

**(APPROVED: 02/13/08)**

MOLOKAI PLANNING COMMISSION

REGULAR MEETING

NOVEMBER 14, 2007

The regular meeting of the Molokai Planning Commission was called to order by Chairman Degray Vanderbilt on Wednesday, November 14, 2007 at 12:46 p.m. at the Mitchell Pauole Center, Kaunakakai, Molokai, Hawaii.

A. CALL TO ORDER

A quorum of the commission was present. (See record of attendance)

Mr. Vanderbilt: I'd like to call the meeting of November 14, Molokai Planning Commission to order. Before I do I would like to entertain a motion to change the order of the agenda, after C move up F, which is Chairperson's Report. State Land Use Commission Meeting on Molokai November 15 and 16 because we're gonna have to have some discussion and get some idea on where we're going on this according to our attorney at this meeting if we're going to do anything tomorrow.

MOTION: TO AMEND THE AGENDA AS STATED BY CHAIRMAN VANDERBILT.

MOVED: COMMISSIONER KIP DUNBAR

SECOND: COMMISSIONER STEVE CHAIKIN

MOTION UNANIMOUSLY APPROVED.

B. PUBLIC TESTIMONY ON ANY AGENDA ITEM FOR THOSE WHO HAVE TO GET BACK TO WORK OR HAVE OTHER SCHEDULING CONFLICTS.

Mr. Vanderbilt: On the agenda we have the TVR and Bed and Breakfast on the agenda and we also have the policy plan and the folks from the policy review were unable to make it today. Anyway, if there's anybody that wants to testify on either of those agenda items or anything they feel is related to planning now is the time to do it and then you can get back to work if you have to. Cheryl?

Ms. Corbiell: I have submitted a letter as usual so you have something to refer to. But there's two things that I'm looking for from this commission. That is, as you know I have no faith that common sense is going to prevail on Maui. So the two things I'd like to see happen with the regulations is for sure the word Interim has to be put into the regulations or you will be eliminating all transient vacation rentals in residential and rural lands on Molokai. That's not an issue on Maui, and the planner can sit there and say that he bleeds for me, or hurts for me or whatever he said, but in fact Molokai is different than Maui. Therefore our lands for what ever reason were put into Interim so that word is a critical word that has to go into the regulations at some point and so far hasn't. The

second one is kill the 20 room mini hotel. I can't believe that Maui has buried that hotel, they can call it a B and B but 20 rooms is not a B and B. 22 rooms is Molokai Ranch Lodge, the Hotel Molokai if anybody is paying attention is part time shared and part hotel. So it's either a 22 room hotel or 20 room and the rest of their forty sum rooms are time shared. So we have very small hotels. Those are hotels. On Saturday at the morning market and said when you hear the B and B regulations what do you think of? No one said hotel, everyone said well it's private homes. I said right but the B and B regulations have hotel buried in them. I understand that on Maui they want to have that and there is one already in Kihei. But the point is on Molokai if you want to build a hotel, I didn't think we were into building hotels, we wanted to renovate the Kaluakoi and support our hotels and everything else but those regulations have, the B and B regulations have a hotel in them. I think for Molokai it should be struck. Because these regulations are going to last for years and what we don't want to see is large infrastructure, more that's coming into Molokai. So I find it a little interesting that the regulations start off by trying to get rid of people me who rent to one set of guest at a time and yet want to build 20 room hotels. That's a little upsetting for someone like me. So I'm hopping that you as our commission have a little bit more common sense than what I'm seeing coming off of Maui. Thank you.

Mr. Vanderbilt: Thank you Cheryl, are there any comments for Cheryl?

Mr. Chaikin: I just wanted to clarify. That interim thing that they were planning to put in, they're actually moving forward in putting the Interim language in another bill but that was only reference to Bed and Breakfast.

Ms. Corbiell: I've told you guys I've got (inaudible) six years ago. I just want to make sure that Interim is not forgotten when it comes to residential and rural lands. Because other than the town of Maunaloa, everything else on this island that is residential and that is rural is interim. Without that critical word we're all gone. That's the problem. So the Mayor that sits there, I am angry because the Mayor sat and said you're illegal. I said that's right because she and her administration wrote the regulations for Maui and forgot that we're all interim. Quite frankly I didn't know that we were all interim nor did most of this island. That's why I feel that we got shafted the first. This time I can actually write something appropriate for Molokai. I'm also warning you guys that's a hotel in that B and B regulations. If you want hotel that means business zoned areas in Kualapuu could have a 20 room hotel, Kaunakakai, more in Maunaloa, that's the problem with that regulation. That needs further community discussion.

Mr. Chaikin: Thank you I agree.

Ms. DeCoite: Well I just have couple comments. One is that we're aware of that and we do have common sense, just to let you know. There needs to be a lot of changes that we have commented on that we're looking at. So, it's just a matter of you're looking at a different commission back to when you guy's were, what ever the mayor has drafted up we're here to make changes ourselves.

So we would appreciate a little bit of patience from you also and some respect with to common sense.

Ms. Corbiell: I didn't say you guys didn't have common sense, I'm looking towards you guys to have that common sense for Molokai because what's come from Maui is not appropriate for this island. I do have great faith that you guys read this a little bit more carefully for Molokai.

Mr. Vanderbilt: Thank you Cheryl. Thanks Cheryl. Is there anybody else who would like to testify? Come up and identify your self. After you've testified can you go over and sign in with Nina so that she has your correct name.

Ms. Brunnert: I just hope the planning commission can keep Molokai, Molokai. I know there's a lot of issues that are going on with this, a lot of division and the pros for it. We need to come up with a win, win situation for Molokai. Maui as you know there plans do not fit Molokai's lifestyle areas or anything like that. Maybe you can think about grand fathering like the people that do have vacation rentals, that have paid their taxes, without having to build new places. We can preserve Molokai without abolishing all the places you stay and also preserve some jobs. Anyway, I just hope we can keep Molokai, Molokai and have the commission do the planning for this island as oppose to having Maui's plan for here because it just gets rid of everything. We don't have to go all the way with the Maui plan but we can also implement more things into it. I forget what I was really going to say but thank you.

Mr. Vanderbilt: Any comments for the testifier? Anybody else who would like to testify?

Ms. Place: My name is Tootchie, Zaidarene Kalipi. I'm speaking for Malama Pono O Ka Aina of Mana'e. A concerned group with about 160 members. We support Jeff Hunt's proposed bill concerning the transient vacation rentals. We want you to adopt them with the addition of Kalua koi as a resort destination area. We agree that these min hotel businesses should be allowed in the district or resort destination areas that have been specified. We do not believe that they belong in our residential and rural areas which was established to protect our family and communities. The current Maui Community Plan clearly states in Exhibit G, page 8 that the people of Mana'e want a permanent moratorium against the development of tourist related accommodations or businesses which will subsequently change the social infrastructure of the areas. What kind of a message would it send to our children and our community if the commission was to issue a special use permit ignoring our zoning. In Degray's words, those short term vacation rentals that are illegally operating, if the Molokai Planning Commission wants to do things right as Degray says, is to support the operator of an on going illegal short term vacation business just because he has made an application after-the-fact. Our community is in big trouble. That's it.

Mr. Vanderbilt: Thank you Tootchie, any comments for her? Hearing none, is there anybody else who would want to testify? Again please sign up with Nina.

Mr. Tim Brunnert: My name is Tim Brunnert and I'm here about vacation rentals. There's so many loop holes that don't fit this island. I know you as the committee have seen them, you question them, I hope that you guys take into your own hands and put together your own plan that you think is right for Molokai. You guys know what's going on, on this island. You guys know what's been going on with the TVR's. I'm sure you all are aware of what's good and what's bad and I just heard that you guys take this into your own hands and go over and above Maui's plan. Because Maui's plan is not just on the 20 units, there's property on this island that people can purchase and put up those hotels and that's exactly the word they used, mini hotels. Some of them were here for a good long while. (Inaudible) Again I urge that you take this matter into your own hands, I know you guys know just as well as anybody else what's good. That's all I ask.

Mr. Vanderbilt: Thank you Tim is there any comment?

Mr. Bacon: Hi I'm Nat Bacon and I'm speaking in behalf of Malama Pono O Ka Aina. We're in favor of Jeffery Hunt's bill concerning the Bed and Breakfast with the number of rooms proposed for any given resident. In the rural areas of Molokai the vast majority of existing homes have a number of bedrooms. There's also a cumulative effect and that we would hold that the issue or the permits, I assume it was stated before by the Planning Director would again, this is only a transition so we see what happens. But whoever does those permits which I assume would be conditional permits and you would view occasionally, that they would be very much aware of what the cumulative effect and what the community is saying so they might later be something that's not stated now.

Mr. Vanderbilt: Anyone else out there?

Ms. Harrison: I'm Dana Harrison. You guys are the ones that make the rules. I've been here 12 years and you guys can come up with a way that'll be legal.

Mr. Vanderbilt: Just a comment. You mentioned like some of the other speakers that you hope we're the guys that make the rules but unfortunately they brought the ordinance to us to make recommendations to the guys who are going to make the rules. We'll do our best.

Ms. Harrison: My understanding is that Maui is recommending to do their own rules and that would be the same for Molokai because we are different and Hana too.

Mr. Vanderbilt: I think we can make our own recommendations and if the county approves it, they'll take our recommendations, fine, we made a couple of recommendations on affordable housing, they didn't take any of them, so hopefully they'll respect what the commission wants. Thank you. Any other comments?

Ms. Place: Aloha Chairman Vanderbilt, council members, my name is Linda Place and I reside here on Molokai. I've been here for 40 years and I've been a full time resident of Molokai. My position regarding this draft bill is that no changes be made to our laws regarding transient vacation rentals. To my knowledge and to date there are only two legal tvr's that have been rented on the east end of Molokai. For our east end community these are two too many. Not to mention the illegal tvr's throughout Molokai and the rest of Maui County which has since been ordered to cease and desist under this administration. Clearly transient vacation rentals should not be located in east Molokai as the east end policy statement with the existing Molokai community plan. The document was created by our community and should be upheld to the fullest of the law. I humble ask that no changes be made to the existing policy and this matter is addressed in a timely manner. Thank you.

Mr. Vanderbilt: Thank you Linda. Are there any comments from the commission? Commissioner Chaikin.

Mr. Chaikin: Linda just to clarify. The existing law as it stands right now allows for transient vacation rentals. What they're trying to put forth is an ordinance that would eliminate transient vacation rentals, do away with them, no such thing and than another ordinance allows some B & B's. So if we leave the policies the way they are it allows the communities for tvr's to continue. I'm trying to clarify for you so that you understand the wording.

Ms. Place: And on that note I would like to say it's because of that, that permit that you have the conditional permitting, that is why they are allowing tvr's. They come before you because it is against the law, they come before you with a conditional permit and that's why tvr's are allowed. A conditional permit is another thing that has to be addressed too because a special permit allows people to do things.

Mr. Chaikin: The Planning Department is suggesting that we do away with a conditional use permit.

Ms. Place: That's why I agree with it.

Mr. Chaikin: You agree with the existing rules or with Jeff Hunt's rule?

Ms. Place: Jeff Hunt's rules, that's what I said.

C. APPROVAL OF MINUTES OF THE SEPTEMBER 24, 2007 MEETING

MOTION: TO APPROVE THE MINUTES AS CIRCULATED.

MOVED: COMMISSIONER KIP DUNBAR

SECOND: COMMISSIONER LYNN DECOITE

MOTION UNANIMOUSLY APPROVED

F. CHAIRPERSON'S REPORT

1. State Land Use Commission Meetings on Molokai November 15 and 16 - Information regarding up coming meeting. Commission will determine if it will provide testimony at the meeting regarding the acceptability of Molokai Properties Limited's Final Environmental Impact Statement for its La'au Point development

Mr. Vanderbilt: We'll now move on to item F. That's under the chairperson's report, the State Land use Commission meetings on Molokai November 15 and 16. Information regarding an up coming meeting. Commission will determine if it will provide testimony at the meeting regarding the acceptability of Molokai Properties Limited's final Environmental Impact Statement for its La'au Point development.

The reason that this is on here is that we received an e-mail or at least I received an e-mail from Corp. Counsel saying that we need to review this 3000 page document and determine whether we find it acceptable or if there's places that aren't acceptable and they suggest that the Land Use Commission not find it acceptable which means more information has to be put in there before they find it acceptable.

Mr. Hopper: More specifically what I said is that you are a commenting department here, you had your comments so I said that if the desire is to either testify or send a letter to the Land Use Commission it should be limited to the responses to the comments that you as a commission made to either testify or send a letter to the commission stating your beliefs about the comments, your comments that were responded to you again would have to act as a commission to wrote on whatever comments those would be or to authorize someone to testify in front of the commission. You couldn't just show up and start talking. I would keep it limited to your comment that you made as a commission, not other comments that were made by somebody else. That's my recommendation.

Mr. Vanderbilt: Let me just finish with this thing. The reason I mentioned the whole thing is that if you read through the 57 pages of comments and responses on the planning commission side it kept referring to other places that were different, we only got a packet with their responses to our comments plus a few of the appendixes that they changed, not all of them and so you may have had to go through this whole thing to really do due diligence. Basically, this was filed with Land Use Commission formally on 3:30, on Friday November 2. Our commission didn't get anything until Nancy I think got an e-mail from MPL November 5 and then she quickly e-mailed it out to everybody else, so that left us really, basically with 7 days to review this document if you take out weekends and the Veteran's Holiday. That's quite a task, I don't know about the other commissioner's but it was a pretty tough task. So hopefully we can move on from there today and try to come up with what we want to do before the Land Use Commission. Commissioner Chaikin?

Mr. Chaikin: I have a question for Corp. Counsel. You mentioned that we should limit our comments to the responses that they gave for the Planning Commission's comments. I was

wondering why we would need to limit ourselves to that and not be able to respond to other areas, other concerns that the community brought up that we didn't bring up that we thought was inadequately addressed.

Mr. Hopper: The reason for that is that your only jurisdiction so far on the project as a commenting agency on the EIS and you made your comments. But my concern is is that you're going to review this project in the future for an SMA permit and for comments on the change of zoning and the community plan amendments. If it's perceived at any point that the commission has a position on the over all project and not just your specific comments, I do not want to have a risk where the commission in its entirety has to recuse itself in deciding and therefore it won't be able to make a decision on the SMA permit. I don't want to have that argument be a potential out there and I know that you're all honest but this is the reason why for example the Planning Department is a party to these proceedings. The Planning Commission is not a party to the proceedings, has not filed a petition to intervene because the commission actually has to make a decision on this project. If you take a position before your decision making comes up the applicant can argue they never had a fair hearing in front of you. If that's the case you could have the risk of having the SMA permit granted even if you have vote against it, for example. So that's what I'm trying to avoid with my advice here and why I'm advising you to keep the comments on the EIS, which frankly is the only, your comments on the EIS, if you had a problem with a separate section, presumably you would have addressed that through your comments. You did have a crack at the entire document at the time. So that was my recommendation. If the answers to your comments are referenced in other sections, than I don't see a problem going to those sections, because it was a response to your comments dealing with other sections. But I would advise that, rather than taking a position, I know you want to do what, to represent the community here, but I just want to caution you to not do something that would require you to recuse yourself later on in the process and the most important thing to me is that when you make a decision on the SMA that decision stands what ever it is and also on your recommendations for the change in zoning and community plan amendment. So that to me is the most important thing.

Mr. Vanderbilt: Thank you Michael. Mr. Chaikin?

Mr. Chaikin: You know when I reviewed the proposed final EIS was on the internet. You could actually go and take a look at that and also the comments that we got back in reference to the comments that we made, I was reviewing that stuff and while I was reviewing it I noted that the Chair of the Molokai Planning Commission was declared an opponent of the project. So I'm wondering how this commission should act or is there anything that we should be aware of as a result of that.

Mr. Hopper: I had read that portion. Just because MPL would declare someone an opponent of a project doesn't necessarily make it true. I want to see evidence that there were statements made or something at some point. Having said that, my opinion, the best way of pacifying would be a written letter with your comments that you approve as a commission. Rather than having someone testify because the person who would testify could, wouldn't be concise as that letter. But you could

have somebody testify at the meeting if you would authorize somebody. Most typically the chair in situations but it could be anybody to come and testify and represent the commission and I would recommend that you basically adopt a position and if you authorize that person to speak, if they're speaking on behalf of the commission you become confident that that person would put forth that position. I think that's important.

Mr. Dunbar: I think what's happening here is that perhaps they're viewing us as being opponents. Where does being an opponent to the project comes from wanting to make sure that you have read everything concerning the project and you have all of the information you need to decide on the project. If our opinion of whether or not the draft EIS was a document in whole as we first received it than why are we even bothered to read through to find out whether or not the proposed final environmental statement is the document. I'm not necessarily opponents to the project and I don't think anybody here is an opponent to the project but we certainly want to make sure that we have all the information that we need in order to make sure that the document that they gave us to review is a viable document.

Mr. Hopper: You're absolutely right Kip and Molokai Properties Limited contacted you as a commenting party on the EIS and shouldn't have any objections. That's why I'm saying, as long as the comments you make while in this commission is based strictly on the EIS and your comments to the EIS. Don't take a general position for or against the project. They can't have an objection to this point if it's based on your comments. They came to you as a commenting agency and didn't have to. They could have consulted appropriate agencies. There wasn't a specific legal requirement to come to you. They did choose to do so. So at least as far as the EIS is concerned I would not think that there could be an objection to you having a position on that document. Especially as far as your own comments are concerned. Because they did come to you as a body for the comments.

Mr. Chaikin: I don't remember them coming to us as a body. Were we a consulted party? We submitted comments to them. Consulted parties, we didn't get in for that, is that correct?

Mr. Vanderbilt: No that's absolutely correct. At the very start of this process which happened in early 2006, they went out for preliminary consulting with groups that they felt would give some good input. They did not come to our planning commission as it happened in other situations. Then on April 27, 2006 they filed a notice that they were going to appear before the Land Use Commission on May 4, seven days later in Hilo. I went down there to provide testimony, the county didn't even show up and they were a party, so they weren't even there, Peter Nicholas wasn't there, there was nobody there except for some Land Use Commissioners and the MPL lawyer and several Molokai residents that live in Hilo. So we were not consulted initially, I don't know who they consulted with so we were not a consulted party in this situation. We were a commenting party but not a consulting party. I guess as far as my being an opponent I probably attended more Land Use Commission meetings on developing this master plan and all but two or three people. I was really into this whole community planning process as everybody was but than everybody got tired at the end and we had to make a decision by August 1 so the parent company could get it in there annual report which went to press at the end of August for the year 2005. Too bad because we really didn't discuss La'au and

the alternatives, we didn't really get into the water and we didn't get into the standards of the resort. I'm on the record of hoping that there would be an alternative because I didn't want to see the master plan go down the drain. That meeting, thank goodness, was video taped by AKAKU so I'd be happy to stand behind my comment because when this process started I had high hopes like everybody else. So with that...

Mr. Dunbar: I want to ask you are you a pro-ponent or an opponent, you can't be either?

Mr. Vanderbilt: Well I don't remember reading that, I remember I was, there was some new language, the three amigo's lumping me in with Walter Rittee and Glenn Teves and others, I don't know why they put that, why they took that little shot, but that's ok I can live with that. But anyway what I am proud of is this community because if they community had not been involved the final EIS would not have been half as good as it is now because if the Land Use Commission said there has never been in the history of the Land Use Commission any community that has come close to participating in developing a good environmental impact statement as the Molokai community has on this project. So the community should feel proud and it's just too bad that this community only ended up basically with 7 days in which to make one final move to get this to be the best document, most complete and accurate for future decision making including this commission. Just one other quick comment, I'll probably be off the commission before this ever gets to the commission, I'm up in March, in a few months. So I'll just be having my three minutes up there like everybody else and I hope that you don't cut me off too quick. So with that what I'd like to do today is, Steve has put together a few issues that he felt were inadequate. I have some that I feel that were inadequate in response to our comment. So what I would like to do is if we could go through and get an idea of just the areas that you thought might be an inadequate response, the information was just wrong, there wasn't enough description for a decision maker or misleading or whatever. I went through and found 30 probably but that's going to, I think Commissioner Dunbar had some good advice, we need to get just a few items and come up with a general opinion on whether we want to say that this should be accepted by LUC or whether it shouldn't be and then maybe have 10 or 12 point there, main points that we could point to and we don't have to get into a long dissertation on them and maybe put a few supporting documents to support our position on those. Nancy is going to have to type all this stuff up this afternoon or tonight. She also has to type up the Planning Department's position, maybe, I don't know, but they also provided 57 pages of comments and responses. Nancy, I hope you got a good night sleep last night. But anyway, if we could do that and take a position and I would, I was thinking about this whole thing, I would like if this commission would agree to it, to have myself and Steve testify for the commission. I would like to basically welcome the commission and say thank you and not to take anything personal and thanks for spending two days on Molokai and Steve could get into some of the points and then I'd like to just sum up again and thank the commissioner's. Because Steve has taken the time to really read this thing and at least put some comments down and we can add to those comments today, if anybody has any.

Mr. Dunbar: You know Degray I know you really want to beat up their, as a Chair I suppose I would too, however given Mr. Hopper's advice and given perhaps some of the statements and your involvements previously with the EC and the planned development I think it wise if you just stay

home. I say that not because I, I say that because with developers they try to develop something that really isn't going to be developed and then it only adds problems to the over all whole. I agree with you that Steve is a good speaker and that you should be there and that you can certainly voice some of your comments. I would not however endorse you being there.

Mr. Vanderbilt: And I wouldn't go up there unless there was consensus. So I appreciate those comments and I think that there is probably enough ammunition that somebody with mission might use and as a matter of fact when I was at a Water Working Group meeting the other night John Sabas who appeared with their Corp. Counsel Ron Orendecker at our last meeting, well I went by and said hello to them and he said glad to see you at the meeting, you better watch out you guys are getting in trouble and I asked him what he meant and he didn't comment. So that kind of bothered me and I think it's that kind of thing that the advice that Commissioner Dunbar gave is pretty good and I feel confident that Commissioner Chaikin can do a good job in representing this commission because he's really taken the time and I think he's the only one, I didn't put any written comments down. He's the only one that's given at least an outline to start with. Before we go any further, could we make a, could I entertain a motion that if we do decide to appear before the commission that Commissioner Chaikin would represent the commission?

MOTION: COMMISSIONER CHAIKIN WILL REPRESENT THE MOLOKAI PLANNING COMMISSION AT THE STATE LAND USE COMMISSION HEARING ON NOVEMBER 15 AND 16 ON MOLOKAI.

MOVED: COMMISSIONER KIP DUNBAR

SECOND: COMMISSIONER LYNN DECOITE

Mr. Vanderbilt: Any discussions?

Ms. DeCoite: You know I got no problem with Steve giving the testimony as long as what Mr. Hopper says is that it's just a comment and we're not taking a position on it based on the adequacy or inadequacy of the final EIS.

Mr. Vanderbilt: Hopefully we'll take a position to say whether it's inadequate or adequate. We're not taking a position on the project just on the EIS.

Mr. Chaikin: Let me conquer since I'm going to be the one up there. It would be totally inappropriate for us to go up there and take a position on the project. We are in a fact finding mode right now to get all the information we can and we're going to listen to testimony, we're going to read the documents and after all the information is in and we have to make a decision, we can close testimony and at that time we'll go into deliberation and we'll figure out what this plan or this board wants to do concerning the plan. But yeah it would be totally inappropriate for me to go up there and take a position on the project itself. Rather take a position on whether or not the information that's contained in the document is adequate or inadequate.

Mr. Dunbar: Absolutely. The only comment is the acceptability fo the draft EIS, that's all you're doing and the revision.

Mr. Vanderbilt: I would also like concurrence if there's anyone that doesn't object, that we will now sort of go through and throw out any comments on certain matters that we felt were inadequate for what ever reason and than later this afternoon Nancy can sort of compile all those and if there's any documents that verify what our concerns are she can prepare that and provide it. I think we need a little, give her a little flexibility at this time to put things together because none of us e-mailed her, and Steve is the only one that has some comments. Does anybody object to that?

Mr. Dunbar: No, I think that's a good plan. We can discuss it, I know that we've all read the plan and if there's something that one of the comments misses, it's a good idea that the other commissioner's are here to comment on that.

Ms. McPherson: Nancy McPherson staff planner. I would support that partly there's a citation in the document where a specific item in the response letter to your comments or specific page number than it can be verified. We got to be specific as possible with this.

Mr. Vanderbilt: I think that there's going to be probably a few people testifying tomorrow and Friday. So we don't have to cover every little thing and I think it could be more effective, we could say if we have 20 or 30 we can say we had a lot but we're going to limit it to 10 or 15 main ones.

Mr. Chaikin: I still have a problem with the concept. The concept that, you know the hearing is about whether or not the EIS is adequate or not. That's what the hearing is about, I thought we could testify on that without being limited to only the few comments that we make. In that document is a part of that document, there were thousands, and thousands, and thousands of comments made, the list goes on and on. There were a thousand comments from just a couple of people. I don't know why we're just so limited and we can't address anything in the EIS that we thought was inadequate. Why are we so limited that we have to stick to only certain things?

Mr. Vanderbilt: I'll give it to Corp. Counsel because I'd like to hear that too because we are the first, we're going to be the first decision makers that have to rely on this document before the Land Use Commission. The Land Use Commission doesn't have to start its hearings for 180 days after it clears legal challenge. They're going to concurrently process the change in zoning and the community plan application concurrently with the land use change. They're going to start at the same time and we're only going to have 120 days to make our recommendations. The Land Use Commission may not have even started their hearings by the time we finish. So it's really important that we, on the commission, have a document that we feel is accurate, complete and easy to read.

Mr. Chaikin: Let me just add a little bit to what I said, the reason I have this particular problem is that I submitted all my comments, my original comments and for what ever reason they got lost in the shuffle and they never got to Molokai Properties. So they were never responded to but they're still very pertinent and I looked through this stuff and I didn't see that they were addressed and I see

that there's major inadequacy in the document. I think the public is an excellent resource. They came up with lots and lots of things that this commission didn't think of and the reason why these are not pertinent and we can't address those I don't see why not.

Ms. McPherson: There was actually a lot of public testimony, written testimony that was submitted during the meetings that you held during this comment period. Those were also adopted by you so my understanding is because those were submitted during your meetings and you, kind of by default you've adopted those as well, even if they weren't included directly in the document, that may not, I haven't gotten total verification on that.

Mr. Vanderbilt: Excuse me Nancy, are you saying that beside what you compiled and sent to Molokai Properties that we had a statement some where in there incorporating by reference the testimony, written testimonies we received during our January and February meetings?

Ms. McPherson: No, what I recall is attaching all of that testimony to your letter. Now whether that was all sent together to the Land Use Commission I'm not sure.

Mr. Vanderbilt: I think we're going to have enough probably just going through our comments and a few other things but to Corp. Counsel, if we as decision makers have read through this they made available our comments and said the rest is on line and they sent this to the Planning Department, this 3000 page thing. If we as decision makers see a glaring error, isn't it up to us as a commenting party to say, because there's a tremendous amount of new information in here that we didn't have available to us when we commented. So is there any reason why we couldn't comment on the adequacy of say any new information in there?

Mr. Hopper: I was basing my opinion on basically the scope of what's allowed as a legal challenge by a commenting party. It's pretty specific and there's case law on it that if there's a legal challenge later on based on a commenting party that commenting party is limited specifically to the comments that that person made as far as the legal challenge. That was the scope that I was looking at. I'm not saying it's necessarily illegal if you go and testify on comments that weren't yours. But as far as my recommendation, that was based on the fact that you had the opportunity to comment, you made, I think, a lot of comments. To focus on those comments rather than other comments that you either didn't make or never saw didn't seem to make sense in light of the fact that the right of challenge for example is focused only on the comments made by this specific party. That's my advice that I have right now. I think there's a good reason for that advice but I can't say that as a matter of law that if you decide to comment on other comments that that would be illegal. I just advise against it.

Mr. Vanderbilt: OK so with that you all have Commissioner Chaikin's two page draft and what I'd like to do is just try to keep this a little informal and if you have a comment that you feel is, regarding the adequacy of a statement or section or an issue, just throw it out there for us to talk about and I'd like to start with Commissioner Dunbar who said he was ready to go with one issue.

Mr. Kalipi: Couple of things, I have a question. In most cases when we get a document to comment on I know there's recommendation from the Planning Department. Is it because we didn't have enough time that the Planning Department does not have a recommendation for us today?

Mr. Vanderbilt: Joe I can comment on that. Nancy may have some comments to add in there for us just off, but she didn't have time for written. This is sort of a weird situation. Jane Lovell who is in the litigation section of Corporation Counsel, she represents the Planning Department. The Planning Department is actually a party to the Land Use Commission hearings and she represents them, she doesn't represent our commission and the Planning Department's position may, it could be contrary to our position. Which is kind of weird because they staff us. It's kind of confusing to the community but basically, if I'm not mistaken, we're no different than a member of the public testifying. I think if Nancy as our staff planner had some obvious things, that those were things we could consider. But the Planning Department, I was hoping that we'd get an idea where the Planning Department was coming from because I don't want to see our commission go up there and be saying one thing and be in conflict with the Planning Department. That's going to make both the Planning Department and this commission look like fools and the community. But we haven't heard back from, too much, but Nancy might be able to clarify that. Try to clarify it quick because it's two and Michael's gotta leave for a plane.

Ms. McPherson: Well we're still developing our position so there's communication going on as I generate information I'm funneling that to the Director and the Deputy Director and the Council and Jane Lovell and so...

Mr. Vanderbilt: The Council?

Ms. McPherson: The Counselor Jane Lovell.

Mr. Vanderbilt: Corporation Counsel.

Ms. McPherson: Yes so at this point we're still trying to figure it out ourselves. But we have to follow our mission as the Planning Department as professional planners in doing our analysis. You as the Planning Commission represent the community, you represent Molokai for planning matters. So we don't have to necessarily be exactly in alignment. We do not have to have exactly the same position because we are analyzing...

Mr. Kalipi: Nancy that wasn't the question. Getting back to it and you guys are all over the map. The question was did you have appropriate time to give us a recommendation or not? If you don't have appropriate time to give us recommendation than just say, we didn't have the appropriate time to give you recommendation therefore I don't have recommendations in front of me. That's what I want to know.

Ms. McPherson: Now you guy's were supposed to send me e-mails and send me your comments and I was supposed to put something together and I didn't get anything from anybody.

Mr. Kalipi: So the Planning Department has no recommendation to our commission as, the steps to follow, everything that I seen proposed to this commission has come with a recommendation from the Planning Department.

Ms. McPherson: No, this is something different. We're not in a position to do that.

Mr. Kalipi: Thank you, that's all I wanted to know.

Mr. Vanderbilt: Thank you Commissioner Kalipi.

Mr. Kalipi: Secondly, secondly there was a motion actually on the floor that hasn't been finished. So if the rest of the commissioner's want to go through the document like that and than take the vote at the end, that's fine. But originally there was a motion on the floor to give Steve the voice to speak for us and than it went left... so I just bringing that back to your attention Mr. Chair.

Mr. Vanderbilt: Thank you Commissioner Kalipi. So ending discussion there, if there's no more discussion on that all in favor of the motion, all those in favor of Commissioner Chaikin representing the planning commission before the Land Use Commission certify by raising your right hand.

Mr. Dunbar: If we could add to pertaining to the acceptability of...

Mr. Vanderbilt: Pertaining to the acceptability of the proposed final environmental impact statement submitted by Molokai Properties Inc. to the State Land Use Commission.

Mr. Chaikin: I think it's important that in that statement we decide whether or not this commission thinks that the proposed final EIS is adequate or inadequate. Because that's an important part of the whole. In my comments I came to the conclusion that there's some really important and relevant information that's not contained in the document that really should be in the document. I think the information is inadequate. So I would recommend that the commission take a position and recommend to the Land Use Commission that the proposed final EIS is unacceptable, the information that's contained is not sufficient.

Mr. Vanderbilt: I think we could do that and along with that statement we say because here are some of the main points that we want to hear, there's probably could have been more but just didn't have the time to....

Mr. Dunbar: Don't go into time just get to the point.

Mr. Vanderbilt: So anyway, now, we've covered that motion we're back on track...

Mr. Dunbar: We have to have a vote. We didn't vote...we had a first and second and no vote.

Mr. Vanderbilt: You mean on Commissioner Chaikin?

Mr. Dunbar: Yes.

Mr. Vanderbilt: All those in favor raise your right hand....Bill?

APPROVED: COMMISSIONER'S KIP DUNBAR, LYNN DECOITE, MIKIALA PESCAIA, JOE KALIPI AND STEVE CHAIKIN.

OPPOSED: COMMISSIONER BILL FEETER

MOTION CARRIED 5-1

Mr. Vanderbilt: So with that we'll get back and try to come up with a few points where commissioner's felt that statements were inadequate for what ever reason. They were wrong, they were misleading, there was more information needed, or what ever. With that I think Mr. Dunbar started off because he had one.

Mr. Dunbar: I certainly like the commission's help with this too. I had a lot of trouble with the planned...

Mr. Vanderbilt: Excuse me Kip one minute. Nancy we're not going to get the minutes to this so are you keeping notes on this? All right, thank you.

Mr. Dunbar: Under the original EIS it was section 6.0 which dealt with the process of examining alternatives to the proposed action. When I read through the revised section of 6.0 there basically was no change other than there was a response to Mr. Yamashita's letter that said how frustrated he was but what I didn't find in this revised proposal was what the original financial return for the La'au project as it stands, I do not know that today. I do not know what the financial return if the 200 lots went forth today and the original plan went forth, I have no idea what the financial return is, it was never stated. However, in the alternative they declined these alternatives based on lack of financial return. One of the alternatives that I felt made some sense even though I do believe that the EIS kind of warmed it up with a 27 hole golf course and an 18 hole golf course just to raise the ira of the populous so they go well we don't want that, but I think it acted like a negative restrain and it made 38 million dollars. Now I took up with some of the things they say whether in the revised form they talk about view lots that they're going to sell for I think it was \$250,000 or \$300,000 and golf course lots at \$500, I might have that reversed. The problem I have here is that I do not believe that either the original EIS or the revised sections of the 6.0 alternative give a precise and adequate accounting of where each of these alternatives stood. So this was my big push and it does discuss water saying well if we had 800 lots it would be so much less acceptable than if we had 200 lots. Well I suppose that's true but you could also increase the lots to an acre in size as opposed to a quarter acre in size, have your 200 lots, have them around the golf course, have them with a view, have them around the infrastructure which is already there, without having to go another 16 miles out to Hale O Lono and jump through a whole pile of hoops. So that's my

comment I'm happy to respond to any of the commissioner's. And maybe you found something that I didn't find.

Mr. Vanderbilt: OK so basically you're saying that there really wasn't in the proposed final EIS, there was just no new information to give you any better understanding of the financial returns on the project. I think, that's the kind of statement, we don't have to go into all the details at this point as to why we thought that. There were several statements in their parent company's annual report, the Ranch's development activities are not projected to produce a profit for the next two years although profitable projects under the master plan are progressively being commissioned. I don't know what that means but there's a summary in their annual report but again it's all a sort of pie in the sky statements with not too much substance in it. So, with everybody being agreeable that that could be one of the concerns that there just wasn't enough...

Mr. Chaikin: I just want to kind of clarify, the bases of your comments is that the amount of profit that they receive on the La'au project wasn't stated so you couldn't really make a comparison between any alternatives and what they were going to propose to do? Is that correct Degray. Was there not a reference in there to the profitability of the La'au Point project?

Mr. Vanderbilt: Well I didn't see it. It seems like they were going to have roughly two million in sales and a hundred and something million construction cost. But that was based on the original numbers but there's no updated numbers to give what that project would be profitable today verses maybe some of the other alternatives. But they made no adjustment when they moved forward. That's what this document is supposed to move through the process and as you get comments it gets embellished so finally decision makers don't have the same questions that Commissioner Dunbar had.

Mr. Dunbar: Should we decide actually at this point and time and bring it up to the other commissioner's, should we decide with Nancy at this point and time on the exact wording of the questions so it is presented by Steve and he's not second guessing what I read and he hasn't read. It might be one, easier for him and two, easier for, if we have a good understanding as to where we should be with this question, maybe it could be good for the LUC then to realize, yeah I didn't see that either. How do we know?

Mr. Chaikin: You know I would feel comfortable with just generally if we, I don't want to go up there and start reading stuff and just doesn't sound good. I want to be able to go up there and talk and kind of put it in my own words, sort of. If we could get the concept down on paper and agree with what the concept is and if I can just tweak it a little bit when I go up there so I don't have to read this stuff I think it'll come off better.

Mr. Dunbar: Basically my comment to you would be that the draft EIS that we originally reviewed and the revisions to that draft EIS that was answers to the alternatives under 6.0 of the original draft have not changed and do not address the reasons for those alternatives to be similarly dismissed and turned down.

Mr. Vanderbilt: did you get that Nancy? So if you could repeat that but basically the last part, between the original and the update things have not changed.

Mr. Chaikin: Kip I'm gonna actually record what you say so that that way we can sit down later on and try to figure out how exactly so go ahead.

Mr. Dunbar: All right well what I said and I hope that I get this straight again was that under the original draft EIS under 6.0 it has dealt with alternatives.

Mr. Vanderbilt: Go ahead Kip.

Mr. Dunbar: Are we still going? And the revisions, we've raised questions as to the alternatives to the meeting they had and the revisions that they provided us do not adequately answer our questions that we raised as to why some of these alternatives weren't the better avenue to take for the Ranch.

Mr. Kalipi: Did you get that Nancy?

Mr. Vanderbilt: I think we're just going to have to do the best we can right now to put this down. I think Kip made his point very clear and I think we asked a lot of questions regarding Matt Yamashita's alternatives based on the figures the Ranch gave him and in here most of the time they said they don't want to comment on it because it's sensitive information. But how could anybody look at an alternative if they won't even explain the requirements that they're placing on that to get an alternative. So that was kind of strange and I think that that might could be a highlight some where in there.

Mr. Dunbar: Again if someone has found this information in either of these documents please so relate.

Mr. Vanderbilt: does anybody else have any, I have one. There is nothing in the sections that carry the CC&R's or anything regarding the potential increase in densities by then switching now from ag to rural. I gave you all a package where they were going for subdivision approval which is pretty much look like the same project but the new project is 40 lots less I believe. That was ag which allowed two dwellings per lot. We have Ralph Nagamine here who knows the laws now but apparently if they go to rural and they go for rural -1 zoning which they are and they have a two acre rural lot they can put three houses, two main houses and an ohana without any...no I think Ralph could you clarify that. Nancy do you have....let Ralph clarify. So what I'm saying is they say there's no subdivision, that's fine, they're not going to subdivide but most of us would think o.k. they can put two houses on there, they're not going to subdivide it, it'll two like the original. But now it can be up to 600 homes. Ralph?

Mr. Nagamine: I believe this area that you're discussing is whether if the property is zoned R-1, one acre and they create two acre lots? Two acre, rural, one acre lots. There's a possibility that they

could build two houses plus an ohana on that two acre parcel. However, if you all are concerned about how many houses to build on a lot, I think when they come in for the change in zoning you could always put a condition in there that they could only have one house on the lot no matter how big the lot is.

Mr. Vanderbilt: But, that's fine. But the Land Use Commission isn't going to start, I don't know if they ever trumped the County zoning laws and said start going property by property you could do this and you can't, I don't know if there's a lot of that, can you recall?

Mr. Nagamine: No I think all they're looking at is whether or not the district boundary should be changed from ag to rural.

Mr. Vanderbilt: And again this is a decision making document and that information should be in there so decision makers would know to put that condition on. At least be up front that you can put, they respond in here to a question to you can put 400 homes there and they say you can put accessory dwellings but no where do they mention that under the existing zoning we can have 600 homes but we're willing to put in less. It's just a matter to make this a complete document. That was a concern that I had and there was, and along with that was a CC&R draft, it just said that there'd be no subdivision but they didn't comment on whether or not you could condominiumize the property which a lot of people are doing in Maui to get around the subdivision laws in order to sell off parcels.

Mr. Nagamine: So the bottom line is that they could have more than one single family dwelling, they could have two or more, they could have an ohana depending on how big the lot is.

Mr. Vanderbilt: So if it was two acre they could have two main houses and...

Mr. Nagamine: They could have two main houses and an accessory dwelling.

Mr. Vanderbilt: Yeah they said they could have accessory dwellings but they didn't mention that they could have two main houses. So is the commission agreeable that they really didn't give an adequate description of the density of the projects?

Mr. Chaikin: Yeah they totally screwed up that issue. But could you one more time tell us what exact rule or law or ordinance allows you to take a two acre lot and actually put two houses and an accessory dwelling on it?

Mr. Nagamine: Yeah if you look at the rural district zoning in Title 19 it says you can have one dwelling per unit and the unit being one acre. So for example if it was half an acre you would have one dwelling per half acre unit. So in this case if they're going for rural one acre and that one acre is the unit and they create a two acre lot, you'll have two units within that two acre lot. So you could have two houses.

Mr. Chaikin: Are they specifically going in for rural-1 acre?

Mr. Nagamine: I believe that's the proposed.

Mr. Chaikin: What is the choice there? What can they go for?

Mr. Nagamine: Right now I think before the State Land Use Commission they're going for from ag to rural and through the county zoning they would then break down that rural further whether it's rural half acre or rural one acre.

Mr. Chaikin: So there's only two choices? Either go rural half acre or rural one acre?

Mr. Nagamine: Yes.

Mr. Vanderbilt: Ralph so they can have a dwelling unit on each one care lot and Kip mentioned that maybe they could have four? Why can't they have two accessory dwellings?

Mr. Nagamine: Because the accessory chapter in Title 19 only talks about one per lot.

Mr. Vanderbilt: OK, right. So if they went, we're not sure, are we sure that they're going for one acre? If they were going for half acre...

Mr. Nagamine: If they were going for half acre, they create a two acre lot they could possibly get four houses plus the ohana.

Mr. Vanderbilt: So they could get four plus one. No, five. OK so that's a pretty big deal. So OK thank you. Ms DeCoite you have a matter.

Ms. DeCoite: I have one big matter. Than Mr. Chair I would have to say than that it would be adequate to say that their water has not been designated for, where they going get the rest of their water if the ag to rural and the build out at maximum, if they went to a four lots, they say they have water but they don't show where they're going to get that water from because their allocation has already met. So that needs to be clarified for me because I don't see it. I don't like the part that they sending me back to section 4.92, I thought this thing was supposed to be easily read and information found?

Mr. Vanderbilt: I think that could be a concern under the OEQC guide book and correct me if I'm wrong Nancy, it states fairly clearly that this not only should be a good informational document but it should be easy to read without unnecessarily have to flip back and forth is that correct Nancy? So could we agree as a commission that it needs to be put into a format that doesn't require the decision maker to look back and forth so much.

Mr. Chaikin: I didn't get that since I'm going to be the speaker. You're saying that the EIS was unmanageable to be able to read or what's the comment?

Mr. Vanderbilt: Well I think that's a pretty good word, unmanageable. I can get the exact reading out of the OEQC guide book but it's basically that, that it's very unmanageable to look through this thing.

Mr. Chaikin: Well you got a 3000 page document and I'm just wondering how do you make a 3000 page document that much more. They can put more indexes and stuff in there, I mean I want to go up there and say stuff that's really...

Mr. Vanderbilt: No, I agree. Let's just go through and we're just throwing things out now and I think we want to limit it to the major things. But with regard to the water, I had a lot of issues with the water and one of them was, I'll have to find the page, but they said on one of the water tables here that the water usage on the west end has been in June of 2007 has averaged 1200 gallons a day on the ag lots down there. Yet before the State Water Commission on the Waiola case they cited the actual use by lot and it came out to over 5000 gallons a day. Then a few years later they said it's been reduced a little bit because of the higher cost. They only used one month. The question was what is the average uses over the year. It just seems that there's no rhyme or reason for the amounts of water that's used. They don't, when asked about the subdivision of the existing ag lots, they say that's only theoretical when in fact they're starting to get approved by the county now because the CC&R's of the Kaluakoi Resort have run out with the prohibition on lot subdivision so people are starting to subdivide them. If I'm a buyer of a \$500,000 five acre lot you don't need five acres. You could sell half of it and get a free house. So I think the incentive is there for people to subdivide and the county is allowing the subdivision, so to just answer the question by we're not going to get involved in a theoretical situation it seems like it's a pretty real situation that needs to be addressed.

Mr. Chaikin: Let me just make the comments on the water. I went through the water section and this is what I had come up with and what I think are important issues that need to be raised. The first thing is, I am not a water expert and I'm not going to sit here and pretend to be some kind of water expert but as I read through this thing the only thing I was really trying to figure out is whether or not there was enough water to do this project. You know what I couldn't tell with the information that was in there. The Ranch says that there is enough water to do the project and they provide totals of all the different subdivisions on the west end so that you can add them all up and yes there is enough water but the real question is, where do they get those numbers. The problem I had is that they really didn't show the details. They just gave you lump sums of water that they would need in Maunaloa, lump sums that they would need in Kaluakoi, the only time that they broke it down and gave you enough information was on the La'au Point where they took the lots and they told you how many lots there were and they told you how much water was going to be used per lot and then you could multiply them out and you could see where they got there, see how they reached their conclusion. They didn't do that with the others. You have no way to check their work or just see whether or not you agree with their assumptions. The other point that I wanted to make with the water is that the water's been really tight on the west end, it's always been tight. They are not getting

any additional potable water going out there. The water is so tight that they're even having CC&R's that prevent commercial agriculture. Prohibit the people that have the ag lots out there from even having the water for agriculture on their ag lots. But when you read this they have figures like right now Kaluakoi uses 800,000 gallons per day. The Kaluakoi area, that's a little less than a million gallons per day. The total amount of water that they have during the dry season in the summer is only 1.1. So there's a little cushion right now but Kaluakoi is only 20% built out and it doesn't include water that they're going to use to re-open the hotel and it doesn't include water that they're going to need for the La'au Point development and it doesn't include the Maunaloa area which has a lot more build out to go. So it's really tight and we need to see the details so that we can draw our own conclusions to whether or not we think there's an adequate amount of water. The other issues are the amount of water that they're putting in the CC&R's for potable water use is 600 gallons per day. They're saying that each of those brand new houses are going to use 600 gallons per day or potable water. A while back they mentioned the Papohaku lots were using over 5000 gallons a day. So is 600 gallons enough? There's not enough information. They haven't discussed whether that's enough. Other water issues include the fact that they still don't know how they're going to get the water from the source out to La'au Point, that remains an unsolved issue. I can certainly understand why it is a unresolved issue because that just happened. Where they got into a situation or they might have to get off the MIS. There's other issues with potable verses non-potable water, they are planning to bring in non-potable water and use it for the whole Kaluakoi area, that's a major issue. The landowner's that own those lots would have to switch from potable to non-potable for their irrigation. I don't know if they've addressed the residence there of that and who's going to pay for all that infrastructure? There's a lot of different issues with the water that I think weren't adequately addressed.

Mr. Vanderbilt: O.K. Commissioner Chaikin and I think that we can have a general statement that the water availability and use just the whole water dynamics is inadequate. Just to point to one key thing, it says under this section called conveyance, it says water conveyance requirement of dual water split into safe drinking and non-drinking will be limited to 500 gallons a day in the entire subdivision. I talked with the PUC, they're PUC regulated and the PUC says they cannot limit people in La'au that are under the same water company from using water and allow somebody in another area to use more. It's up to, if you can afford to pay for the water they gotta give you the water. So the only other way to conserve water usage is to make it the higher the price maybe people will start cutting back. But they cannot limit the La'au, the PUC said they cannot limit La'au and then allow Papohaku to use 3000 gallons a day. You don't have that luxury when you're regulated by the PUC. So this statement under the CC&R's which are not, the copy is not included in the final EIS, that's just a plain and inaccurate statement.

Mr. Kalipi: Commissioner Chair what if using your train of thought come up with a general comment that says, the section where they address water is inadequate and hear some bullets, just a couple of bullets whether there's MIS or it be potable water or even the covenant, it's not addressed therefore, it's not complete.

Mr. Vanderbilt: So the commission agree's, is there consensus that we can go ahead and say that it's inadequate the water with the information because of the following and go through and pick up six of the good ones? There's a lot of them but.

Mr. Kalipi: Right

Mr. Vanderbilt: Not beat it to death.

Mr. Dunbar: One other comment. To me the problem with the water is that if they had legitimate alternative that they could rely on, it'll be one thing to be, so non-factual with their findings. But because they do not and they've already ruled out salinity, I mean trying to do de-saline water is being too expensive and then they say their alternative is 800,000 gallons a day from Pala'au brackish well, I don't have any confidence that the, all the alternatives and all the what if's have been answered, either the draft EIS that we got or the revisions that they've presented, you could get one or two things to go wrong there, I mean they originally thought they could raise sugar in Kalamaula and they pumped that dry in about 30 seconds. That Pala'au well is not much higher where they began pumping from Kalamaula. So I think that its been shown that it's a brackish area and I personally would like to see a few more concrete alternatives.

Mr. Vanderbilt: And I think that they're just going with the flow in saying what they have to and if you look at what they sent us on page 25 or what ever, it says MPL has asserted that La'au Point development is not contingent on the Kakohale well. However it's the most efficient. Then they said if we don't get that then maybe we'll get this and then maybe we can use Pala'au and if that's too brackish, they just go through a lot of things that they keep going down until the find something that works. Right in the Council there is a bill going through called the water availability bill where before any developments are approved you have to show you have water source.

Mr. Dunbar: Right but that's not passed yet. The other thing I think that we've run into here very recently is that we've had request for large homes on the west end and they're not close to any fire prevention system. Now everybody wants a 40,000 gallon pool because they think that that's going to be their savings grace to put out the fire in their house. Having talked to some fire men about this, they will not hover the helicopter over the burning home to get the water out of the pool and I can well understand why, and normally pools are fenced in so in order to get to the pool in order to utilize that water they would have to either cut or jump over fences to get to that and I just see that as being a contributing problem that has not been fully analyzed.

Mr. Vanderbilt: So we're going to go with the whole water budgeting as being inadequate and input some bullet points on the main reason why.

Mr. Kalipi: The bullet that Kip is probably talking about in his position and I'm trying to understand it is that they haven't taken the bullet, they haven't really legitimately the alternative route for alternative usage of water and in detail it would be more like, they didn't do their homework or even put some numbers seriously in their draft to say well o.k. if they're saying this, desalination is too

expensive, what are the numbers? What are they saying is too expensive? Or what are the different alternatives, they say it so blatantly to say just believe what you read and not have the information to support their statement. I think Commissioner Chaikin said the same thing. They produce certain numbers that, they don't give you the detail to actually do the math and in some areas that they want you to agree on, they'll give you the math.

Mr. Vanderbilt: Well on the other part on desalinization they do have figures on desalinization but they don't give the source on where those figures come or if they're based on something around. So you don't know if their just... O.K. does anybody else have any other points? No it can be on the social, water or whatever.

Ms. Pescaia: Page 16 of 57, 4.2, cultural resources, burials and handling of kupuna. I'm trying to find, they say that if they come across a burial that they will cease work immediately, they will kind of, they want to leave the burial in place and they're going to go around it. I was just wondering if there's an exact figure of a buffer zone to be allowed surrounding the burials left in place. Down town Honolulu is famous for going around burials but it's like six inches from cement walls that go up forty stories high but they went around the burial. So I'm just wondering, I don't know how comfortable people would feel knowing that the burials are in people's back yards of if they would just, I don't know. Is that valid? Buffer zone, if there's a figure, how much allowance are they going to give to go around the burial.

Mr. Vanderbilt: Mikiala did you have, that's a cultural related issue, were there any other ones that you had in there off hand? I mean again we had requested, the Land Use Commissioner's each got a hard copy of this, it's a lot easier sometimes to read a hard copy. We asked for one but they only thing they did was put one in Nancy's office. So unless you went on the computer, I don't think they attached the revised cultural section did they?

Ms. Pescaia: I don't think so. I have another comment on page 26, kind of going back to our earlier discussion, it says their project includes 200 lots, each of which would contain one home and possibly one ohana unit and then two paragraphs later they say that the permanent population that build out is estimated at 174 persons. So I'm trying to figure out if you have 200 lots and even with just one home each, and there's only 174 permanent population, you kind of short 26 people, how realistic is that number and where did they derive that? I'm guessing they're thinking that some people are going to build houses and not be here permanently and I'm just wondering where the formula came up for that figure. For accurate projection purposes.

Mr. Vanderbilt: Well I guess that's one of the problems with the document. When they were concerned about water, they say they're going to be here so many months a year but then they say they need the development of La'au to help support the operations of the Kaluakoi Hotel and Golf Course but there's not going to be anybody there. So it's hard to just figure out where...

Ms. Pescaia: Well I think that when you're talking about maximum capacity, maximum build out it's not what might happen, what likely could happen, it's what is going to be allowable. If you have

200 homes and so many bedrooms like potentially six people could be living in it, that's for a maximum build out. Like if every single room was occupied in every single house and they built every single home that they're allowed, that's the ceiling that needs to be looked at not the conservative 174 people. It doesn't make sense to me. If they go for the R.5 instead of R-1, we're looking at potentially 8 houses per lot, that's 1600 structures, right? 1600 structures potentially whether it be in the next ten years or fifty years, 1600 structures even if there's one person living in each building, that's 10 times this 174 figure that their throwing out here. So I'm just trying to figure out how did they...I don't know, that doesn't make sense.

Mr. Vanderbilt: No, that makes sense.

Ms. McPherson: Could I comment? The minimum lot size is what determines what the zoning is and what's being proposed is the smallest size lot is over an acre. So that would mean it'll be RU-1. It would have to be, there would have to be lots there less than an acre in size to be RU.5. That's my understanding.

Mr. Vanderbilt: That's not what Ralph just said. He said you could have two acre lots in rural one zoning and you could have two acre lots and go for R-5 zoning.

Ms. McPherson: Yeah but if your smallest lot is greater than an acre in size, maybe Clayton can help me out here but that would constitute an RU-1 development.

Ms. Pescaia: OK so even assuming that if you had 200 RU-1 lots, each of those lots are allowed how many structures?

Mr. Vanderbilt: Three

Ms. McPherson: Two homes and an ohana.

Ms. Pescaia: So three times 200 is 600 buildings then, potentially.

Ms. McPherson: Right.

Ms. Pescaia: And if each of those houses had at least one person living in them that's 600 people, that's without even going for further subdivision or, that's just the proposal on the table right now. 600 potential structures which mean at least 600 people.

Ms. McPherson: Well for the lots to have two homes, I believe they would have to be at least two acres in size.

Ms. Pescaia: Even if they had one house, 200 lots with one house I would assume that is a minimum of 200 people. 174 is below one person per lot.

Mr. Vanderbilt: I guess this is where the information, you really got to flip back and forth. In the draft EIS they said they would not allow vacation rentals in the ohana, that they would allow rentals of the main house. If you look on page five of five in the revised section of the conveyance now they're saying under rental, under 2.36, revised conveyance page 55, renting properties to third parties will be prohibited. So you tell me they're going to build these houses and build the ohanas and when they're not here for six months they're going to sit vacant? But if you read further on in the document it says that the CC&R's can be changed with a vote of 75% of the homeowners. So we need to have this CC&R. I think that can be one catch all that we all talk about being inadequate. They didn't provide the key documents, the CC&R's, the easement agreement, the rural easement, the ag easement and they even talk about a put option back to the community to buy the hotel. That's not even in here.

Mr. Dunbar: This might be a little off the subject but I'm going to the alternatives again because I really understand now why it totally pissed me off. Anyway... having said that here's the problem. They don't give, they only talking 200 lots on their new development. So in round figures let's say they got a million bucks on each lot. They only ended up with \$200 million dollars. You gotta figure at least going that far and having to take water and having to provide pounded roads and bridges and parks and let's say they got 60% in cost and I think that's light because....

Mr. Vanderbilt: No they said \$120, \$118 million so that's about 60%.

Mr. Dunbar: Well if it's a million bucks. That comes up with about \$120 million. Now if you minus that out of your \$200 million you got \$80 million. Now you got your attorney's, you got your marketing, you got all your sales cost, you got all of that...

Mr. Vanderbilt: 5% to the land trust.

Mr. Dunbar: I haven't even gotten there yet, that's a whole other group. So now you got your source cost ending about 21%, you got another, that adds up to another 60. Now on this project if you sell it for a million bucks, you down to 180 so you left yourself 20, then you gotta take out 30 million to open the hotel then you got 10 million that you gotta give back to EC, now you wondering? Are they selling it for a million dollars or... a million and a half. What are they selling them for? I'm just trying to make a point.

Mr. Vanderbilt: No and they're supposed to give their best estimate but they haven't updated them. I talked to John Sabas and he said they'd probably get three million for the lots.

Mr. Dunbar: Well if that's the case then they got to back to their alternatives because under the alternatives and Steve, there is some very brief discussion about that, it just doesn't answer any of the questions, now they're talking about using the same numbers for their subdivision but it doesn't make any sense. They talking view lots at \$200 thousand and golf course lots at \$300 thousand, I mean that's almost affordable. You're not going to, you would never sell that and that's in their

alternative. That's what I'm saying, I'm just saying that the alternative cannot be believed because they using apples on one side for their development but oranges on all their alternatives.

Mr. Vanderbilt: That's a good point because I think that's where everybody was looking because I was on the LUC and we didn't spend any time on the alternatives. We didn't and that was one of the things that was lacking. That's one of the major considerations of decision makers, is it adequate, did you really look, make a sincere effort on the alternatives and I agree with Commissioner Dunbar that it's lacking a little bit here.

Mr. Dunbar: If I could one last point. They're talking about part of the trade being hey well we're from the hotel and these jobs, that's terrific, the islands need the jobs. But it we're going to give up something in perpetuity on one end we better make darn sure that we have perpetuity on the other end and that hotel was closed for three owners right? Sheraton was the manager , gas and oil company and than the Japanese...so, there's been no perpetuity here that I can see.

Mr. Vanderbilt: OK. All right does anybody else?

Ms. Pescaia: I just have a comment to add to that. You might want to take the work force development printout that just came out, every couple of weeks they print out all the jobs that are available through their office and if you look on there there's a running list, it tells you when the position was posted from 2005 to 2006 where the Lodge is continuously recruiting wait help, bartenders, cooks, housekeepers, all the same kind of jobs that a proposed hotel would be offering this community and they still cannot fill those positions on the small operation that is in existence. Those kinds of jobs may not be the kind of jobs this community needs because there are jobs in existence that remain vacant.

Mr. Vanderbilt: I think that's true if you look at the unemployment statistics that come out. They're the same, they calculate them the same for all the islands and we were down to 3.2 but in September we were up to 6.1 on the work force of 2200, so that's about 130 people. You figure some people are chronically unemployed so there's probably less than 100 people that would take a job and if you talk to Monsanto they can't find worker's they have to import worker's. The Ranch is continually like you said.

Ms. DeCoite: Well could be Mr. Chair the companies are not pono and the cost of living and the trade off in order to get to their job is not feasible because, I mean the federal government offers you better benefits not to go to work.

Mr. Vanderbilt: I think one of the main things in the environmental law that the LUC looks like is that it address the need for jobs. I don't think that they have really analyzed the job market here and said yeah we need...so if there's 130 jobs needed on Molokai to get to zero unemployment the state will say we're zero unemployment, I don't know. It just doesn't add up, it's like the water there's all these numbers bouncing around and nobody said here's the data, here's the source, it's just numbers.

Ms. Pescaia: There are many reasons why people remain unemployed, they have to take care of children, kupuna, they have many reasons, they gotta fish, they got deers to shoot and other things. I mean the definition of unemployment in that category, people fall in that category for many different reasons not just because they can't find a job. So I'm saying, what Kip is saying, we're talking about perpetuity here, we're going to open a hotel and people on Molokai not want to work there which means for it to be sustained we're looking at bringing in, importing a work force to run the hotel and the impacts that it would create.

Mr. Vanderbilt: I guess that's where on the Land Use Committee we fell short. We were trying to get standards for the resort development as it moves forward based on the job needs of Molokai but we never got there. So that's one whole issues that was never addressed by the master planning.

Mr. Dunbar: I happen to reside on Kauai when (inaudible) showed up with his silver tongue (inaudible) and how they were going to tear down the old Kauai Surf and what he was going to put back was these dancing marble gazelles and he was going to provide jobs, and jobs and jobs, and jobs. Long story short is that the Lihue became extremely congested, the roads never kept up, the people that came in were not Kauai residents. Most of all the contractors came in from the outside and took all the jobs and they never bothered to hire the local people and I think, I don't think that the EIS gives proper creams to the impacts that the construction will have as it goes through, as it runs its course. Because we have limited dock space, limited dock workers, the everyday material that has to come in just for sustenance and it's going to be jeopardize by the influx of construction material, myself. So it goes actually in keeping where what Steve has said before that you use up a whole lot or resources but it really doesn't get you any where.

Mr. Vanderbilt: Are there any other comments?

Ms. DeCoite: Mr. Chair basically I would like to say that I agree with all of Commissioner Chair's comments, what he stated and I think we elaborated, I know mind taking on more comments but I think we touched on like the water, and I'd like to add on especially Kip's on top of this is the alternatives. But I think Steve was pretty precise on the comments he's made because I think we should start looking at taking the priority, I don't know how much time they going give us like you said, I hope they going give us as much time as we need.

Mr. Vanderbilt: Well I think what we want to do and just to give you a little back ground, the Land Use Commission has never not accepted one of these, final EIS's. But there has been several legal challenges to their not accepting the EIS and when a legal challenge goes, if they accept it and it's legally challenged, the first thing the judge does is to look and see if the challenge has merit to go forward in court. In many occasion's they've said yes they do have merit if there's stuff on the record like what we're talking about today. Then what usually happens, it doesn't go through the court there's a settlement between MPL whoever filed the lawsuit, the Land Use Commission and the settlement is to get the information that's lacking on the record so we have a better document. So it's really important that we get stuff on the record. So that the judge says at least it has merit

which it will at least set up a process where the document can get approved so we as a commission can have something to feel comfortable with that will be informed when we make decisions.

Mr. Chaikin: I guess you know when you look at this EIS you gotta ask the question like we brought up the thing about the job market, I think that's extremely important. The real question is what is the scope of this EIS. Does it include the Kaluakoi, does it not include Kaluakoi, where do you draw the line?

Mr. Vanderbilt: I think that's one of the significant things, the law says you're not allowed to segment things but here this is an odd thing. They sell La'au is the carrot to get all the rest of this master plan but then they're going to try and limit the scope of this thing just to La'au when there's a lot of other things that have to happen. I mean there's no assurances, they say if they don't get La'au they're going to put the dooms on everybody and let everybody go at the Ranch and just sell off the properties to a bunch of owners. But there's nothing that our community has not received a commitment that if they get La'au they won't sell out. Now they'll have something to sell. So there's a lot of unknown's out there and it really needs to, I think, they've not really look at the cumulative impact's, they've just ignored the future development of the resort. So what are they going to do down zone that? They're never going to develop it? It's all zoned, it's ready to go 6 hotel sites, two commercial sites, three major condo sites and some single family stuff. They're all zoned by the state urban and they're zoned with the county hotel and single family. So you can't tell me that with the value of real estate they're not going to do anything but they haven't addressed the future development of the resort and the water needs or anything else. I think that should be a point that they really segmented this thing yet they're selling this segment on this plan that has many components to it.

Mr. Chaikin: So what are you saying, are you saying that we should go up there and, we have this comment out here about the job market and the Kaluakoi, do you think we should expand the scope of our comments to include the job market and the Kaluakoi?

Mr. Vanderbilt: I think all we need to do is say that there has been inadequate analysis of the job.

Mr. Dunbar: I don't think so I think you gotta be a little bit more distinct. I think you gotta point to something that says respond to this and revised issue whatever, 4.23 but I don't see where you've really answered the question. You have not adequately addressed the question because it's that adequacy that's going to point to the acceptability or non-acceptability of this document. I'm not speaking for the commission, I'm just speaking for myself.

Ms. DeCoite: I agree Kip just like when Nancy said from the beginning we gotta address them on the page number, paragraph so and so, I mean the thing can be plenty pages, I scratching my head too, Degray, whatever hair I get left right now but I think that's how we gotta address it.

Mr. Vanderbilt: I think we ought to address too and make it real clear to the commission that it really wasn't the time not only for us but for any agency, I know the Planning Department wanted to check

on some things to see if other agency comments were actually adequate but they don't have the time, nobody has the time to do the deals that we need to do. So we gotta do the best we can.

Mr. Kalipi: I think what Commissioner Dunbar said, that might be one of our opening pitch. That we should bring up in the introduction about the time frame and then start off with our points and what not. Referring back to the conversation about inadequate. I don't know if you know a stronger language for that position would be the inconsistency of them wanting to have certain things connected to La'au and taking a position saying that this is La'au's to stand alone. I think it's easy enough to refer to certain pages where they do point out certain areas that they don't want to comment with certain items.

Mr. Vanderbilt: So we can point to at least two or three. That would be a good thing. They have not addressed the adequacies of the cumulative impacts of this whole master plan.

Mr. Dunbar: What you don't want them to say is, yeah we did. That's what you gotta get away from. Because that's what they did in their original EIS and that's what they're doing in the revised plan. They're saying well it is because we say it is. This plan that was developed in 1991 said it was. That's a little old one that you're going to be moving forward here.

Mr. Chaikin: Yeah I spent days reading through people's comments and then their responses and I can tell you that they are very good at responding to comments. So that's one of the things when I go up there and talk I want to be able to hopefully say something that they're not going to be able to just fluff off.

Mr. Vanderbilt: Well the sad thing is the commissioners are coming over to determine if it's acceptable. It's hard for them, they don't know the local situation, they don't know the Ranch is going to say something and we're going to say something and they're going to have to make a decision and they really don't know. Plus the fact that I think we'll find, I've heard that the staff report is going to come out and recommend approval because they've met the technical merits, they've filed the documents, it doesn't seem to matter about the merits of the responses and everything because that's something they can get faired out in the quasi judicial hearings. But whatever they accept our planning commission is going to have to use that document because we're going to start on our approvals before the Land Use has their first hearing, probably.

Mr. Chaikin: Let me bring up one more thing that I put on my list that I don't think we've talked about and that is mitigation. The real core of the EIS is to figure out what all the impacts are going to be and develop mitigation measures to reduce those impacts. By equally important is also for the reader, when they read they have reasonable assurance, mitigation efforts are going to take place. They actually going to be implemented and in this particular case Molokai Ranch has delegated that responsibility to a third party, a private new company that they're calling the Molokai Land Trust. I think that at least coming from myself I have some concerns about that because first of all they have no track record managing lands, they don't have people on their that have a long history in this type of management but more importantly are they going to survive financially. If you take a look

at the past Molokai Ranch has had an extremely difficult time financially managing these lands over the years. Here is this company that's going to be managing over 50,000 acres and the real question is can they survive economically. I didn't see any information in here. They gave some different sources of income but you saw nothing on the expense side. But you did read that Molokai Ranch lost \$42 million dollars over the period like 2001 to 2006. That's a big red flag. This land trust is not going to happen if they go out and sell land, they don't have a parent company that has a whole bunch of money. So I think that's something that should be adequately addressed in here on whether or not that is a viable entity. They have to provide the reader with some assurances if that trust is going to continue.

Mr. Vanderbilt: I think the sustained financial viability of the Ranch, they bought the Kaluakoi Resort to sell lots to cover their operating loses. Now when they sell the La'au Point lots, they'll use those to cover but there's nothing in this plan to say how they're going to get rid of the operating loses. I mean so we're going to be right back over and not do any more development. Well how are you going to cover? There's nothing in here and I think the financial, if they commission is willing the financial aspect on two points, the financial sustain ability, how are you going to get rid of the operating loses and the other one is the financial viability to carry out the project because in t his document, in these pages and I can't find the right, but I'll find it, it says that our parent company is not going to invest anything. In the annual report that they put in there they said, the company said we need to find an investor yet when we talk about an investor they said it's nobody's business but without the investor they could be no project. So financial viability of the project itself plus getting into a sustained economic profit, those are things that really aren't addressed in here.

Mr. Dunbar: Steve I certainly don't want to tell you what to say because I know you're a lot better speaker than I am but I think with what Degray has said, some of your introductory stuff I mean you can certainly begin clarifying what you're going to say whether we're plagued with a short fuse that even in reading through the original document, what I've noted in there that's been lacking is a total lack of believable financial statements. I mean no one has accounted, no one has I mean it's like you pick it out of the air and say this is because I said it is. That really doesn't get you any where. So it's because of the, I think for a better word, financial credibility because all of that is what they say they're gonna want to sustain this community with. Whether it be to the EC, I mean we don't even know where that is and no ones made any comments on it but I certainly wasn't consulted by the EC as to what they thought would or would not be viable. Having said that I think then you can go into some of the meat that we've given but again I would make it short and sweet and say you said this and this and we asked for some revised and you say you revised it in 6.72 but it was not revised and you using the same old figures that were dated by to the 1990's. So you know we had a very hard time and we cannot accept your financial presentation. Having said that I also believe that Molokai Properties Limited, in order to be on the island and to be a support to the island, needs to be profitable. Everybody that comes here you need to make money to see the next day. If you're not making any money you're not going to be here at all. To think that the land down there would be better off with this language, I know on mine if I didn't have cattle or if I didn't put in fences or if I didn't do what I did it would be one big strawberry guava. That's not goo either. That's just food for thought.

Mr. Vanderbilt: I would like to put in there that it's inadequate and maybe we discussed this, but all the major documents whether it be the land trust documents so we can understand how the land trust works, the C documents the CC&R are not included, so it's inadequate. We can't decide. They say in here that they're going to get those documents at the first hearing of the Land Use Commission but the Land Use Commission is not required to have their first hearing until 60 to 180 days after the start date. They're going to start processing with us before that time. So I think from a commission stand point we would want to see those documents in order to determine. Because the CC&R's they say are going to control everything and you'll be happy with what you see finally in the land trust. Well maybe we will and maybe we won't. I would like to just put a bullet point in there that it's inadequate because it did not include the key documents that are going to implement most of what is talked about about La'au Point in the master plan. Does anybody have a problem with that?

Mr. Chaikin: So it says they're going to bring those documents at the LUC petition hearings, what does that mean? Does that mean it's not tomorrow?

Mr. Vanderbilt: No. This is just an acceptability hearing. The hearings on their petitions start 60 to 180 days after the acceptability of this thing clears legal challenge. So is everybody agreeable just to put.

Mr. Chaikin: Let me just make a couple of comments. The, I was planning to ask them for the easement documents. I think that the easements are very essential to the mitigation, that is the core of their mitigation efforts. These agricultural easements, the rural landscape easements and conservation easements. But we don't know what those easements are until we read the easement language. So I was going to ask them for that. On the documents for these...

Mr. Vanderbilt: Excuse me, not only ask them but that's one of the reasons it's inadequate because they're not there.

Mr. Chaikin: Correct. The other documents there's private companies. One is called the Molokai Land Trust, one is called the Molokai Community Development Corporation, I thought those documents should be provided but they are taking the position that those are private companies and those documents will remain private.

Mr. Vanderbilt: Well then we have to say that it's inadequate that they're not in here because there's so much in here. Like in the ag easements if you read it says that it'll be protected by development except for farm dwelling that's connected with a farm activity. Well the county, farm activity is just keeping your land in ag conservation doing nothing with it. So how is that different from the ag subdivisions that are operating right now.

Mr. Dunbar: Well I kind of think keeping your land in conservation as ag is good. So I mean we might differ with that but on the other side of the coin.. You know what I'm getting back is the point that you're making that it's inadequate is we don't know if it's adequate until we review the

documents. I can guarantee you there's a lot of differentiations to what an easement entails. You can have some that are just next to nothing. You can have others that are very, very restrictive such as mine.

Mr. Vanderbilt: I think if you look at the map...where the rural easements. They're right contiguous with the urban development. They're not off on the moon some where. It's really an important document, they may be beautiful documents, we don't know but right now they're saying you hear this no more development but they're saying you can develop on the ag easement lands but it has to be connected with a farm.

Ms. DeCoite: I get one question Degray and I don't even know if I can even ask this question but I going ask anyway. How come, I notice way in the beginning it was talked about a Molokai community land trust. Why was the change now a Molokai Land Trust?

Mr. Chaikin: Mikiala can you repeat what you said last time because I kind of wanted to hear that again.

Ms. DeCoite: Because this is supposed to be for the community right? So what happened to the community?

Mr. Vanderbilt: I guess that's the concern people have because if you look on the map part of the land trust lands is what just was sold or leased to Monsanto. Those were lands that the land trust and the community was to control. Now we don't know whether the land trust is already working and they decided on that.

Ms. DeCoite: Well I saw a part in here I was reading earlier that they already got some of the trust members on there and then they seeking for more members.

Mr. Kalipi: Somebody explain this to me, I forget who it was but they took out the word community from the Molokai Community Land Trust is because they need community participation and meetings and if you take away the word community a land trust can stand alone as a private entity and not have community participation. So now its changed to Molokai Land Trust instead of Molokai Community Land Trust.

Ms. DeCoite: So in reality they don't speak for the community. What's the validity of this whole thing?

Ms. Pescaia: In the beginning the conversation included a community land trust, the community would decide, the community would have control over these lands and that was part of the package. It has since evolved and now it is just the Molokai Land Trust who is receiving support from the EC and Keaupuni Lokahi who are receiving funds on their behalf, grants and the like. But they don't need to, they are not required to consider community input on their decision making nor to let the community know what they are doing. They can do what they want and that is where...

Ms. DeCoite: The funny part is that they took the money, the federal money that was designated for the community to do this and to get the communities approval which was how the whole thing started as a benefit to the community so what I'm saying is that to make it short, there's no benefit to the community right now. It's more so are we lining pockets again?

Mr. Vanderbilt: I think these are questions we'd like to have answered and we've already said that it's going to be inadequate because we can't sit here, we just don't have the documents. So I think the fact that it's inadequate is because they're not here is good.

Ms. Pescaia: Furthermore they're referenced many, many, times or differed to this entity, this entity is differed to in this EIS but yet they have not contributed the documentation that support those plans. They actually say it'll be up to the land trust to take care of this and take care of that and they kind of use it as, to me, they kind of used it as a bucket to throw all the things that they didn't want to deal with into. They should, it would be pono and lovely if they would fill in those gaps.

Mr. Vanderbilt: Joe before you leave can we get consensus that we could incorporate as an addendum to our by reference the minutes from this meeting so when our document goes forward the minutes will be attached as part of it because we've come up with a lot of good points that aren't going to be expressed. But down the line it might be helpful to somebody to look at.

Mr. Kalipi: So what are you asking me?

Mr. Vanderbilt: We're going to send our comments and say our comments include as an attachment the minutes of this meeting because.. I think if we put that that would be...

Mr. Kalipi: Yes I agree and I'm also giving Mr. Feeter my power of attorney because he said to give him the power....thank you.

Mr. Vanderbilt: I would, the one thing that has come up and I passed that thing out, in this document, if you look under permits needed and all of this there's nothing about subdivision. Nobody knows that they've already gotten preliminary subdivision. That's something that should have been mentioned in there that they've gotten this preliminary subdivision and the last letter of action on that subdivision was last week. They sent a letter renewing their preliminary approval. I think that's something that nobody realizes that. It's not in, they have a list of permits and the new information they did list a water permit that wasn't in the draft EIS, but they need a water permit, they need final subdivision. So I think that the permitting list need is inadequate even. They haven't explained that.

Mr. Hopper: Before you lose quorum you need to take a vote to adopt what comments you made so far as the comments of the commission before you lose quorum and I have to go soon too. You just got to take a vote, take that action and that's what you have to do.

Mr. Vanderbilt: Can they leave it up to Steve or Nancy if there's some other comments in there that are key that they could have the latitude to put them in.

Mr. Hopper: I wouldn't do that I would specify the comments. But if it's like technical revisions or more specific wording yes, that would be fine.

Mr. Vanderbilt: That would include adding in any attachments that might support the statement?

Mr. Hopper: They would add attachments, I would say you would want to specify what attachments you would want with the letter. Attachments is pretty specific I think.

Mr. Vanderbilt: I would just like to, I would like to add some attachments on the financial capabilities from the parent company's financial statements and the talk about the need for an investor and everything else that contradict some of the things that are in the EIS. But I guess we don't need to do that. I could...

Mr. Chaikin: Here's where I'm coming from. I'm going to go to this meeting and give a presentation and then during that day or the next day this LUC can either decide to accept it or they can decide to defer it or they can decide what ever they want to do. Our goal to go there is to have them to not accept this document, that's what we're trying to do. They might not do that but that's our goal. I'm just wondering if we shouldn't go there and hand them a sheet that they can read that day or the next day to help them in their decision making process.

Mr. Vanderbilt: I guess, that's a correct analysis. We're going in there to try to get them not to accept it but they're more than likely going to accept it. So really what we're trying to do is build a record so that if it's challenged the judge would say this is worthy and then they would have to get the additional information to make this a better document. So that's why we need to add a few attachments that are supportive of the particular.

Mr. Dunbar: We got to be, if we go in there it's a two way source. If you walk in there and you say we didn't have enough time and we didn't do this and we didn't do that and then they how can you tell if it's acceptable or not? If you didn't read it's perfectly acceptable. What I'm saying is that when you go in there and say we looked at this and this didn't make sense with that. We were unable to discern in either the first document or the second document on how do you propose to finance this project so that it lasts in perpetuity. Because if it's not then the community is giving up something and all the social balances will happen because of it for nothing. It'll dissolve because the community won't get any further benefit from it. I think if you're going in with that resolve, as opposed to adding the attachments, me for one if I get something in the meeting I'm not reading it. It better come in five meetings before so when you do it you can pass it out after you either read through it or done what you want to do and say this is for the record.

Mr. Vanderbilt: That's what I mean, no, no. That's all I'm doing is putting some stuff on the record that just gives, like you said you got a point to a reason why and if you read certain things in conflict

with what they said. So there may be some or there may not. But I agree there should be a distinct statement to it because the staff report is coming out recommending approval.

Mr. Dunbar: I say that even if it may be five or six of them and because, you also want to bring up the minutes but I don't want the minutes going to them, at least that's my say so and you guys can out vote me, but I don't want the minutes going to them because for that exact same reason. In the minutes will say well the staff has already approved it so, so what do we care. That'll be in the minutes and I wouldn't want anybody to read that. We got to look at this document as if it was any other document.

Mr. Vanderbilt: The staff has said that they're going to recommend approval. I'll put that on the record because that's what they said.

Mr. Chaikin: I'll concur with Kip on that. First of all they're not going to read the minutes.

Mr. Vanderbilt: No but this will just be on the record for down the line. We're putting in a lot of reasons in here on why we think things are inadequate but how else are we going to get them to the, it doesn't matter, I guess we don't need to do that because they can be part of it. If anybody challenges they can just get the minutes of our meeting and put it in there. There you go. Forget the minutes.

Ms. Pescaia: Motion?

Mr. Vanderbilt: I would like to entertain a motion that we accept the issues that we talked about today and I don't think that we have them all down but all of us are aware of them. We'll leave some flexibility with Nancy and Steve to come up with something that meets what we talked about. Distinct as possible.

MOTION: I WOULD LIKE TO MAKE A MOTION THAT WE APPROVE THE COMMENTS THAT THIS COMMISSION HAS MADE IN REGARDS TO THE EIS, LA'AU POINT. TO INCLUDE THE COMMENTS PROVIDED BY ALL THE COMMISSIONER'S AND FURTHER GRANT STEVE CHAIKIN WHO HAS BEEN DESIGNATED THE SPEAKER AND OUR PLANNER NANCY MCPHERSON TO TAKE AT LIBERTY OUR COMMENTS AND TO BESTOW THEM DOWN INTO A MOST SUSCINCT AND TO THE POINT AND EFFECTIVE WAY POSSIBLE TO BE PRESENTED AT THE LAND USE COMMISSION HEARINGS TOMORROW.

MOVED: COMMISSIONER MIKIALA PESCAIA

SECOND: COMMISSIONER BILL FEETER

Mr. Vanderbilt: Any discussion? You can't back out now.

Mr. Chaikin: I just wanted to know, I'm going to go up there and speak but are we going to hand the commission anything in writing?

Mr. Vanderbilt: I think we hand them a bullet point.

Ms. Pescaia: And the point should be presented in writing.

Mr. Vanderbilt: OK.

MOTION UNANIMOUSLY APPROVED.

Mr. Vanderbilt: Well thank you Mikiala. Is there any other business that we have right now because Nancy is going to be awful busy here. Did we hear anything if Jeff might testify or be the witness?

Ms. McPherson: He is able to come on Friday and we are requesting that he be allowed to testify on Friday.

Mr. Vanderbilt: As a witness?

Ms. McPherson: As a witness, yes.

Mr. Vanderbilt: Who is Jane Lovell, if he can't do it will you be able to do it? Clayton, oh, sorry.

(BOTH ITEMS D & E ON THE AGENDA WAS DEFERRED)

Mr. Yoshida: Before we lose quorum Mr. Chairman I wanted to talk about, I know La'au Point is outmost important at this point but items D-1 and E-1, there's two more regular meetings of the planning commission for this year regarding the county wide policy plan. There is the 120 day requirement to finish the plan. We feel that the commission may want to schedule a special meeting between its November 28 and December 12 meeting in order to try to catch up so that it can finish before the end of the year.

Mr. Vanderbilt: I would like, where are we in relation to the Maui Planning Commission on our review? We have three more left, how many do they have left?

Mr. Yoshida: The Maui Planning Commission is scheduling a special meeting next week Tuesday, November 20 to try and catch up and they have two regular meetings after that.

Mr. Vanderbilt: Where are they? The question was...

Mr. Yoshida: I think they're ahead of the Molokai Planning Commission.

Mr. Vanderbilt: You think they have less than three sessions to do?

Mr. Yoshida: I think so.

Mr. Vanderbilt: I would throw it out to the commissioner's. We have a meeting on November 28 to dedicate that meeting to the policy plan review and just finish it up at that meeting and the policy plan people said they could be over here and start at 10 and try to run through those last three sections. It took us three hours to get through one section last time. Because we have 120 days to make a decision on the tvr.

Mr. Dunbar: If you folks had given us good ordinances instead of the garbage that came through we might be able to do something with it. But we're tangling with this, we're tangling with this thing, we're tangling with La'au. What do you want us to come out with? You want us to do the 120 day stuff first? We didn't pick La'au it landed on our plate.

Mr. Yoshida: Well I guess after this week. We would note that on the TVR, Bed and Breakfast Bill's the Lanai Planning Commission is, they've made their recommendations.

Mr. Dunbar: And what is it?

Mr. Yoshida: I think they have recommendations on each of the five bills.

Mr. Dunbar: They have recommendations on what?

Mr. Yoshida: On each of the five bills.

Mr. Dunbar: And what are they?

Mr. Yoshida: I can't recall off hand I was just informed that they had completed their work last week Wednesday.

Mr. Dunbar: So the question I have is did they give you (inaudible) or did they change it?

Mr. Yoshida; I believe they have some amendments, I can't tell you right now what the amendments are. The Maui Planning Commission is scheduling a special meeting on December 4 to complete its work on the TVR Bed and Breakfast Bill. So potentially by mid December the two commission's will be completed with their work on the TVR Bed and Breakfast bill.

Mr. Vanderbilt: You know this commission is getting a little weary, so is everybody else and I would just like to finish up one thing. I would recommend that we do the November 28 meeting and try to start at 10 in the morning and finish up this policy plan sections. Get that off the table, at least we have one thing off the table and we still have some time to do the TVR situation. Kip you have any suggestions on that?

Mr. Dunbar: Well you know I've heard this TVR over and over and over and over again. It's the same guys saying the same thing about nothing. It seems to me where ever you are with the TVR's is, Maui needs these ordinances to clean up their mess and that's o.k. I don't have a problem with that. I don't believe these are relative to Molokai. I'd make a motion right now that we pass them all except for Molokai and be done with it, get it off the plate.

Mr. Vanderbilt: Again that could be a recommendation that if Maui wants these laws they can have them but at this time we would like them not to apply to Molokai and we will address these issues in our community plan where we can sit down and say where these things should be or not be or whatever.

Mr. Dunbar: Where the authority is the Molokai Planning Commission.

Mr. Vanderbilt: But I think we need to set aside some time to really look. I can't recall, at one time I read them, I had a lot of thoughts one way or the other but they've escaped me now so I would have to revisit it. But this policy plan we gotta get finish because that triggers when we can start our community plan and that's something we just can't afford to delay and we don't want to be the reasons for delaying it. I would really like these commissioner's to, the ladies from planning can come over and stay, they can be here to start at meeting at 10 and then we can go break for lunch and afterwards finish this thing up.

Mr. Dunbar: If that's the case than what I would do is not put those things on the agenda because we get the same people showing up saying the same thing.

Mr. Vanderbilt: I'm just saying dedicate the 28 to the policy plan. That's the only thing on the agenda.

Mr. Dunbar: You could dedicate something earlier than that if you wanted to. But what I'm saying is don't put...

Mr. Vanderbilt: Well if you're up for a special meeting that's another planning commission meeting between now and the 28.

Mr. Dunbar: I'd rather meet for three hours and get it done than come in at 10 and ruin the whole day as opposed to half a day.

Mr. Vanderbilt: It's going to take us more than three hours, we only got through one section.

Mr. Dunbar: Well that's because we argued over every one. It was ridiculous, it all came out to the same thing. We got off the plan the last time. We went through the goal and then we did the objective and then we talked about each, A, B, C, D and we got no where.

Mr. Vanderbilt: Well we did that on other times and we moved through quicker. So I don't know what happened at the last meeting. Anyway, what is the pleasure of the commission? Well I would like, if they're going to come over I would like to make a recommendation that we start at 10, Kip if you can't get here till 1230...o.k. and then I would like to still start at 10 and I would put, you're interested in the economic section so I would put that last. So Kip could...

Mr. Chaikin: I don't see why we can't start at 1230 and then run late, they can get a flight like out of here at night.

Mr. Vanderbilt: Well if you think that's enough time. I was going to start at 10 and if we got finish we got finished early. But if we start late...

Mr. Chaikin: The problem is is that we make all these plans to start at 1230 to go late to get everything finish and then they book an early flight and we're all messed up.

Mr. Vanderbilt: No they have the flights set up, I got an e-mail. They got the 805 so they can go to 630.

Mr. Chaikin: So that should be plenty of time.

Mr. Vanderbilt: Are we o.k. with going on the 28 from 1230 to 630?

Ms. DeCoite: Yeah that's as soon as I can get here, at 1230

Mr. Vanderbilt: O.K. that's it Clayton.

Mr. Yoshida: So there won't be any special meeting between November 28 and December 12?

Mr. Vanderbilt: No. Unless the commissioner's want one.

Mr. Chaikin: No I think we got Thanksgiving in there and I think we need to give everybody a little bit of time.

Mr. Vanderbilt: No, so no special meeting. Just for the commissioner's on this La'au thing we finally got a tape, we got somebody to figure out how to decipher that whole disk and come up with a tape that you can type in one word and it'll search the whole document and give you all the references to that. It's pretty helpful and I just got this yesterday. I made an extra copy for you Nancy. If there is no other business with the commission...

Ms. McPherson: I have a request, can I get copies of whatever you guy's had in writing before you leave?

Mr. Vanderbilt: Yes.

G. DIRECTOR'S REPORT

1. 2008 Meeting Schedule
2. Open Molokai Applications List circulated with October 24 agenda
3. Open Molokai Applications List
4. Closed Molokai Applications circulated with October 24 agenda
5. Closed Molokai Applications List

H. ANNOUNCEMENTS

I. NEXT MEETING DATE: NOVEMBER 28, 2007

J. ADJOURNMENT

There being no further business before the Molokai Planning Commission the meeting was adjourned at 3:42 p.m.

Respectfully submitted,

NINA-LEHUA KAWANO

RECORD OF ATTENDANCE

Present

Degray Vanderbilt, Chairperson  
Steve Chaikin, Vice-Chairperson  
Kip Dunbar  
Bill Feeter  
Lynn DeCoite  
Mikiala Pescaia  
Joe Kalipi

Excused

Sherman Napoleon  
Linda Kauhane

Staff

Clayton Yoshida, Planning Program Administrator  
Michael Hopper, Deputy Corporation Counsel  
Ralph Nagamine, Administrator, DSA., DPW