

**MOLOKAI PLANNING COMMISSION
REGULAR MINUTES
NOVEMBER 8, 2017**

••All documents, including written testimony, that was submitted for or at this meeting are filed in the minutes' file and are available for public viewing at the Maui County Department of Planning, 2200 Main St., Suite 315, Wailuku, Maui, and at the Planning Commission Office at the Mitchell Pauole Center, Kaunakakai, Molokai. ••

A. CALL TO ORDER

The regular meeting of the Molokai Planning Commission was called to order by Chairperson Lawrence Lasua on Wednesday, November 8, 2017, at approximately 11:07 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).

Chair Lasua: Okay, Commissioners, we can go ahead and begin. I'll go ahead and call the meeting to order.

B. PUBLIC TESTIMONY - At the discretion of the Chair, public testimony may also be taken when each agenda item is discussed, except for contested cases under Chapter 91, HRS. Individuals who cannot be present when the agenda item is discussed may testify at the beginning of the meeting instead and will not be allowed to testify again when the agenda item is discussed unless new or additional information will be offered. **Testimony will be limited to a maximum of three (3) minutes, with 30 seconds to conclude.**

Chair Lasua: First on the agenda is Public Testimony? Any public testimony at this time? Seeing none, we'll go on to the next item of business, Communications, item C.1.:

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

C. COMMUNICATIONS

1. **FORD FUCHIGAMI, DIRECTOR, STATE DEPARTMENT OF TRANSPORTATION, requesting comments from the Molokai Planning Commission regarding the National Historic Preservation Act (NHPA), Section 106 Consultation, on the Makakupaia Bridge Replacement Project on Kamehameha V Highway, TMK: (2) 5-4-003:028 (por.) and (2) 5-4-017:044 (por.), Kawela, Island of Molokai. (Federal Aid Project No. BR-0450(10)) (S. Lopez) (Request letter was distributed with the August 23, 2017 agenda packet. The matter was previously scheduled for the August 23, 2017 and September 13, 2017 meetings, which both lost quorum soon after the meetings were called to order and therefore needed to be canceled.) (Commissioners: Please bring your documents).**

The Commission may provide its comments.

Ms. Lopez: Thank you, Chair. I'm Sybil Lopez, transmitting a request for comments regarding the National Historic Preservation Act, Section 106 Consultation, on the Makakupaia Bridge Replacement, you did have it in your packet back in August of the

23rd, and we can discuss if there's anything that you wanna respond to regarding to this letter.

Ms. Oana: So, Ms. Lopez, are you just going to be jotting down the comments of the Commissioners --

Ms. Lopez: Yes.

Ms. Oana: And then transmit it to the DOT through the Planning Director?

Ms. Lopez: Yes. Thank you, Corp Counsel.

Ms. Oana: And just for information purposes for the Commission, I just wanna read to you the purposes of the Section 106 process. Section 106, of the National Historic Preservation Act, requires Federal agencies to take into account the affects of their undertakings on historic properties and for the council, not our County Council, reasonable opportunity to comment on such undertakings. The procedures define how Federal agencies meet the statutory responsibilities. The Section 106 process seeks to accommodate historic preservation concerns with the needs of Federal undertakings through consultation among the agency official and other parties with an interest in the affects of the undertaking on historic properties commencing at the early stages of the project planning. The goal of consultation is to identify historic properties potentially affected by the undertaking, assess its affects, and seek ways to avoid, minimize, or mitigate any adverse affects on historic properties. If you look at the letter that they sent to you, on page 2, it basically says we welcome any comments you may on this project's proposed improvements. We're particularly interested in any information you have on this historic and cultural sites that have been recorded in the area or any other historic or cultural sites about which you may have knowledge. In addition, if you are acquainted with any persons or organization that is knowledgeable about the proposed project area or any descendants with ancestral, lineal, or cultural ties or to -- to or cultural knowledge or concerns for, and cultural or religious attachment to the proposed project area, we would appreciate receiving their names and contact information. So this is your opportunity to provide comment and submit any names or organizations that you think may have information for the government. Thank you.

Mr. Poepoe: I get one comment.

Chair Lasua: Go ahead, Commissioner.

Mr. Poepoe: So no more any representatives for direct questions to? Just to Sybil?

Ms. Lopez: Yes.

Mr. Poepoe: Okay.

Ms. Lopez: So your comments will be, as what Corp Counsel said, transmitted to Department of Transportation.

Mr. Poepoe: Okay. Thank you.

Ms. Oana: So, Ms. Lopez, I think Mr. Poepoe was asking, there's no one from this agency here today?

Ms. Lopez: No. There's no one here today. Sorry.

Ms. Buchanan: Mr. Chair?

Chair Lasua: Go ahead, Commissioner.

Ms. Buchanan: I have, well, I -- I no think we can have questions of staff, but I do have a question. If staff was -- did somebody from the DOT come and meet with you to give you the project overview and -- and give anymore papers than what is supplied here?

Ms. Lopez: No.

Ms. Buchanan: No.

Ms. Lopez: That's it in its entirety.

Ms. Buchanan: Are you aware of any other additional information besides this scoping letter of July 18, 2017?

Ms. Lopez: Any -- you mean any additional information --

Ms. Buchanan: Yeah.

Ms. Lopez: Regarding the project itself?

Ms. Buchanan: Yeah.

Ms. Lopez: No. Whatever is in this letter is what the Department got.

Ms. Buchanan: Okay. Okay.

Ms. Lopez: There's no additional information.

Ms. Buchanan: Okay. Thank you very much ...(inaudible)... number one, that I would want to know -- I would wanna see a copy of their stakeholder 106 consultation list because, obviously, they're using State fund -- I mean Federal funding, which is the trigger for Section 106. The area of potential impact, potential effect is in a high cultural historically important area, and I would note the Kawela Plantation Cultural Impact Study. Also, if we could contact Pulama Maioho, on Molokai, to be part of the stakeholder list. My other --

Ms. Lopez: Can you state her position? Pulama?

Ms. Buchanan: I believe she is an archaeologist, but I don't know if she's a consultant working or she's teaching school, but she's from Molokai, and she seems to be now the on-island archaeologist that's born and raised 'cause I'm familiar, I've read, but some time ago, the cultural impact study for Kawela when Kawela Plantation was built, and there's a lot of significant findings within the area. I would like to see their archaeological monitoring plan at the time of construction because inadvertent finds, and it's right by the fishpond as well, I wanted to know who they were going to treat the inadvertent finds. It would have been nice, another feedback is it would have been nice for them to give us links to additional information for this project. And I'm assuming they did an environmental assessment but I don't see that anywhere referenced here. And then when I talk to people that live in Kawela, they all ask me the same question: Why are they fixing the bridge 'cause it looks it okay? And then page 2, of their own correspondence, says that the bridge is in generally in good condition and its materials remain intact, so I guess we were wondering why are they fixing it, although it was in 1940, it has had a history of modifications, and it was evaluated in 2013, but I didn't see why it was a priority, so it's one of those. And then they said that it wasn't really clear how long the project would take to come from start to completion, and what I don't want to see is the great Kainalu Bridge fiasco again where the bridge started and -- and it was an ongoing project that impacted the community for several years.

Ms. Lopez: So you -- I just wanna make sure that I captured what you said.

Ms. Buchanan: Okay.

Ms. Lopez: So, basically, you're requesting a timeline of how the pre --

Ms. Buchanan: Yeah, from start to finish.

Ms. Lopez: Okay.

Ms. Buchanan: I'm really concerned about the historic and cultural inadvertent finds with a project like this in that area. And they should really consult the -- the same consultants who did the Kawela Plantation inventory of archaeological sites. Thank you, Sybil.

Ms. Lopez: I have one more question.

Ms. Buchanan: Okay.

Ms. Lopez: So can you repeat what document was that the Kawela 'cause I heard three different ...(inaudible)...

Ms. Buchanan: The Kawela -- I'm not sure what the document is called; all I know is it's a archaeological and cultural inventory of Kawela for the Kawela Plantation before the Kawela Plantations got built. It's the only one that I know of that has a compilation of the sites. And then the stupid question like why? Why? I mean where is this in a priority for DOT? That might be helpful if they could translate like their priorities on Molokai and -- and where does this fall within the priorities. Okay, thank you. Thank you, Chair.

Chair Lasua: Thank you, Commissioner Buchanan. Any other questions from the Commissioners? Sybil, question. So this is all that's -- that's been presented to us, just the letter and -- and the document in the back as far as --

Ms. Lopez: Yes.

Chair Lasua: What they're doing? Okay. And so with what Commissioner Buchanan is asking, requesting that we get information from that. Okay. So --

Ms. Lopez: Additional information --

Chair Lasua: Yeah.

Ms. Lopez: And if requesting also if there's any links to those additional information.

Chair Lasua: Commissioners have any other comments?

Ms. Buchanan: Mr. Chair?

Chair Lasua: Go ahead.

Ms. Buchanan: Sybil, can you put me as a stakeholder on their 106, then that way I should be getting any information that comes out from this process. Thank you.

Ms. Lopez: I may need Ms. Maioho's information so I can put that in. Thank you.

Chair Lasua: Okay. Are there anymore comments we can translate to Sybil?

Ms. Buchanan: Mr. Chair, did you want a motion?

Chair Lasua: Yes, go ahead.

Ms. Buchanan: Okay. I move that what was offered up to staff on feedback for the Makakupaia Bridge Project be transmitted to the Planning Director and staff.

Mr. Poepoe: I'll second that motion.

Chair Lasua: Okay, moved and second to have staff turn over the records to the Commission. All in favor, raise your right hand? All opposed, your left hand? Okay, motion carried.

It was moved by Commissioner Lori Buchanan, seconded by Commissioner Poepoe, then

VOTED: that the Commission's feedback for Makakupaia Bridge Project be transmitted to the Planning Director and staff.

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

Ms. Lopez: Thank you. Thank you, Chair.

Chair Lasua: You're welcome. Item 2:

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

2. **CHRIS HART & PARTNERS on behalf of KALUAKOI POOLSIDE, LLC and KUKUI (MOLOKAI), INC. requesting a Special Management Area (SMA) Minor Permit for the removal and demolition of an existing luau pavilion and a rock wall structure located at 240 Kepuhi Place and 0 Kakaako Road, TMK: (2) 5-1-003:005 and (2) 5-1-003:021, Kaluakoi, Island of Molokai. (SMX 2017/0048) (Valuation: \$120,000) (S. Lopez) (Report was distributed with the June 14, 2017 agenda packet. and was previously scheduled for the June 14, 2017, July 12, 2017, and September 13, 2017 meetings, but due to other lengthy items on the agenda, the Commission could not hear this matter.) (Commissioners: Please bring your documents).**

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

The Commission may take action on this request.

Chair Lasua: Okay. Go ahead, Sybil.

Ms. Lopez: Thank you, Chair and Commissioners. Sybil Lopez, with the -- Staff Planner regarding this project, SMX 2017/0048, in regards to the request for approval with conditions with the special management area minor permit for the removal and demolition of an existing luau pavilion and a rock wall structure located at 240 Kepuhi Place and Kakaako Road, Kaluakoi, island of Molokai. This matter arises from an application filed on February 14, 2017. The application was filed pursuant to Chapter 205A, Hawaii Revised Statutes, and Chapter 302, of the SMA rules of the Molokai Planning Commission, by Chris Hart & Partners, the consultant, on behalf of Kaluakoi Poolside, LLC and Kukui Incorporated. So I have the consultant here today, Mr. Jordan Hart as well as Todd Sventin, on behalf of the Kaluakoi Poolside, and at this time, I would like to turn the mike over to Mr. Hart so he can make his presentation. Thank you.

Mr. Hart: Thank you, Sybil. Good morning, Chair and Members. My name is Jordan Hart, Planner, with Chris Hart & Partners. I'm going to step back a little bit just so everybody can see the powerpoint while I'm going through it. So, as discussed, this is an SMA assessment with a shoreline setback assessment. I'm here with Todd Sventin. I think everyone's familiar with the project location. This is an aerial photograph of the project site. This blue area here is the work area that we're discussing. The majority of it is sidewalk, the existing sidewalks. There was a ADA assessment and a safety assessment on the sidewalks, and the Kaluakoi received a series of recommendations on improvements they needed to do to their sidewalks in order to comply with accessibility requirements and eliminate slip and fall or tripping hazards, and then the other item is there is the luau pavilion right over here on the corner by the showers that it's currently undermined, it's maybe approximately one-quarter to one-third, maybe one-quarter undermined, the slab is hanging out over the bank, and so they're proposing to -- to remove that. There's also a flanking wall, it's not a shoreline -- it's not a revetment, it doesn't stop wave action, it's probably like a foot-and-a-half to two-foot wall, but they are going to propose to remove that as part of this action.

So regarding the parcels, they're both in the urban district. The hotel parcel is hotel. The parcel where the flanking wall extends into is zoned park. The community plan designations are H-1 and A-1 apartment, and then the park parcel is open space and golf course. This is a State land use map. The yellow is urban district. The project site is completely within the urban district. Here is the County zoning map with hotel and park. And then the community plan map.

So, as I noted, there was a safety and accessibility assessment that was done, which identified the issues that we have, and I'll go through -- I took a series of photos, basically, progressing approximately 15 feet through the entire work area so you can just see

exactly what we're talking about, and I'll go through that in a moment. But it's -- it's -- these are the preliminary photos. We got a request just to provide an expansive photos of what we're talking about, but I'm just going to go through these very briefly. So you have things like substandard curb sizes where you have concrete uplifting, these are the types of issues that are being addressed, substandard curb sizes, oh excuse me. There's also locations where the grade does not meet ADA standards so some of those will need to be addressed. You have, basically, grade issues here. So, anyway, like I said, I'll go through a more thorough photo analysis of the -- of the sidewalk work, but those are character descriptions of what's going to happen.

And then the other item is the pavilion and so this is the location of the pavilion up on the left side here, this is the pad that's -- that's being undermined significantly. So down here -- down here is the bank. This is the area where it's really being undermined. The other photos that I have had the sun with it to my back in this photo so you can see a little bit better. This is that low flanking wall, this is not a -- it's not a sea wall, but it is on the shoreline, but, anyway, that's proposed to be removed. And then all of the disturbed area is proposed to be replanted with native plants. We expect that this area is going to be some sort of groundcover, and then the -- the area on the south side of the pavilion, there's a big bank, and there's already naupaka over there so there'll probably be naupaka so that people don't walk through that and go off the edge.

So, anyway, what I'm going to do now is I'll just transition -- well, I'll go through the mitigation measures for the demolition process, and then I'll go through the longer set of photos. But, anyway, the work will be scheduled during low tide, silt fences will be put up, the work will be completed and the silt fences will be removed before the end of low tide, and then biodegradable netting will be placed over all the exposed areas, and then native plants will be replanted in the place of the disturbed areas, groundcover expected on the north end, and then naupaka on the south end of the pavilion.

The way this complies with HRS 205A, this is a repair and maintenance action, and then demolition are also items that are -- can be exempted from an SMA major -- or SMA permit. We anticipate an SMA minor permit with some conditions, which is satisfactory to the applicant. The total budget is anticipated to be approximately \$120,000.00 or less. As stated, repair of these existing pathways is an exempted action, and then the demolition of the pavilion is happening just because it's a safety hazard; it's also, you know, a potential erosion hazard, and you'll see that more from the photos that I'll show, to follow.

So I'm going to transition into just -- just a slideshow of only photos and I'll just try to briskly walk you through those so you can get a complete understanding of what this is.

Okay, so this is beginning in the parking lot. This would be an example, this a tripping hazard that needs to be addressed. These areas here also will probably need to be

addressed. There's uplifting in various locations. More uplifting here. And so what I did, basically, is I just walked through the entire pathway from start to finish. Some of the shots I turned back to make sure I caught things, but more uplifting. Uplifting on the corner here. And so this is just going to be an ADA repair, it's not a cosmetic or -- or beautification action. More uplifting over here. This area here. And then they'll just assess all of the aprons whether or not they need to be corrected to meet ADA standards, but I just took photos of all the areas just so everybody knows where the areas are. This area probably doesn't have appropriate grade. This -- this section may need to be repoured just because of the grade issue. There's also a break. This section of the grade goes in the wrong direction, and then this here and then this here are issues I believe. This is the -- down by the pool area. These curbs are substandard so they'll need to be addressed and whether or not this -- this grade meet standard, that'll need to be addressed as well. More curbing that's substandard curbing. And then the next area, we'll head down to the carb path, so these are the stairs. Any of these transitions may need to be addressed. This asphalt cart path is just intended to be resurfaced. So this is -- this is not the pavilion we're addressing; it'll be the one that's to our north behind -- behind my back when I'm taking this photo, but I just wanted to get the transitions between the asphalt and the concrete. Okay, the path, this concrete connection area. So another transition to a stairway. Transition to a stairway. This is the pavilion that's proposed to be removed. So this is -- the location here is anticipated to be the end of the -- the hardscape refurbishment project. The pavilion area. I do go -- anyway, sorry. No work is proposed here, but I just go down to the extent of it just to show it. Okay, sorry.

Okay, so now we're on the pad looking southwest, I believe. The pavilion is this rock wall -- this is the foundation of the pavilion right here. This wall is coming out, it's not a revetment, but it is a rock wall in the shoreline area. So this is the undermining that's happening so this soil it's pulled out to the ocean if there's high surf that's lapping at the bottom of that, and then you can see that pad is floating. Some pieces have come off already. This is looking from the corner back up so the wall is running this way. Okay, and then this is the -- excuse me. This area is probably the most significant overhang. These are all pieces that have come down already.

So just to recap. The proposed action will happen during low tide, silt fences will be put up, and then the work will be completed and the silt fences will be removed before the end of low tide, and then all of the exposed areas will be covered with a biodegradable netting, and then native plants will be replanted in the area. This area here with the larger bank is -- is proposed for naupaka, and then as the bank is at a -- more of a slight grade where people can walk over it, that's proposed to be a groundcover in that area, and then, you know, so this had been boarded up the last time I looked at it and somebody opened it up so it's -- it's an attractive nuisance and, you know, it's an environmental concern as well so they're proposing to remove it. We did get a comment from SHPD Architecture regarding the status of the structure, it's less than 15 years old -- or 50 years old and it's

not considered to be historic. And so, you know, that's the proposed action. Thank you for your consideration.

Ms. Lopez: Thank you, Mr. Hart. I just wanted to add a little history on how this project came to be. Back in 2015, during the winter season, we don't have the pictures, but our shoreline team got numerous calls because of the high water waves actually came and covered -- covered all the way up to the top, so some -- some locals or concerned citizens sent some pictures of the high water mark going all the way over during the winter season and actually covering -- sorry, I wanna -- I wanna actually show where and how far. So the -- so the water waves actually came up to the -- the vegetation up on the top, and then you kinda see the wall and the pavilion, and so the shoreline team, prior to Mr. Sventin, I think it was Clay Ramba, actually sat down with their team and the shoreline team to kinda figure out how would be best, you know, mitigation measures to help with the falling of the pavilion, the waves coming up, so it was more of a hazardous area, and once the season went out, the year 2016, there were a lot of beachgoers that actually kinda congregated in these areas and so they had to block it off, they used tape that didn't work, they used the orange mesh, that didn't work because the ocean kind of swept it away, and so we finally actually came up with, thanks to the consultant and the -- the team for actually working out, they actually wanted to keep the wall in that is located towards the beachside, but the recommendation from the shoreline team was to actually remove it, and so the -- some of the mitigation measures that Mr. Hart talked about and those that are in the report, those actually came from the shoreline team, so I kinda wanna give them some credit that they actually came, the owners actually came in to actually work with mitigation measures with the shoreline team to see how they could best address this situation. And if Mr. Sventin doesn't have anything to add, I will turn the time over to the Chair. Okay. Thank you.

Chair Lasua: Thank you, Sybil. We'll go ahead and have Corp Counsel.

Ms. Oana: Thank you, Chair. As this is considered a contested case, pursuant to the law, as it will determine the legal rights, duties, or privileges of the applicant, we're going to add a step to this process. Mr. Hart, opportunity for public testimony will be afforded to the public shortly, do you wish to cross-examine any public testifier?

Mr. Hart: No. Thank you.

Ms. Oana: Okay, thank you.

Chair Lasua: Okay, at this time, we'll go ahead and take public testimony. Seeing none, public testimony -- seeing none, okay, Commissioners, any questions for the applicant?

Ms. Buchanan: Mr. Chair?

Chair Lasua: Yes, go ahead.

Ms. Buchanan: I have questions for staff.

Chair Lasua: Go ahead.

Ms. Buchanan: Sorry, Sybil. Hi.

Ms. Lopez: Hi.

Ms. Buchanan: Planner Lopez, thank you so much for working on this project from 2015. I, too, had taken pictures of the demise of the shoreline at Kaluakoi, I did not forward them to staff, but it was a concern for myself seeing that it was such -- in such disrepair, so my question, specifically, for you before I ask the consultant, the shoreline team that was assembled that made these recommendations, did they realize that this was a project that might have qualified for a major SMA permit as opposed to a minor SMA permit because of the additional -- additions into rock wall and the work related to the shoreline?

Ms. Lopez: So -- so I'll let you know who the team consisted of, and then I can go from there to let you know who --

Ms. Buchanan: Yeah, I don't know if that's really relevant except for the recommendations because just in the review that we had today, which was the first time we saw the project other than the correspondence we had dated July 14, 2017, I didn't realize the -- the scope of the project, which is quite large, and so I have trouble, you know, with the valuation, but it is what it is, but I think because the project is a large project encompassing several aspects including hard surfaces and hazardous materials, I'm finding it difficult to see that it qualifies as a minor permit.

Ms. Lopez: So one of the --

Ms. Buchanan: So maybe you can tell me the reasonings why you think it qualifies as a minor permit.

Ms. Lopez: So going back and forth with the shoreline team and the owners and his team, they actually wanted to do something bigger, and so this was the -- the best mitigation measurements that we could come up, I mean they hired a structural engineer, they -- to figure out how they can still keep and preserve the rock wall area of the pavilion and move it out of the way or see if they could build upon that and keep it, they really actually wanted to keep that wall and they were hiring structural engineers to figure out how they can do it, and as -- as they proceeded in that notion, the valuation did come high, and what, like I said, the best measurement was actually this -- this route 'cause all of those routes were more costly where it would turn into actual major use, and that's not something that they,

after doing the cost benefit analysis, seeing the scope and the -- the scope of the work, and what it'll take, and the undertaking of that, the best possible -- they actually really wanted to keep it, so now they -- they agreed that the best most cost effective was to actually demolish it, remove it in its entirety, and that was at -- at this valuation, that 120, so if they were to do a major use, the valuation would be looked at and it has to be at least 500,000 or more to be considered a major use, that would be one of the criterias. Mr. Yoshida can chime in and correct me if I'm wrong. But trying to answer your question, that is the route, this is why they're here at -- at this stage and the scope of work that they chose because of the other options they actually had was not operable or not -- not cost effective.

Mr. Pele: Okay, Sybil, I know we had the training on the minor and major SMA permits and the valuation, without addressing this in ambiguity, just saying, oh, I think it's going to be a half-a-million dollars, because I think it is, what are the steps that they will have to take as the project moves forward and cost increase? Like can you refresh my memory? I apologize. I know we had the State here doing the training session. So if it goes above the valuation that they were determining right now, and it reaches that threshold of 500,000, what is the requirement?

Ms. Lopez: They would do a cost -- worksheet cost analysis --

Mr. Pele: And --

Ms. Lopez: So -- oh, go ahead.

Mr. Pele: And staff, who's in charge of monitoring that?

Ms. Lopez: At the time of them submitting their application, so during the review, so the Department will review it and -- and if there is a need to do a cost breakdown to show the valuation if it will go either over or under that -- that is part of the review process.

Mr. Pele: So as they're in -- as the project is being -- as the project is being completed or if it gets approved, and those costs start to build, they -- they're required to come back to you and say, hey, listen, we're getting close to -- we didn't expect this, we didn't expect this, we didn't expect this, we're kinda close to \$500,000.00 now --

Ms. Lopez: That --

Mr. Pele: What do we --

Ms. Lopez: You won't -- that -- that won't be seen during the SMA. I can see where you're going because that would be like --

Mr. Pele: Once it's done, it's done --

Ms. Lopez: Post-construction --

Mr. Pele: In other words. Yeah.

Ms. Lopez: During that time, but that -- this wouldn't encompass what -- what the overall project would cost, so after the SMA and, you know, whatever permits that they would have to get for that, it kind of would have to be in that --

Mr. Pele: Okay. Alright.

Ms. Lopez: That would be constituted in that cost analysis that they would have to submit to the Department.

Mr. Pele: Thank you.

Ms. Lopez: I hope I answered your question.

Mr. Pele: Yeah, well, we're not in discussion so I have my opinion about this project. Kinda long overdue. But anyways --

Ms. Lopez: 'Cause that's undetermined --

Mr. Pele: That's backyard that's why.

Ms. Lopez: Well, because that's more undermined factor -- cost factors that -- that you cannot -- that it's hard to calculate --

Mr. Pele: Right. No, you answered my question.

Ms. Lopez: You know, in the event something, I don't know, in the event that there's another winter season coming around and another wash white of waves, so it's hard to - - I don't know what is the word.

Mr. Pele: Yeah.

Ms. Lopez: Predictive measures on cost.

Mr. Pele: Alright. Alright.

Ms. Lopez: Oh, anticipated costs.

Ms. Oana: Commissioner Pele, I think your question was how is it valuated?

Mr. Pele: Yeah, I mean I don't wanna sit here and, like I said, address this with ambiguity saying, oh, I just think it's going to be a half-a-million dollar project.

Ms. Oana: Yeah.

Mr. Pele: Because I think so.

Ms. Oana: Yeah. According to --

Mr. Pele: I mean if they're telling us it's 120,000, what -- where do I have -- I mean what makes me say that it's not going to be and how do we check that to make sure there's check and balances to make sure it doesn't go over or it doesn't reach that major SMA permit that would be required at half-a-million dollars.

Ms. Lopez: Good question. Thank you.

Ms. Oana: Okay, so in the Molokai Planning Commission rules, the SMA rules, Section 12-302-12, that's the assessment and determination procedure section, and in that section there's a valuation of the proposed action section, an applicant's estimates of the valuation may be verified by the Director of Public Works. In the event of a conflict between the estimates of the applicant and the Director of Public Works, the higher estimate amount shall be used by the Director for the purposes of an assessment of the proposed action. So, basically, it -- it can be checked --

Mr. Pele: Okay, so you used the word "may."

Ms. Oana: Yeah.

Mr. Pele: So who enacts that valuation by the Public Works? Would that be something we would require as a condition or --

Ms. Oana: Well --

Mr. Pele: Like who's going to tell Public Works --

Ms. Oana: That would be --

Mr. Pele: We want a true bid on your ...(inaudible)...

Ms. Oana: Yeah, that would be the Director of Planning --

Mr. Pele: Alright.

Ms. Oana: To have the final say in the valuation or determination, so if he wants a check, then he can ask the Director of Public Works.

Mr. Pele: And only him?

Ms. Oana: That's what it says in the rule.

Mr. Pele: Okay. Thank you.

Ms. Lopez: Thank you.

Ms. Buchanan: Mr. Chair?

Mr. Lasua: Go ahead, Lori.

Ms. Buchanan: If you get question, you can ask before me. So let me make it clear on the record that I don't have this problem with the valuation of the project, okay. It is the actions within the project that I'm concerned with, and those concerns are, number one, with the actual demolition occurring on the coastline. I don't know what company is doing it. I don't know what best management practices that company is incurring during this demolition that's going to occur on the shoreline, and what impacts that might have to the shoreline itself. Also, the demolition of the wall, the cement wall, how is that going to occur? How -- how are they going to traverse over the sand, over the native grasses to the area in order to remove structures? The third would be the replacement plantings. Question -- a question for me is has a certified shoreline been done within a year from the time of this project? Were people knowledgeable of climate change and impact shoreline and sea level rise a part of the team because it looks like we are replacing hard surfaces in areas where the high water is occurring? So why would you put hard surfaces that are constructed of hazardous materials back into high water areas? You also stated on the record that and I am aware that orange netting was used for safety purposes and that got washed out at -- in the high waves, so that's putting hazardous materials into the near shore waters and then the ocean, that has a impact to marine life. So the coastal management law, which is an environmental law, which we have purview over, which is Chapter 205A, is actually the qualifying mark for myself other than valuation of this project as to whether the actions occurring within the special management area will impact the shoreline. In my opinion, there is impact to the shoreline. That should not be exempted. And I have more questions than what can be offered either in the paraphernalia that was given us today, on July 14, and through the powerpoint, but that does not mean that I do not support improvements, of course we do. We know that the area has been out of service as a hotel, part of it, and we know it fell into disrepair, and that's why you see the noncompliance of the ADA. It was much broader than I expected it to be, and that's fine,

it's all good, but I really do have concerns on re-vegetation plantings, hard surfacing of areas currently being impacted by high water, and the setback. If we are -- the reason for a certified shoreline certification is because we do have sea level rise and changing occurrences on the shoreline. Although it's not Papohaku Dunes, it does -- the beach at Kaluakoi, Kepuhi Beach, does impact the dunes on the adjacent shoreline of Papohaku, and for that, we can turn to the Papohaku Dune Restoration Study. So that's what's concerning me 'cause when -- when the consultant says "hard surfaces," hard surfaces consist of hazardous waste, it concerns -- it's made up of cement or asphalt materials; usually that is all included in paraphernalia that we would have already received and found that that would have no impact to the shoreline or near shore waters, so that's my concern, it's not really about the evaluation of the project, it's the actions that are occurring on a large -- much larger scale than what is written up on the July 18, 2017 paper that we got. Thank you, Mr. Chair.

Chair Lasua: Okay, Commissioners, so if we can take an action on this application request. Could I get a motion?

Mr. Pele: I move that we accept the application as presented with conditions.

Chair Lasua: A second?

Mr. Bicoy: I second that motion.

Chair Lasua: Moved and second to the motion to -- on the applications request. All in -- ready for the question? All in favor -- or discussion. Open for discussion.

Ms. Lopez: Chair, can I read the recommendations?

Chair Lasua: Oh, sorry.

Ms. Lopez: Okay. Thank you for your speedy actions, Chair and Commission, but I do have recommendation that would address some of the concerns that the Commissioner Buchanan has, so can I continue? I will continue with the recommendations. In consideration of the foregoing determination, an SMA minor permit is required for the proposed action. Pursuant to the aforementioned, the Department recommends approval of the SMA minor permit subject to the following conditions, and I'll -- I'll go one-on-one 'cause it actually addresses that, well, the first one is the project shall be in accordance with the descriptions submitted on February 14th as -- and representations made to the Department.

So the BMPs shall be implemented to ensure water quality and marine resources are protected. All construction-related materials shall be free of pollutants and placed or stored in ways to avoid or minimize disturbance. No debris, petroleum products, or

deleterious materials or wastes shall be allowed to fall, flow, leach, or otherwise enter near shore waters. Any turbidity and siltation generated from activities proposed at the site shall be minimized and contained in the immediate vicinity of construction through the use of effective silt containment devices. Construction during adverse weather conditions shall be curtailed to minimize the potential for adverse water quality impacts.

That the contractor shall perform the work in a manner that minimizes environmental pollution and damage as a result of construction operations. That environmental resources within the project boundaries and those affected outside the limits of permanent work shall be protected during the entire duration of the construction period.

That the activity/use shall not adversely affect a federally listed threatened or endangered species or a species proposed for such designation, or destroy or adversely modify its designated critical habitat, like the monk seal that goes there.

That the activity/use shall not substantially disrupt the movement of those species of aquatic life indigenous to the area including those species which normally migrate through the area.

That no contamination of the marine or coastal environment, trash or debris, shall result from the project-related authorized activities/uses.

That no more motorized construction equipment is to be operated in the water at any time.

That in the event that there is a petroleum spill on the sand, the operator shall promptly remove the contaminated sand from the beach.

That the applicants, okay, number 9 is about the ordinance and the rules and regulations.

Number 11 goes -- requires that the applicant shall take measures to ensure that the public is adequately informed of the project activities/work once it is initiated and the need to avoid the project area during the operation.

That public access along the shoreline during construction shall be maintained so far as practicable and within the limitations necessary to ensure safety.

Number 13 addresses the BMPs, such as daily inspection of equipment for conditions that could cause spills or leaks, cleaning of equipment, clean up of -- any fluid or oil spills immediately for activities and implementation regarding like equipment must not be refueled in the shoreline area. What to do during visible petroleum, and the DLNR, the Office of Conservation and Coastal Land staff shall be contacted immediately to conduct a visual inspection and to provide appropriate guidance.

Number 14, that a qualified archaeological monitor shall be present during those portions of the project which involve any ground altering disturbance in order to document any historic properties, which may be encountered, and to provide mitigation measures as necessary.

Fifteen, that the applicant shall plant vegetation landward of the shoreline and maintain the vegetation planted in the shoreline area to ensure the beach transit corridor fronting the property is kept passable and free of vegetation.

That the project shall be initiated, and I would like to strike out the June 30th to put the November 30, 2019, and shall be completed within one year of the said initiation.

And I would like to remove the June 14 and put November 8, today's, so in consideration of the foregoing, the Department recommends that the Commission adopt the Department's report prepared for June 14, 2017, but November 8, today, 2017 meeting as its findings of facts, conclusions of law, and decisions and order, and to authorize the Director of Planning to transmit said decision and order on behalf of the Commission.

Chair Lasua: Thank you, Sybil. At this time, the applicant have any comments?

Mr. Hart: I think we have no comment. I just want to thank the Department for the recommendations on BMPs. Thank you.

Chair Lasua: Thank you, Mr. Hart. Okay, so, Commissioners, there was a motion, and a second. Any discussion?

Ms. Buchanan: Mr. Chair, the maker of the motion said with conditions, did he mean the conditions numbers 1 through 16?

Mr. Pele: Correct.

Ms. Buchanan: Or did he have additional conditions?

Mr. Pele: No. If you wanna talk about it, we can talk about it, but I wanted to make a motion for discussion. It was presented to us with conditions, I believe, so that was my motion.

Chair Lasua: Okay. Okay, discussion.

Ms. Buchanan: So, Mr. Chair, on condition number 15, that the applicant shall plant vegetation landward of the shoreline, do we know what the shoreline certification is?

Ms. Lopez: So part of the -- so the shoreline -- so let me explain. So they -- we did a shoreline analysis, the consultant did a shoreline analysis and because that area, especially the whole island of Molokai does not have an erosion rate or map, instead of using the annual erosion hazard rate method, it's -- the consultant actually used the average lot depth method, and so because of this, the calculation of the shoreline setback is greater than 600 feet, which the shoreline setback is 150 feet, so, therefore, the actual work is not in the shoreline setback. Or you wanna -- okay, and the consultant will finish.

Mr. Hart: Thank you. Jordan Hart. One point of clarification. There is work in the shoreline, that would be the removal of the wall and then, obviously, the undermining of the pavilion, you know, that's really the shoreline is right under the pavilion right there, and so that's why we did file a shoreline setback assessment, but, you know, this -- we believe this action is -- is able to be assessed to be exempt from a shoreline setback variance based on it just being a repair and maintenance of existing, and also the removal of a structure from the shoreline area. If I could add one item, if it's appropriate, Chair?

Chair Lasua: Go ahead.

Ms. Lopez: I wanted to add onto the shoreline.

Mr. Hart: Okay. Afterwards.

Ms. Lopez: Sorry. And I wanted to add on that shoreline, so the shoreline setback approval would be administratively and the shoreline team did, after listening to him, did come up with that they support this project and the reason is is that they removing the wall and the reason why they're -- and that was one of the recommendations from the shoreline team to the -- the owners, and so they would support this in -- within that area.

Mr. Hart: Chair, to revisit the question about whether or not we had any comments, I did think of one request that we do have. There is a one-year duration on the work, and there's also a requirement that we have an approved archaeological monitoring plan from SHPD, so we have already prepared our archaeological monitoring plan and we have submitted it to SHPD, but, you know, they definitely have a lot of work right now and they take some time to respond to applications, and so what I'm requesting is that there be consideration that the -- the one-year duration start at the Department's receipt of SHPD's approval of our -- our monitoring plan because that would be the earliest date we could actually do work. Thank you.

Chair Lasua: Thank you, Mr. Hart. Commissioner Buchanan, did you have your questions?

Ms. Buchanan: Yeah, I have a question. For the -- maybe the consultant or for Mr. Sventin, since Molokai Ranch is up for sale, if the ranch got sold tomorrow, what would happen to these improvement plans? What would happen to the permit?

Mr. Hart: A permit can be transferred. The Department administers that process regularly. Can be transferred is what I was saying.

Ms. Buchanan: Okay, thank you. So back to item -- condition number 15, that the applicant shall plant vegetation landward of the shoreline, which is kinda -- I'm not sure where the shoreline is right now even after all that explanation. I know where the shoreline is if I walk out there today because you go by high water mark and then you go from vegetation, it's pretty simple. I know that the luau pavilion is within that high water mark. I also know that the cement that is planning to be removed is a great idea, it should be removed 'cause it's also in shoreline inundation from hot waves, so I really like that you guys are going to remove it, but it says you're going to plant vegetation, you know, usually we see a vegetation plan or restoration plan, and part of that is that so we don't run into issues with, and I know you said you're going to see it's kept free from -- and passable, but what we've seen is people try to acquire acreage that way, and so I'm concerned about that.

Mr. Hart: Chair, if I might respond to that?

Chair Lasua: Go ahead.

Mr. Hart: If it's possible, the condition could be amended to -- to say that we would plant in the disturbed area because we're not -- we're not proposing to do any additional planting except for basically stabilize the area that's going to be disturbed because the -- the pad is partially buried and then there's going to be, you know, when that's -- when that's removed, that area is going to be exposed, and then the wall is partially buried, so when that's broken and dug up, there's going to be a hole, and so the proposal is just to put the biodegradable netting over the exposed soil area and then plant, and so when you're talking about planting mauka or makai, we're not proposing to do any action makai, all the action is going to happen from the mauka side, you know, taking out of the shoreline area, which I agree with you, I think that the shoreline, from when I walked it, is either under the slab and then at the face of that wall, and sometimes it's going -- there's a portion of the wall that's actually floating so the sand is under -- under the wall, so, anyway, the only area proposed to be planted is the disturbed area and so, obviously, there is also no accretion as far as you could -- a landowner could try and do that but the State doesn't allow you to claim land, and not that that's the intent here, but it's just not possible, so perhaps a resolution could be that that we plant in the disturbed area rather than talking about going makai or mauka of the shoreline.

Chair Lasua: Thank you, Mr. Hart.

Ms. Lopez: Can I add, Chair?

Chair Lasua: Go ahead, Sybil.

Ms. Lopez: As part of the -- this was actually a suggestion made from the shoreline team, so as you see, some of these conditions were actually came from the shoreline team to actually have vegetation 'cause after, like what Mr. Hart said, it is actually to -- to vegetate those areas, but, like I said, it did come from, majority of conditions came from the shoreline team.

Ms. Buchanan: Mr. Chair, question for Planner Lopez. Planner Lopez, did the shoreline team write up an assessment from their meetings?

Ms. Lopez: They --

Ms. Buchanan: Did anybody take notes and did you guys have a map?

Ms. Lopez: Yes, so it's all via email and back and forth, and yes.

Ms. Buchanan: Did you guys do a map? Is there like -- like part of the -- is there an actual map of the improvements and the areas to be improved, and then an overlay, like a GIS overlay of where these actions are occurring? And are those absent because it's a SMA minor and would those be present if it was not?

Ms. Lopez: I don't -- well --

Ms. Buchanan: Would a site visit suffice?

Ms. Lopez: Well, we -- the team used what was submitted by the applicant, so that's -- that's the -- that's what was used during the -- those assessments, so it was what the applicant -- the consultant provided and which you have here. I don't see what we've done, what they've done that you guys didn't -- did not see in here.

Mr. Hart: Jordan Hart. I would just like to add that normally we don't prepare GIS maps for the Department even for SMA major permits, but what I would say also is that, you know, I recognize that there was an interest in making sure that there was a complete understanding of what the project area was so I did take approximately a hundred photographs, which we went through, and that's what I believe is the submittals and representations that are being made to the -- to the Commission here today. The Department has those on the computer here, and that's the work area that we're talking about. We did use aerial photographs and outline the -- the hardscape area that you can see in the aerial photographs, but there wasn't a -- a set of plans on record that was

usable for the sidewalks and there wasn't a new land survey of the entire hardscape area, and I think that, you know, in the context of a scope of what this project is, which is basically making these sidewalks so that they're not a liability and then just removing a structure, it didn't, you know, the cost of that level of analysis to have a surveyor out there to do a file to do these kinds of level of plans didn't really, you know, seem appropriate, but we did do our best to document that in photographs, and we hope that that's adequate here. Thank you.

Ms. Lopez: And to add to that the Department or the team did use the County Accela GIS system for mapping, pictometry, whatever is online, and we also went on site a few times to take our -- the Department's own pictures on top of what the consultant had submitted to the Department.

Ms. Buchanan: Thank you, Planner Lopez. Mr. Chair, I would like to state for the record that -- that I'm uncomfortable with approving multiple actions that -- that are kinda large in my perspective of what I'm thinking. Demolition always has its own issues. I would have liked to have seen the demolition of the luau structure come in as a separate application, and they could have been concurrent, with the ADA improvements. It would have been easier for those to be two separate projects because I -- I hardly go to west end like my -- the maker of the motion who knows what's going on down there, but the few times that I do go, I stand and I told myself who in the world permitted these structures back in 1970 or '80 when it was really clear that it was just too close to the shoreline, period. These hard surfaces and structures are still too close to the shoreline, in my opinion, and so at least we could have dealt with that separately instead of being it a bundle package and an all or nothing, so that's where my uncomfortable issues come within because even with the 16 conditions, I will bet that there will be impact to the shoreline. We do know that we have tiani species there, whether it's monk seals or not, and how those hard surfaces are going to be repaired is a concern for myself and the demolition itself, so at least I stated my concerns on the record. Thank you, Mr. Chair.

Chair Lasua: Thank you, Commissioner. Anymore discussion?

Mr. Pele: Yeah, I share the same concern, Chairman.

Chair Lasua: Yeah.

Mr. Pele: I live 300 yards away from that site. Everyday I walk there and I wonder who permitted that too in 1979, but the fact of the matter is I hear people testify in this community about their section of the island and how they feel, I live there, and all my family lives on the west side, and that's all I hear about is when are they going take this thing down, and not only that, I see everybody from the island on that beach, east, west, north, south, they're all there when the surf is up. I even think I seen Laakea surfing over there before. So the place is pilau. We should be holding signs down there. I'm surprised

we not holding signs demanding the ranch clean this thing up. And the community, I laughed during the presentation, 'cause I've tripped twice on some of the spots that he -- he pointed out. The community uses that area, let's not get it twisted that that's some kind of resort area, the community use it; in fact, they drive their cars all over the place, that's why the ranch had to hire a security for firm to stop that kind of -- that kinda disrespect on the land. The fence didn't fall in the water, the one fence. The fence was ripped down by the locals, threw it -- and they threw it on the ground, then it went into the ocean, so let's get that right. That's what happened. The water didn't come and take that fence away. They trashed that place. And that needs to be -- it needs to be cleaned up like yesterday. So that's my opinion from a guy --

Chair Lasua: Thank you, Commissioner Pele. Commissioner Buchanan, was there any other condition you'd like to put on there besides what was provided by the Planning?

Mr. Poepoe: I get one question for the applicant. If can, would you be able to provide one description of what we could expect, like based on the pictures, what we could expect upon completion of the project? If that's possible.

Mr. Hart: Sure. Jordan Hart. So with regard to the sidewalks, you know, basically any of those edges that are -- that are uplifted, those will basically be -- be broken out and re-poured with joints, and then any of the large grade areas, like there's the one main sloped area in the middle that's not to ADA grade, that would need to be re-poured to a proper grade, and then the curbs, they would be more of a standardized curbside like you see in any -- go ahead.

Mr. Poepoe: Mostly concerned with the shoreline.

Mr. Hart: Sure. Okay, so -- so, basically, if we go to the photos, that -- the wall, the wall that's extending north past the pavilion would be gone and there would be, immediately after the -- the removal of it, there would be biodegradable netting that's over any of the disturbed area, and then, like I was saying, proposing pahuihui planted in that area, and then on the -- where the pavilion is and the slab on this other side, that would all be removed and then there would be netting over any of the exposed soil there, and I recommend -- well, I would suggest, based on there's naupaka there already, just planting more naupaka in that location just because that is a higher bank. That would be it. There's -- it's just removal.

Mr. Poepoe: So what type of -- what angle slope can we expect?

Mr. Hart: I think it would generally resemble what's existing, there will be a hole where the wall -- like there will be a trench where the wall is removed, and so I think that that -- that should be filled in with the soil that's immediately around it, so I think that it would

generally -- not as much -- not as much this area, but if you -- if you look at the photos that look north --

Ms. Lopez: ...(inaudible)... these ones?

Mr. Hart: Yeah, just keep -- keep going. Go the other direction, sorry.

Ms. Lopez: This direction?

Mr. Hart: Keep going. Shucks. Maybe back to the presentation. Anyway, the wall -- the wall goes into the bank as it goes farther towards -- toward away from the resort, and that -- that portion is the lower slope, but when you take -- when you break the wall up and you take it out, it's going to be a trench, and so what should happen is that that the soil around it should be pushed into the trench just so it's not a hole, and then the biodegradable netting we'll be putting over that, and then the planting is put in that area. So as far as the exact grade, I couldn't tell you, but the intent would be to make it not -- just so it's smooth as opposed to being a -- you know, a hole that you could step into. But that's -- it's just removal, stabilize it, and that's it. Yeah, but anyway, up on that bank, if you look at it when it's -- inside the powerpoint, there might be a better photo, but anyway, as it goes in that direction, it sinks into the wall. When it's closer to the pavilion, it's kinda out in the front of the bank, but on the lower -- on the other end, it's -- it kinda sits inside the bank so you'd have to dig it out basically, when you break it, you have to pull it out.

Ms. Lopez: I don't know. I'm sorry.

Mr. Hart: Sorry. Inside the powerpoint there might be a better photo of it towards -- towards the end. Yeah. There. Do you see how it gets buried? The grass goes over it? It's starting to go into the bank.

Ms. Lopez: ...(inaudible)... the actual size?

Mr. Hart: Sure that's when you break that out, that'll be the -- that'll be a hole there and so it just, what I was saying, just pushing the soil into that hole that's immediately around it just to -- just to smooth it out as opposed to leaving a hole, which is just a different hazard.

Mr. Poepoe: Thank you.

Chair Lasua: Commissioner Pele, you had a question?

Mr. Pele: No.

Chair Lasua: Okay. Anymore discussion?

Ms. Buchanan: Mr. Chair, considering condition number 17 to the project that Kaluakoi Poolside transmit to the Molokai Planning Commission the name of the -- name and number or contacts for the contractor that is hired to do the project, and that a 24-hour phone number be posted at the constructed site for anyone needing more information on the ongoing construction during the construction period. And that, on item number 16, to reflect, as Planner Lopez, that we're striking the "June 30th" and inserting "that the start date of the initiation shall be pending the State Historic Preservation Division approval of the archaeological monitoring plan." And one year from that. Thank you.

Ms. Oana: So, Ms. Buchanan, can I just kinda rephrase the condition 16 to be initiated by the date of the Department's receipt of SHPD's approval of the architectural -- archaeological monitoring plan? Okay. And then one year from said receipt. Also, for your condition number 17 that you're proposing, you said applicant transmit to the Molokai Planning Commission the name and number of the contractor. Should it be transmit to the Department of Planning? Okay.

Ms. Buchanan: Please add the Department.

Ms. Oana: And not the Molokai Planning Commission because it'll be the Department who people can call or complain?

Ms. Buchanan: Okay. I want the Department or somebody to transmit that when we have it to the Molokai Planning Commission ...(inaudible)...

Ms. Oana: Okay, so like just a -- like a communication to the Planning Commission?

Ms. Buchanan: Yes.

Ms. Oana: Okay. And then for the maker of the motion and seconder, do you -- are you okay with those changes --

Mr. Pele: Absolutely.

Ms. Oana: To have a friendly amendment?

Mr. Pele: Yes.

Ms. Oana: Okay.

Ms. Buchanan: And not to forget the posting of a contact number for the public at the construction site for the contact of the contractor if that's acceptable to the applicant.

Ms. Lopez: Yes, it's acceptable to the applicant. And I was just going to ask you to repeat that so I got it. Thank you.

Chair Lasua: Okay, Commissioners. Are we all clear? Anymore discussion?

Ms. Buchanan: I have one discussion and I wanted to get it on the record. Accessibility during construction period. I know that item 15, condition number 15 is specific to the plantings, but because, as the maker of the motion has testified on the record that it is frequented by the community a lot, so all the construction materials, sites, and vehicles that they maintain the public access to ensure that public access is not ever blocked from Kepuhi Beach. Thank you.

Ms. Lopez: Chair, can I address the --

Chair Lasua: Yeah, go ahead.

Ms. Lopez: Condition number 12 says that public access along the shoreline during construction shall be maintained so far as practicable and within the limitation necessary to ensure safety. Would that -- is that suffice or would --

Ms. Buchanan: I'm assuming there is a public access from Kaluakoi Hotel that is specifically designated as a public access to the beach. Can I ask the consultant? I don't want that blocked by fencing material during this period.

Mr. Hart: Jordan Hart. So I think that what we could proposed to do is -- is start with the one end of the wall, the north end of the wall first, remove it and finish it so that that could be opened, and then move on to the -- to the pavilion side.

Ms. Buchanan: So, what I'm saying is I go to the hotel and I park my car in one of the resort area parking spaces, and then I traverse to the shoreline, so I'm assuming there is an MOU for public access that is -- was granted along with the hotel when it was built. All I'm saying is I do not want that access area to be blocked in any way because, otherwise, they all gotta go to Commissioner's hale and walk over on the shoreline, and I no think he appreciate that.

Mr. Pele: So long they no bother. I no bother them.

Ms. Buchanan: Either that, if you not sure on the record, then I would like a condition 18 to be that -- that Kaluakoi Poolsides will ensure that there is public access from the parking area to the shoreline during the construction period. You don't know?

Mr. Hart: I, well, go ahead. I'm sorry.

Mr. Pele: Well, I think to tag onto that, if you park, there's signage that says "beach parking" in the Kaluakoi area, and then there's signs, like the one shown in the picture right there that are posted --

Mr. Hart: Yes.

Mr. Pele: That say beach access going down the pathway behind the old -- for the kitchen and the -- is for the old hotel, so that's the majority, if they're not breaking into barriers at ... (inaudible) ... or driving onto the property, they're, hopefully, parking in that and walking to the beach. We want to make sure that that is -- I mean how are they going to get to the beach if they park in -- to the beach 'cause you have signage that says "beach parking," right, on the front parking lot there, and signage that says "beach access," for people to traverse.

Mr. Hart: Okay, so with regard to the -- the shoreline, what I was trying to say is that they would start on one end and finish the low side of the wall. The only areas that would be fenced off would be areas that are under construction at that time. With regard to the sidewalks, those will be done incrementally and so there wouldn't be fencing off the entire area to block off shoreline access at any time, there might be portions of a specific location where they need to work at the time they're actually doing work, but they're not going to be fencing the entire area that we're talking about in this project at the same time and then keeping it blocked for a long period of time.

Ms. Buchanan: Okay, thank you 'cause I was alluding to safety, okay, so it's a safety issue with beachgoers because there's going to be ongoing construction and that's usually mitigated by fencing, and what I don't want to happen is that the person that is hired, I want them to be very cognizant of the fact that it is a very popular beach and that safety is an issue, and access is an issue, and I've stated that on the record, so I'm happy. Thank you.

Chair Lasua: Okay, Commissioners, anymore discussion? Okay, are you guys ready for the amended motion? Ready for the question? All in favor, say or raise your right hand? All opposed, your left hand?

It was moved by Commissioner Pele, seconded by Commissioner Bicoy, then

VOTED: to accept the application with conditions, as amended.

**(Assenting - X. Bicoy; L. Buchanan; L. Lasua; J. Pele; L. Poepoe)
(Excused - B. Buchanan)**

Vice-Chair Lasua: Unanimous vote.

Mr. Hart: Thank you.

Ms. Lopez: Thank you, Chair. Thank you, Commissioners.

Chair Lasua: Commissioners, we'll go on to item D.1.

Chair Lasua read the following agenda item into the record:

D. UNFINISHED BUSINESS

- 1. PAMELA HAMAMOTO requesting a State Land Use Commission Special Permit to operate the Hamamoto Hale Short-Term Rental Home, a three-bedroom short-term rental home, located in the State Agricultural District at 4800 Pohakuloa Road, TMK: (2) 5-1-008:035, Kaluakoi, Island of Molokai. (SUP2 2017/0004) (S. Lopez) (Commissioners: Please bring your documents.)**

The public hearing began at the June 28, 2017 meeting and the public hearing was closed at the August 9, 2017 meeting. The matter was deferred to the August 23, 2017 meeting. The Commission lost quorum at the August 23, 2017 meeting soon after the meeting was called to order and the meeting had to be canceled. The Commission lost quorum at its September 13, 2017 meeting soon after the meeting was called to order and meeting had to be canceled.

In accordance with its Rules of Practice and Procedure, the 120-day deadline for the Commission to act on the application is December 7, 2017.

The Commission may take action on the subject application request.

Ms. Lopez: Thank you, Chair. Sybil Lopez, the project planner, staff planner on the Hamamoto, who is requesting a State Land Use Commission special permit in order to operate a short-term rental home in the State ag district on approximately 5.952 acres of land at 4800 Pohakuloa Road, in Kaluakoi, Papohaku Ranch Land Subdivision, on the island of Molokai. I don't -- the applicant is not here today but I do have the consultant, Mr. Luigi Manera, who would like to come up and say a few words.

Mr. Luigi Manera: Hi. Luigi Manera, for Pam Hamamoto. Well, we already testified a couple times on this matter. The only thing I wanna emphasize, the -- the application is in compliance with the plan, they allow short-term rental, and is -- the most important thing is it's allowed on this community plan, existing now days, today. I no see why we no have to approve this application. Now neither the -- Pam Hamamoto is also a local person,

born and raised from Maui. They've been paid the fine for doing it illegally for three, four year, and they already receiving taxes -- they paying taxes on commercial. This is residential. So I ask you -- I ask you for your approval.

Ms. Oana: Okay, Mr. Manera, as this is considered a contested case, pursuant to law, as it will determine the legal rights, duties, or privileges of the applicant, we're adding the step to this process as well, so, Mr. Manera, opportunity for public testimony will be afforded to the public shortly, do you wish to cross-examine any testifier?

Mr. Manera: Sure.

Ms. Oana: Okay.

Ms. Lopez: Chair, I just wanted to add that, as you look at the report, just to make sure that you know that the report is dated and was submitted in June 28, 2017, so the report is based upon the information given at that time.

Chair Lasua: Okay. Thank you, Sybil. Okay, at this time, any public testimony?

Ms. Oana: Before you begin, can you please state your name for the record?

Ms. Mahina Poepoe: Mahina Poepoe.

Ms. Oana: Ms. Poepoe, do you solemnly swear to tell the truth, the whole truth, and nothing but the truth?

Ms. Poepoe: Yes.

Ms. Oana: Thank you.

Ms. Poepoe: I just have a couple of notes. My concern mostly is the non-ag use of ag zoned properties or land. Short-term rentals aren't listed as a primary use or a secondary use. I don't even think residence is a primary use on ag land. So I do feel like it's kind of a blatant repurposing of ag lands without even trying to do agriculture at all. I know that water is an issue, but there are ways to use it, the land, that are more aligned with the primary or even secondary uses. So that's my concern. And I think it's been mentioned here before that the resolution is in progress. It just doesn't make sense to keep approving, especially -- especially on ag lands, short-term rentals while we're still in a place like it's undecided what the cap is going to be, it could be more, it could be less, I'm not sure, it could be zero, so I just think it makes more sense to hold back until that's finalized. And -- and just the special use permit, I think it is, it's just something that should be, especially on ag land, I think more looked at a little more critically and not just, you

know, as just experienced, or seen, or remnants where they're just handed out so frivolously without really much consideration. So that's all I have to say. Thank you.

Chair Lasua: Yeah, we'll go ahead and do questions from the Commissioners first. Any questions? Any questions for Mahina?

Ms. Poepoe: Cross-examination?

Chair Lasua: Any questions from Mr. Manera to the testifier? No? Okay. That's good.

Ms. Oana: Hi. Before you begin, can you please state your name for the record?

Ms. Caparida: Yes. My name is Judy Caparida.

Ms. Oana: Thank you, Mrs. Caparida. Do you solemnly swear to tell the truth, the whole truth, and nothing but the truth?

Ms. Caparida: Yes I do.

Ms. Oana: Thank you.

Ms. Caparida: Aloha, everybody. I'm so thankful I could be here today. I had my daughter, she's got my letters, and then she got all the Planning Commission papers, and then because she has a lot to do with law and all that, I only talk about life. Life here on Molokai. But she had so much questions, I got a folder over there that she said, mom, go pick up the folder and go to the meeting. So that's why I'm here. I'm here because agriculture is, for me, as young as I was, agriculture was go ahead and go feed your family. That's what it was. Raise animals. Raise pig. Raise cows and all that. Today, you cannot do that. Why? Because they smell stink. People complain. They complain about the roosters. They complain about everything that is edible. How you like that one? And it's free. God bless us with all that. But we make it so complicated because we gotta do all this kind of stuff that we thought, at that time, was legal. But, today, they change everything. Just one word, it changes the whole paperwork. You get messed up. And that's what I'm here to say. I'm here to say it because I cannot explain it the way my daughter would, but I can tell you something. I'll never change my story about the way we was raised. On Molokai, we're blessed. We're blessed to the max. And that's why I'm here. My daughter said to me, mom, you go and tell 'em the way I -- I say hello. I say you like? You take time off. She's in Maui working. That's why she cannot be here. But I had the whole folder over there. Mom, don't give anybody the papers. Just read it. For me, it will be taking too much time for read it. It's about special permits. It's about all this stuff that it was already legal, made, and then now you trying to change everything, and that's why we're having problems. We're having problems. Now they gotta amend all those ways now because the law says now you gotta do this, you gotta do that. It's really

hard. It's hard. On Molokai, it's hard for us that's so used to of living the life of the land, of the ocean, and we gotta remodel our way of living. But you know what? I no change my life because of this. I tell my grandchildren this is the way you gotta live because if anything shut down, you know how to survive. Today, the machine broke, the doors no can open. You no can go in the store. They no like you go outside the store. Hello. But that's so much complicated stuff that's happening. On Molokai, we have the freedom of doing everything that God furnishes for us to do, and this is why I'm here, to just tell you that my story will never change. I will always stand on the truth, and the truth is that we are given everything free. It makes us hard for us to live when they make all this kinda - - all this kinda rules. All this kinda changes. For what? We not going live here forever. There's going to be a change. Everybody's going to die and somebody's going to take over the work. We make it so hard for the one that's going be left back. That's what I wanna say that everybody wants money, money, but they don't live up to the rules that they was made. Can you go follow up on this, all these stuff that they promising to do? Oh no. As long it's on paper, you get words, that's fine. But you know what? They can do sneaky stuff and you don't even know about it. When we go down to the beach, we see all the changes. We change -- we see all the changes. But you know what? We go around it. That's the way we are on Molokai. We go around it. But it's enough about going around. We gotta tell the truth. Stand for the truth. Don't have to be afraid of what man gotta say. Be afraid that one day we going have to stand before the judge and say it, yes or no, that's the answer going to be, but that's why I say to myself, I say, yeah, why I come to listen, but you know what? Agriculture is something that is special to us. Us that is dying. Us that is living to go ahead and go push for our loved ones. That's why we're here. I'm here because I love our people on Molokai. I just came from the school. Why? Because they get so much stuff that they so distracted. No more time for talk and sit down and prayer. No more time for thank the Lord. That's why I come and I say you know what? Yes, I going go. I go listen. But my story will never change. I love all of you. I tell you from my heart, I love all of you, and I will not hide the truth. All our parents, grandparents that was left before, they never told us lies. They love us. So I love all of you and that's why I'm here to tell you that nothing going to change. God's word will never change. He's the same yesterday, today, and forever. So it's up to us to live our life accordingly. But I let you know that you know what? Agriculture is for -- for plants for go ahead and raise our family so they can live. It is for animals so we can eat. It is the kinda soil that we can plant and get vegetables and fruits out of it. So I love all of you. And you got any questions for me?

Chair Lasua: Thank you, Ms. Caparida. Commissioners, any questions?

Ms. Caparida: Okay, thank you.

Chair Lasua: Hold on, Ms. Caparida. Any questions from Manera? Okay, thank you, Ms. Caparida.

Ms. Caparida: Thank you.

Chair Lasua: Anymore testimony? Seeing none, Commissioners, what's your pleasure for this item?

Ms. Buchanan: Staff read recommendations.

Chair Lasua: Oh, staff recommendation.

Ms. Lopez: Thank you, Chair. So staff recommendations. That the Maui County Planning Department recommends to the Molokai Planning Commission approval of the Land Use Commission special permit subject to the following 6 conditions, that be advised that the compliance with codes, covenants, and restrictions of any applicable homeowner's or apartment owner's association is the sole responsibility of the applicant; that the conditions of this State special permit shall be enforced pursuant to Section 205-12 and 205-13, of the Hawaii Revised Statutes.

In consideration of the foregoing, the Planning Department recommends that the Molokai Planning Commission adopt the Planning Department's report and recommendation that was prepared for the June 28, 2017 meeting for November 8, 2017 meeting as a findings of fact, conclusion of law, and decision and order, and authorize the Planning Director to transmit said written decision and order on behalf of the Molokai Planning Commission.

Chair Lasua: Thank you, Sybil.

Ms. Buchanan: So on page 3, the 1 through 6, yeah, is the recommendations?

Ms. Lopez: Correct. And no. 1, it can be changed from June to November.

Ms. Buchanan: Okay, I don't have questions on this, Mr. Chair.

Chair Lasua: Thank you. Commissioners?

Ms. Buchanan: You ready for one motion?

Chair Lasua: Go ahead.

Ms. Buchanan: So, Mr. Chair, I move that we deny the application of Pamela Hamamoto and Docket no. SUP2 2017/0004 for Hamamoto Hale.

Chair Lasua: Get a second? Okay, moved and seconded. Any discussion?

Ms. Buchanan: Sure, since I made the motion to deny, it's basically because I don't agree with the Department's conclusions of law and recommendations. I find that it is a development. It is a commercial use. I feel that it doesn't meet evaluation guidelines of 12-303-6. That the use is contrary to the objectives of Chapters 205 and 205A, HRS, and the rules of the Molokai Planning Commission, which are to preserve, protect, and encourage development and preservations of lands best suited in the interest of the public health and welfare. I believe the proposed use may have harmful effects on the environment, the coastline, and thus are contrary, and I'd like to cite the 2005 Papohaku Dunes Cultural and Natural Resource Preservation Plan, 3.1.3. Any commercial use, public use, or facility on lands in State ag or rural districts shall be subject to the requirements, and procedures, and guidelines of 206-6, and I believe it is a commercial use. The use adversely impacts surrounding properties. Take one and pass one down. Can you give this to Sybil? Sorry. Hang on. The use adversely impacts surrounding properties, and we've had a lot of testimony on short-term rentals that I believe support the inferences to an increase in tax base, that it inadvertently up-zones, and spot zones, and is inconsistent with the Molokai Community Plan. That the use would burden public agencies. The need for emergency services to respond to tourist types of activities, and I cite that many -- there's been many drownings involving tourist at the west end of Molokai, and we all know that it's been an issue for emergency services. We know that the infrastructure is antiquated and the roads are in bad shape, that they don't have sufficient lighting, and they're just full of -- they're just antiquated. So privately owned -- the private water system, and the fire suppression, and police response is inadequate. And in 12-303-6B, the conditions and trends have arisen since the district boundaries were drawn, and my response is that there is substantial evidence Statewide of adverse impacts by short-term home rental types, and then I cite 12-303-62. And we have 5 resort zoning which are in close proximity and allows for the special use being requested for and in the community plan, and the applicant has not demonstrated public demand or market. And I believe the testimony is anecdotal. And the applicant has not demonstrated or proven the economic and social benefits of the use to the community, and I stating it's my belief it's actually the reverse. The land upon which the proposed use is sought is unsuited for the permitted uses within the district. The land upon -- the ag zoned land is suitable for agriculture, so using -- saying that it's unsuited or it's not suitable is not true. It is suited for ag. The land where the proposed use is sought -- sorry. The applicant has not successfully submitted the following, and I put that the statement of applicant's interest and reasons for the special permit was inadequate - the provided facts, views, and arguments, maps, plans, and other relevant data. The applicant has not conveyed the length of time that the special use is needed. Special use permits should be for a period of time for which the use is needed and should not be used as a substitute for real zoning needs, and then, hence, the spot zoning and up-zoning. And special use permit should not be indefinite, and an example of that is Manae Goods and Grindz. They have to come in for a special use permit even though they've been operating forever. And that this is - it's adverse to community plans. And I hope everybody got -- I tried to -- because the last time it was so lengthy, and I caught on that I'm supposed to write it down, and so I

did, and I passed that along to you as part of my own findings of facts and conclusions of law as to why I made the motion to deny. Thank you.

Chair Lasua: Thank you, Commissioner Buchanan. Anymore discussion? You're ready for the question? All in favor raise your right hand?

Ms. Buchanan: Mr. Chair, I think --

Chair Lasua: Oh, I'm sorry.

Ms. Buchanan: The applicant may have a rebuttal.

Chair Lasua: Applicant? Any -- no? Okay. So, Commissioners, you're ready for the question? All in favor raise your right hand? All opposed lift your left hand? Motion doesn't pass.

It was moved by Commissioner Lori Buchanan, seconded by Commissioner Poepoe, then

VOTED: to deny the application of Pamela Hamamoto, Docket No. SUP2 2017/0004, for the Hamamoto Hale Short-Term Rental Home.

**(Assenting - X. Bicoy; L. Buchanan; J. Pele; L. Poepoe)
(Dissenting - L. Lasua)
(Excused - B. Buchanan)**

The motion FAILED.

Chair Lasua: Another motion or a condition?

Ms. Buchanan: Mr. Chair and Corp. Counsel, is it appropriate that the descending vote would be the maker of an additional motion if not carried?

Ms. Oana: It is not necessary to do that, but if you guys want further discussion, maybe you guys can come to a resolution as a body.

Ms. Buchanan: Okay, with that being said, where are we in our time clicking away? Two questions. We opened public testimony quite some time ago. How many days are allowed, and in a special use permit like this, is -- is there the same default that the permit is granted if no decision is made by this board, Corp. Counsel?

Ms. Oana: Yes, as we stated earlier in previous meetings, this one and the next one on the agenda closed public hearing, I believe, on August 9th, we did the calculation, it comes

out to December 7th as the final date for Molokai Planning Commission to approve or deny or this will be deemed approved pursuant to the Molokai rules. May I just comment on your paper that you handed out, and I'm not sure if --

Ms. Buchanan: Yeah, and it could be in error, you know, because that was from the last time so --

Ms. Oana: Okay. I'm trying to get through the whole thing, but the first one, maybe if we could just take out that first line that says, "In the SMA?" If yes, is it a development? I believe this is not in the SMA at all, so maybe we just eliminate any discussion on SMA, and we can just go to the guidelines on special use permit -- special permits.

Ms. Buchanan: Mr. Chair, very recently, the Land Use Commission was on the island of Molokai to hear an application for declaratory ruling on important ag lands designation. During that hearing, that public hearing, the applicant testified, as the Hawaii Revised Statutes pointed out, that the State of Hawaii, in their designation of ag lands, especially important ag lands, it was clearly conveyed that -- that the legislature wanted to save ag lands for diversified agriculture, and that the taking of agricultural lands for other commercial uses that were not permitted in ag lands, such as a short-term home rentals, was adverse to the State's zoning law. With that, it was also conveyed that uses that are not permitted uses within ag zoned land, under the State, should -- should be heavily scrutinized and that precaution should prevail in being quick to approve those types of not -- non-permitted uses in areas that are not zoned for those uses, and so with that, I did research some of this and that's why you see the inferences within that paraphernalia that I handed out that it's not consistent with the zoning by the applicant for Hamamotos, and so I have really no hesitation in my motion to deny and stating the findings of facts and conclusions of law having just attended a Land Use Commission. Because this area is 15 acres or less, the Molokai Planning Commission is tasked with that responsibility that actually would be a Land Use Commission meeting. Had this area been 15 acres or more, it would not be here today, and it would be in front of the Land Use Commission, who has clearly demonstrated that -- and has been very contentious in other areas throughout the State that the loss of ag lands to commercial uses that are not consistent with ag production is frowned upon, and so I don't know what else I can say to -- to be very clear that the law is very clear on ag uses and ag lands and what they're proposed to be used for. And specifically with this case, it's a hard sell for me because a stone throw away, less than a mile, less than two miles away, you have five areas that are zoned for commercial uses for tourism and short-term rentals, so it's a really hard sell. That's why you have zoning. It would be if the -- if this Commission sets precedence that we are going to, tasked by the Land Use Commission and the State of Hawaii to look at parcels and commercial uses and consistent with ag zoned lands, if we set precedence now that we're going to go down that road of spot zoning outside of the parameters of State zoning and -- and the County, I would be very cautious to set that precedence because it will open the door to really bad planning, and the State entrust us to do that

type of homework that we need to ensure that that zoning and community plan is met and adhered to. So I think we have that obligation to -- to stick to the law and to make sure that incompatible and inconsistent uses are not allowed.

Chair Lasua: Thank you, Commissioner Buchanan. Any Commissioners?

Ms. Oana: I'm sorry. Commissioner Buchanan, I just reviewed something 'cause I thought I read something wrong, and you are correct, portion of the property is in the SMA, so I just wanted to correct myself.

Ms. Buchanan: So for the record, everything that I had testified for in findings of fact and conclusions of law does pertain, just so we know. So there's like 13, 14 findings of facts that I submitted to this board in support of my motion to deny. So, Mr. Chair, I don't believe that there are any conditions that could be placed upon this application that would make it more amenable because it flies in the face of adversity to the existing permissible uses within ag lands. They -- the State makes many inferences to gentlemen estates, and there are large cases that were won, Hokulia on the Big Island, multiple cases that talk specifically about this type of uses that is inconsistent and incompatible with zoning, and so I am very comfortable in my motion to deny, and I would be uncomfortable trying to amend this to make it more palatable to approving because I don't -- it's so inconsistent with the objectives of 205 and 205A that I really can't think of a way to amend that and make it more amenable for approval. Thank you.

Chair Lasua: Thank you, Commissioner Buchanan. Commissioners? Are there any other comments or --

Ms. Buchanan: Maybe, Mr. Chair, let's talk about the default. So if by default this Commission does not approve or deny, and takes no action, and this permit is approved, we may be opening the door to a contested case hearing because -- and I think it's really not a good precedence for this Commission to set that we are indecisive, and I've heard indecisive because we're unsure of the law or the parameters under which we're operating, then maybe we need more training, or maybe we need, yeah, someone specific to come in and specifically address special use permits under State law. So I'm not sure that not doing anything is going to be helpful. I think it's going to be more -- even more detrimental in the long run if we take no action, and does, Corp. Counsel, if this Commission votes to defer, does that affect the timing of the drop -- the December 7 deadline?

Ms. Oana: A deferral does not affect that date. That date is the date that you have to make a decision or -- or this application will be deemed approved.

Ms. Buchanan: Okay.

Ms. Oana: So, basically, we have no meeting, no other meeting in November, this is our one and only meeting in November, our December meeting is on December 13, and your deadline is December 7, so, ultimately, you should really make a decision today.

Ms. Buchanan: Okay, earlier, I had asked Councilwoman Stacy Crivello's liason to contact staff on Maui to see how we're doing with -- how we're doing with getting more Planning Commissioners onboard, and I think she just -- maybe staff -- or maybe -- can we take a five-minute recess?

Chair Lasua: Sure. I'm going into a five-minute recess.

Ms. Buchanan: Thank you.

(A recess was called at approximately 1:11 p.m., and the meeting reconvened at approximately 1:19 p.m.)

Chair Lasua: I'll call the meeting back to order and reconvene. So, right now, we're at a standstill and we can defer this to the next meeting, which I can request to the staff, if that's okay with the Commission?

Mr. Pele: That would be a moot point. I mean if we defer it to the next meeting, it would actually be a finished -- we would have to what? Just for notification purposes that the application is approved?

Ms. Oana: Well, a deferral to the next meeting if we don't schedule another meeting this month because, currently, there's only one meeting, this meeting, scheduled for November, a deferral to the next meeting would possibly be December 13, I believe that's the next meeting, unless the Commission wants to request that the Department schedule a second meeting in November, I'm not sure if that's possible, you know, I don't know the schedules of this room, of Mr. Yoshida, or anything, so I can't promise that we'll have a meeting if you guys request one. So I would suggest we -- we make a decision today.

Chair Lasua: Any comments?

Ms. Buchanan: Mr. Chair?

Chair Lasua: Go ahead.

Ms. Buchanan: A deferral, as Commissioner Pele has stated, would be moot given the timelines, and if the only option that is given this body is deferral, then my request pending the deferral would be to schedule a special meeting before the end date of December 7 when the -- and this is why I do not like to rush into initiating public hearings, and if we look back at the date that this public hearing was initiated, it was initiated purposely

knowing that we were not going to have time that day to complete the hearing, and now we find ourselves in this quandary, so I'm very upset, I'm really disheartened, and I am not accepting of a deferral unless it will be for a special meeting that is held before December 7, 2017.

Chair Lasua: Can we schedule another meeting? Or a special meeting?

Mr. Yoshida: I guess the Commission is down to six members, and it looks like it's going to be that way at least until December 1 if the Council approves the Mayor's nominees to the Molokai Planning Commission. If we have a special meeting, will the composition change or will the same five members be here? Will it result in the same result of a no action?

Mr. Pele: Having -- so having said that, you said December 1st, and that's congruent on if the County appoints people. Correct? And how would we -- so you couldn't make a determination on December 1st then. When would we know that, or when would anybody know who's going to be sitting on the Commission? And if we did know by December 1st, could we do a meeting on the 6th, which is a Wednesday?

Chair Lasua: December 1st is too late already?

Mr. Yoshida: Well, I guess if we have a special meeting, then, you know, we would have to find a place, and if it involves new members, provided we have new members, they would have to review the record, which includes all the testimony presented at the prior meetings on this item.

Ms. Buchanan: Okay.

Mr. Yoshida: I mean I guess it's up to the Council as to what they do with the Mayor's nominees. I cannot speak for the Council as to what they would do with the Mayor's nominees.

Ms. Buchanan: Mr. Chair, we're missing a Commission -- Commissioner today, that Commissioner should be back, I'm assuming, from vacation, that would be one more member that would make quorum either one way or the other, and so let's not forget that we do have one more member that is outstanding; I'm thinking that we're going to need to apply -- we're going to have a special meeting that's going to be not December 13 meeting, it's going to be a meeting that -- that happens before December 7. I only see couple of options here, Mr. Chair. Either the Chair enters a new motion, either the Chair -- we take a -- we try to vote again, and Chair votes in the affirmative. If the Chair doesn't vote in the affirmative, then a motion to defer pending a special meeting prior to December 7, and we hope that an additional member or members of this Commission will then be present in order to make a decision. I don't know of any else. I'm -- besides that, can we

Speak to item no. 1 on the conclusions of law and recommendations by staff? And what I wanna address and talk about is, in item 1, it says that the Land Use Commission special use permit, let's not forget that this is a State permit, it is not a County permit, it's a special use permit that has restrictions on it, says that it shall be valid until June 30, 2020, and I've heard staff say that -- so that number, that date has changed over multiple times 'cause I have it written in here, it -- the first change was August -- to August 31st, and then, most recently, staff said November, so how can we address this because my thinking is if the default goes to December 7, and by default, this permit is issued, who changes the conditions of these permit -- of these items 1 through 6? Do we have authority to change the items 1 through 6? Because I would change the date. I would change the date to a very short date where the applicant would be granted a special use permit for a very short time. I believe the State Land Use Commission rules allow for that condition. It is time specific. It says you should assign a time to it. And my assignment at today, first, would be to change that permit time to June 1st, 2018. My purpose for making that amendment is that I cannot see us going past June 1, 2018 without a full Commission. Six months is more than adequate time to get Commissioners approved to this Planning Commission, and I think it's reasonable. I don't think it's unreasonable to request that.

Ms. Lopez: Hi, Chair. I have the consultant who has a few words.

Mr. Manera: Hi. Commissioner, well, I think six months is pretty unreasonable. I mean now I understand all things you say, and this lady, she paid a fine up to \$20,000, plus we went through the whole application to do this, and now you wanna make a condition of six months from the permit. I mean that's somehow pretty unrealistic to me. But even if you approve this today, or disapprove, whatever, after December 7, it's going to take another two months, at least, before you can get any paper saying you're allowed to operate, so we're talking lucky if we get something by the end of January, so you're telling me you're going to give five months.

Ms. Buchanan: So can I respond? Okay.

Chair Lasua: Go ahead.

Ms. Buchanan: So, Mr. Manera, you see what my concern is?

Mr. Manera: Well, I saw that today.

Ms. Buchanan: Yeah.

Mr. Manera: I saw that ten minutes ago.

Ms. Buchanan: Okay.

Mr. Manera: I mean that's pretty unreasonable --

Ms. Buchanan: Okay.

Mr. Manera: If you really think about it.

Ms. Buchanan: Yeah.

Mr. Manera: If I get that yesterday or the day before, I think it's fair for everybody.

Ms. Buchanan: Okay.

Mr. Manera: I think what you did is not right. Probably illegal too, at this point. It's not fair.

Ms. Buchanan: What is not fair? My conditions and conclusions of law?

Mr. Manera: Yeah. No, no, but, you know, the sheet you showed earlier about all the things you wrote down --

Ms. Buchanan: Yeah.

Mr. Manera: The SMA. Say if we have that a few days ago, it's much easier to respond ... (inaudible) ... this thing.

Ms. Buchanan: Okay, well, I thought that was reasonable given the last four meetings that I attended that -- this Planning Commission that I was put on the spot to be very specific about my objections on the record, and so I kinda took the lead from Corp. Counsel that maybe I should have stuff written down if -- if -- if I think that it was pertinent and it should be easily transmitted to staff as conclusions of law, and that's why I did it so --

Mr. Manera: No, no. That'd be nice if you --

Ms. Buchanan: Yeah.

Mr. Manera: Come up with -- anyhow, whatever. It's too late for that.

Ms. Buchanan: Well, it's hard for a Commissioner that doesn't have any formal law training to respond that fast on the ground, and so let's go back to the -- the time issuance.

Mr. Manera: Okay.

Ms. Buchanan: So, today, you have five members of this Commission, four members vote in the affirmative to deny, with one descending vote, which was the Chair, and so in giving you that time allowance, it's not giving you, but in amending the time issuance here, it's a either/or. Either/or we going show up at one other meeting before December 7 and we going rehash this again, and then it's a coin toss then, you know, whether the last Commissioner is going to vote, you already get four Commissioners voting in the affirmative to deny, we don't know if we going get more people, so that's just that. With this amending, you have the opportunity of three more people coming on with the addition of the Chair that is missing today, four, with the Chair, that's five, that's a -- that's a 50-50 that your permit might get approved.

Mr. Manera: I understand. I mean we're talking, if you leave it the way it is, it's good until 2020? What is that - 18? No, no. Next year is 2018.

Ms. Buchanan: Yes.

Mr. Manera: That's what you want to do.

Ms. Buchanan: Yes.

Mr. Manera: But no, what it actually say is --

Ms. Buchanan: Yes, 2020.

Mr. Manera: It's two years.

Ms. Buchanan: Yes.

Mr. Manera: Is that --

Ms. Buchanan: Yep.

Mr. Manera: It's not something beyond.

Ms. Buchanan: Right.

Mr. Manera: My God, it's two years.

Ms. Buchanan: Yes.

Mr. Manera: Take me -- take me two years --

Ms. Buchanan: I know that.

Mr. Manera: From the day of the application to get over here.

Ms. Buchanan: I know hat.

Mr. Manera: Two years.

Ms. Buchanan: I know.

Mr. Manera: For whatever reason.

Ms. Buchanan: I know.

Mr. Manera: I not saying it's because of the Commission, but take two years just to get over here.

Ms. Buchanan: And I'm very sympathetic to the sluggish --

Mr. Manera: It's whatever happen happen, but now you're telling me you wanna give me six months when it's probably lucky it will be four months because, like I said, the paperwork lately has been --

Ms. Buchanan: Yes.

Mr. Manera: Has been an issue for the whole County. So I don't think two years is the end of the world.

Ms. Buchanan: Okay. Well, I think on the agenda, we also have another applicant that faces the same situation.

Mr. Manera: That's correct. And on that -- well, that particular, you know the place very well.

Ms. Buchanan: Yes.

Mr. Manera: It's not an SMA.

Ms. Buchanan: Okay.

Mr. Manera: And few other things so --

Ms. Buchanan: Yes.

Mr. Manera: I mean they could be in the same -- in the same league, let's say. That's fine.

Ms. Buchanan: Yep.

Mr. Manera: It's not like we have the -- the whole west end -- I mean --

Ms. Buchanan: Right.

Mr. Manera: It's only so many homes. It's only so many short-term rentals.

Ms. Buchanan: Yes.

Mr. Manera: I understand they never make a solution yet as far if we go 15, 10, 15, or zero all, or zero, 10, 5, whatever that be. I mean if you even -- if you make it two years, I mean I no -- I no think it's going to be such a bad deal. That's what I'm saying. Now, one more thing I'd really like to say is whatever the resolution will be, the number or totally zero, my take on the law, in general, especially -- especially this one on the west end because I think that's more appropriate, all these years, all these people, they've been doing short-term rental, and I mean for some of the homes is 30 years old and they've been doing that for 30 years, and nobody ever say one word. Now the County, they come up and they say, hey, you guys doing this illegal, let's make you guys pay some taxes over here, let's make it legal, and let's have a little bit more control. And all of a sudden, everybody going crazy. I mean I cannot understand what went wrong over here. It's because the sign is white? Or it's because the sign is blue? Why nobody came before and complained about all this? Why we have to go through this nonsense? That doesn't make sense. And the youngest home built to do this short-term rental, it's at least 15 years old, whether she's at the east or at the west, it's not new. There's no one new home in the whole application I did, whatever 15 or 20 there are, none of that. Now, the people, you deny it, like ... (inaudible) ... or whatever, they're going to go back and do it. They still do it today. And the people, they never apply, they watch the spots. The smart ones, they actually never apply because then they have to pay for a fine, then they have to pay for the fee, and what they do? They be renting every single weekend. So we allow that so we can go back and do it all illegal. That's basically what you guys want because you cannot stop them. There's no way you can stop them. The County don't even stop the house that coming up in the middle of the road. They just pass by and look at 'em - oh, okay, a new house. That's it. What make you think they can actually stop somebody renting a place? It never happen. This is one of the worse thing happen to Molokai and the economy. That is for sure. Especially affect the County. That's my belief.

Chair Lasua: Thank you, Mr. Manera. Commissioner Buchanan, would you like to put an amendment on the condition 1, doing it for one year instead?

Ms. Buchanan: I think no matter what, you have to make an amendment to item no. 1 no matter -- no matter what. You have to change that date because there's a flaw in the Planning Commission rules or whatever rules that have these default times where, oh, if you no make one decision in ten days, your permit is granted. That is a huge flaw in the law to me. It was never acceptable to me that all of these permits are just granted because you ran out of time or you wasn't able to make a decision. I would like to amend, first, item 1. I think it has no bearing on whether we deny, defer, or whatever the permit. I appreciate Mr. Manera's testimony, and I understand, and it -- and I'm saddened at the fact that sometimes we feel like we gotta throw our hands up and quit and look the other way or whatever we say because we don't have any enforcement, and just because people operate illegally for years, and years, and years, and years doesn't make it okay. It's not okay. We voted on one at the last meeting that wasn't okay. So that shouldn't have any bearing on whether this gets approved or not or making it legal. The way to solve this is for all the people who wanna do short-term home rentals come in and do a community plan amendment to change the zoning to make their commercial uses okay. That's the way to do it. That's the proper way to do -- handle all these types of short-term rentals. I wouldn't think of spraying one car in my garage and my friend come and charge me for that because it would have one impact to my neighbors. Same thing. So, Corp. Counsel, can I make a motion to amend the time on item 1? Okay. Then I move to amend item 1 of the conclusions of law and recommendations in the matter and application of Pamela Hamamoto, Hamamoto Hale.

Ms. Oana: Sorry, the conditions?

Ms. Buchanan: Yeah, make an amendment under the recommendations, sorry, of item no. 1, and I'm doing this because in the event that we cannot come to a conclusion by December 7, that this conditions 1 through 6 are going to be attached to this Land Use Commission special permit.

Ms. Oana: I'm sorry. Can I --

Ms. Buchanan: Yes.

Ms. Oana: Interrupt you right there? You said in case you guys don't make a decision, you want this to attach?

Ms. Buchanan: Yeah, I sorry.

Ms. Oana: From my understanding, if you guys don't make a decision, it's deemed approved as submitted.

Ms. Buchanan: Right.

Ms. Oana: So there will be no conditions if you guys don't set conditions.

Ms. Buchanan: Right.

Ms. Oana: And approve.

Ms. Buchanan: Well, after this, I going move to one -- to ask for a special meeting date before December 7 in order to rectify this and either approve or deny this permit.

Ms. Oana: How about you make your recommendation for condition 1 --

Ms. Buchanan: Okay.

Ms. Oana: The amendment, and then let's see where we go.

Ms. Buchanan: Okay. So I move on the recommendations on the Hamamoto Hale application, item no. 1, that the Land Use Commission special permit shall be valid until, and this motion is open to discussion, yeah, by a second, so my motion would be to June 1, 2018, and then the rest still applies. That's the motion.

Chair Lasua: Okay, can I get a second to that motion? Or you wanna continue?

Ms. Oana: Maybe I can have Ms. Lopez help me. Okay, so the request for an extension though --

Ms. Lopez: I was going to wait until they go in discussion to ask about the 120 days.

Ms. Oana: Okay, so basically what you're saying is you're going to grant it for a month, but in the meantime, they have to file a renewal application?

Ms. Lopez: In hundred -- yeah.

Ms. Oana: I mean it could be in December, but it's basically going to be them, you know, working on the renewal application from today 'cause it's not that much time.

Ms. Buchanan: I don't see that you gotta add that much for renewal. I'm sorry that I'm ignorant of what a renewal encompasses so is it extremely overbearing?

Ms. Lopez: No. My question would be do you wanna change the 120 days 'cause you're giving them -- so you giving them six -- allow to June --

Ms. Buchanan: 120 --

Ms. Lopez: And then 120 days before that June 1st expiration, they have to already submit a renewal. That's what it -- that's what it says. You said January or June 1, 2018?

Ms. Buchanan: I said June.

Ms. Lopez: Yeah, she said June 1, 2018.

Ms. Buchanan: June 1st.

Ms. Lopez: Yes. So June 1, 2018.

Ms. Buchanan: Yeah.

Ms. Lopez: From that expiration, they would have to come in 120 days before that to submit a renewal application, so that's four months prior to June 1st.

Ms. Buchanan: I would -- yeah. Okay, if the June 1, 2018 change of date in recommendations is approved, I would also consider waiving the 120-day renewal for this at the end of the 2018 because it's going to come up again before this Commission, that's what I'm trying to do. Do you have a suggestion, Planner Lopez, as to how we can mitigate that?

Ms. Lopez: To reduce the -- the days? Instead of 120-day you would either do 60 or 90 days --

Ms. Buchanan: Okay.

Ms. Lopez: Just so that they -- they have this renewal process 'cause if -- if it's going to expire, then how -- what would be your recommendation after expiration if they -- if they wanna come in and reapply or 'cause it expires --

Ms. Buchanan: Yeah.

Ms. Lopez: So they don't have any time to request for a time extension?

Ms. Buchanan: So a 60-day renewal period or a 90-day would -- would suffice?

Ms. Lopez: Yeah.

Ms. Buchanan: Okay. So the longer would be better for the applicant, yeah?

Ms. Lopez: Correct.

Ms. Buchanan: Okay, so I would also attach to -- a friendly motion -- I withdraw my first motion and I make a new motion then on item no. 1, that the Land Use Commission special use permit shall be valid until June 1 -- let's go June 30th, I'm sorry. How many days in June? 30? Okay, June 30, 2018, with a 90-day renewal instead of the 100-day as stated, and then the rest be subject to extension by -- yeah, the extension would be the 90 days. That's my motion for a second and discussion.

Mr. Poepoe: I will second the motion for discussion.

Ms. Lopez: ...(inaudible - not speaking into the microphone)... is it approved -- approval or just the --

Ms. Buchanan: No. It's just an amendment to item 1. We confused of whether we approving this permit or not?

Ms. Lopez: Correct.

Ms. Oana: You're not approving the permit right now. You just are discussing no. 1 for further discussion on an approval or denial later?

Ms. Buchanan: Oh, okay. We can do that too.

Ms. Oana: Or are you making a motion to approve with the conditions and no. 1 as amended?

Ms. Buchanan: I would be hard pressed to move with item 1 as amended with a condition to approve. I guess it would be discussion.

Ms. Oana: So just discussion then if it's on just the condition only without a motion to approve or deny.

Ms. Buchanan: Okay, Commission, Chair, if you would bear with me, let me try to mitigate this the other way. I need to ask two questions before we get into nitty-gritty. Number one, would the applicant be willing to withdraw this application at this time and resubmit after we have our Commission members?

Mr. Manera: Luigi Manera. No. No.

Ms. Oana: And just for the record, Mr. Manera, would the applicant be willing to waive the deadline for the Planning Commission to make its decision even just for 30 days?

Mr. Manera: No.

Ms. Buchanan: Thank you, Mr. Manera. Then my second question --

Mr. Manera: Thank you.

Ms. Buchanan: Thank you. Would he would the Chair reconsider his earlier vote if I move to restate the motion that I entered at the -- at the beginning?

Chair Lasua: Yes, I'd be willing to.

Ms. Buchanan: So with that, I'd like to make a motion. Motion is to deny the Hamamoto Hale application, Docket no. SUP2 2017/0004, with the conclusions of laws, findings of facts submitted by Commissioner Buchanan to Commission members. That's the motion.

Mr. Poepoe: Second.

Chair Lasua: Second? Okay. Move and second to deny the applicant's request. Any discussion? Seeing none, ready for the question? All in favor raise your right hand? All oppose, your left hand? Okay. Application denied.

Ms. Buchanan: Thank you, Mr. Chair.

It was moved by Commissioner Lori Buchanan, seconded by Commissioner Poepoe, then

VOTED: to deny the application of Pamela Hamamoto, Docket No. SUP2 2017/0004, for the Hamamoto Hale Short-Term Rental Home, with the conclusions of laws, findings of facts submitted by Commissioner Lori Buchanan to Commission Members.

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

Chair Lasua: Next item?

Chair Lasua read the following agenda item into the record:

- 2. STEPHEN PILLAR requesting a State Land Use Commission Special Permit in order to operate the Pa Loa Hale, a three bedroom short-term rental home, located in the State Agricultural District at 891 Pa Loa Loop, TMK: (2) 5-1-006:033, Kaluakoi, Island of Molokai. (SUP2 2017/0001) (S. Lopez) (Commissioners: Please bring your documents).**

The public hearing began at the June 28, 2017 meeting and the public hearing was closed at the August 9, 2017 meeting. The matter was deferred to the August 23, 2017 meeting. The Commission lost quorum at the August 23, 2017 meeting soon after the meeting was called to order and the meeting had to be canceled. The Commission lost quorum at its September 13, 2017 meeting soon after the meeting was called to order and meeting had to be canceled.

In accordance with its Rules of Practice and Procedure, the 120-day deadline for the Commission to act on the application is December 7, 2017.

The Commission may take action on the subject application request.

Chair Lasua: Planner?

Ms. Lopez: Thank you, Chair. This is Sybil Lopez, Staff Planner. In the matter -- this matter arises from an application for a State Land Use Commission special permit filed on January 18, 2017 by the consultant, Luigi Manera, on behalf of Mr. Stephen Pillar, the applicant, and the applicant is requesting a State Land Use Commission special permit, State permit to allow a short-term rental home operation called the "Pa Loa Hale," and the applicant purchased this home in April 23, 2004. I do have the consultant here today, Mr. Luigi Manera, if you would wanna speak on behalf of the applicant.

Mr. Manera: Well, basically, the same like the project before. The only difference is it's not in the SMA, and, Lori Buchanan, I think you're very familiar with this property, so that's about it.

Ms. Buchanan: Mr. Chair?

Chair Lasua: Go ahead, Commissioner Buchanan.

Ms. Buchanan: So I'd like to make a disclosure, as Mr. Manera has inferred to, I am very familiar with this property. In my job as coordinator for the Molokai and Maui Invasive Species Committee, we have conducted control work either near or on parts of this property in West Molokai as part of the invasive species committee's work on Molokai, and just for the record, Mr. Manera and his agents and people working within the -- for the Pillars have been very accommodating to the invasive species program and we very much appreciate them accommodating our objectives for the invasive species. Thank you.

Chair Lasua: Thank you, Commissioner.

Ms. Oana: Just wondering, are we -- is there alleged conflict that we have to discuss or -- or no?

Mr. Pele: I don't know, am I allowed to ask, is this -- is that a private or public entity in which the capacity you work for?

Ms. Buchanan: MoMISC is a project of the University of Hawaii under the auspices of the Pacific Cooperative Studies Unit, and I coordinate that program, and we do islandwide early detection and control of invasive pests.

Mr. Pele: I just don't see a conflict at all. Can I -- can I ask a -- so we did open public testimony for this item right now? Did -- we did hear it, Pillar? Did we open public -- so we're not under the same deadline as we are -- I mean so we did previously hear? Okay. Yeah, I know. I just -- I'm wondering, and this is totally off subject and if there's some more procedural things that need to go through. What I would like to do as a Commission is, and I hate -- I know they have a right and the thing that's kinda hard for me is the public testimony part, I know the public has -- has the right to hear, but it's unfortunate that we have to listen to -- and it's not unfortunate 'cause that's their right to testify, but sometimes they go on for four hours, and it's a shame that we don't get through the meeting because you guys gotta leave and they wanna come up and testify for the same thing, and I wanna hear their testimony, but how can we relate to the public that when they testify for five hours in a meeting, for three meetings in a row, we find ourselves in this situation where we weren't allowed -- we couldn't make any -- any motions, we couldn't move on anything because we had to afford them the right, and it's to testify even though we tell them if you've testified before, we have it on public record, and I know they want to come up and say their piece, but we're -- that's part of the reason why we're sitting here too 'cause we sat through, my first meeting, I sat through five hours of public testimony. We didn't even move on anything. We come back to the next meeting, they testify again for five hours. We don't get to move on anything. How do we kinda work with the public, as a Commission, to let them know that, hey man, now we're facing these kinda things where we can't enact what their asking us to enact on because just by virtue of loss of time, how do we balance that out? I mean that's always been an issue with me is like I wanna tell them, man, I know where you stand, but I don't wanna infringe on their due process to testify, but that -- that is a big issue and my concern, as a Commissioner, is that they testify over and over and over, and we just can't -- we just can't do anything. We can't -- we sat there for like three meetings and couldn't do anything.

Ms. Oana: I share your concern and, under the Sunshine Law, we do have to offer public testimony. What would be a good thing is if the chair, who is presiding over the meetings, take control during public testimony, as you all seen, you know, the chair, at the time, tried to do a three-minute limit and then they -- he would be talked over, he wouldn't be able to adhere to that three-minute, so, you know, whoever is -- is presiding over the

meeting really has to take control and enforce the rules of the time limit. Ms. Buchanan and maybe another Commissioner also, during the meeting, kind of address the public and said, you know, we've heard you already, you don't have to re-testify, and that was helpful, but we do have to let them testify, but if the chair can control the meeting, control the time limitation, and really everybody only has one time to testify unless they're going to testify on another item --

Mr. Pele: Yeah, but we've seen that not true in many, many meetings.

Ms. Oana: Yes. Yes. And so you see someone testify and then five people later, they wanna say something again, that really should not be occurring. They have on shot to say what they wanna say. And so if -- if we could, you know, kinda do a better job in controlling the time limitations.

Mr. Pele: Are we allowed to share with the -- with the public?

Ms. Oana: Oh yes.

Mr. Pele: Can we tell them, hey guys, we know where you stand, but if you're going to take up four hours of this meeting, we're going to defer, we're not going to make any move, then we're going to listen to another four hours, and then they're going to come and accuse us that their tired of talking about it while we haven't even been able to make them -- we can't even move on the thing for like three or four meetings. I understand they're tired. I'm tired too 'cause I wanna move. I wanna make a motion, you know. But I can't. But that's cool. Sorry. I'm pontificating.

Ms. Oana: Yeah. Yeah. So it's just something we have to do as a procedure, but we can set rules and limits on the testimony.

Mr. Pele: And I'm just frustrated that we're in this --

Ms. Oana: And if it's two minutes, you know, we can set it at two minutes as a rule; we can do four minutes to, you know, let everybody have more time, but then when the four minutes comes up, you know, we all should say, okay, thank you.

Mr. Pele: It's just a little frustrating that we're -- now we're under this deadline, and we're probably going to get scrutinized for allowing this application to slip, and that's, you know, this could have been remedied both by the public testimony and letting us do our job. It's just frustrating for me, little bit frustrating, and I apologize.

Ms. Oana: And another added thing to why we're in this situation is we all came to meetings, and bare quorum, and one commissioner quit at both meetings, you know, so

that took two meetings this summer out of it for us, so a lot of things happen, but we can, you know, all try to do better with regard to time constraints.

Mr. Buchanan: Mr. Chair, if you would allow me to respond to Mr. Pele's concerns? I just wanted to thank you for sticking on as Chair. I just wanted to point out, Commissioner Pele, so now you see how important leadership is. The Chair is the captain of your boat. He does -- his main purpose is to run the meeting. That's what the Chair does. And so that's difficult when you get impassioned people, but I also wanna remind Commissioner Pele that he had the opportunity to be the captain earlier.

Mr. Pele: I know that they're passionate, Commissioner. I know that their passionate people and I don't want to take that passion from them, but I wanna work -- I wanna work with them to let them know that sometimes you're tying our hands for four hours rather than letting us -- 'cause there's some meetings like I just wanna vote, I wanna make a motion that's going to support everything they're saying, but I had to listen to four hours of testimony, then you guys had to catch a plane, and I walked out of the meeting going, man, if they would have just let me move, I would have moved on what they wanted, but they insisted on coming here, when you try to cut 'em off, they wanna throw the mike at your, point finger at your, which is part of the job, I understand, but I want them to understand that we need to work together and sometimes that's cumbersome and that's why this application, you know, unless we deny it with a bare quorum, it's going to get approved, and it's frustrating for me 'cause we could have moved on this. Just, again, I wish there was more people here so they could kinda hear my -- my frustration although I don't want to take their passion from them, that's not my purpose here. My purpose is trying to work with them to let them know that we heard them, and everything, but alright. I apologize again.

Ms. Buchanan: Mr. Chair, just one more feedback to Commissioner Pele is just a precautionary principle, it's called "due process" --

Mr. Pele: I know. I know.

Ms. Buchanan: And when the community, who we work for, is not afforded due process, it is -- it can be used as standing in a contested case hearing if you -- if you do not have due process, it's a biggie, but, yeah, you can control that when you the chair next, okay? Thank you.

Mr. Pele: I'm not trying to do that. I don't want to take their due process. I just wanna -- it's hard. I want -- I just don't want to run into a situations where we're on a deadline now and we can't deny that we were in meetings for four or five hours just listening to public testimony and not being able to act on anything and that ties our -- it ties our hands 'cause we get yelled at for not acting on it, but yet we get yelled at for not letting them have their three minutes, and I understand that, it's always going to happen, but, you know.

Ms. Buchanan: And you're not getting paid ...(inaudible)...

Mr. Pele: Yes. That's alright about not getting paid. That's part of -- I knew that when I got into it, but alright.

Chair Lasua: Thank you, Commissioner Pele. I appreciate your comments, and I only got, what, one more month and then you're able to take over. Okay, so any questions for the applicant before we go into public testimony?

Ms. Oana: Mr. Manera, can you come to the podium real quickly? Again, as this is considered a contested case hearing pursuant to law as it will determine the legal rights, duties, or privileges of the applicant, the opportunity for public testimony will be afforded shortly to the public, do you wish to cross-examine any public testifiers?

Mr. Manera: Yes.

Ms. Oana: Thank you.

Mr. Manera: Thank you.

Chair Lasua: At this time, any public testimony?

Ms. Oana: For the record, can you state your name again?

Ms. Poepoe: Mahina Poepoe.

Ms. Oana: And, Ms. Poepoe, do you solemnly swear to tell the truth, the whole truth, and nothing but the truth?

Ms. Poepoe: Yes.

Ms. Oana: Thank you.

Ms. Poepoe: Just about testimony. I think I understand with the length that it goes on, but the more you say something, the more important it becomes too, so keeping the record is important even if I say the same thing over and over again. Also, in the past, we had Rob Stephenson, which contributed to the length of the meetings and the inability to make decisions and, right now, we're short on commissioners, so that's also contributing. So to the application for Pillar, I saw his farm plan, or whoever, him, her, they actually grow something, so that's nice. Dragon fruit. The most current draft of the West End Policy Statement asks to set a cap agreed upon by the community, not in those exact words, but really close to that, so that's where they're at right now. The illegal

versus legal. Just because it's been legal -- illegal for 30 years means it's been wrong for 30 years. It doesn't, you know, justify it being right or what's the big deal now. I wasn't alive 30 years ago, so that -- that helps. There's -- they've been multiplying to where the impacts are undeniable. The internet happened, which streamlines the process of connecting travelers to owners and the renting out process. The advertising is you can search and find a house in under a minute. I live in a neighborhood with both legal and illegals, and I do notice that the illegal ones are rented out much less, with lower frequency than the legal ones. And the - what is it called? The enforcement is a problem, but it might take a while, but it does happen. I turned in an illegal vacation rental and they were served papers to cease their operation, so enforcement does happen. So that's pretty much all I have to say.

Chair Lasua: Thank you. Any questions?

Ms. Buchanan: I have a question, and I might have missed it in the beginning, beginning 'cause your voice is so soft, are you in favor or you're not in favor of the Pillar application?

Ms. Poepoe: Oh, I -- I would not be in favor just because it's still the ag land thing that I mentioned earlier. I still have the same -- I have the same concerns as with the Hamamoto one, I just didn't know if I should repeat exactly the same thing that I said earlier, but basically I have -- I would be not in favor because of the repurposing of ag lands and that it doesn't prove to be a subordinate or incidental use to a primary use, which is what accessory uses are supposed to be. Primary uses would be agriculture, ag parks, animals and livestock, solar energy facilities. So I would say not in favor.

Ms. Buchanan: Thank you.

Ms. Poepoe: Okay.

Chair Lasua: Any other questions, Commissioners?

Mr. Pele: Yeah, did you testify the first time we heard this in June?

Ms. Poepoe: I think I remember I might have, but I think I remember that they opened testimony just to open this up and then ended the meeting.

Mr. Pele: Yeah, so as a testifier against the project, am I allowed to ask how you're going to feel if it runs out and it's granted solely based on the fact that 120 days ran out because of the time constraints?

Ms. Poepoe: I would be disappointed, but I understand like where we're at and kind of how we got here. I just gotta try I guess and do what I can. I don't know. But also west

end, I do feel dislocated from it even through we're all connected, so I'm really cautious about what I say about what goes on down there too so --

Mr. Pele: Okay. Thank you.

Chair Lasua: Mr. Manera, any questions for the testimony? Thank you. Any more testimony, please?

Ms. Caparida: My name is Judy Caparida.

Ms. Oana: Thank you, Ms. Caparida. Do you solemnly swear to tell the truth, the whole truth, and nothing but the truth?

Ms. Caparida: Yes.

Ms. Oana: Thank you.

Ms. Caparida: I'm so sorry, bruddah. You know, it is -- it is really -- the thing is that, you know, that's how much we love Molokai. We try to do what is right. We try to live the life that we used to. We used to living this life. So all the changes, you know, it makes changes for us too, you know, and so I'm so sorry that, you know, we have to go this way, but I say what goes for one, goes for all. They had a good time, 25 years, 30 years, they had a good time. They made all that money. So we gotta look at it that way. Now they're paying for it. It's not my fault. It's not our fault. So this why we have something like this to come here and show us that you know what? You guys care too. You guys know what's going on. We don't. We never knew what was going on. People was making money out of their life. Agriculture land in our community. We don't know about that. But today we know why because we get educated. We come to the meetings to hear what's going on. On the TV, it tells us what's happening to our island, and that's why we're here. We not here because we want to be here, because we have to be here because that's all our children have. This is our future. The future. The generation to come. It's been my time. I'm already gone. But in the meantime, I'm going to stay here and I'm going to talk the same thing I say. How I learned that, that's the same way I'm going to say it. I love you guys. God loves us. And that's why we're here. We're here to share. How can we get results? And that's the way I wanna say it. I'm so sorry you guys have to go through this, but you know what? This is life. This is life. This is our future. The life for our children, grandchildren, generation to come. It's going to look like Maui and Honolulu. The only reason why we don't move that fast is because we got us to come out here and say you know what? This is our life. So I'm really, really blessed that we're here today to share with you guys because I don't hate you guys. I'm here because I love, and Jesus loves us. Thank you.

Chair Lasua: Thank you, Ms. Caparida.

Mr. Pele: Aunty? Aunty? Aunty, are you for or against this?

Ms. Caparida: I'm against it because why we just been through one.

Mr. Pele: Yeah. Okay.

Chair Lasua: Anymore questions? Mr. Manera? Thank you. Thank you.

Ms. Caparida: I can go now?

Chair Lasua: I'd like to close -- anymore public testimony? Seeing none, okay, testimony is closed. Any further questions from the Commissioners? If not, we'll go ahead with the recommendation from the planner.

Ms. Lopez: The Maui County Planning Department recommends to the Molokai Planning Commission approval of the Land Use Commission special permit subject to the following conditions 1 through 6, be advised that compliance with codes, covenants, and restrictions of any applicable homeowners or apartment owners association is the sole responsibility of the applicant. The conditions of this State special permit shall be enforced pursuant to Section 205-12, and Section 205-13 of Hawaii Revised Statutes.

In consideration of the foregoing, the Planning Department recommends that the Molokai Planning Commission adopt the Planning Department's report and recommendations prepared for the June 28 and November 8, 2017 meeting as a findings of fact, conclusions of law, and decision and order, and authorize the Planning Director to transmit said written decisions and order on behalf of the Molokai Planning Commission.

Chair Lasua: Thank you, Sybil.

Ms. Lopez: You're welcome.

Chair Lasua: Commissioners? Any motion?

Mr. Pele: Chair, I move that we deny this permit based on - I don't even know what she said the last motion - that we deny the permits -- shucks. With the same findings and facts and conclusions of law as our previous vote on the special use permit. Is that acceptable?

Ms. Buchanan: And I would like to make a friendly amendment to that motion that in those findings of facts and conclusions of laws that any inferences to the SMA is stricken.

Chair Lasua: Can I get a second?

Mr. Poepoe: Second.

Chair Lasua: Discussion? Any discussion? Seeing none, ready for the question? All in favor, raise your right hand? All oppose, your left hand? Application denied.

It was moved by Commissioner Pele, seconded by Commissioner Poepoe, then

VOTED: to deny the permit based on the same findings of facts and conclusions of law as with the previous vote on agenda item D.1., but striking any inferences to the SMA in those findings of facts and conclusions of law.

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

Ms. Lopez: Thank you, Chair.

Chair Lasua: Thank you.

Ms. Lopez: Thank you, Commission.

Chair Lasua: Next item, Director's Report, under item E.

E. DIRECTOR'S REPORT

1. Native Hawaiian Law Training – December 9, 2017

Mr. Yoshida: Thank you, Mr. Chair and Members of the Commission. Late last year, the Council passed an amendment to the County Code requiring that members of the Planning Commissions and the Hana Advisory Committee attend an annual training, a Native Hawaiian Law Training, conducted by the members of the Native Hawaiian Law Center of the William Richardson School, at the University of Hawaii. As the trainers are teaching during the week, the only day of the week they conduct the training is on a Saturday, so the date of December 9th has been chosen. The team will conduct their training from the Council Chambers and have Akaku film, televise the matter, so the members can view the training on Akaku. It's scheduled for Saturday, December 9th. I guess more details will be forthcoming as to the time. This is the first time that, you know, they mandated the Native Hawaiian Law Training. Okay, moving on, the Department has circulated the list of pending and closed Molokai applications --

Mr. Poepoe: Excuse me? Oh, sorry.

Mr. Yoshida: If there are any questions.

Mr. Poepoe: I had one question about the Native Hawaiian Training, the law training. If we going --

Mr. Yoshida: I believe it's a all-day training. Oh.

Mr. Poepoe: Okay. I going yell in the -- in the mike. Since we get the option of watching 'em from -- from home, right?

Ms. Lopez: Yes.

Mr. Poepoe: So is it -- in order for verify that you actually went participate in watching the -- the class, how do you -- are you going to check in by attendance by phone or something?

Ms. Lopez: Yeah, I think they're working on it, on how you guys have to phone in, but, just a reminder, it is on a Saturday, so it's a Saturday all day, and I think they're working on it, and they will notify you on how they will go about checking you in from your remote areas.

Chair Lasua: I thought we were using a room here for that?

Ms. Lopez: No. No.

Chair Lasua: No? Okay. So then we'll probably have to sign in for like a conference meeting type.

Ms. Lopez: Yeah, but it's -- it's still in coordination.

Chair Lasua: Okay. Still in due process.

Ms. Lopez: Right. Until it gets fleshed out, they will call you and let you know how those will be -- how they will --

Chair Lasua: Okay. Thank you.

Ms. Lopez: Coordinate that.

Mr. Poepoe: So this -- this option is --

Ms. Lopez: And that I think --

Mr. Poepoe: Still get 'em or --

Ms. Lopez: Oh, where is -- oh, she just left 'cause she would be the one --

Mr. Poepoe: Oh, okay.

Ms. Lopez: But I think they will leave this option open but they just didn't want it to be full because the room is so small.

Chair Lasua: Right.

Ms. Lopez: And so that's why try tried to make it more remote so you actually can stay home and watch it live through -- through Akaku, so until they figured out how they can logistically do that via telephone or online, they will let you know.

Mr. Peopoe: Okay.

Chair Lasua: Okay, anymore questions for Clayton.

Ms. Buchanan: I have a comment. Since the County Council mandated this training, I find it unacceptable to have this law training for commission members under these circumstances. The County Council mandated the training. The County Council needs to provide the monies to bring the trainers here to Molokai to train us, and I know, even if it's on a Saturday and they come over and they train us because they teaching school, either that or to do it a time when they're on break. But I think it's -- I think it's disrespectful to Native Hawaiians and culture to assume that this training should occur to persons and they not show whether they going train or not and to pick just one day for that training on a Saturday. I'm not a hundred percent sure, but I think I'm going to be in Florida on December 9, and having said that, I attended law trainings at least three to four times in the past with other State boards and commissions, so I'm familiar with the training, but even having said that, I really wish that my comments are conveyed to staff, Planning staff, and the County Council that this Commission should be afforded that opportunity to engage with the trainers in person because sometimes I feel that this Commission may lack that expertise and, today, I made inferences to the Hokulia law case, that training is really important to what we do especially under Chapter 205A, which is really an environmental law and, yet, this board does not have that environmental and expertise and then that's why it's not helpful to move projects along either. By the time we see it, there's something that triggers the need for us to know that type of law. So I just wanted to make that comment. I wanted staff and Planning to be aware that I'm not -- I'm not -- I'm happy that the law was passed and it's mandated that the training be there, but I'm not happy that they're so nonchalant or not making a financial accommodation to bring the trainers here. Thank you, Mr. Chair.

Chair Lasua: Thank you, Commissioner Buchanan. I agree. I think we should, you know, when I first heard this, I was wondering what kind of accommodations they was going to have us do it especially when we're -- we're a volunteer, these people have -- I'm assuming they're getting paid, but yet we're not, but yet we have to make time for them, so that's -- that's my concern too, and I do want to put that in the Council's ear as well. Thank you. You have anymore report, Clayton?

2. **Pending Molokai Applications Report generated by the Planning Department with the November 8, 2017 Agenda Packet (Appendix - A)**
3. **Closed Molokai Applications Report generated by the Planning Department with the November 8, 2017 Agenda Packet (Appendix - B)**
4. **Agenda Items for the December 13, 2017 meeting**

Mr. Yoshida: We have circulated our list of pending and closed Molokai applications I there are any questions. Seeing none, the next regular meeting scheduled for December 13, I don't know if we have anything in the way of SMA assessments, but we do have a request from the State for the Commission to comment on proposed improvements to the Molokai Library. Yeah, we'd like to wish all of you a Happy Thanksgiving.

Chair Lasua: Oh, thank you, Clayton.

Ms. Lopez: Happy Thanksgiving --

Chair Lasua: Okay.

Ms. Lopez: And Merry Christmas.

F. NEXT SCHEDULED REGULAR MEETING DATE: DECEMBER 13, 2017

G. ADJOURNMENT

Chair Lasua: If there's anything else, if not, this meeting is adjourned.

The meeting was adjourned at approximately 2:27 p.m.

Submitted by,

SUZETTE L. ESMERALDA
Secretary to Boards & Commissions II

RECORD OF ATTENDANCE:

Present:

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

Excused:

William Buchanan

Others:

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