms. Lopez: Correct. Thank you for that clarification.

Mr. Stephenson: Good afternoon, Commissioners. Good afternoon, Chair Lasua, Vice-Chair Buchanan, and Commissioners, Mr. Spence, Ms. Oana, and Ms. Lopez, Mr. Yoshida. Thank you very much for the opportunity to be here today. My name is Robert Stephenson. I am speaking on behalf of Mr. Luigi Manera, who is the consultant for the applicant, Mr. Jim Sherrell.

So we received -- our office received the original petition, as outlined in the agenda, and we received the supplemental petition as well, but the office, to this date, has not received the reply to the response that our office submitted, so not having seen that but having

heard the testimony, we don't feel comfortable to comment on a document that we haven't seen. So we will leave our comments directly to the -- the original petition.

The first item that we'd like to bring up is part of the process of a contested case hearing, petition to intervene, there are two parts from what I understand. There is good cause for an untimely filing, and there is the issue of standing.

So we first like to address good cause for not filing a timely petition. So in the original public -- at the original public hearing, the petitioner did not and had not indicated an intent to file a petition to intervene in a timely manner by the deadline required to file a petition to intervene. The only time the petitioner indicated an intent to file was when prompted by a member of the Molokai Planning Commission who appeared to be offering legal advice to a member of the public, which we would suggest is clearly outside of the statutory boundaries of the Molokai Planning Commission; that was also well after the deadline to file a timely petition. So I'm not sure if the good cause is because the petitioner didn't have an intention to file or had not declared an intention to file until prompted by a member of the Commission. So we would -- we would assert that there is not good cause for not filing an untimely petition -- or a timely petition.

So as for the item of standing, there -- as the petitioner had indicated, there was some typographical errors, which is clearly understandable. It was addressed to the Maui Planning Commission, which this is the Molokai Planning Commission. They also misidentified the manager for the proposed application, but that was explained clearly. And, again, under the introduction paragraph, the petitioner identifies the Maui Planning Commission. So we suggest that the petitioner resubmit the petition under the proper authority.

And if we go down the list of the bullet points in the original petition, the first bullet point says the proposed short-term rental home permit application is -- it is not nor is it associated with a development. All the structures are existing and were constructed in 1998, nearly 20 years ago. So the word "development" has a clear definition under the rules of the Molokai Planning Commission.

And the traffic study. The 1000 vehicular trips per day. If we go by the daily trip for the entire island, as the petitioner gave in his testimony of 6,000, if you're just adding the maximum of 6 people, there'd be a reasonable assumption that you would have between 6 to 12 additional trips per day, no way near 1000. There is no data for that. There's no credible data. There hasn't been a study done and it would be very difficult to determine that. And, in fact, for another project that this office is working on, a 16-unit apartment complex with 40 total bedrooms in Manila Camp, there was a traffic study done that said this would only generate 15 total trips per day. So if we use simple math, based upon that traffic study, the proposed short-term rental will be less than 2 trips per day.

The increase in density in this area is a very interesting topic because the increase in density would only be up to a maximum of six people. The property actually has the ability to host more than six people if it were under its currently permitted -- used in its currently permitted state. And although I can appreciate that the sentiment of density within the entire area and an aggregate of additional short-term rentals, this petition to intervene addresses simply, one, one application for one short-term rental permit, which is the Sherrell's application, so it's hard to understand how a maximum increase of six potential -- six potential visitors could increase the density of the area 45%.

And again, there is no -- there's no proposed development associated with this application, therefore, the entire statement we feel is irrelevant. Again, there's a clearly defined term "development" in the Molokai Planning Commission rules.

We're a bit unclear about the third bullet point on the petition. The proposed short-term rental house is not in violation of the Coastal Zone Management Act nor the short-term rental home rules, and we're very unclear on any statutory violations that are either occurring or would occur.

There had been no triggers, no statutory triggers for the -- for any type of additional cultural or environmental assessments as that is not part of the short-term rental home rules.

We've heard a lot by testimony and in this particular petition that says: There will be an increase in taxes. So there really is no methodology or data to support this claim. Mr. Manera spoke with Seiko Machida, at the County of Maui Real Property Tax Division, by telephone on Tuesday, September 5, 2017, and was told that a short-term rental permit would not have any real property tax implications to neighboring properties. It would only have tax implications to the property associated with the short-term rental home permit. And that can be verified by Seiko Machida, at the County of Maui Real Property Tax Division.

The proposed application is not associated with any alteration of the existing ocean access nor is it associated with any activity that would affect the native tenant kuleana landowners' ability to gather food from the ocean. There has been no change in the law, there will be no change in the residential use of the property, so we don't understand how that would be applicable. And as far as the allodial rights for public access to lands, there will be no change in any access of any kind associated with the property, so we don't feel that there would be any effect to allodial right for public access to lands.

As far as the plain view of the area, there are no physical changes to the property associated with their proposed application, and it will not alter the plain view of the area.

As for the handling of sewage waste impact on the environment and water quality, the property is currently served by an individual wastewater system approved by the State of Hawaii, it has documentation that that wastewater system was approved and constructed in conformance and in full compliance with all the laws of the State of Hawaii.

The parcel identified as being owned by the petitioner was purchased and we heard from the petitioner that there was an interest that was purchased by Floyd and Mrs. Heimbuch on March 15, 2017, and at the time we did our research that was the only ownership data that we could find but the petitioner apparently has subsequent ownership data that supersedes that, but the only public records that we were able to gather at the time of the reply showed that the petitioner did not have an ownership interest in the property nor is the petitioner listed on any public records as an owner of any property TMKs listed at the top of the petition, and again, that was public record search from the date of the reply.

The name on the petition, "Native Tenant Kuleana Landowners of Pukoo, Molokai," also was not associated with any of the property TMKs at the top of the petition, so I'm not sure if this is an organization or an entity that owns land. We're unclear about that.

As far as the statements at the bottom of the page, those are statements from Mr. Manera and I cannot comment on those. Those are not my statements. I don't have that information. That would be best addressed by Mr. Manera.

And finally, we've heard a lot of talk today about the process, about transparency, about making sure that everything is done in a way that follows the rules and is fair and is reasonable, and in that spirit, we would request that Commissioner Lori Buchanan recuse herself from voting on this issue, not just the contested case hearing, but the entire issue especially being in a leadership position, as Vice-Chair of the Molokai Planning Commission, even the appearance of impropriety could have a negative impact on the credibility of the Commission and eventual outcome of any deliberations. Additionally, at the original hearing, Commissioner Buchanan also raised her hand and she stated for the record, "I intend to submit a petition to intervene on this particular item," which we believe would preclude Commissioner Buchanan from being able to render a fair and impartial judgment on the matter that comes before the Commission. And also, at that same meeting, she was providing legal advice to a member of the public, and several members of the public on their legal rights and in giving instructions on what they must do in order to file a petition to intervene, so it is our position that Commissioner Buchanan will be best served, as with the Commission, by recusing herself from participating in voting on the contested case hearings and on the matter itself.

We would also like to submit that Laa Poepoe recuse himself as well because his wife had submitted a petition to intervene, and because of the close family relationship, we believe the Mr. Poepoe would not be able to render a fair and impartial judgment on the matter as it comes before the Commission.

And with that, I'd be happy to answer any questions.

Chair Lasua: Any questions from the Commission?

Ms. Buchanan: Chair, I have questions.

Chair Lasua: Go ahead. Excuse me, Lori. Hold on. So, Lori, we're going to go to public testimony now and then come back and do your questions.

Mr. Stephenson: Thank you.

Chair Lasua: Thank you, Rob.

Ms. Place: Good afternoon. Linda Place. I am speaking on -- I know I spoke a lot on this project, Sherrell, and I'm going to say a few words today 'cause I've said a lot on record, but I wanna say that, on February 8th, this is -- this property was waived an SMA, and how that is possible, and turn around, and come back and ask for -- ask for an STRH. Anyway, I wanna say I am against any home that's put into STRH after it has been granted a waiver when the neighbors have followed building and guidelines and regulations. Now, because this property is not a brand new property, this property has been there for a while and it was previously a vacation rental, and they came forward and because they were building an attachment, and then after further down the line, they said, no, it's not an attachment, it's a building up there, but it has a stairs and it goes upstairs and they're building a room, another room, a full -- I don't know how many thousand square feet, I don't have the proper paper and -- today. And the other thing I wanna say is that, you know, we're talking about zero capping on the East End and this is because nothing has been done year after year about vacation rentals, and people say things, and they come to meetings, and they get tired, like me, I'm exhausted. This -- this -- this vacation rental has exhausted me because it's the same thing over and over and people get permitted. They don't live here. They just come and they buy property, they purchase it, and then they immediately apply for a conditional permit, and, thereafter, after they make their money, they sell their place, and then another person comes in and buy it, and the gentleman before me said it doesn't affect your taxes. Hell yeah. It does. It affects your taxes 'cause the value of your property goes up because they selling it for much more money. If they bought it for 200,000, and now they're selling it for 400,000. I know this for a fact because the Swensons sold their property, and they sold it for a million. When they bought it, they bought it for a song, and the taxes is unbelievable. To the homeowners like us, local people, that have to work hard and live on what we have and do what we, you know, be contented, and that's why we live here because we love Molokai and to have people to come over here and change our way of living is terrible. It's mean. And I'd like to say that in this area, in this area there's two permitted now but it's only because the other people sold their property. In no time, we're going to have

more. And in this 500 feet thing, you have this many house, and I cannot purchase one house if I wanted. I could have my whole family of 50 members or so and we still wouldn't be able to purchase it for that kind of money. The other thing is Brayton is asking -- it's a pending permit, and Puccinelli is a pending permit and -- and as far Sherrell, they bought four properties. What are they going to do with four properties? If they already got one, they're going to do the other one, and then what are they going to do with -- today, we sit here. Give them the permit today? And then what? Next year, we're going to give them number three and number four, and why? I don't know who made this law about people, my mom can have one, my dad can have one, my -- my -- my children can have one, all under the same name or in-laws or whatever, under different names, but it's all the same person. LCC is a company. LCC is -- LCC or LLC, they have monies and they're coming here, they're just ruining our lifestyle, fishing, whatever it is, the ocean and whatever. Anyway, I'm going to stop now because I know ...(inaudible)... thank you for your time. I really hope that you folks consider not giving permit to this application. Thank you.

Chair Lasua: Thank you, Ms. Place. Any other testimony?

Mr. Miguel: Hi everybody. My name is Charles Miguel. I speaking for the people of East End, yeah, 'cause we tired of this. This is not local people doing this, coming here and making money off this island. It's not local people. If this was locals yeah, but this is not locals. Yeah and, Rob, you can go back to your partner, what his name? Luigi, yeah. You guys be gentlemen if you guys want do business over here. No start giving this kine talk about, you know, throwing stones when you start saying -- blaming some of the Commissioners over here. What kinda class you guys had? What kinda class you have as a business man? Yeah? Show some respect.

Ms. Buchanan: Mr. Chair?

Mr. Miguel: Show some respect.

Chair Lasua: ...(inaudible)...

Ms. Buchanan: Can you please advise the testifier to address the Planning Commission and not members of the community?

Mr. Miguel: I sorry but I cannot help but yeah. We just -- we just tired of this already. We said enough. Enough. I don't know who on the Commission or whoever, the County, they -- they -- they just don't understand what is no or what is enough. Yeah, Mr. Spence? You looking at me? Alright? Why -- why we gotta keep coming here arguing about this thing? This is not right. Not right at all. This is not local people doing 'em. Like I said, if local people, maybe, but they would understand more than to ruin the aina or ruin the island. Is it about money? The County need more money? What the County need more money for? They just throwing the money away. Honestly. They throwing the money

away. Come on. Be nice people. Be nice. Yeah? We said no. The people said no is no. How long more this going go? You answer me. You what you call? You the counsel. The public, yeah. Answer. How long this -- how long more this is going to go this short-term rentals and all this?

Chair Lasua: Mr. Miguel, he's not here to answer your questions so just continue on with your testimony, please.

Mr. Miguel: Yeah, I said enough already.

Chair Lasua: Any other testimony?

Ms. Poepoe: Mahina Poepoe. I just wanted to say a few more things. When I talk about density, I'm not talking about the amount of people, but I would rather have 12 people living there fulltime that I know, who I know who they are and who my neighbors than 6 people who are strangers that change every week, but when I talk about density I talk about I mean -- meaning the repurposing of parcels of land so that the short-term rentals as houses are getting more dense in an area, not necessarily the people, and it does absolutely raise property taxes. The permit itself, just the permit maybe not, but the industry of short-term rentals raises property taxes because the buying and selling of the properties with the intention to operate short-term rental is an incentive that I think allows the sellers to sell higher because there is the incentive to make money there and as these properties are turning over, especially with the Sherrells, it's obvious that they bought these properties and immediately, almost immediately applied for two permits, so that does raise the property values, which raises the taxes for people that aren't ever going to sell their land, we don't want our property values to go up. And about the waived SMA thing that Aunty Linda was talking about, I don't know how that happened either, but it can go back to what we were talking about Dave Mireles application where there just wasn't enough information provided and it was just like just waived through with no review and that property that the SMA permit is on is the property the Pukoo Polynesian I'm pretty sure that we're talking about today. And if Mr. Stephenson voted on that issue in February, as serving as a agent for the owners, I don't know if that was a conflict of interest that should be revisited also, so we're talking about stuff like that. I think that's all I have so thank you.

Chair Lasua: Thank you, Mahina. Any other testimony? Okay, hearing none or not seeing anyone moving towards the podium, we'll go ahead and open it up to the Commission for questions to the testifiers if you want. Now is your time, Lori.

Ms. Oana: Chair, I'd just like to remind the Commissioners that they have the rules in front of them, Subchapter 3, regarding intervention, as well as the filing requirements, and then if it's easier for you guys, you can use that chart that I made which just is written according to the rules.

Mr. Pele: I do have a question that's of relevance to my decision for Mr. Pale if that's alright?

Chair Lasua: Go ahead, Commissioner.

Mr. Pele: Shane, howzit. One of the -- one of the big things we've been talking about is rules and procedures, and I would think that the community would want me to follow the rules and procedures as they wanted. I need to know -- I have not heard an -- a reasoning for good cause from Mr. Pale, that's -- that's one of the criteria that -- that is probably the most important criteria and that's why, if you go back to the June meeting, I actually made the motion to give Mr. Pale more time to provide me with that, and I just need to know what -- what the good cause for not filing within the ten days of the application was 'cause that's the most -- for me, that's the key thing that I'm looking with your intervention.

Ms. Oana: And just to clarify, it's ten days prior to the first public hearing.

Mr. Pele: Yeah, prior to the first public hearing.

Ms. Oana: Which was that June 9th or whatever that was.

Mr. Pele: Yeah, 'cause I'm asking you in respect that you gotta -- you gotta want me to follow the rules, that's what I'm hearing from you guys, to the T. You don't want me to circumvent any rules that are written down, you guys want me to follow 'em to the T is what I've heard from the public testimony, so I just need to hear that. I don't think I've heard that yet.

Mr. Pale: Well, I think part of it was that I didn't really get involved until the time that I came to the meeting at that time. I was only kinda reading about it, you know, as a community person. I mean that pretty much is it. And I think, you know, you look at today, there's hardly anybody here, you know. I think that it's -- if any good -- if anything comes out of it in terms of good cause, why isn't the room full? You know, I mean there's things that we can look at as to reasons why that is, but the bottom line is I came in at that time, and as -- and -- and at that time, it was brought up, and we're here today, and you guys already accepted it, you know, you guys accepted it, you guys -- we've moved on. In fact, you guys rescheduled it, you guys gave us two new dates to submit. I mean I don't know what else to tell you except the fact that we're -- I'm standing here today, I don't know how many days later, presenting to you my, finally, the petition and I don't know what, you know, good cause has to do with it in terms that your legal counsel and everyone, the Commission agreed and allowed it to come forward so --

Mr. Pele: Can I address that or are you gonna? Can I address that from my opinion?

Ms. Oana: Well, I just wanted to remind the Commission and you, Mr. Pele, that your motion that day was to defer it, not to really give them more time --

Mr. Pele: Right. To defer it. Right.

Ms. Oana: But just to defer it and see what happen.

Mr. Pele: Can I address? As far as the good cause, my understanding is there is a rule, I notice in your letter you guys reference the -- I'm sorry. Let me get it here. The statutes. You wrote that -- we got so much work here. You had it right under 12-301-26, the intervene, I saw that you submitted that, and if you look above it, the same Subchapter 3, that if I'm going to look at your testimony, your written response to 12-301-26, I have to look at the one right above it, 12-301-25, that says no less than ten days before the first public hearing date, so that's what I'm saying, we need to hear what your good cause was for not filing ten days, and I think you told me that, right, that's because we weren't at the meeting till -- so that's all I was asking. Thank you.

Chair Lasua: Thank you, Commissioner. Any other questions?

Ms. Buchanan: Chair, I would like a follow up question on that line, that thread to Mr. Pale. Mr. Pale, as a landowner, were you ever notified of the -- were you properly -- were you noticed by the applicant, the Sherrells for their request for permit?

Mr. Pale: No. We were not. And if you look at the dates on when Heimbuch actually got interest on the land, it was just a few days before we got interest in the -- and we were actually conveyed back into the land. I don't know why. And in addition to Mike's name on there, on the tax map notices, there's two other ancestors of ours that is on there, and I have not seen any notice so far, up until this point. I do know that I have -- we have a lot of people that I do know who work on genealogy and whatnot, and whenever anything is printed in the paper, any kinda notice, we'll get a call. You know, I mean sometimes you see where quiet title action is taking place, you see Hawaiian family names, and there's like -- there's like a circuit within the Hawaiian community that kinda looks out for that kinda thing. So, you know, my question to that, definitely, I did not get any notice. Did they include the two names that are there on the tax map key, which is Lili'i and the other one is Keawe? Had I seen those names on those -- on that actual notice, I definitely would have -- it would spark my interest if, at the time, that they do that, but the answer to that in short is no. I did not get any notice from the Sherrells or from the County.

Ms. Buchanan: Mr. Pale, do you live on Molokai?

Mr. Pale: No. I do not. I'm actually born and raised here, but I do not live here. I actually live on Oahu. I plan to move home, you know, soon.

Ms. Buchanan: So, Mr. Pale, do you regularly or do you have a subscription to the Molokai Dispatch?

Mr. Pale: I see it once in a while on social media, and I actually tune in, but I do not have a -- a subscription. No. I don't have no subscription. I just kinda see articles that is posted -- posted on social media and if it's of interest, then I'll look at it, but that's to the extent of any kind of access that I have to it.

Ms. Buchanan: Mr. Pale, did you see prior to the June meeting any public hearing notice by the County of Maui in the Molokai Dispatch concerning the Sherrell application?

Mr. Pale: No. I did not.

Ms. Buchanan: Okay, thank you, Shane.

Mr. Pale: Thanks.

Chair Lasua: Any other questions?

Ms. Buchanan: Mr. Chair, I have questions for Mr. Stephenson, on behalf of the Sherrells, on his testimony.

Chair Lasua: Go ahead.

Mr. Stephenson: Thank you very much. But first I'd like to say yes, we did provide notice to all of the properties and we have the receipts from mailing from the owners and lessees of record of all parcels within 500 feet radius of the subject application, and we do have the -- the receipts that went to each one of those, so if you would like, I can provide those at a later date. Thank you.

Ms. Buchanan: Thank you. So, Mr. Stephenson, in your opening remarks, you made some very -- some very big remarks and I'd like to address them one by one. The most important one for me right now to address is your testimony that you felt that a member of the Commission, at the June meeting, which was myself, although my name is not stated there, was in your opinion offering legal advice to members of the public and that that was outside of the statutory boundaries of the authority for commissioners.

Mr. Stephenson: That is correct.

Ms. Buchanan: Okay. So if you felt that, has the Sherrells, yourself, or Mr. Manera filed a formal request for a review for ethics with the Boards of Ethics for Maui County.

Mr. Stephenson: From what I understand, that's forthcoming.

Ms. Buchanan: It's forthcoming?

Mr. Stephenson: Yes.

Ms. Buchanan: So you haven't?

Mr. Stephenson: I -- I can't answer that question. I don't know the exact status of that. I'll have to defer to Mr. Manera to answer that question.

Ms. Buchanan: Okay, well, you're making a representation on the record right now.

Mr. Stephenson: That is correct.

Ms. Buchanan: You've also -- it's also been followed up by a request during this proceeding, which is a legal proceeding in a contested case hearing, that you feel --

Mr. Stephenson: Excuse me. I believe it's not a contested case hearing yet.

Ms. Buchanan: Okay --

Mr. Stephenson: It's just a hearing --

Ms. Buchanan: ...(inaudible)... they have standing.

Mr. Stephenson: So a contested case hearing would happen after an intervenor were allowed to --

Ms. Buchanan: Okay, so we going find out if -- if --

Mr. Stephenson: So let's just -- I just want to make sure that we're clear what we're --

Ms. Buchanan: Okay.

Mr. Stephenson: We need to make sure that we're clear on what we're discussing.

Ms. Buchanan: We're discussing your testimony.

Mr. Stephenson: Yes.

Ms. Buchanan: That's it.

Mr. Stephenson: Of course.

Ms. Buchanan: Okay, so during your testimony you've made a lot of mentions that you want members of this Commission now hearing -- because this is going to be relevant to the decision making today.

Mr. Stephenson: That's correct.

Ms. Buchanan: So in your -- in your opinion and the applicant's opinion, you feel that any participation by myself or Commissioner Poepoe would be in conflict and, therefore, you want us to be removed.

Mr. Stephenson: That's not correct.

Ms. Buchanan: Okay, can you please state your concern?

Mr. Stephenson: The statement is clearly to recuse yourselves from voting on this matter, on the contested case hearings, and recuse yourself from voting on this matter by itself, but we have no recommendation or no request to remove from the proceedings or any other participation as stated in the Molokai Planning Commission Rules of Practice and Procedure, I believe it's 12-301-21, it talks about disclosure of conflict and it only talks about recuse themselves, the person may not participate in voting, and, in following those rules, we're requesting only to follow the rules as they are laid out in the Molokai Planning Commission Rules of Practice and Procedure.

Ms. Buchanan: Thank you, Mr. Stephenson. With that, Mr. Chair, I'd like to ask the Commissioners and Staff to -- if we can recess to an executive session so I might confer with my legal counsel on my duties as a Commissioner.

Mr. Stephenson: Might I request that, before we do that, in the Rules of Practice and Procedure, it says that the -- that there must be a full disclosure of all of the circumstances that must be addressed immediately, so would that be something preceded the -- the executive session or would that be handled after the executive session?

Ms. Buchanan: Are you posing that question to legal counsel?

Mr. Stephenson: Yes, anyone who can answer that question.

Ms. Oana: We can do it after. We can do executive session first.

Mr. Stephenson: Thank you very much.

Ms. Buchanan: Okay, so the request by Commissioner Buchanan is that I need to confer with my legal counsel as to my duties and representations as a Commissioner on this board has nothing to do with X, Y, or Z after. I have questions for my personal self that I would like to be answered in executive session.

Chair Lasua: Okay, Commissioner, so we'll go into executive -- oh, sorry. We need a motion to go into --

Ms. Buchanan: Mr. Chair, I'd like to move that we -- to a brief executive session so I can confer with legal representation. Okay, move and second to go into executive session. Any discussion? All in favor? All oppose? Motion carried.

I has been moved by Commissioner Lori Buchanan, seconded by Commissioner Pele, then

VOTED: to enter into executive session.

(Assenting - X. Bicoy; L. Buchanan; W. Buchanan; J. Pele; L. Poepoe)

The Commission entered into Executive Session at approximately 1:47 p.m. The meeting reconvened at approximately 1:55 p.m.

Chair Lasua: Okay, the Chair would like to call the meeting back to order. Sybil, did you have a question earlier? No? Oh, okay. Okay. In our executive session, we talked about the conflict of interest that was -- that we went into, so Commissioners have any comments?

Ms. Buchanan: Mr. Chair, I have one --

Chair Lasua: Go ahead, Lori.

Ms. Buchanan: Question for Mr. Stephenson on your testimony about no. 2, access and sustainability to ocean -- wait. Oh, the -- your reply on access. Cannot help. We have three papers and they all not on the same -- but reply from the applicant was the proposed application is not associated with any alteration of existing ocean access nor it is associated with any activity that would affect the native tenant kuleana landowner's ability to gather food from the ocean.

Mr. Stephenson: That is correct.

Ms. Buchanan: So, in one meeting, we were shown a website where ocean toys were available or a diverse group of items for ocean activities were included with the stay at the vacation rental, and then we heard testimony from people who live in the immediate

vicinity that there was trouble between local users and vacationers using different water craft and activities that came with the property, so I'm assuming that that website is still up and still advertising ocean activities with the rental?

Mr. Stephenson: I'm not aware of any website associated with the subject property or the application nor am I aware of any vacation rental tenants who have been associated with the subject property because when the current owners purchased the property, they have not rented it, so I can't speak to any other activity outside of the permit application, but as far as the permit application goes, they're not associated with any activity that would alter existing ocean access nor that would affect the native tenant kuleana landowner's ability to gather food from the ocean. We can only speak to the application, not any -- not anything outside of the application.

Ms. Buchanan: So I don't have it right in front of me, but part of the application was a permit owner's responsibility to convey to guest house rules. Would you have a copy of the house rules because assertions have been made by the intervenor that those types of instructions or whatever to users and the general feedback from community input is that there is no clear instructions within house rules of appropriate behavior in certain areas, this in particular being Pukoo?

Mr. Stephenson: Yes, thank you. That's a great question. The house rules were actually submitted as part of the application and they, I believe, were submitted to the Molokai Planning Commission inside of the original application package that went before, and it's Exhibit 10 on your original documents. And thank you to Sybil for having that. I have it electronically but it's quicker on the paper. So it says here --

Chair Lasua: Commissioner Buchanan, let me interrupt you for -- for a minute. We're here right now to talk about the intervention and not the application.

Mr. Stephenson: Excuse me, Chair. I also have a question. I know that the request for the recusal of two of the members, and I believe in the Molokai Planning Commission rules it says it should be promptly addressed, and it said it was going to be addressed afterwards, is that going to be after this questioning or is that going to be addressed at the moment or how can we -- I mean how can we, as the -- as the consultant for the applicant feel comfortable and ensured that we know that those requirements have been met? Thank you.

Ms. Oana: I believe the two Commissioners that you reference were going to make a statement at some time, but because that will only affect their voting, I'm not sure when they're going to do that, but I was going to bring that up prior to any vote on this matter.

Mr. Stephenson: Thank you. I believe, according to the Molokai Planning Commission Rules of Practice and Procedure, 12-301, I believe it's 21, it says: When any conflict of

interest or question of ethics is brought up, it shall be promptly disclosed. And so as the representative for the applicant, we would like to make sure that the applicant can feel confident that those Molokai Planning Commission Rules of Practice and Procedure had been followed, so I just wanted to know what, if anything, was going to be done to satisfy those requirements. Thank you.

Ms. Buchanan: Mr. Chair, would you want that disclosure to happen now because we just -- I was just instructed to do that after but would you prefer for me to have that now?

Chair Lasua: We'll go ahead and do it now.

Ms. Buchanan: Okay. So I don't know what you mean by disclosure but can you restate, Mr. Stephenson, your concern and so I can respond?

Mr. Stephenson: I believe the -- the concern was stated for the record, in the interest of everyone's time, the concern was stated in the record. I believe everyone here is fully aware of that.

Ms. Buchanan: Okay, so all I did was scratch -- what I do have, because I don't have anything in writing except for the September 7, 2017 Shane Pale, from Architectural Drafting Service, and then under your first item as for good cause, in the second part of that paragraph --

Mr. Stephenson: So pardon me. In the interest of -- in absence of a hardcopy, I will be happy to restate the objections.

Ms. Buchanan: Okay.

Mr. Stephenson: So the -- as the consultant for the applicant, we would request that Lori Buchanan recuse herself from voting in this matter especially holding a leadership position where even the appearance of impropriety could have a negative outcome on the matter before you and cause a negative view or call into the question the integrity of the decisions of the Commission. We request that Commissioner Buchanan recuse herself based upon three things: Number one, the statement on the record of the intention to intervene, which we believe would be preclude Commissioner Buchanan from being able to render a fair and impartial judgment on the item before the Commission; additionally, providing legal advice to the public at the original hearing on contested case hearing of on the legal rights of the general public to file a contested case hearing petition to intervene; and by having -- your son having submit a petition to intervene and the close family relationship associated with that. We would also say that not all three of those must be met, but any one of those we would deem that would be a requirement for recusal. Thank you.

Ms. Buchanan: Thank you, Mr. Stephenson. So, members of the public and fellow Commissioners, I'd like to address item number one on the representative of Sherrells to recuse, number one was I stated on the record that I would intervene, and I believe, from -- if my memory serves me right, it was at the June meeting, at Kalaniana'ole Hall, and I believe that statement was made after Corporation Counsel had told members of the public that they did not have the right to intervene and that -- that they had to have had the intervention in ten days prior to the first meeting to which I replied except, except when, so in the rules there's an except when and before, so except when you show good cause and before any decision making on the project is finalized. So that I recall was my response, and I think we went back and forth and -- and I think many people were kind of frustrated at that point, there's no excuse, but I think, at that point, I said that I would intervene and was mainly to prove a point that you could so I didn't want misinformation going out to our community and the public that would squelch their rights as individuals to participate in the process. So that is the first thing.

Mr. Stephenson: Pardon me, if I may. I don't recall that the Corporation Counsel said people could not intervene. I believe she said that they had missed the deadline to intervene. Those are two clearly distinctly different things --

Ms. Buchanan: Yeah.

Mr. Stephenson: And I think we need to make sure that we're --

Ms. Buchanan: Okay.

Mr. Stephenson: Clear about what we're discussing because that is an assertion that -- that is incorrect --

Ms. Buchanan: Okay.

Mr. Stephenson: And it could -- it could cause a different outcome.

Ms. Buchanan: Okay so --

Mr. Stephenson: Thank you.

Ms. Buchanan: So reading that, again, my rebuttal to that was that I didn't want the public to believe that they could not intervene because they had the right to intervene, and as grassroots people and makaainana, you don't know the rules, however, the Planning Staff are the professionals, they should be giving good counsel, they should be forthright in advocating for the community, who we serve, and I just felt, in that capacity, the community needed to know that regardless of how it looked and was said that they still had the right to intervene because the project was not decided on. Okay, that's number

one. Number two, concerning myself as offering legal advice to member of the public outside my statutory boundaries of authority. For the record, I am not a lawyer nor do I have any legal education, formal education as a lawyer, I felt I was clearly reverberating the -- what is written in the practice and procedures of the Commission and rules and stating that members of the public had the authority to respond and that there was a venue to respond for that, so I don't think I was giving legal advice because I'm not a lawyer, but I think part of my duties as a Commissioner is to be akamai about the rules and practices, and I think not being akamai as a Commissioner, you do a disservice to your community, and so I was just clearly stating for the record that there's a process and that was that you can be part of that process.

Mr. Stephenson: Well, it would be our assertion that that was clearly more than just stating for the record that there's a process and procedure. It was clearly an advocacy. It was clearly giving instructions to -- to the general public. So our position would be that you were instructing the public on what to do and how to do it, therefore, we feel that that would preclude you from being able to --

Ms. Buchanan: Okay.

Mr. Stephenson: To judge this in --

Ms. Buchanan: Okay.

Mr. Stephenson: In a fair and balance manner.

Ms. Buchanan: So I would enter into the record the Akaku video of the meeting of June in order to make -- that people could clearly see what transpired during that meeting, it's on Akaku, everybody came and had something to say about it afterwards, and I think that is the final authority of whether -- in that instant, I would have hoped that my Planning Staff would have done the education and that I, as a Commissioner, would have not needed to do that because it's clear that -- that Planning Staff, and what was written, could have been conveyed to the public and then I would have never needed to -- to even bring that up that there was existing rules that allowed for people to become part of the process in a contested case hearing.

Mr. Stephenson: So are you saying that we should postpone this and --

Ms. Buchanan: No.

Mr. Stephenson: And review the Akaku footage and make a determination based upon that?

Ms. Buchanan: I'm just saying that whatever I stating for the record now can be verified and validated on the record by looking at Akaku.

Mr. Stephenson: Indeed.

Ms. Buchanan: Okay. And the third I think is a third moot question because we have in our possession a letter saying that, which should have been read into the record, by the way, let me find that. I'll read it into the record. It's addressed to the Molokai Planning Commission, from William Buchanan, not that William Buchanan, a petition to intervene in the Sherrell short-term permit application. I am withdrawing my request to intervene because I believe other intervenors have the same concerns I have and will able to convey them on behalf of myself as well as others. I do want to state for the record that my intention to intervene was primarily on the behalf of Mr. Stanwood Formes, primary landowner of Kupeke Ahupuaa, including the Namahana Buchanan Fishpond that abuts the Pukoo site where the Sherrell project is being requested. Mr. Formes has never been contact by Maui County about any commercial business in his district, or short-term rentals, I'm adlibbing there. For the record, Mr. Formes is adamantly opposed to short-term rentals and other commercial activities and believe they will have perpetual negative impacts for East Molokai. Mr. Formes is a major landowner and feels he has been left out of decision-making processes by the County that directly affects himself and others in East Molokai. So, with that, I don't think there is any -- I think that's a moot concern because it was -- because it's moot. Because he's withdrew his intention to intervene on behalf of Mr. Formes.

Mr. Stephenson: Thank you.

Chair Lasua: Okay.

Ms. Buchanan: Oh, one more, Chair, which is the biggie. I'm sorry for being so rude. I'd like to state for the record that I have zero, absolutely no financial gain from this project, which is a biggie for the ethics and review board. I have absolutely zero financial gain from this application. Thank you.

Mr. Stephenson: I would also like to add, if I may, that in the Molokai Planning Commission Rules of Practice and Procedure, it says one of their conflict of interest or other ethical question, and this would fall under the ethical question guidelines, so it's not specifically if there is a financial gain, there are other ethical concerns as well. Thank you.

Ms. Oana: And just for the record, Commissioner Buchanan, you said you don't have a financial interest in this application ...(inaudible)... true you don't have any financial interest in -- in -- in denying or granting this application either way?

Ms. Buchanan: No. I don't have any financial interest in approving or denying this application.

Chair Lasua: Okay, discussion by the Commissioners? Anybody? Right now.

Ms. Oana: So, for the Commissioners, when -- whenever a conflict of interest or other ethical question is raised by anyone regarding any member of the authority, that affected member shall promptly make a full disclosure of the circumstances to the authority. When the member is deemed by the authority or the Board of Ethics to have a conflict of interest, that member shall be disqualified from voting in all actions relating to such matter. So I recommend you folks have a little discussion on this and move to either disqualify Commissioner Buchanan or move to allow her to proceed in this proceeding and vote on all the matters.

Chair Lasua: A motion?

Mr. Pele: Chairman, I move to allow Commissioner Buchanan to continue in the process and vote. I believe that she's met the criteria. I'm satisfied that she has no financial gain. Whether or not she has a predetermination or position on matters to the island, I think we all do, we bring that to the table when we come to this Commission, it's just the way it is, so I don't find there's that ethnically wrong especially when she's serving the public, so I would move that we allow her to continue in the process and vote on this matter.

Chair Lasua: Okay. Second?

Mr. Poepoe: Second.

Chair Lasua: Okay, it was moved by John, second by Laa. Any discussion? Okay, all in favor, raise your right hand? All oppose, your right hand? Oppose? Motion -- motion fails. Thought there was five. Yeah. All in favor, raise your right hand? Okay, I vote aye. Motion carried - five ayes.

It has been moved by Commissioner Pele, seconded by Commissioner Poepoe, then

VOTED: to allow Commissioner Lori Buchanan to continue in the process and vote.

(Assenting - X. Bicoy; W. Buchanan; L. Lasua; J. Pele; L. Poepoe)

Chair Lasua: Commissioner Poepoe?

Mr. Poepoe: Yes, I going address my potential conflict of interest now. It's pretty much the same thing that Aunty Lori said about hers one, which is my wife is one intervenor who withdrew her contested case petition, so I going leave 'em up to the Commission for vote on whether or not I can participate. I have no financial gain with the whatever.

Chair Lasua: Okay, for Commissioner Laa to vote, can I get a motion yes or no?

Mr. Bicoy: I motion to allow him to vote.

Chair Lasua: Second? Move and second for motion to Laa to vote. All in favor, raise your right hand? Motion carried.

It has been moved by Commissioner Bicoy, seconded by Commissioner Pele, then

VOTED: to allow Commissioner Poepoe to vote.

(Assenting - X. Bicoy; L. Buchanan; W. Buchanan; L. Lasua; J. Pele)

Chair Lasua: Okay, so we're going to move on to Shane's petition whether he's going to be approved to intervene or not, so can we get a motion for that?

Mr. Poepoe: I going motion for approve his intervention. Second? A second?

Ms. Buchanan: I'll second for discussion.

Chair Lasua: Any discussion?

Mr. Pele: Commission, yes, I do have a, it's not an easy discussion, but I'm -- I'm still battling with the good cause, and to be fair to the Commission, to the community, I think it's important that we follow the rules. Previously in this meeting, we just denied a man a permit to build a roof on his leaky house because of rules and following procedure. I asked the question of good cause. I don't feel it was satisfied although Commissioner Buchanan did a great job trying to lead them into a good cause discussion. I just wish it would have came -- it's just hard -- it's hard for me to find the -- to find a good cause with the -- with the application, as it's stated in the rules.

Mr. Spence: Sybil, there was -- there was some question as to was proper notice given to -- Shane doesn't show up on the TMK that he's identified for right to intervene but notice was given, that's my understanding, would you please confirm that?

Ms. Lopez: Yes, I can confirm that the applicant did submit the certified and notarized affidavit of mailing of notice of public hearing to those that are within 500 feet of the proposed property, and for the ones that was stated by Mr. Pale, those were received by

Mr. Heimbuch -- Heimbuch, and so his address is stated on the real property, so how they -- they come up with the addresses is that the applicant look on the real property tax map key and those names that show up with the addresses are those that are properly addressed to, so that property, those three properties were properly addressed by the names and the addresses listed in the real property.

Mr. Spence: Okay, so just so everybody is aware, when there's a public hearing, the Director shall public -- and I'm reading right out of the code, shall publish in the paper the date, time, and place, and subject matter of the public hearing as well as there's the requirement the applicant shall provide notice to -- of public hearing on the date of the application to the owners and lessees of record within 500-foot radius from the parcel identified in the application by complying with the following procedures, and then it gives a couple procedures including giving us the certified mailing receipts, so my understanding is we received the receipt from that property, and I'm not saying good or bad here, I'm saying that -- that there was notice given, and I see Mr. Pale would like to address that as well, but so -- so we have the receipt that -- that notice was given.

Ms. Lopez: Yeah, I just wanted to add that part of the application checklist for a short-term rental home permit, the applicant must submit a 500-foot boundary notification list, in that 500-foot list is -- list of tax map key numbers, names and addresses of all the owners and lessees of record within the 500 feet of the subject property's boundaries. The list shall be compiled from the most current list available at the Real Property Tax Division of the Department of Finance at the time of the application, so if there was only that one -- if all -- well, the names that were stated, if there were only -- if they had all those addresses, the applicant has to address all those names with addresses listed.

Mr. Spence: Alright, and just so the public is aware, when, for real property tax purposes, you know, you can have a kuleana with a hundred owners or more, you can have different properties with, you know, ten different owners, it's very common to see, but for real property tax purposes, there is one mailing address for the owner, for the person who receives the real property tax bill and that's -- that's who we're required to -- to provide notice to so --

Mr. Pale: You know, I just wanted to say that the notice -- the notice that came out, I mean I think that there's a cause for due diligence in this because although you know that the Maui tax map office is just one venue for getting information as far as who is -- has title on the land, in this situation, as far as your example that there's sometimes a hundred names, there was not a hundred names on this -- on this particular one. I just -- I just think that notice should have been properly -- I mean due diligence should have been handled where there should have been at least one more check at the Bureau of Conveyance, every single -- every -- all private property in Hawaii goes through the Bureau of Conveyance, that is where you actually record deeds. I think there needed to be some due diligence and I don't accept, and for, John, I don't accept that they can just

say that they're going to go with the Maui tax -- tax map key 'cause this is not really a true story of exactly anything about the land. The truth of the land is really at the Bureau of Conveyance, and I think that because there wasn't a hundred names on this, at least that should have been looked into and there was -- I mean how many properties we got, 24, Sybil? Twenty-one?

Ms. Lopez: Twenty-nine.

Mr. Pale: Twenty-nine. I think that you should have put some kind of abstract report that that is available from the Bureau of Conveyance. It should definitely be part of your process. Here, we're in a situation where John is saying that there's not good cause, but here it is, right? I mean I did not get notified even so my information was in the Bureau of Conveyance, you know, there's a deed that I do have, dated on 3-24, it was recorded on that very same day. Information on who I was and -- and my address was available through public record. Thank you.

Chair Lasua: Thank you.

Ms. Buchanan: Mr. Chair, we're still in discussion, yeah?

Chair Lasua: Yeah.

Ms. Buchanan: Okay. Sometimes I get lost. We've had so much information given to us. In one schematic, I looked at the parcel and then I saw that a radius was basically the circumference, if you poked -- using that compass thing, yeah, you poke 'em on top the property, then you draw one circle, and so that circle was the 500 radius for notification, and it occurred to me that, two things, number one, half of the radius of notification was the ocean so, okay, so we notifying the fish? So that kind of -- kind of -- we need to look at that when half of the radius is -- is wasteland or ocean or what have you. Just the way that that circle is drawn is problematic. The second thing is I looking at where this has become real issues, like Hanalei on Kauai and other areas, and that's why I said we gotta review our SMA rules, the 500-foot radius, when you have 75, 90% of all the other homes within that radius doing commercial business that affects the people outside the 500 radius, then what do you do? You basically notifying yourself, people who have the same commercial interest as you, and I do believe Mr. Pale has standing. I know that we -- we've talked about proper notice before, and along the years we've changed the way we do business because of proper notice. The Molokai Dispatch, it used to be The Maui News period. You no get The Maui News, you never know any public hearings was coming up and, unfortunately, people on Molokai stopped getting The Maui News, number one, for free, and, number two, it became a weekly type of paper to Molokai, so then we switched to the Molokai Dispatch. Again, unfortunately, that is only a local paper that only advertises on a bi-weekly basis. So I still think that in the County's due diligence and for applicants, we still not meeting the proper criteria for

notification especially on things that impact our daily lives. And so that's why I said we have to keep on working on rule amendments 'cause communication is important, so I believe that we were given, in one executive session, multiple papers, like three, four papers, and all it said was examples of what is good -- what is good cause. Anybody remember that? Did we even look at it? Okay, so if you read those three papers or four papers of good cause, it gave you example, in other words, good cause is a gray area, it's not black or white, even though it's written into here, there's a definition for everything, and so sometimes, and people who practice law know this, you no take things literal, there's always some other information available, but in that good cause, I inserted this situation, and I wanted to thank Staff for going through the whole problem of downloading that information and disseminating that information to Commissioners because I felt, after reading all of that, that Mr. Pale did have good cause, and as we were told, it really comes down to common sense, to use our common sense and our experiences to do determine good cause. I feel Mr. Pale has. Thank you.

Chair Lasua: Any other comments?

Mr. Pele: Well, I can appreciate that. I asked the question here and I wish I would have heard that more directly from Mr. Pale's mouth rather than saying I wasn't involved until the day of the meeting, I think it was his response to me, and that's all I was looking for, and, please, you guys, as Commissioners, let's talk. I mean now I'm understanding that there is a problem with the mailing, I hear something from Sybil, I hear something from the public, and I can understand both sides of the coin, so, you know, I'm still in the discussion so if you guys got, you know, can share some angles with me, I'm, you know, I'm just trying to read what's in front of us. I think the community wants us to follow the rules, that's what I keep hearing, so I don't wanna step outside of the rules on this particular matter and not step, you know, I don't wanna be conveyed this, making up my own rules as we go, but I'm, you know, I'd love to hear from your guys.

Chair Lasua: Any other comments, Commissioners? Yes, go ahead.

Mr. Spence: Commissioners, I wanted to make another comment on -- on the notice and why we notice the way that we do. First off, the public notice is outlined by law. We do what the law says to do. If it's in people within 500 feet, if it's published in the paper, it's, and I'll say, it's not a perfect system, but we -- we follow the law for a couple reasons: One is we want to include the public, we want to notify the public, and the coconut wireless is more alive on this island than like anywhere else I've ever been so -- but in sending out the notice, it's deemed by the lawmakers to be fair to the public but also to the applicant, so it's some people will say, hey, it's too much burden on the applicant for all this; no, I think it's -- I think it's fair. If -- but if we, as the Planning Department, go further than notify people, require additional notification; that prejudices the applicant. The -- the -- we try, as the Planning Department, we're here to protect the rights of everybody whether it's intervention, in following the rules or notification, and, you know, the applicant is required

to do so much. If we go and make additional requirements, that's we're then going outside of the law and that's not fair to them and I've seen, you know, if -- a possible challenge to that if we make additional requirements that are not required by the law, and I don't wanna open up the Planning Department to that kind of challenge so just --

Chair Lasua: Thank you, Director Spence.

Mr. Pele: Chairman, can I ask a question?

Chair Lasua: Yeah.

Mr. Pele: Just on this matter.

Chair Lasua: Go ahead.

Mr. Pele: Well, we're voting on the intervention right now. If -- if it wasn't to pass, let's say, if it -- if it didn't pass, the intervention, what would happen to this -- where does this application go from there?

Ms. Oana: If you don't grant any interventions today --

Mr. Pele: Yes. Yes.

Ms. Oana: Then the matter is in your hands for decision today as item B on this agenda, so you could approve or deny the application.

Mr. Pele: Am I correct, from inception, we have not taken -- we have not made a motion not to vote on this project since June 14, correct?

Ms. Oana: Correct.

Mr. Pele: So we've never even voted on it yet.

Ms. Oana: I believe there was a motion to deny, which didn't pass, and then a motion to defer.

Mr. Pele: Oh, that's right. Motion to deny, which didn't pass. Alright. Okay.

Chair Lasua: Anymore comments, Commission?

Ms. Buchanan: Mr. Chair, no comments except to, based on that question from Commissioner Pele, is the 120-day, if we resort to no intervention today and then back to making -- decision-making process on the application as it stands, is there a time clock

running on this application, the 120 days, and -- and please explain to this community that if that application will be automatically granted if no decision is made either today or from what time?

Ms. Oana: So in Subchapter 8 of your rules, there's a maximum time period, and the authority shall review and make a decision on business and development related permit approvals and licenses within 120 days from: a) the date the application is deemed completed by the Director; b) the closing of public hearing on the application; or c) the conclusion of a contested case proceeding, whichever is later. If you don't grant the interventions today, then the time period will be running from the close of the public hearing on the application, which, I believe, June 28th, so the 120 days will start from then and I believe Director Spence it was going to be October 30th. If an intervention --

Mr. Spence: Either -- either the 28th or the 30th.

Ms. Oana: Either the 28th -- okay. But 120 days from the date of the closing -- the public hearing -- the closing of the public hearing.

Mr. Spence: And that's what your agenda says, the public hearing began June 14, 2017 and was closed June 28, 2017.

Ms. Oana: If, however, you grant the interventions today, it becomes a flew blown contested case proceeding and, therefore, Subsection c would apply that the 120 days is from the conclusion of the contested case proceeding, which, in our office's opinion, it is at the end of the presentation of the evidence and when the Commission or the hearing officer has the case in front of them after the closing of the evidence, during the deliberation time, at the start of that.

Ms. Buchanan: Okay, Mr. Chair, we just heard earlier that the next two Molokai Planning Commissions is stacked. What -- what my public is concerned about, and I know 'cause I got three phone calls last night asking me the same question, if we don't make a decision on the 120 days, it gets automatically granted, is that why things are being purposely stalled, and given that Staff has told us the next two meetings are really packed, there's no ability if we're given today to hear -- I mean we deny his petition to intervene, then we're going to be called to make a motion to decide on the application as it stands. I'm just concerned. You can see where I going with this? I'm really concerned that we going fail as a Commission and then are there any exemptions given within that directive that because we don't have quorum, because we never meet, because we went cancel, because we went have on earthquake, we had lava, does that -- is there anything in there that has an effect on that 120-day rule?

Ms. Oana: There's nothing in the rules with regards to a meeting that we lost quorum at, but there is the usual national disaster, State emergency, union strike, and the acts of God things.

Mr. Pele: I would like to ask Staff a question again. Mr. Spence, when you -- when you were explaining that your own words said that the mailing is not a perfect system, so is - - is -- could that lead one to believe that proper notice wasn't served or that when the applicant -- when the petitioner is saying they might not received property notice, could that be in the realm of possibility?

Mr. Spence: Okay, the -- when I say that our notice system isn't perfect, what I'm saying is some people thinks it's too much, some people think it's too little, you know, applicants think it's a burden, the public thinks we should be doing more, and so what -- what is written into law is a compromise of not too much, not too little, but letting the public know both through certified public mailings as well as publication in the paper that public hearings are going to take place, and there's certain things that we have to follow according to State law, the content of the notice, etcetera, including the -- when we send out the public notice to the people within 500 feet, it notifies them of their right to intervene, okay. The -- in this case, we followed what the law says, the property owner that was in real property tax, the addressee was notified, so, no, there was no insufficient notice given at least according to the -- to the rules.

Mr. Pele: Okay, and is there a possibility that there's insufficient notification of the meetings when we have our -- how is our Planning Commission meetings posted to the public saying that there's a hearing on the Sherrell property, I mean is -- is that a flawed system by any means or, excuse me, not a flawed system, is that not a perfect system?

Mr. Spence: Say that again?

Mr. Pele: When you post meetings for -- when you post notifications for meetings, like today's meeting, where -- where would you get that notification? If I was a public member, how would I know that there is a Molokai Planning Commission meeting on - what is today? September 27th, at 11:00.

Mr. Spence: Okay, as -- as a part of your Staff report, there's always a section titled "Procedural Matters" that -- and -- and public notice is given several times. It's not -- this is not just the first time. It says on February 14, 2017, applicant mailed a notice of application to all the owners within 500 feet. So that was the first notice. The second, and March 27, 2017, the Planning Department published a notice of hearing in The Maui News, and then on March 29, 2017, the Planning Department published notice within the Molokai Dispatch. The -- then on March 21st, the applicant mailed a letter of notification and location map to all the owners and recorded lessees within a 500-foot distance. The -- May 16, 2017, applicant mailed a letter of notification and location map to the owners

and recorded lessees within 500 feet. May 12th, the Planning Department published in The Maui News. On May 17th, the Planning Department, again, published in the Molokai Dispatch. So we have lots of -- lots of notice to the public and, in addition, I know Nina runs around to all the different bulletin boards on the island and post the Planning Commission agendas.

Mr. Pale: Can I say something, Chair?

Chair Lasua: Yeah, go ahead.

Mr. Pale: So I just wanted to say that I think that it -- you gotta look at -- at the fact that here we are now, right, and I'm here telling you that I never got notice and that gotta mean something to everyone here in this -- on this Commission. I mean the bottom line is that it's public information, and it's part of a State agency. I mean in part of doing due diligence is -- is important, I think, and you're saying that it's not fair to the applicant, well, I'm saying that it wasn't fair to a homeowner -- a landowner who did not get notice that -- that this was happening, and the thing is I could see if I was across the street or something, but the corner of our lot touches their lot, you know, it's like -- it's kitty-corner, it touches -- it touches, so I think if anybody is being unfairly treated at this point and this is why we have the process for a contested case is -- is us. You know, it's, you know, I just think maybe because it's public record, that information is accessible to you folks anytime especially coming from another government agency to the Bureau of Conveyance, and there's -- you just gotta understand what the Bureau of Conveyance is, right? I mean are you going to depend on a map that was produced through the Maui tax office when there's actual real maps, real topographical maps at the Bureau of Conveyance that gives you an actual real story about what's really happening real time. So I think that there is access for you guys and you guys -- there was not sufficient notice. I mean I don't know what else to say except that we were -- we were conveyed to the land on March 24th, you know, so I think that was more than enough time for you to have looked at it, you would have looked at that tax map key, of course, our name was not on the tax map key itself, Maui County, but the conveyance was there. It showed that something happened to the land after the Heimbuchs were put on the land. So I think that's enough evidence for me to say that there's good cause here. You know, I think, you know, I understand what John is saying, but, you know, just looking at this whole thing, I think that's -- that's where good cause is is that you guys -- you should have looked again at the tax map key and saw that there were two more transactions that happened after the Heimbuchs actually were put on that land and were recorded interest. It was there on your records, which should have alerted you at that point to go look at the Bureau of Conveyance and find out what is happening.

Chair Lasua: Thank you, Mr. Pale.

Ms. Lopez: Can -- can I?

Chair Lasua: Okay, Commissioners.

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

Chair Lasua: Go ahead.

Ms. Lopez: So, again, on the application list that is given to the applicants for those who want to come in to do a short-term rental application, it is stated that the list, that 500-foot boundary notification list shall be compiled from the most current list available at the Real Property Tax Division of the Department of Finance at the time of application, and on the application, it is noted that the -- where you can go, which is located in Kahului, at 70 East Kaahumanu Avenue, Suite A-16, and where it is located in the ordinance, which is 19.65.050.A, Section 6. And under the Real Property Tax Division of the Department of Finance, in Chapter 3 in their section, it is clear that the landowner's responsibility is to notify the Real Property Tax Division if there are any changes to the property address, contact information, or if there ain't any located publicly on their tax division map key that the landowner is responsible to notify such division of any such changes. Thank you.

Chair Lasua: Thank you, Sybil. Okay, Commissioners, you guys ready?

Ms. Buchanan: Last question. Who certifies the 500-foot boundary for the applicant? So we ask for shoreline certification from the Department of Land and Natural Resources in order to determine setback on SMA permits, so who looks at the application and says, oh yeah, this is a true and correct boundary for notification? Does anybody do that?

Mr. Spence: Yeah, the Planning Department does that, and we do it the same for every single application that comes within the Department, and I would -- I would also add we probably have five or six hundred applications within the Department at any one time.

Chair Lasua: Anymore questions?

Mr. Pale: Yeah, I just wanted to say that, you know, I'm looking at the Staff right now for the Maui Planning Commission, it seems very one-sided, and that is -- that is my honest to goodness assessment of what is going on here. We come up with giving good cause on why this is important to us, all the reasons why we stated, I responded, I flew over here to do this, and then, at every turn, when we say something, the Maui County Staff comes forward as if -- I mean, you know, this guy right here called that there was -- that these people should be recusing themselves but, in some ways, I think Staff should be recusing themselves as well, you know, 'cause they have a lot of power, again, to really engage the community, and I think that comment in every turn when we're coming up and saying something, to come and counter every single thing, shows that there is impropriety, impropriety, and maybe not financially, but impropriety in capital of the community, and I think I just wanted to point that out that that is something that is not

going to go unnoticed, yeah, I mean I never got the notice, plain and simple, you know, and you said it's not fair to them, I'm telling you that's not fair to me.

Chair Lasua: Okay, Commissioners, there's a motion on the floor to approve the intervention, and second by Lori. Anymore discussion? If not, you're ready for the question? All in favor, lift your right hand? Look like it's unanimous. Thank you.

It has been moved by Commissioner Poepoe, seconded by Commissioner Lori Buchanan, then

VOTED: to approve Mr. Pale's Petition to Intervene.

(Assenting - X. Bicoy; L. Buchanan; W. Buchanan; J. Pele; L. Poepoe)

Chair Lasua: The next item is the:

Chair Lasua read the following agenda item description into the record:

5) HUI ALOHA AINA O MANAE LEADERS, by letter dated July 12, 2017 and received by the Planning Department on July 12, 2017.

Chair Lasua: Anyone here for the Aina?

Ms. Lopez: So Tammy-Lynn Ross will be representing the Hui.

Ms. Ross: Aloha, Commissioners. My name is Tammy-Lynn Ross, I'm President of Hui Aloha Aina O Manae, and there was actually -- oh, I wanted to point out that there was actually an email sent to Staff Planner Sybil Lopez to withdraw our intervention, however, there was some -- some of the other members that were unaware of this -- this email and had or want to request if we could get an extension on our intervention, and we also understand if it's not granted and it's denied, that, you know, that we're not going to be a part of the process.

Chair Lasua: So what is your purpose for the extension?

Ms. Ross: Just so we could deliberate and get a consensus 'cause we didn't really get a consensus and we also needed more time to seek legal counsel.

Chair Lasua: Commissioners, can we entertain a motion for this or --

Ms. Ross: If not. If it's denied, it's okay.

Ms. Buchanan: I'll -- I'll enter a motion for, and if it's seconded, to have a discussion. My motion would be to deny the request for extension by Hui Malama O Manae and I'll disclose why I made that motion if it's seconded.

Mr. Pele: I'll second.

Chair Lasua: Moved by Lori, second to deny the extension. Discussion?

Ms. Buchanan: It goes back to the time. It seems to be an internal issue. I did see the email so I did come to meeting confused as to whether Hui Malama was -- O Manae was moving forward or not. Their request for an extension, the reason why I'm suggesting we deny the extension is because this is an ongoing matter since June. All the rest of intervenors had sufficient time to seek legal representation, and I have issues about that as makaainana and getting legal representations, which we not going get into now, besides cost and we don't have any lawyers on Molokai readily available to do that kinda work, but I would like to suggest to Hui Malama O Manae that they may want to entertain the idea of being called as witnesses having one intervenor already been approved to intervene in the case, again, I'm not a lawyer, and I'm not giving legal advice, but it would seem that because it's a hui, once you give the intervention the list of potential witnesses is -- it can be large, but any intervenor can call anybody as witnesses in a contested case hearing, and so if members of the Hui that may not -- they hundred prevent onboard at this time can always act as witnesses if you have the same concerns in other areas. That's just my feedback. Thank you.

Chair Lasua: Any other discussion? You guys ready for the question? All in favor to deny the extension, raise your right hand? Look like it's unanimous again. Thank you.

It has been moved by Commissioner Lori Buchanan, seconded by Commissioner Pele, then

VOTED: to deny the request of Ms. Tammy Lynn Ross, President, Hui Aloha Aina O Manae, for a time extension on their intervention.

(Assenting - X. Bicoy; L. Buchanan; W. Buchanan; J. Pele; L. Poepoe)

Ms. Ross: No, no. That's okay. Mahalo. I'll be sure to take whatever Commissioner Buchanan has stated back to the Hui.

Chair Lasua: Thank you. Because of that motion, the Commissioners will -- because of the denial of the extension, do we wanna deny or approve their intervention at this point? We just voted on the extension.

Ms. Buchanan: If it's cleaner, I can make a motion to deny the Hui Malama O Manae's request to intervene in a contested case hearing with Sherrell.

Chair Lasua: Okay, second? Second there. Any discussion?

Ms. Oana: Can you put on the record for the reasons for denial? I'm going to have to write finding of fact, conclusions of law, decision and order, so any good cause or standing kind of reasons.

Ms. Buchanan: For the record, there was a email that was sent saying that the Hui was removing themselves from contested case hearing, but hearing from the President of the organization that they needed more time, we -- this Commissioner felt that they had sufficient time to find legal representation and they haven't, so for that reasons, requesting the denial of intervention.

Ms. Oana: And further, just based on their petition or request as it stands in front of you today, is the petition sufficient? Did they establish good cause? Can you put something on the record that there's nothing in their petition that establishes good cause?

Ms. Buchanan: Corporation Counsel, that would have had to be from the last meeting date because the email that we got was dated yesterday, if Planner Lopez can expound on that, on what is the most current paraphernalia from Hui Malama O Manae on this intervention.

Ms. Lopez: You want the most current date of the email or of Ms. Ross's testimony?

Ms. Buchanan: Counsel is asking concerning the petition.

Ms. Lopez: No the -- do you have any extra? I don't -- I gave out mine.

Ms. Buchanan: Chair? Mr. Chair? It's pretty obvious that Hui Malama O Manae was not able to address the concerns that was raised in the initial paraphernalia from them for cause of intervention because of the inability to have representation or to meet as a Hui and agree, so they haven't made any representations to support their application for intervention. They haven't been heard.

Ms. Oana: Well, I have to write findings and so are -- are you representing that there's no argument that there's a good cause for untimeliness on filing a petition? Okay. That's all.

Chair Lasua: Okay, so anymore discussion? If not, ready for the question? All in favor for the motion to deny Hui Malama to intervene, intervention, please raise your right hand? Okay, it's unanimous.

It has been moved by Commissioner Lori Buchanan, seconded by Commissioner Pele, then

VOTED: to deny the request for intervention by Hui Aloha Aina O Mana'e.

(Assenting - X. Bicoy; L. Buchanan; W. Buchanan; J. Pele; L. Poepoe)

Chair Lasua: Where to?

Ms. Buchanan: So, Mr. Chair, there was two motions then, yeah, the first was not to grant the extension.

Chair Lasua: Right.

Ms. Buchanan: And then the second was to deny, because of their untimeliness, their request for intervention.

Chair Lasua: Yes.

Ms. Buchanan: Okay, thank you.

Chair Lasua: Okay, as we continue on this intervention:

Chair Lasua read the following into the record:

Pursuant to the Molokai Planning Commission's Rules of Practice and Procedure, all of the requests are untimely filed as they were not filed at least ten (10) days before the first public hearing date of June 14, 2017.

The Commission may take action on the above requests. Each request shall be reviewed pursuant to Subchapter 3, Intervention and Contested Cases, of the Molokai Planning Commission's Rules of Practice and Procedure.

If one or more of the intervention requests are granted, the Commission may authorize the appointment of a Hearings Body or Hearings Officer.

Chair Lasua: So the motion to authorize the appointment of the hearings officer.

Ms. Oana: So just for the Commission's information, you folks can appoint a member of the Commission to be the hearings officer, or you could also authorize the appointment of a hearings officer in which Department of Planning will send out notices and request for a hearings officer for this matter.

Mr. Pele: I would like to see a hearing officer appointed by the Planning Department.

Chair Lasua: Okay. Second? Okay. Okay, move and second.

Mr. Bicoy: I second that motion.

Chair Lasua: Move and seconded to have the appointment of and authorize an officer by the Planning Department.

Ms. Buchanan: Discussion, Chair.

Chair Lasua: Discussion?

Ms. Buchanan: Chair, I do have discussion. I also would like to have a hearings officer preside over this, however, I do have concerns. If we could be supplied with the protocols of what the County uses in order to put out a call, I don't know, you guys put out a call for proposals for hearings officers? You guys have a pool of hearing officers? My concern is that that hearing officer, whoever that person might be, would be thoroughly trained in traditional Hawaiian law, that that person would be qualified and trained in the cultural practices, and would be able to address the concerns that I feel is going to be brought up during the contested case, so if we have to write up the protocol for who we looking for in a hearings officer, much like they did with the hearings officer that provided over the TMT case on Mauna Kea, I would like input in that because that person who's going to be hearing the case needs to know about culture, Hawaiian culture in particular, 'cause that's part of the argument.

Mr. Spence: Normally, okay, I'll let Corporation Counsel comment on all the rest of that, but, normally, our procedures are we maintain a pool of attorneys who are willing to serve as hearing officers. We get the -- we don't just appoint one, we go to the two parties and we ask for their consensus on which -- which hearing officer would be selected. So you would have to have consensus of Mr. Pale as well as the applicant. So if Mr. Pale is not satisfied that this person knows, you know, is -- knows what he needs to know, then he can reject all of them or one of them or whatever. So that's the process we normally go through when there's a contested case.

Ms. Buchanan: Does that person get paid? Does the hearing officer get paid?

Mr. Spence: Yes. The hearing officer does get paid.

Ms. Buchanan: Would a Planning Commissioner be paid? I just -- I just asking.

Mr. Spence: No. No.

Ms. Buchanan: It's just funny, you know. Okay.

Mr. Spence: No. Because Planning Commissioners are volunteer.

Ms. Buchanan: Okay.

Mr. Spence: It's unpaid position.

Ms. Buchanan: Not that I would be interested.

Mr. Spence: Attorneys get paid.

Ms. Buchanan: I know that but -- but it's -- it's funny. What if this Commission felt that we had somebody in mind that we wanted to ask to serve as a hearing officer?

Mr. Spence: Then the, again, both parties would have to agree that this hearing officer was -- was suitable for the task.

Mr. Pele: How far do you guys go if they can't agree on particular people you put in place? Could it be 10? Could it be 20? I mean is that a sticking point when they say, no, I don't want that person. You know, could you drag that out, that process?

Mr. Spence: Clayton, how many people do we have on the list or do you know? Maybe Sybil knows.

Mr. Lopez: Well, I don't think the problem would lie about that how long the list is. It's if those are able and willing to come over to Molokai to do that. I -- I don't have the numbers exactly but would be maybe 10 to 15. We have a pool of list. We choose from them. I mean I've done it in the past and it was really hard, really hard to get some -- at least one of them to accept, and their availability to be here, so the availability would be upon the hearing officer if they choose to come. So, at the most, I would get at the most three available from the -- the pool of list, and the list, I don't think it's not even more than 20, but Clayton can -- Clayton can confirm with that.

Mr. Yoshida: I think Staff went through the list of the people on the hearings officer and mediators in anticipation on August 9th that the Commission might make a decision on request to intervene, but at that time, there were no real takers from the list about

availability or people who were not conflicted out by one side or the other, so we don't have anyone at this time from the list to offer as a hearings officer.

Ms. Buchanan: Thank you, Clayton. Thank you, Planner Lopez. Mr. Chair, I have a procedural question. In all fairness to the applicant, Mr. Sherrell, what is he supposed to do in the meantime? So he's put in an application, he's met the, you know, timely manner, whatever, it got waived, so is his spot in line to get a permit held or everybody behind him who getting approved, administratively approved because they never was flagged for whatever reason, what happens to Mr. Sherrell? Because, in all fairness, yeah, the members of the community, I would like to know what happens to him in the meantime while we keeping him in limbo?

Mr. Spence: I can answer that. Okay, so what happens during a contested case is that application remains active. There is no decision made on it until the contested case is completed. When the contested case is completed and both parties believe that they have submitted all of their evidence and they've interviewed all of their witnesses, the hearing officer will write up a recommendation to this Commission on whether the -- the application should be approved or not; that, normally, and it's a much more -- it's a more formal document than your staff report, it's a proposed decision and order, there'll be all the facts, the findings of facts as it relates to the applicable law, and then there will also be recommendation for approval, denial, or approval with -- with conditions, and there's always conditions if the -- if he recommends, he or she, would recommend approval. The -- yeah, so it's after that time when the hearing officer presents his or her findings to this Commission, the Commission can then choose to accept the hearing officer's report and recommendation and vote accordingly, they can accept most of it and -- and go ahead and vote with modifications to his -- his or her recommendations, or the Planning Commission can reject the hearing officer's findings and recommendation all together and then make their own decision. So does that answer? So anyway, the application remains active until such time as it goes through the process and comes back to this Commission for decision.

Ms. Lopez: And I can answer the other half is that the other pending applications still go through the process so you are looking at another short-term rental application that will come before you at the next meeting if we have quorum.

Ms. Buchanan: Thank you, Planner Lopez. So my other question on top of that question would be how many applications are not coming to the Planning Commission? Are the ones that are being administratively approved even seen by this Commission? The answer is no right? No? Okay. No, right?

Ms. Lopez: We just recently approved administratively one short-term rental right -- right before Kainalu, after Kupeke.

Ms. Buchanan: Okay.

Ms. Lopez: The next one would be Mr. Givens, which you will see coming up on your next meeting.

Ms. Buchanan: Okay, so only the ones that are flagged for various reasons come to this Planning Commission, so, Mr. Chair, wait, do we have a motion on the floor? I'm getting lost. We have a motion on the floor? No? Appointment of hearings officer. Okay, so I think I would like feedback from the intervenor and the applicant if they fine with that, with us waiving that responsibility to review the permit to a hearings officer that you will approve of eventually.

Mr. Pale: To approve what?

Ms. Buchanan: They -- they going have to approve of the hearings officer so I'm happy, I'm comfortable with that as long as they have, the both parties, have a chance to say yes or no.

Mr. Pale: What if -- what if one says yes, one says no? I think that's -- that would be like my concern. So how long could this process actually take and then when are we looking at, you know, approximately on when the hearing will be held?

Mr. Spence: Okay, first off, you need to -- both parties need to agree on a hearing officer. Okay, if one says yes and the other says no, then that's no go.

Mr. Pale: So this could drag out, you know, for a while.

Mr. Spence: Yes it could. How long contested case takes, it all depends on the parties and they -- how many witnesses they have, what kind of evidence they want to present, those kinds of things. So, yeah, it could take -- it all -- it all depends on the parties -- what -- how involved they wanna get or, you know, how much evidence, how much everything, the issues they wanna raise and they believe that the hearing officer needs to make a recommendation to the Commission.

Mr. Pale: Is it going to here or on Maui?

Mr. Spence: No, it would be heard here.

Mr. Pale: Okay. Okay. I just want to make one other comment. You know, I just think that this administrative review makes me a little bit nervous 'cause, in many ways, you know we're doing this, I'm totally impacted by this particular short-term rental, but, you know, part of the concern is that there may be some things that will come out of this hearing, this contested case hearing that might affect the administrative process, and the

administrative process mean that community -- the permits that come through the administrative, through your office, and not even seen the light of day as far as allowing or providing for community input, you know, I think that -- that is a major problem, you know. I think that, I agree with Lori again, that we just really need to look -- you guys need to look at the policies and procedures because if you think about the commitment in this whole contested case for just this one case, it gotta mean something more than just that, you know. I mean it's just the resources and stuff that I'm going to have to go through -- I'm going to have look for legal representation at this point. I may end up paying \$75.00 an hour for someone, which I hope not, but I just -- I just think that it's -- it is part of the larger issue and, hopefully, you guys won't lose context of that as well. Thank you.

Chair Lasua: Okay, Commissioners, we have a motion on the floor unless you guys have anymore comments? Motion on the floor to approve the selection of a hearing officer, authorize the hearing -- authorize a hearing officer from the Planning for the appointment of a hearing officer. Okay, ready for the question? All in favor say aye or I mean raise your right hand? Okay, look like unanimous.

It has been moved by Commissioner Pele, seconded by Commissioner Bicoy, then

VOTED: that a hearings officer be appointed by the Planning Department.

(Assenting - X. Bicoy; L. Buchanan; W. Buchanan; J. Pele; L. Poepoe)

- b. If all of the Petitions to Intervene are denied, then the Commission may act on the subject application.**

Chair Lasua: So we're on H, Director's Report. Okay, so under item b., if all the petitions -- so we're not going to engage in that item because we -- because of the petition to interview -- intervene was approved, so we're going to move on to -- to the H, Director's Report.

H. DIRECTOR'S REPORT

- 1. Pending Molokai Applications Report generated by the Planning Department with the July 12, 2017 Agenda Packet (Appendix A).
(Commissioners: Please bring your copy.)**
- 2. Closed Molokai Applications Report generated by the Planning Department with the July 12, 2017 Agenda Packet (Appendix B).
(Commissioners: Please bring your copy.)**

3. **Pending Molokai Applications Report generated by the Planning Department with the July 26, 2017 Agenda Packet (Appendix C).
(Commissioners: Please bring your copy.)**
4. **Closed Molokai Applications Report generated by the Planning Department with the July 26, 2017 Agenda Packet (Appendix D).
(Commissioners: Please bring your copy.)**
5. **Pending Molokai Applications Report generated by the Planning Department with the August 9, 2017 Agenda Packet (Appendix E).**
6. **Closed Molokai Applications Report generated the Planning Department with the August 9, 2017 Agenda Packet (Appendix F).**
7. **Pending Molokai Applications Report generated by the Planning Department with the August 23, 2017 Packet (Exhibit G) (Commissioners: Please bring your copy.)**
8. **Closed Molokai Applications Report generated by the Planning Department with the August 23, 2017 Agenda Packet (Exhibit H) (Commissioners: Please bring your copy.)**
9. **Pending Molokai Applications Report generated by the Planning Department with the September 13, 2017 Agenda Packet (Exhibit I) (Commissioners: Please bring your copy.)**
10. **Closed Molokai Applications Report generated by the Planning Department with the September 13, 2017 Agenda Packet (Exhibit J) (Commissioners: Please bring your copy.)**
11. **Pending Molokai Applications Report generated by the Planning Department with the September 27, 2017 Packet (Exhibit K)**
12. **Closed Molokai Applications Report generated by the Planning Department with the September 27, 2017 Agenda Packet (Exhibit L)**

Mr. Yoshida: So, Mr. Chair, accumulatively, under items 1 through 12, of the Director's Report, we have submitted the list of pending and closed Molokai applications for the past three months, so if there are any questions on that.

Ms. Buchanan: Mr. Chair, I have questions on that. On the open projects, page 2 of 6, the Hawaiian Home Lands Well 4, and the Kauluwai 1 and 2 Wells, and Agrigenentics

Well, it has a request for comments, did any of that request for comments come to this Molokai Planning Commission?

Ms. Lopez: Do you want to answer or I answer? So the -- the request for comments came from the -- the requestor was from the Commission of the Water Resource Management team, and their request was to the Department, it wasn't stated to the Planning Commission, so the comments that they are requesting will be requested from the Department itself, like the one on the last agenda that you seen from Department of Transportation, that request came to have comments directly from the Molokai Planning Commission versus this was requested straight to the Department itself.

Ms. Buchanan: Is there anything that precludes the Department from sharing that information with this Commission?

Mr. Yoshida: If that's -- that's the wish of the Commission. I don't know if they, the Commission on Water Resources Management had a deadline for public comments or agency comments.

Ms. Buchanan: It's -- 'cause I would be requesting that the Department share that information with this Commission because it's a formal request for comment to the Department, but I don't know why we're given these reports if we cannot get information that is on -- on the projects report. I would like to know kinda like what is -- what are they asking for ahead of time, even the Kanakaloloa Cemetery Project, I notice that Group 70 has put in for comments, and then the Kaunakakai Drainage, I don't see that they ever came back to this Commission for a while. I would like to hear what was an update. I guess I would like an update from the ones that I pointing out that I have questions about if the Department can do that.

Ms. Lopez: Would you want that on your next Commission meeting?

Ms. Buchanan: A brief report during the project updates would be really nice and helpful.

Ms. Lopez: As far as the Kaunakakai Drainage System, it will come before you as a public hearing item for the October 25th calendar of your Commission meeting. As far as the rest, I can give you an update on the next meeting. But these requests were made back in 2015. It's -- it's still open so yes. But for the EA comment for the science facility upgrade, it's close, but I don't know why it still say open, so do you still want that 'cause you said the EAC for the Kanakaloloa Cemetery and the request for comments for all the wells, the Hawaiian Home Lands to Kualapuu Mauka, Well 17, Department of Water, Molokai Public Utilities, and Argenetics.

Ms. Buchanan: You said the comments is closed for all of that, yeah, Clayton?

Ms. Lopez: No. Well, they are because they passed the date so they had a certain period of time to comment, so their comments are closed.

Ms. Buchanan: Okay.

Ms. Lopez: But if you would want to see that -- an updated --

Ms. Buchanan: I still like know ---

Ms. Lopez: We still can.

Ms. Buchanan: Yeah, I still like know what they was doing because they ...(inaudible)...

Ms. Lopez: Because the status is still open?

Ms. Buchanan: Yeah. DLNR does a really poor job at communicating to the community so --

Ms. Lopez: Okay.

Ms. Buchanan: I would hope to get some feedback from that 'cause we just talked to water use guy, yeah, yesterday he was here from the department, from the County, and had I know about this or looked at it, I would have asked him.

Ms. Lopez: So it's going to be one, two, three, four, five, six, seven just kinda noting.

Ms. Buchanan: Yeah, all the well, the Well 17 --

Ms. Lopez: All the wells.

Ms. Buchanan: Yeah.

Ms. Lopez: The Kanakaloloa Cemetery.

Ms. Buchanan: Yeah.

Ms. Lopez: Group 70. That's basically -- that would be on Hawaiian Home Lands and so majority of the comments that would come from the Department come straight from the Molokai Community Plan. Just kinda giving you what I know on the top of my head, but I will provide you with more updates on those.

Ms. Buchanan: Okay.

Ms. Lopez: And the, like I said, the Kaunakakai Drainage will be in front of you on October 25th so you will have a report. The final came already to the Department and so they're coming forward with their SMA major.

Ms. Buchanan: Okay. Can we get a hard copy of that, the final EA from the Kaunakakai Drainage? Can I request one?

Mr. Yoshida: I guess we can ask the consultant for the Department of Public Works if they can provide -- is the CD okay? I mean in some -- in electronic form is it okay or you want --

Ms. Lopez: The email version?

Mr. Yoshida: Because if they do the paper version, it's going to cost -- it could cost quite a bit.

Ms. Buchanan: Million dollars? No. Going cost one million dollars for a copy. I will not look at the CD. I so sorry. I'm a hard copy kinda person but if that's problematic, then I can pay for it. You can let me know.

Mr. Yoshida: Yeah, I think the final EA is also accessible on the OEQC website if they made a findings of no significant impact determination.

Ms. Buchanan: Yeah.

Mr. Yoshida: Yeah.

Ms. Buchanan: Okay, so the problem is that there was significant changes to the project and I don't think this community knows it so that's the reason why I'm bringing it up. And then the Kapaakea Flood Mitigation, if we can have one briefing on that for Staff.

Ms. Lopez: Sorry. I didn't get that. What was that?

Ms. Buchanan: The Kapaakea Flood Mitigation.

Ms. Lopez: What page?

Ms. Buchanan: I never even know they had one EA. Page 4 of 6.

Ms. Lopez: Page 4 of 6.

Ms. Buchanan: Watch out. DHHL going be right up there with DLNR for poor communication. I did just say that on Akaku. I'm sorry.

Ms. Lopez: Oh, yes.

Ms. Buchanan: Yeah. I didn't know that there was an EA for Kapaakea. Wow. Okay.

Ms. Lopez: Yeah, and I think we already responded but I don't know why it's still open. Yeah, I don't know why it's still open 'cause we responded to the Department of Hawaiian Home Lands. But if we did respond and it does say open but it's close, would the response letter be sufficient or would you wanna see the whole EA?

Ms. Buchanan: I can request I guess from department for one -- the EA but it's been so contentious over the years with this Planning Commission so --

Ms. Lopez: Okay.

Ms. Buchanan: I would love to see it.

Ms. Lopez: Okay.

Ms. Buchanan: I would read it. Promise. Thank you.

Ms. Lopez: You're welcome.

Chair Lasua: Okay. Anybody else?

- 13. Approval of Calendar 2018 Meeting Schedule (Distributed with the September 13, 2017 agenda packet. (Commissioners: Please bring your copy.)**
- 14. Agenda Items for the October 11, 2017 and October 25, 2017 Molokai Planning Commission Meetings at the Mitchell Pauole Center, Kaunakakai, Island of Molokai.**

Mr. Yoshida: If not, we did circulate the proposed 2018 meeting schedule with your last agenda packet but we didn't get to discuss it because we loss quorum after five minutes so -- so it's basically the second and fourth Wednesday of the month except for the months of November and -- except for the fourth Wednesday in the months of November and December 'cause Members have hard time in the past coming out on the fourth Wednesday in December or the fourth Wednesday in November.

Moving on to item 14, under Director's Report, our next meeting is on October 11th. We have two public hearings scheduled. One is our dead sea scrolls retirement system project to have a digital zoning map for the island instead of various paper maps, which

a labeled "the dead sea scrolls" because they have a lot of tape, you know, to maintain them but, you know, make it digital, have the Council adopt it as such, and then we would go from there as the base map but they would be one map for the island. And then we have the John Givens short-term rental home permit application at Waialua in the rural district. And then on October 25th, we have the Public Works SMA permit for the Kaunakakai Drainage System 1B, which the Commission reviewed the draft -- commented on the draft EA last year, and then there's the Corbiel bed and breakfast permit, this is the second bed and breakfast permit to come before the Commission.

I would note that, right now, since three Commissioners have resigned, you know, you're down to six, so attendance is important on these next couple of meetings until they can appoint and confirm new members. So make sure to contact Staff if you cannot attend meetings 'cause if two members cannot attend meetings, we don't have a quorum so -- and then we have these public hearings scheduled so they gotta re-notice and whatever.

Chair Lasua: Thank you, Clayton.

Ms. Lopez: And can I -- can I add to Clayton?

Chair Lasua: Go ahead.

Ms. Lopez: The -- so the next one after that, November, just kinda giving you a little foresight, the November 8 would be the meeting that we did not have quorum on, which we will continue with mister -- Mrs. Hamamoto's State special use permit and Mr. Pillar's State special use permit, and whatever was on that agenda will be moved to the -- the next, the November calendar, so at least kinda give you a little bit more so we know our meetings are stacked.

Chair Lasua: Question?

Ms. Buchanan: What happened to the Kaluakoi demolition?

Ms. Lopez: That -- that goes on the November calendar because that was the date that they were with the Hamamoto's and the Pillar, so all that that was on the agenda, and the Department of Transportation.

Ms. Buchanan: Can we not move up the Hamamoto, the Pillars, and the demolition to the October 25th?

Ms. Lopez: Well, all of these --

Ms. Buchanan: Or the October 11th? Why is that? Why are we opening another public hearing on another vacation rental when we have so many in -- waiting on the side?

Ms. Lopez: 'Cause these were all scheduled prior to the August meeting, so all of the public hearing notices and everything else went out prior to that -- the meeting that was canceled. Oh and --

Mr. Yoshida: Yeah, also, I guess for the public hearings, they are scheduled 45 days in advance because we have to publish the notice in the various newspapers, like 30 days in advance, and then for some of these, like the dead sea scrolls retirement team project, you got people flying in from Maui, and also, I guess, for the Kaunakakai Subsystem 1B project, you have Public Works people and their consultants flying in also, so you don't want them to come to the meeting, as it happened before, you know, like with the Kaluakoi one where we schedule, but they don't get to say anything, so they gotta come back, and then we schedule it and we don't get to it, and -- or we lose quorum, and they gotta come back, so we don't wanna shortchange them either.

Ms. Buchanan: Okay, thank you. Mr. Chair, the two reasons why this is difficult for me is when we open public hearing, and then we not follow through consistently with the public hearing, it becomes a tracking nightmare, and then my agenda is full of bring the papers you had three months ago to the next meeting, so I just ended up throwing 'em in one soda box because it's becoming a tracking nightmare, and so in order for us to do our job, we have to have some consistency where if we going focus on one project and defer that project to the next meeting, that we actually here -- make that for the next meeting. The other concern, reason for my concern is once you open the public hearing, the clock starts ticking on the 120-day, so then you defer, defer, defer, you end up in November, and your Planning Staff come and tell you, oh guess what, if you no make one decision today or we never have quorum, they get their permit. So that's my two big concerns with putting off all of these until November because we've already open hearings for them, and I just hope that we can work to be more consistent and one thing I would request, Mr. Chair, is I wanted to request a few items to be put on the agenda for the next agenda, if can, and they could probably be standing items, number one, a notice to the community for a review of SMA rules and just have it general, but in the action item under that, that the Commission may take action to form a working committee to do SMA rule review, and I hope that can be on the next agenda.

Ms. Lopez: Then that -- that'll be a question to Corp Counsel. Would that have to be properly noticed with 45 days to notify the community for such action?

Ms. Oana: I don't understand your question. This is just a review by the Commission --

Ms. Lopez: Oh, review but not changes.

Ms. Oana: To discuss and figure out what they wanna change. Then so there doesn't need to be any 45-day notice, just the 6-day notice for the meeting. However, I do wanna

remind, Commissioner Buchanan, we have multiple items that we wanna get through, including the Hamamoto and the Pillar thing, so adding something that might be very intense -- intensively discussed, it might best to wait until you get all the things that have been continued and continued disposed of first.

Ms. Buchanan: Yeah, thank you. Mr. Chair, the reason is I want a few items to be standing and fluid items with -- on the agenda so my -- my community is not -- so my community is able to discuss the SMA and the rules at any given time during, not only public testimony, but also that we are looking to form a committee to focus on rule changes. That's the two things that I would like to see.

Ms. Lopez: So can you clarify to Staff?

Ms. Buchanan: Sunshine Law, proper notice to the community that this Commission would like -- is wanting to or would like to or have the ability to review SMA rules and in that, because we're short-staffed or short on Commissioners and we're really busy and we have one contested case and all of this, that we may be able to form permitted interaction group under the rules that can be formed with people not on the Commission, but outside resource people to come in and actually focus on rule amendment.

Ms. Oana: Well, there's no authority in any rule that I know of that if a TIG can contain other members no on that board or commission, so I think you're thinking about something else, maybe an outside community group that may come to your meetings to give you input, but the TIG has to be formed by members of the Commission.

Ms. Buchanan: Maybe that's one rule we going change.

Mr. Yoshida: Again also -- sorry, okay, sorry. If the Commission wants to do site inspections for upcoming item, as a body, you know, which means we have to have a quorum to attend the site inspection, which means five, five out of six, if you can let us know the meeting ahead, you know, so that maybe we can do it before the meeting, then we can run the public hearing and, yeah, we can do the site inspection, then do the public hearing as a meeting.

Ms. Buchanan: Mr. Chair, I really happy. Thank you, Clayton, for that. I appreciate that because I do wanna request a site visit for the Kaunakakai Drainage Improvements because there's a substantial change in the original plans and I think this Commission needs to see where they wanna dump that waste now.

Ms. Lopez: So are you looking right now into scheduling that? Okay. Today?

Ms. Buchanan: If we can schedule that before the meeting or whatever time, but before the hearing, yeah, on the -- I mean the Kaunakakai Drainage SMA stuff. If they going be coming in for one SMA permit, we should have a site visit before that.

Ms. Lopez: Maybe on that day.

Chair Lasua: Can't we do that before the meeting? I mean --

Ms. Lopez: Would you want it that day?

Mr. Yoshida: Yeah, I guess if they have a commitment from the Commission as a body, and at least five out six Commissioners show up at the site inspection, then we -- we're going to have Public Works people here anyways.

Chair Lasua: Is that okay with the Commissioners.

Ms. Lopez: So you would have to probably make a motion for that. October 25th would be that Wednesday, the meeting starts at 11. I do not know the traveling arrangements that the consultant has but I can bring it up to their attention. Would you guys consider having it on that morning?

Ms. Buchanan: Yup.

Ms. Lopez: Okay, so you guys going to have to make that vote.

Chair Lasua: Okay, can I get a motion?

Ms. Lopez: There's no opposition? If there's no opposition, then what I will do is I will contact the consultant and the Department of Public Works and let them know as of today's meeting that the Planning Commission would want to have a site visit that morning prior to that meeting? Okay. And then I will get back to our Secretary where she can notify the board of that and can confirm for that morning and that you guys all will be available so that you will have a quorum to go and attend the site inspection. Okay.

Chair Lasua: Will everybody be available? Okay.

Ms. Lopez: Thanks, Chair.

Chair Lasua: Everybody shook their head okay.

Ms. Lopez: And prior to your adjournment, I would like to entertain one final thing, it's just up to the discretion of the board. I -- I do have, again, going back to that SMA application that we seen before, the wife of Mr. David Mireles, and she really wants to say something

but it's really up to the Commission if you guys would want to entertain at least three minutes of your time that she came out of her work schedule to come and express her -- her testimony to the Commission if that's okay with the Chair and the board.

Chair Lasua: Everybody in agreement? Okay.

Ms. Lopez: Okay. Thank you. I would like to bring over Ms. Wailani Tanaka.

Ms. Tanaka: I'm sorry that I wasn't here. My apologies. I wasn't aware that I had to physically be present.

Ms. Lopez: State your name.

Ms. Tanaka: Okay. Aloha. My name is Wailani Tanaka and we were on the agenda, actually, I have to tiptoe 'cause I'm only five-one and three-quarters, but so we were on the agenda today and I just wanted to ask from the Chair as well as Clayton if I understand that we got deferred till December and so I wanted to ask if: A) we can be put in earlier, to the next meeting, and B) if we can have full disclosure on our application that we'll share with all of you guys to show more of what was on this application. We filled out a complete and full application with pictures and arrows and post-its, and so I just wanna ask if we can, October is already coming up in rainy season, our roof is currently leaking, we also have, she's not even one yet, we have a baby living with us, so if it keeps on getting rainy, there could be mildew, we could get more damages, which who would be responsible for that? We've already gotten approval for what we -- what we need for our roof, so I'm asking: A) if our meeting can be moved up to one of the October meetings, and B) if we can have our full application available for you guys? I don't even mind printing it out for you guys as well so you can review it and make the decision with -- with more information. So those are my two requests.

Chair Lasua: Any problem with that, Staff?

Ms. Buchanan: I have absolutely no objections to that, Mr. Chair. I don't think anybody has. And then I'm sure you was aware that there -- there is an emergency procedure permit too that you can apply for as well.

Ms. Tanaka: Okay, so I have to do an emergency -- ask for an emergency permit?

Ms. Buchanan: No, no, no. Watch out. I not one legal advice. Oh, I gotta watch that. I just saying that there is a process to get an emergency permit because we no like the rain fall on the baby, okay, no rain on the baby. I have one one-year old in my house too. I had to put a/c. So I have no objections to moving you up on the agenda but, you know, the struggles is with the scheduling with Staff but, personally, I have no issue.

Mr. Spence: Yeah, just -- just a comment. You can work with Sybil if, I'm not saying you should or shouldn't, but if you need to file an emergency permit so your roof no leak, work with her, that's something we do administratively but then it has to come back to the Commission for their final approval, it doesn't excuse you from getting a regular SMA permit or assessment, but that if -- that's a health and safety issue.

Ms. Tanaka: Yes.

Mr. Spence: That's very important.

Ms. Tanaka: And I just -- Okay, and as long as we can provide our full application, right, so that they can actually make the decision 'cause I understand that was one of the reasons that everyone didn't feel they were informed enough on what we were doing. Okay. Okay, so, well not everyone, okay. Sorry, I wasn't here. I'll take that back. Okay, so get the emergency permit and work with Sybil. Okay. Thank you. And that was it.

I. NEXT SCHEDULED REGULAR MEETING DATE: October 11, 2017

J. ADJOURNMENT

Chair Lasua: Thank you, Wailani. So as they said, next scheduled meeting October 11. If there's nothing else, meeting adjourn.

The meeting was adjourned at approximately 3:52 p.m.

Submitted by,

SUZETTE L. ESMERALDA
Secretary to Boards & Commissions II

RECORD OF ATTENDANCE

Present:

Lawrence Lasua, Vice-Chairperson
Xavier-Kaniaala Bicoy
Lori Buchanan
William Buchanan
John Pele
Laakea Poepoe

Resigned:

Michael Drew (as of September 22, 2017)

Others:

William Spence, Planning Director, Department of Planning

Clayton Yoshida, Planning Program Administrator, Current Division, Dept. of Planning

Sybil Lopez, Staff Planner, Molokai, Current Division, Department of Planning

Jennifer Oana, Deputy Corporation Counsel, Department of the Corporation Counsel

Suzette Esmeralda, Secretary to Boards & Commissions II, Current Div., Dept. of Planning