

(APPROVED: 08/08/07)

**MOLOKAI PLANNING COMMISSION  
REGULAR MEETING  
JUNE 13, 2007**

**A. CALL TO ORDER**

The regular meeting of the Molokai Planning Commission (Commission) was called to order by Chairperson, DeGray Vanderbilt, at 12:50 p.m., Wednesday, June 13, 2007, Mitchell Pauole Center, Kaunakakai, Molokai, Hawaii.

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

Mr. DeGray Vanderbilt: So I'd like to call the meeting to order for the June 13, 2007 regular meeting of the Molokai Planning Commission, and here with us today, on the Commission, is Commissioner Kip Dunbar, at the far right; next to him is Commissioner Bill Feeter; next to Bill is Commissioner Lynn DeCoite; next to Lynn is Commissioner Linda Kauhane, and next to her is Vice-Chair Steve Chaikin, and my name is DeGray Vanderbilt.

And with us, from the Maui Planning Department, we have Clayton Yoshida, and we have the Commission clerk, Suzie Esmeralda, and here we have the Corporation Counsel, Michael Hopper, and anyone else? Oh, oh, there she is. I was looking for you over there. And we have our own Molokai Staff Planner, Nancy McPherson, over here to the right, and earlier I saw Ralph Nagamine with Land Use and Codes. I don't know where Ralph is right now.

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

Mr. Vanderbilt: So, with that, we'll get started, and before we go any further, we have on our agenda each meeting a chance for people who may want to testify on anything related to planning matters or anything on the agenda where you have to get back to work and can't wait around until the item comes up. So if there's anybody that needs to get back to work and wants to share some mana`o with this Commission, now's the time to do it or we will move on. Okay, seeing no one's here to testify in advance, the next item on the agenda is the approval of the April 11 and May 9 minutes, which was sent to all the Commissioners in our packet in advance of the meeting. So, does anybody want to make a motion to approve the minutes?

**C. APPROVAL OF MINUTES OF THE APRIL 11, 2007 AND MAY 9, 2007 MEETINGS**

Mr. Steve Chaikin: Mr. Chair, I'll go ahead and make a motion that we approve the minutes from the April 11, and can we do them both together? And the May 9 meetings, the one's that were distributed to us in our packets.

Mr. Vanderbilt: Thank you. Is there a second?

Ms. Lynn DeCoite: I second that motion.

Mr. Vanderbilt: Thank you. The motion is made to accept the minutes of April 11 and May 9 by Vice-Chair Chaikin and seconded by Commissioner DeCoite. Is there any discussion or any input as to corrections on the minutes from the Commission? Hearing none.

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

**It has been moved by Mr. Chaikin, seconded by Ms. DeCoite, then unanimously**

**VOTED: to approve the minutes of the April 11 and May 9, 2007 meetings as distributed.**

Mr. Vanderbilt: Motion unanimous. Now the next item on the agenda is Unfinished Business.

Chairperson Vanderbilt read Item D.1. into the record.

#### **D. UNFINISHED BUSINESS**

- 1. MS. FRANCES FEETER requesting a State Land Use Commission Special Use Permit and a Conditional Permit to operate the Hale Maluhia, a short term vacation rental in the State Rural District and the RU0.5 Rural District at 8770 Kamehameha V Highway, TMK: 5-7-007:011, Pukoo, Island of Molokai. (SUP2 2001/0024) (CP 2001/0031) (N. McPherson) (Public hearing conducted on May 9, 2007.)**

Mr. Vanderbilt: Now, the public hearing on this was held on May 9 and the Commission has had a lot of discussion on this, there's been a lot of good input from the public, and this is a pretty complex issue that we've been wrestling with and, today, hopefully, we can come to some resolution.

This Commission is -- all we do on the County Conditional Permit is make a recommendation to the County Council that has final approval. On the State Special Use Permit, because it's under 15 acres, we're the final authority on that. On the conditional permit, we have a 90-day time frame to make our recommendation to the County. On the special use permit, we're under no time table for making a decision.

So, with that, I would like to see if our Planning Staff has any information to share with the Commission at this time and, a little later, I'll follow up with an opportunity for the public to testify.

Ms. Nancy McPherson: Thank you, Chair Vanderbilt. Commissioners, good afternoon. Nancy McPherson, Staff Planner for Molokai. After reviewing my notes, which I had wished had been a little more complete, and in trying to review the discussion that has happened over the last two meetings on this item, and in consultation with the department, with Clayton Yoshida and with Jeff Hunt, the Planning Director, this Commission, at the previous meeting, requested that the department draft some language that would portray the intent of the Commission as to the discussion that had happened at the last meeting, at the end of the last meeting, and how the Commission -- what the will of the Commission was in order to move forward. The recommendation that was drafted and submitted to you with your packets for this meeting was actually an attempt to respond to the entire discussion on the item during that meeting because there were several different motions that occurred on the item, none of them were successful, and what the final, you know, comment was was that the Commission would like to entertain, you know, the ability to send the application for a conditional permit up to the council without recommending approval or denial but able to recommend that the council not act on the application until the draft ordinance on vacation rentals and bed and breakfast had been acted upon by the council. Well, the department felt that its responsibility, based on procedure, was to provide a recommendation that -- one recommendation has already been provided and that was for denial of the permit application and deferral of the special use permit, State Land Use. The other option was to approve the conditional permit for one year with conditions, and that was something that was also discussed at the meeting, last meeting. So that was what was submitted to you.

It is difficult for the department to support a recommendation of non-action because our policy that is admittedly still being drafted but is close to being finalized is, basically, to not allow continued operation without a permit, so that would mean that either they, you know, get a conditional permit, so this application moves forward from the council with or without a recommendation by the -- I mean the Planning Commission, with or without your recommendation, then it's acted upon by the County Council. At that point, we would know, well, they have their conditional permit or they don't, and then they would be either, you know, continuing to operate or they wouldn't be. And so it's really difficult to, you know, for our department to say: Well, you know, we can support you just suggesting to the council that they take no action because our policy is that, you know, you either get a permit if you're operating a vacation rental, or you stop operating a vacation rental, or you start operating a bed and breakfast, and we're going to be, you know, actually making those applications much easier to get. So those are our options as a department. The Commission can do what you choose to do. If you feel that you're clear on what your options are, at this point, great. I'm hoping I explained it clearly, I'm not so sure that I did,

but anyway hopefully you've read over this latest addendum report, which does have -- should I read through the whole thing, Clayton? Would that be desirable? Sorry.

Mr. Clayton Yoshida: Well, I guess you could or you could do it after public testimony when the Commission is in the deliberative state.

Ms. McPherson: Right.

Mr. Vanderbilt: Excuse me, Nancy. Would the Commissioners have any questions of Nancy at this time as far as the options that she's outlined and any comments on other options that you feel may be available to this Commission? I have a question, Nancy, and maybe Clayton can answer this. This idea that they need a permit or they're going to get shut down, as I understand it, there was an amnesty period that was -- came from the administration, an internal policy decision, to have an amnesty period and before that amnesty period expired, the Feeter's had duly applied for an -- their application, so they met those demands of the amnesty period in seeking some type of approval for their operation. I don't quite understand why we can't send a recommendation to the council that we're not going to take any action at this time and we want them to defer action on it until there is an ordinance that's specific to the governance of vacation rentals, and put the special use permit on hold until that time. Because how can you shut somebody down if they're approval process, even though its been deferred, is still open, and it's a process that the County Administration and the Planning Department told them to go through? So I'd like to hear, preferably, from Clayton, not -- I just don't want you to -- you always seem to be on the hot seat, Nancy, so we gotta get some of these visitors on the hot seat. But I'd like to understand how you can -- the County can shut down somebody when they're process -- they're still going through a process and met all the obligations that the County dictated to them.

Mr. Yoshida: Thank you, Mr. Chair, members of the Commission. For the record, my name is Clayton Yoshida with the Planning Department. The Chair is correct. There was a policy, so-called "amnesty policy," where if you applied for the permits, it would kind of allow the entity to operate until they -- either council had decided on the permits or council had developed some legislation relative to transient vacation rentals. There was a bill, a council resolution, which the commissions dealt with last year, introduced by Councilmember Bob Carroll.

Mr. Vanderbilt: Excuse me, is that mike on? Yeah, can you speak up a little bit, Clayton?

Mr. Yoshida: Introduced by Councilmember Bob Carroll, and the Commission held a public hearing on this I believe in June of last year, and the matter was transmitted to the County Council. There were several active meetings on the council resolution. The council, ultimately, filed the bill that was proposed by Councilmember Carroll. There was a -- in

those discussions, there was discussion from the council members to the department as to enforcement of the laws as they were because the -- these uses are not outright permitted uses. So the new administration came onboard in January. The council filed Councilmember Carroll's bill, I believe in March. The department is still making a distinction between those who have filed while there was this amnesty policy in effect and those who have filed after the council filed the resolution. If you had applied during the amnesty period, we would allow the operator a certain time period to kind of wind-down their business, you know, we haven't crystalized as to what that time period is; you know, whether it's four months or six months or whatever, after which they would have to stop operations until they get all of the necessary permits. If the person had filed after the council, their applications after the council filed the resolution, then we would not allow them to operate until they got the special -- all of the necessary land use permits. So we are taking an -- you know, we are planning to roll this out through a series of public information sessions, but the enforcement direction is being handled differently with the council's filing of the resolution and the policy of the new administration.

Mr. Vanderbilt: Well, Clayton, you mentioned that there's a distinction between those who met the amnesty period and those who filed afterwards.

Mr. Yoshida: Yes.

Mr. Vanderbilt: And then there's another group of people that just ignored everything and haven't filed anything, right?

Mr. Yoshida: That's correct.

Mr. Vanderbilt: Okay. Now, how -- how can you expect -- how can you enforce on somebody when they're still trying to get the approvals? Is there anyway that you, in adopting -- you say you haven't figured out the time frame on which you would allow those who met the amnesty period to wind down their operations. Is there anything hindering you from taking a position that those that filed within the amnesty period, I think there's five on Molokai, I don't know how many there are on Maui, can continue to operate until such time as an ordinance is passed, and I understand that the Committee has asked the Planning Department to come up with something, and they're drafting another ordinance to send back to the council, until such time as the ordinance is passed and the council makes a decision? Because I understand the council has like quite a few conditional permits sitting before them now that they're not acting on and it just seems unfair to me that those few that took the time to follow the direction set by the administration wouldn't really gain anything over somebody that just ignored the law. So is there a chance you guys could adopt a policy where you just say that they continue to operate until there's some ordinance passed and that the council makes a decision on their conditional use permit?

Mr. Yoshida: Mr. Chair, I guess the direction that we're getting is to enforce the laws. You know, to be fair, we are making a distinction between those who had filed during the -- you know, while the amnesty policy was in effect and those who have filed after the council filed the resolution relative to TVR's, and we do plan on taking a more active role in enforcement against those who have not applied for operating a transient vacation rental and who have not applied for the permits.

Mr. Vanderbilt: So you would take enforcement action on those that have not applied or applied after the amnesty period before even trying to enforce the ones that met the amnesty period deadline?

Mr. Yoshida: Well, I guess we are trying to get compliance -- well, I guess we are allowing a certain period for those who have applied during the -- while the amnesty policy was in effect to wind down their operation.

Mr. Vanderbilt: But when are you going to make a decision? I mean it's very hard on this Commission, it's very hard on the public, and you guys just are over there meeting and saying: Well, maybe we'll make a decision or maybe we won't, or we'll just let things roll along, and, meanwhile, everybody else is confused. So when are you going to make this decision, and where are you getting input to determine what time frame you will allow the people to wind down their operation?

Mr. Yoshida: Well, I guess the department is in the stages of trying to finalize its policy but that's sort of the initial direction that we have because the council has, in the discussions on the resolution, sort of -- well, advised the department that, you know, we should be or criticized the department about enforcing these laws.

Mr. Vanderbilt: But, as far -- you say you're coming up with a policy, that's -- the policy is different from the draft ordinance you're working on to send back to the council, is that correct?

Mr. Yoshida: Yes.

Mr. Vanderbilt: And what is this policy? Is this an enforcement policy that you're working on, a final enforcement policy?

Mr. Yoshida: Yes, the department --

Mr. Vanderbilt: And then you're going to take that out to the various communities and educate them about this enforcement policy?

Mr. Yoshida: Yes. At the same time, we will be -- we are working on a proposed bill relative to bed and breakfast, and transient vacation rentals.

Mr. Vanderbilt: How many -- how many vacation rentals in -- transient vacation rentals in Maui filed within the amnesty period? About?

Mr. Yoshida: I would say roughly about 60.

Mr. Vanderbilt: And about how many do you estimate are on Maui?

Mr. Yoshida: Those are 60 on Maui.

Mr. Vanderbilt: Now, how many total transient vacation that aren't legal on Maui right now? Has there been any estimates?

Mr. Yoshida: According to the -- in the Kauaian study that was done for the Board of Realtors, I believe there are about 800 on the island --

Mr. Vanderbilt: Okay, so 800. So 60 is less than 10 percent. We know, from input from you guys that there's only five on Molokai. So it seems to me that, to be realistic, it's going to be years before -- if you enforce the other guys first, it's going to be years before you get down to those 60 or the 5 on Molokai, so it just seems to me why not adopt a policy to give them a break to continue operating until the ordinance has been passed and the -- and the council can make some decision either on a conditional permit or otherwise. Is that something you could consider?

Mr. Yoshida: Well, we can, you know, present that to the leadership in the department.

Mr. Vanderbilt: To who's that?

Mr. Yoshida: The Planning Director.

Mr. Vanderbilt: Jeff Hunt?

Mr. Yoshida: Yes.

Mr. Vanderbilt: Thank you. Okay, that's all the questions I had. Anybody else? Steve. Commissioner Chaikin.

Mr. Chaikin: Yeah, I have a question for Nancy. Nancy, we have two pieces of paper sitting in front of us, both signed by the Director of Planning, and I was just wondering, they both say different things with respect to the conditional use permit and the special use

permit. Can you clarify for us what the County's position is for the recommendation for that conditional use permit and the special use permit?

Ms. McPherson: Well, based on the staff report that was done, the first recommendation was that we were recommending denial based on the language in the Maui County General Plan, the Molokai Community Plan, and, particularly, the East End Policy Statement. Because of some of the discussion that happened in the last two meetings, and realizing that perhaps the language in the community plan and the East End Policy Statement could be opened to interpretation to a degree, and also to defer to kind of the idea of home rule on Molokai where the Molokai Planning Commission may choose to retain this ability to grant conditional permits on a case-by-case basis, even for vacation rentals, which has happened in one instance before, the previous application that came before this Commission, the Dunbar cottages, we drafted another, a second recommendation that, based on some of the discussion, that the Commission consider granting a conditional permit for a time period of one year, and I'm going to read the recommendation in its entirety after public testimony because we wanna make sure that you folks get the public testimony, but those are your two -- those are two options. We chose to present the second one to the Commission to give you additional options. You can chose to take -- to make no recommendation and send it up with no recommendation as well so -- and you can choose to draft your own recommendation.

Mr. Chaikin: Thank you, Nancy. I just wasn't familiar with that procedure that the County would actually make multiple recommendations. Is that normal that the County would make -- would do that?

Mr. Yoshida: Mister -- Commissioner Chaikin and members of the Commission, the department's recommendation on the conditional permit is for denial, as expressed in our May 9 memo, and for deferral on the State Special Use Permit until after the council has dealt with the conditional permit. However, in subsequent discussions on the matter, at your May 9 and May 23 meetings, the department has drafted conditions for approval for the Commission's consideration should the Commission decide to recommend approval on the conditional permit and defer on the State Special Use Permit.

Mr. Chaikin: Thank you for that clarification, Clayton.

Mr. Vanderbilt: Clayton, excuse me, could you answer a question here? In this latest one we got with our package, it says that a denial of the -- I can't quite -- I don't see it right now, but somewhere it said that the -- that there might not be support for a condition or recommendation for denial, I don't know where that came from, and I think, at the last meeting, we were asking if you could draft up some information where we could send it up to the council with no recommendation and defer action on the special use until an ordinance was passed. But where you're coming from is you don't -- you don't want to



recommend that. Is that -- is that correct? Or you don't think that's a good recommendation?

Mr. Yoshida: I wasn't here at the last meeting but --

Mr. Vanderbilt: Well, see that's why -- and that's another thing, it'd be really good on these controversial meetings if we could get the minutes from the last meeting here because Jeff was here, now he's not here; you're here and you weren't here last time. There was some critical stuff on the record that would have helped us all, so that's just a little side note that, in the future, when we're deferring action on these to another meeting, it'd be helpful to all of us and the public that -- to get those minutes to us. But, anyway, go ahead. I'm sorry.

Mr. Yoshida: Yes, I believe one of the suggestions was for the department to draft some conditions for the Commission's consideration if they weren't going to follow the department's prior recommendation, and that's what we tried to do, taking into account that the community plan update is coming up after the Countywide Policy Plan is completed by the GPAC and, possibly, discussions on transient vacation rentals and bed and breakfast policies relative to the community plan could be incorporated into the plan and the circumstances may change in a year or two years or whenever it takes for the community plan update to be adopted.

Mr. Vanderbilt: Well, Clayton, just one other question. Should this Commission approve the conditional use permit, and send it to the council, and then defer action on the special use permit, was that what you were talking about as one option?

Mr. Yoshida: Yes, that's --

Mr. Vanderbilt: Okay. How -- how could this Commission, we keep saying one year, but if they're following -- if they're being good neighbors and they're doing everything else, what justification would this Commission have of not renewing that conditional permit or the special use permit? I mean --

Mr. Yoshida: Well, possibly, circumstances may change from what exist today. The community plan update may be adopted. There may be policies addressing where these types of operations should occur. The transient vacation rental legislation may be adopted and that may also specify where these types of operations may occur. And the Commission and the public would have those -- that information in front of them, which would be new information.

Mr. Vanderbilt: But your recommendation for denial was that the conditional -- the director got up here and mentioned that the conditional permit was really not a viable -- I mean this

operation didn't meet the condition of the standards set for a conditional permit. Is that correct?

Mr. Yoshida: Yeah, that's the recommendation of the department, as specified in its May 9 --

Mr. Vanderbilt: Now, in Maui, when somebody comes in now to apply for a conditional permit, I understand that the County is saying: You can go ahead and apply for it, but we're not going to support it. Is that correct?

Mr. Yoshida: I believe it depends on where it's located. We would like to see, I think, we would like to see these types of operations in resort areas.

Mr. Vanderbilt: Yeah, try to speak up a little.

Mr. Yoshida: We would like to see these types of operations in resort areas.

Mr. Vanderbilt: Are they currently permitted in resort areas?

Mr. Yoshida: They are permitted in the hotel district.

Mr. Vanderbilt: But you're saying if there is a single-family project in a designated resort area, that you would -- you would feel okay with a permit for those?

Mr. Yoshida: We would be more supportive if it were in a resort area.

Mr. Vanderbilt: So what you're saying is you're telling people that are outside the resort area that apply for a conditional permit that you -- they can apply, that's their right, but you wouldn't be supportive of granting that conditional permit?

Mr. Yoshida: From a policy standpoint, we may be less supportive of an operation which was outside of the resort area.

Mr. Vanderbilt: So you -- you don't have a firm policy? It's less. What does that mean? I was told, when I called the Planning Department, that the Planning Department's policy now is that if you're outside the resort area and you file with a conditional permit to use -- to have a transient vacation rental, that that's your -- the applicant's right to file but the Planning Department would not be supportive of that means of getting an approval. Am I -- did I get the wrong information or --

Mr. Yoshida: No, that's sort of the direction of the draft ordinance.

Mr. Vanderbilt: Thank you. Any other comments? Commissioner Dunbar?

Mr. Kip Dunbar: Yeah, Clayton, I think if you look at a conditional permit, you know, you can't just stand there and outright say we're going to deny all the conditional permits because a conditional permit happen to say that it's site specific, number one, and whether or not it has -- is unique, number two, and whether or not it's combined affect is going to have a detrimental affect, if it's known in advance, on where this site is. So to stand there and say that the department is going to outright deny everything, you know, I, just knowing the conditional use permit process, I don't see how you can say that because it -- well, I should take that back. The Maui Planning Department can come up with any policy they want, I mean they certainly have in the past even though it is not what the law wrote, and the reason they wrote it is that it needs to be looked at site specifically and that's why we're here to look at specific sites. It doesn't mean just because you approve one that's carte blanche for everybody, because it's not. But if you have ten or twelve of them in a spot that is now perhaps taken away from -- from whatever, long-term rentals, you know, it really doesn't make any difference whether it's a B&B or it's a transient vacation rental, the same problem occurs. So, you know, I hear you standing here telling me that B&B's are okay and transient vacation rentals aren't okay, but that's not what the law says. It is site specific, and that's what we have to decide here, and so that was the home rule point.

Mr. Yoshida: Yeah, that's correct but, you know, it's ultimately the, well, the Commission and council that's going to make the final determination.

Mr. Vanderbilt: Clayton, there is a law in the books, an ordinance for bed and breakfasts. If you want to operate a bed and breakfast, there's --

Mr. Yoshida: Yes, that's correct for bed and breakfast homes.

Mr. Vanderbilt: And a bed and breakfast, and the difference is between a bed and breakfast and a transient vacation rental is the -- the dwelling that's being rented is within the house and owner of the house is on premises. Is that right?

Mr. Yoshida: In part, and also that it only applies to certain zoning districts, the bed and breakfast home. It does not apply to the County Ag or County Rural Districts.

Mr. Vanderbilt: Okay. Thank you.

Mr. Dunbar: Clayton, one other. So what I just heard you say is that even if it were a B&B, they'd have to come in for a conditional use permit granted by us and recommendation of the approval of a special use permit, even it were a B&B?

Mr. Yoshida: That's correct, under the current --

Mr. Dunbar: Is that for a B&B1, 2 , 3?

Mr. Yoshida: What is defined in Chapter 19.64, because it is not in one of the zoning districts that is listed in 19.64, they would currently have to apply for a State Special Use Permit and a Conditional Permit if they were in the ag or rural districts.

Mr. Dunbar: Okay, and one other question. You say that they, the council, is now dwelling on what language to put in the transient vacation rental ordinance. Did I hear you say that?

Mr. Yoshida: No, the council filed the resolution on transient vacation rentals, the one the Commission considered in June of last year. The department is developing a new bill for an ordinance concerning transient vacation rentals and bed and breakfast, which it hopes to provide to the Council Planning Committee, and since it's an amendment to Title 19, it would have to go to the planning commissions for their review and comments; the same as Bob Carroll's bill did.

Mr. Dunbar: Okay, so do you have that paperwork? Do you have what the recommendations that we gave them and how we thought that the, you know, you couldn't just have masterdize B&B ordinances that you're trying to convert to a vacation rental? Has there been any --

Mr. Yoshida: As far as the comments from the Commission?

Mr. Dunbar: Yeah, is there any draft, you know, any draft language that you can give us so that we can see whether or not anybody was listening?

Mr. Yoshida: Not at this time. The department's legislation is kind of going through some internal review but, at some point in time, if the council or the department moves the bill forward, because it is an amendment to Title 19, it would have to come before the planning commissions for public hearing and comments; the same as Bob Carroll's bill did.

Mr. Dunbar: Comments or approval?

Mr. Yoshida: Comments and recommendations, and then it goes back to the council and they make the final decision.

Mr. Dunbar: Thank you.

Mr. Vanderbilt: Okay, if there are no more comments, I'm going to open this up to the public if anybody has any testimony they would like to give. And before we get started, Suzie, do you have a sign up sheet? Oh, okay, there is a sign up sheet already. And just to give you the ground rules, you can speak for three minutes and at the end of three

minutes, I'm going to say: You have a choice of concluding in a minute or if you wanna wait till everybody has testified and come back for an additional three minutes, you can do that. So, with that, Tootchie Kalipi.

Ms. Zaidarene Kalipi: Good afternoon everyone. My name is Zaidarene, everyone calls me "Tootchie," and I was born in Ualapue and raised in Keawanui. From mountain to the ocean is where I get most of the resources. I've been surviving with the feeling of accomplishment and for the love of the land, which my Lord Jehovah has put me on this earth to be a caretaker, and it is a blessing and a miracle, when I open my eyes every morning to see a new day. I feel the pain of this island because of the changes these people, who are for their almighty dollar only. I'm disappointed with the people who are for vacation rentals because most of these people are not from here. These people come here and ho`omalili the people; then they infringe on their generosity. Hawaii has been polluted enough. The government has been making bad judgements and we don't want that kind of error to be done on Molokai. Maui and Oahu has been getting the shaft so don't do this to us. If you think that vacation rental will do good for the people of Molokai, I don't think so. It's only good for the people who's going to profit from it. We have Hotel Molokai, Molokai Shores, Wavecrest, and resorts at West End. Why don't we use that instead of just building and building and polluting our ocean? Now we have the ships passing by and dumping their sewage in the ocean. That's why most of our seaweed, opai, and pretty soon our fish will diminish, and crab. And, furthermore, you people bring all these alien species to the island and they ruin with what we have. They let it go into the ocean without notifying the public or the community. When something happen, then you can't undo what was done, like gorilla limu, ogo, taape, toao, roi, rats, mongoose, gnats, and I could go on, but what for? You people are supposed to be the brains. People like us we are survivors. Thank you.

Mr. Vanderbilt: Thank you, Tootchie. Tootchie? Any questions for Tootchie? Okay, hearing none, the next to testify is Mililani Hanapi.

Ms. Mililani Hanapi: Aloha you folks. I see some really good people. Aloha, DeGray and Mikiala, Steve, Linda, Lynn, and Kip, and Mr. Feeter. I know you folks love our island.

Mr. Vanderbilt: Can you identify yourself for the record?

Ms. Hanapi: Oh, excuse me. Oh, for the record, my name is Mililani Hanapi. I live on the East End, and I'm fortunate to be a decedent of the original people of Molokai. My family has been on these lands since wakahiko, that is what our kupuna tell us, so we've been here more than 500 years, since ancient times. Anyway, I am a decedent of these lands. I've watched tourism and rentals. I am a landowner, my husband and I, from the mountain to the sea, and, often, we are concerned about prosperity, as we all should because it's our turn to try to ensure that our children and the next generations can prosper as we have, as

our kupuna did. I'm real concerned about any permits being issued at all, as a matter of fact, on the island of Molokai, and especially in our beautiful side East End. My one first concern is, in a special use area, we all know that it's filled with sites, historic sites, sites that are used that are subsistence sites that we still use, fishponds, fisheries, those are still sites and places that were created for subsistence economics, yeah, for our people. I, of course, we live on the beach so we see a lot of different people coming to the ahupua`a and I can't understand why, for just a few people, we should give up our privacy so others can have -- make a dollar. And I was talking about it's our responsibility to sustain and to increase the wealth of our lands cause that's what you supposed to do, yeah, for the next generation. We often thought about rentals. We know that there's a housing shortage on the island. A lot of our people are living in the houses of their families. They homestead. There's like three, five, you know, children living their with their children and their spouses. We know there's a shortage. Also, as a family, had kicked around the idea of for having that kind of prosperity for our children. It's an option. But what we wanted to be conscious of was not intruding upon our neighbors or intruding upon that which was given to us, the lifestyle. So you can figure out a way to make money in another way. I don't have to intrude upon my neighbor's space, nor would I'd like them to intrude upon my space.

And I think that the other thing that I wanna point out to the council, in wrapping this up because of its limited time, is Molokai has no burial council. It has not had one since January 2004, that the last that was on the register or whatever you're supposed to have your meeting, and it never took place. It was cancelled because there wasn't enough people. So 2004 was the last time a meeting for the burial council. Manae people, on that side, bury our people all over the place. In 2005, burials were removed from Waialua, in an area where there was a rental, and we still have them at home. I believe that our ancestors need to be connected with homelands again, yeah.

Mr. Vanderbilt: Excuse me, Mililani, can you finish up in a minute would you like --

Ms. Hanapi: Yes.

Mr. Vanderbilt: Or would you like to come back for --

Ms. Hanapi: No, I think I need to finish up cause I need to go home too. I have my own work to do.

Mr. Vanderbilt: Thank you.

Ms. Hanapi: So, in concluding, it's really important that I would like these kinds of committees, like you folk's, to keep that in mind when it comes to burials cause that is also in special use permit, and so it's -- it's really offensive when we have to stay out of our own homelands, our ancestors, and they sit outside, they're not even being buried, so because

the State of Hawaii doesn't have that in place, the County should not be doing anything with Manae. Thank you.

Mr. Vanderbilt: Thank you, Mililani. Are there any questions for Mililani? Hearing none, the next testifier is Alapai Hanapi.

Mr. Alapai Hanapi: How you guys? Aloha. I'm Alapai Hanapi for the record. I'm from Manae, 17 mile marker, and I'm here to -- to talk about vacation rentals. I'm against it. I feel that -- I feel the same way, as my wife said, that people, you know -- you know, I've listened for the last 30 years of people come here from someplace else that are not from here and they say: I just wanna come here and live here. That's all I wanna do. I just wanna share Molokai and I really love Molokai and everything. But, you know, down the road, 10 years, 15, 20 years, they decide to do something else. They don't want to just live here. They wanna turn a profit. You know, it reminds me of the missionaries becoming merchants, you know. And so I'm against that kind of stuff. You wanna come here, fine. That's the lifestyle. You live over here, you -- you share the prosperity with the community, not with yourself cause that is traditional and that is the way we have to live together, okay. Now I know you folks are good people. I know most of you here. And, as a maka`ainana, as a commoner, we can't attend all these meetings. Sometimes we not even aware of what's going on around us because we busy people, so we need you folks to be there and be here to make sure that things don't get far out, yeah. We don't want stuff to get far out over here. So we depend upon you folks as akamai and your moral standards and values, you know. And the lifestyle is the way it is. When you come over here, you malahini come, you have to understand, you adapt, you go with what's happening here. No bring nothing new because that's why you came here to live here, not to turn a profit. We got all kind issues: burials; permits; helicopters landing on the beach. Guess what? Bringing people over for transient rentals. Landing on the beach right down Kupeke. And then we had the shoreline determination turn around, we got blue tile roofs sitting right on the -- the kine, on the fishponds because now the highwater water is on the outside fishpond wall. Eh, I not happy about these changes. But guess what guys? Changes on the land, the ocean, and the sea. Now what are going to accept and what are we not going to accept? Okay. It's happening. I don't like it. Ua mau ke ea o ka aina i ka pono. Now if this stuff is not legal, where is the enforcement? Why do we have this stuff on the books but there's no enforcement procedure? I mean I hear "I guess" and "maybe" and "it's possible," but I don't hear nothing, you know, about this. Now, I know that -- I know a little bit about it. I'm not too up to date with what's going on with the vacation rentals but there's more than five, I can tell you right now. I look at this visitors, Molokai Visitors Association thing and there's more than five on top here, you know, and I know they're all over and some are on the -- I know there's some have met the grandfather clause and they are permitted to do that and, you know, and we should have a special management area instead of it stopping down the road from our place and not extending down to Kumimi because we got some sites, yeah, and I think realtors should be held accountable for SMA's, EIS's, all this stuff, including

burial. Before they sell a piece of property that they're advertising now, hey man, do what you like, it's yours, you know. With this kind of capitalistic view, that's not acceptable.

Mr. Vanderbilt: Alapai, can you finish --

Mr. Hanapi: One minute? One minute?

Mr. Vanderbilt: Thank you.

Mr. Hanapi: Okay. I'm not here to offend anybody and I'm sorry if I did. I apologize. But I -- I want everybody to be conscious of the feelings of the people, you know, and if there is enforcement, it should be enforced. It shouldn't be happening, you know. And, like I said, if there's wealth to be made here, I don't blame these people, you know, these malahini, because they're not from here. They not from here. They're from some place else that they've been taught and told and brought up in this way to make a buck, to make money, you know, during your lifetime, and I don't blame them. That's what they've been taught. But over here, this is Hawaii nei. Please keep it on Oahu, keep it on Maui, keep it in the specific zones that are supposed to be happening, hotels, condos ...(inaudible)... all that man, you know. Keep it over there. Otherwise, guess what? This not going to be Molokai nui a hina. This going be Molokai nui a America. Mahalo.

Mr. Vanderbilt: Thank you. Are there any questions for Alapai? Hearing none, the next testifier is Burrell Duvauchelle, followed by Butch Albino.

Mr. Burrell Duvauchelle: Aloha everybody. I'm Burrell Duvauchelle. I live in Puko`o. I was born here. My family's from here. I'm just here to just express my feelings about this vacation rental situation that we have. To me, it's a -- to me I'm a -- I work in housing, affordable house, conservation, home repair, rehab because there is a big -- there's a big need for housing on our island for the local people and you -- and it seems like there's a lot more concern being made about how we're gonna house the tourist. I mean that's, to me, that's -- I think we have our priorities wrong if we're worrying about tourists rather than house we're going to, you know, how we're supposed to, you know, house our local people. And so when we get to this point where people are able to come in and do this kind of speculation, they're not there for a house to live in. They're there for a house to speculate on and, to me, that's -- that's a waste of, you know, the land and the resource of the housing, so that's my perspective. I think it's -- I think you guys need to set the priorities as far as, you know, what we need here. We don't need vacation rentals, but we do need housing, affordable housing for our people. Thank you.

Mr. Vanderbilt: Thank you. Are there any questions for Burrell? Hearing none, the next testifier is Butch Albino, followed by Linda Place. Butch here? Okay, well, if we comes back -- next testifier then would be Linda Place, followed by Shawn Vernon.



Ms. Linda Place: Aloha. I'm Linda Place from East End, known as Mana'e, and I have my paper here because I cannot speak, I'm not a good speaker, and I'll be running out of time because I'll be bringing up everything from here to there. Anyway, I'd like to start with a -- start off with a little frustration from the last meeting, which was on May 23, 2007.

I really couldn't believe what I was hearing, and after everything was said and done on the vacation rental at Puko`o, a vote was taken to approve or deny the conditional permit, an after-the-fact to continue operating a short-term vacation rental, with a first motion, a second motion to vote. It was three to two with it to be denied. Why did that did not count? Why was it deferred after some discussion from the council? After that, I was very disappointed that our very own Commissioners could not walk the talk. It was so wishy-washy. I do not mean to be disrespectful to the Commissioners but, however, asking the planner to soften or change the dialogue or words to the applicant dated May 9, 2007 so it would be, I guess, easy to approve the new revised dated June 12, 2007. And, as a note, I'd like to say that if you see Page 2, the background information on today's application from -- the new application, our own Planner, Nancy McPherson, along with her supervisor, Jeff Hunt, Planning Director, recommended to the Commission, on the report dated May 9, 2007, that the permit should be discouraged. The proposed action is not keeping with the following community plan. Recommendations. And, again on May 23, the Planning Department presented its recommendation for denial of the condition permit and on both days it was deferred. Is the effect being made today to approve what is now on the books as an illegal activity that might, at some later date, be legal? It would seem appropriate, regardless of the efforts of the applicant has made since early this year, that the Commission would ask the applicant to resubmit their application when and if this activity is made legal by the next Maui County General Plan. Also, giving a permit will be harder to take back at a later date. Another point I would be -- is like to open -- I mean another point that I would like to say is that it would be like opening floodgates for another applicant or applicants free for all on the East End because it is a big number of illegal vacation rentals out there. I ask you today to really think of the future for our beautiful Mana'e, and I thank you, and aloha.

Mr. Vanderbilt: Thank you very much, Linda, for the testimony. Are there any questions? Commissioner Dunbar?

Mr. Dunbar: Yeah, Linda, couple answers to your questions. You know, when you vote two to three, it takes five to vote, and they all have to agree.

Ms. Place: Okay.

Mr. Dunbar: So, five out of the nine gotta agree to either approve, deny, or defer. So they had five votes to defer ...(inaudible)...

Ms. Place: Okay, I am unaware of that. This is new to me.

Mr. Dunbar: Okay. I remember when I got my permit and the talk was we're going to open the floodgates and they're going to be thousands of applications. Basically, this is the second application, and this was like I think about seven years ago now. And it just, you know, it hasn't occurred. That doesn't mean to say that they're not there, and it doesn't mean to say that there are those that are operating, you know, that aren't operating legally. It also means that just because you approve one or you approve two or you approve five or approve ten, it doesn't mean you approve everyone that comes here. You know, each one is going to be taken individually. And so whether it be a hundred applications, those hundred applications, you know, aren't going to be approved. And, likewise, I don't believe a hundred applications are going to be denied because, you know, for what we're doing for some of the vacation rentals, I mean there are at least one, two, three, four people employed on the East End of Molokai just by my operation alone. And those people probably wouldn't have any other job.

Mr. Vanderbilt: Commissioner Dunbar, did you have a question?

Mr. Dunbar: So the question is: You know, is there a -- is there a mid-road position that you folks have taken on vacation rentals, or it's just all or nothing? I know you and I have talked about it quite a bit.

Ms. Place: Sure, and I don't want to bring that conversation in here. But, anyway, what I'd like to say is that, on my very own, is like once you have -- okay, I understand that the Feeter's, you know, are applying and they live here and all that kind of stuff, okay, but how do you determine the future of Manae? We -- you have two legal. When is your conditional permit up for a hearing? How many years did they give your conditional permit for?

Mr. Dunbar: I was originally given two years.

Ms. Place: Okay.

Mr. Dunbar: And then I --

Mr. Vanderbilt: Excuse me. Excuse me. Let's not get a lot of dialogue going between -- we have an opportunity to ask some questions and just respond to the question.

Ms. Place: Okay, well, I feel that, I'm just going to say that I agree to what I've said in the last three testimonies and one written testimony that I gave for Malama Pono, which is, you know, which is our group on the East End, and we have people that are in our group, that are members, that are real estate people and that they not -- do not agree with what we're

saying but we still have the right to come forward and say what the majority of the group says, you know, that they are what we are not approving, you know, this conditional permit.

Mr. Vanderbilt: Any other questions for Linda? Hearing none, thank you very much, Linda, for your testimony. And did Butch come back? Okay, he didn't. Okay, the next testifier is Shawn Vernon, followed by Judy Caparida.

Ms. Shawn Vernon: Hello. My name is Shawn Vernon. I'm absolutely terrified so I'm going to read this paper. Other than to say, I moved to Molokai at the end of 2003. I didn't move to make changes. I moved because I loved what I saw. I don't want it to change. Okay. At the outset, it should be pointed out that the Maui Planning Department has correctly noted that the request for a vacation rental in Puko`o, which is the residential area of East Molokai, is not consistent with the existing community plan. That was recorded at the May 9 meeting of this Commission. It is an accurate statement of the existing plan, which strongly states that no transient rental activity should be allowed in Manae. Because Maui County is currently considering updates to the community plan, the Planning Department is now recommending that denial of the application may be premature and that should be granted under some restrictions. This reasoning is backwards. Because the current plan may be updated is no reason to ignore the existing clear prohibition on vacation rentals. If anything, it is approvals, not denials, that are clearly premature. First, there is no reason to think that a revised community plan will favor vacation rentals on East Molokai. The residents of that area are overwhelmingly in favor of continuing to protect its residential character. Second, allowing permits to be issued in the face of the existing plan will only encourage more such activity currently illegal in the belief that after-the-fact permits will be easy to obtain. Third, conditions such as the Planning Department recommends will prove unworkable even after the existing prohibition is carried over into the new plan. After a year or possibly two of operating under a permit, the applicants would be understandably reluctant to shut down. This would only add to the County's already large enforcement problem with regard to illegal rentals. In this situation, any doubt about what may appear in the updated community plan should be resolved in favor of enforcing existing standards. This application should be denied.

Mr. Vanderbilt: Thank you, Shawn. Are there any questions for Shawn?

Ms. Vernon: Oh good.

Mr. Vanderbilt: Hearing none, the next testifier is Judy Caparida, followed by Carol Klein.

Ms. Judy Caparida: Aloha, Commissioners. My name is Judy Caparida. and I'm here on behalf of the agriculture subdivision first, and it's about where is it going to take place. I read that there's going to be some kind of workshop for it?

Mr. Vanderbilt: Hopefully.

Ms. Caparida: Well, this is what's so hard for us on Molokai. Everything is maybe, if, but, but there's no clear answer. Another thing we talking about is about -- I'm following up with Manae cause I live there, hello. If you look around, and this is what I wanna say, that we need you guys to have evening meetings. If you look around, there's only kupuna sitting here. We are the back-up people for our community. Where are those that's supposed to be here that is for our future? They're working making money for their family. So you know what? Get this straight that everybody should know what's happening to Molokai. We belong to the whole Maui County but we still don't deal with what the things they want. We want to have the things that we want and that's liveable for us. It is really hard for Molokai because the cost of living is going up and it's not going down, electric, water, everything is up, gas, and yet they still don't look to the needs of our community, and this why I'm here to let you know, from the east to the west, we all one island. We live here. We support each other because this is all we have.

I wanna talk about this bed and breakfast and all this. There is more than 200. You guys better do your guys homework. I not only talking to you, DeGray, I mean all of us. Even myself. I take it because it's part of my kuleana to know what's going on in our community. It is pilau. It is corrupt. It is for who so ever. And I think that, you know what? The kupuna they know what life is about because we live here. People come here, they use us, they abuse us, and they go on. They buy place, they build it up, they make it beautiful, million dollars, gone. Who's stuck with all those taxes? We, those that live here that even hasn't got lot to live for yet we know that this is for what? We are stuck with it. And why? Because we don't have people that really love Molokai to really fight for us. What they do? They make us best and yet we are what? We're supposed to be one County. Everything that we get cheated out because of what? Doing what is right. All these people that is having these bed and breakfast, bruddah, they got to make sure they pay up. Pay up or make them pay fines like they did in Honolulu. I got two friends. You know what happened? They bought them out. You know why? Cause they couldn't pay the fine. They shut them down. It don't matter it's my friend, my sister, by brother. If they screwing up, bruddah, hey, shape up.

Mr. Vanderbilt: Judy, can you finish up in a minute or would you like to come back for --

Ms. Caparida: No, I'm going to finish up, and I'll come back later, but I wanna finish up now.

Mr. Vanderbilt: No, well you --

Ms. Caparida: I get one more minute.

Mr. Vanderbilt: You can either take your minute and not come back, or you can sit down now and come back for three additional minutes.

Ms. Caparida: Let me tell you something. I have the right to come back anytime I like because this is just one time or twice in a month. You no tell me. So I letting you know that the bed and breakfast is because they're not paying. If you no pay, you get a collector come to your house, hello. They call you up. They make sure that you pay. For those that had it so many years, you know how many grands of money they made? How many thousands of dollars? And yet they telling, making excuses that they don't know. Hey, come on, this is bullshit. I only say it because you know why? This is not something that happened yesterday. This is years, and years, and years, and some of these guys are still sitting here, they still never do nothing about it. So I love my sister. I know what she's going in for but you know what? What goes for one goes for all. So make it clean cut that you're going to wait till this thing get cleaned up. That's the right way. Clean up our act first before we can make new problems. Thank you.

Mr. Vanderbilt: Thank you, Judy. Are there any questions for Judy? Hearing none, the next testifier is Carol Klein, followed by Roland Salmon.

Ms. Carol Klein: Hello. My name is Carol Klein. I live in this immediate area of Puko`o where I own a big lot of several acres. I would like to comment and my opinion is that I'm totally against these vacation rentals whether they're permitted or not permitted, licensed or not licensed. I think the real issue is the quality of lifestyle. I think the residents of this community are bearing the brunt of this change. These are really commercial business enterprises. They should be under TMK's that are business and commercial oriented. They should not be taking up residential lots. Currently, we have eight lots on that strip of beach, six of them are operated as vacation rentals, and there's one more under construction. Now, I, personally, cannot hardly walk the beach anymore. There are tourists everywhere. Their garbage is everywhere. Their toys are everywhere. They're often indecently dressed, drunk. They have brought in the elements of this neighborhood of drug dealers, drug users, perverts, sexual deviants. All kinds of people that we really don't want in our neighborhood. Now, these commercial ventures are charging really big bucks. I'd say an average of \$300 a night. If you multiply that by 30, you get \$9,000 a month. You get a \$108,000 a year. Now I don't see any profit sharing going around. I don't see anyone sending me a check for the change of lifestyle that I have to withstand, and I don't see why I should.

Now, in addition to that, I would like to point out other issues. Bringing in a lot of tourists at six vacation rentals, currently, we have issues of safety. I don't see any police there. I don't see any tourist information kiosk to help these poor visitors who have had so many questions that anyone now walks the beach has account to them about where to swim, what to do, this and that, chit-chat, chit-chat, and, personally, I don't see a lifeguard there.

I consider those beaches dangerous to these children that are coming with visitors and the visitors themselves. I don't see any supervision. I don't see any garbage collection. I don't see anything that's helping the neighborhood, and I don't see anything protecting the safety of either these tourists or the rest of the people that live there.

I would also like to comment that these conditional permits make it much harder to rescind at a later date. I think you're all caught up in a bureaucratic nightmare for which I have a lot of empathy, but I don't see that rubber-stamping these temporary permits has any effect on the real impact of these neighborhoods, which are slowly getting demolished, and the reason they're getting demolished is cause there's so much money to be made. If I was to build some vacation rentals on my three acre lot, I'd be making a lot of money, and I would be willing to pay a registration fee, and I'd be willing to pay any other fees for not having been registered properly, or this and that, because at \$9,000 a month profit, it's more than my current job, and I don't see that I should be a working class person in my neighborhood when these people operating these vacation rentals do not even live there, and that's what I have to say. The price of a lifestyle is immeasurable and I don't see why I should sacrifice my lifestyle when I'm paying property taxes so that these people can take the money and run, which is exactly what they're going.

Mr. Vanderbilt: Thank you, Carol. Are there any other questions? Hearing none, the next testifier is Roland Salmon, followed by Nancy Johnson.

Mr. Roland Salmon: Good afternoon. My name is Roland Salmon. I can see and feel your frustration because I'm very frustrated myself right now. I'm really appalled that we can't get clear answers from the County and that, to me, has been going on for years and years. They have broken their own laws, and they're responsible to us. All these people working in the County, we pay their wages, and they're accountable to us, and they have to give you an answer, a clear answer. It's only fair. So we have to do something toward the County so they give us an answer. We are the poor sister, I know that, in Hawaii, but they must give you an answer. That's the law. If they can break their own law and let the vacation rental to be built, that's a commercial unit, which has nothing to do with B&B's, and if they let the commercial unit on rural land and ag land, that's against the law. And, today, I don't want to take much of your time but I'm going to ask you to place a permanent moratorium in the development of tourist related accommodation and business which will significantly change the social infrastructure of the area, and that's number ten now on your East End policies that was adopted in 2001. So I have some serious question to ask you, sir. What happened to our decision here in 2001?

Mr. Vanderbilt: Excuse me, Roland. Please speak to the Commission.

Mr. Salmon: Oh, okay. I'm sorry. I would like to have that answer from the County of course. Good luck. Thank you very much.

Mr. Vanderbilt: Thank you, Roland. Are there any questions for Roland? Hearing none, the next testifier is Nancy Johnson. Okay, Nancy apparently has left. So the next testifier would be Diane Swenson.

Ms. Diane Swenson: You know, the one thing I just wanted to make you aware of, probably some of you are --

Mr. Vanderbilt: Could you identify yourself?

Ms. Swenson: Yeah, I'm sorry. Diane Swenson. I thought you did that for me, DeGray. Sorry. You know, I just wanted to make you guys aware, everybody's talking about tourists and strangers and strange people, and I would say, at the least the vacation rentals that I've been involved with, 30 to 40 percent of our bookings are local families. I mean like this instant -- this weekend, there's three homes that are booked to a local family that's having a wedding here and, you know, these people they can have their family barbeques and things and activities in a condominium project or at Hotel Molokai, so it's not just tourists that are coming and using these properties, it's local families, it's kids that are coming home for family events where their family house won't hold everybody. I mean it's -- I mean there are other -- and there's people in the community that are getting paid for cleaning these properties, for grooming these properties. So there is community benefits that some people are not seeing.

And I just quickly wanna say, I applied for my -- okay, 20 or 25 years ago, whenever it was that we wanted to have a vacation rental, I called -- we called the County before we even built the building to see if we could do it. We were told there were no rules and regulations but if we were going to do it, we needed to pay our taxes. So we got our -- we've always paid all of our general use and transient taxes. When Kip Dunbar applied for his permit, we put in our application when Will Spence lived there -- I mean worked at the County, and I don't know what's happened to it, but we are pre-amnesty period, and we still haven't had our day. So it's not like we're trying to do anything illegal. I mean we just have been in the dark for 20 to 25 years and still we don't have a date. So, anyway, that's all. I just wanted to let you know that it's not just tourists using and enjoying these properties, it's a lot of local families too.

Mr. Vanderbilt: Thank you, Diane. Are there any questions for Diane? Commissioner Chaikin.

Mr. Chaikin: Yeah, Diane, I have a question. You know, you're probably better positioned than anybody to kind of, you know, assess the situation. How many vacation rentals would you venture to guess that there on Molokai?

Ms. Swenson: Oh God, I, you know, I know what we manage. I think we managed 12 or 14 houses. The rest of the properties we manage are condos. But I -- I haven't ventured to count. I can tell you this: There's over a hundred people on this island operating businesses out of their houses illegally and that should be cleaned up too. I mean there's just -- I mean I think that if you guys are going to straighten out the island, there just needs to be a clean sweep. I mean all of these things. People working at home illegally need to get offices and it goes on and on. I mean there's -- I would say, vacation rentals, I haven't any idea. I don't know what our competition manages but I know that there's probably three or four dozen that are doing it themselves from the -- you know, that aren't being managed by anyone. I know the ones that are managed at least somebody's taking care of them ...(inaudible)... and making sure that they aren't causing problems and that are kept clean. I mean I hope that Carol doesn't consider me the pervert on Puko`o Beach. I mean I live there and I have not seen these people she's talking about, but I don't know.

Ms. Klein: You're gone all day.

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

Mr. Chaikin: Thank you, that's all I had.

Mr. Vanderbilt: Any other questions for Diane? Kip?

Mr. Dunbar: Yeah, I'm just curious. About how much -- I know it pays about 11 some-odd percent, but how much do you think those vacation rentals generate in tax revenues?

Ms. Swenson: Oh, I could give you an exact number of what gets paid out of our office, but it's thousands of dollars. I mean it's 11 point something that gets paid on every -- every dollar.

Mr. Dunbar: Yeah I know that.

Ms. Swenson: I mean so there's a -- plus the people that are getting paid for the services they are providing. So it's revenue that the island's going to lose but that's --

Mr. Dunbar: So how many jobs do you think those units that you have actually, you know, employ?

Ms. Swenson: Well, normally, each unit has at least three people: they have a maintenance person, they have a yard person, and they have a cleaning person, and each one of those persons probably does three to five properties, but -- so they're earning, I mean they're independent contractors, but they're getting what they would get at a full-time job, and that revenue will be gone too.



Mr. Vanderbilt: Diane, as the management company, what does a management company take as a percentage fee on -- for managing the properties?

Ms. Swenson: You know, DeGray, it varies, depending on the company and the owner, and some of the owners do part of the work and -- themselves so it's a sliding scale.

Mr. Vanderbilt: Okay, I had heard that, you know, for -- that it ranged from 20 to 25 percent on if you just -- if the owner's not here and you have to deal --

Ms. Swenson: It depends. Some of them are not that much and some of them are, so it depends on the owner and the property.

Mr. Vanderbilt: Okay, thank you. Excuse me, Commissioner DeCoite.

Ms. DeCoite: Diane, you know, I know that, you know, it's your business to provide vacation rentals and sell land and whatnot, you know, and a lot of this that goes around is the enforcement, which I've always, you know, bucked on is that there's no enforcement on a lot of these things, but if the shoe was on the other side of your foot saying that what if you were to live in the middle of these vacation rentals, I've heard from those that say, you know, they don't want it in their neighborhood and we have hotels and everything else to rent, how would you feel if you were living in the middle of these vacation rentals?

Ms. Swenson: Okay, well, Lynn, let me tell you, we -- we bought our property at Puko`o in 1976, and we were the only people living on that beach east of the stream. Between the stream and Kupeke Pond, we were the only people on that beach, and it was heavenly. So our life have changed some, but it hasn't changed that much. I mean it's -- I do live in the middle of it, but most -- I would say 99 percent of the visitors or people that come are -- are really pleasant and it's a nice experience and it's a good exchange. I mean we've lived out there probably Lincoln Lin Kee and our neighbors to the west of us were the only people out there for years. So it has changed but it's been a gradual change. I mean we are -- we're in the middle of four acres so it's -- and all of the properties out there are big so it's not like there's a million people running around in a little neighborhood.

Mr. Vanderbilt: Are there any other questions for Diane? Thank you, Diane. That was the last testifier who had signed up. Is there is anybody else in the audience that would like to say something? Tootie, you've already testified.

Ms. Kalipi: No, no. I'm reading someone else's here.

Mr. Vanderbilt: Okay.

Ms. Kalipi: You folks already know me so -- I'm reading for Lee Mott. Molokai is documented to being the most Hawaiian of the islands. Well, I feel times are changing. I don't see many locals building a typical island style house with room for boats and children to play. The new houses now choke the lots with massive architectural designed custom built homes with rock walls and hedges to mark their perimeters. Well for some reason some of these people don't want to live here but want to come and visit for a week or two out of the year. So what do they do with this beauty designed and decorated house? Can't rent to a local, they can't afford it, and it still needs to be available to the owner for these visits. Vacation rental, it's the trend with the internet and the websites, local realtors and advertising these houses seem to be rented steady during peak times and some are occupied almost all the time. How do we know this? Well, we have already lost most of the beach community at Waialua. We see the rental cars parked at these beach houses. Is Puko`o next? Or is it already gone too? The small beach access is jammed on busy weekends and favorite holidays. So how do vacation rentals help Molokai? I don't know. Most of the owners don't live here. They are not involved with any community issues. Where do they spend their money? Not on Molokai. Some have other vacation rentals on the Mainland. This must be a good business. He's right. They do employ a few people to clean and cut grass. I wouldn't call that steady employment. I feel if we don't do something now, we will soon be just like our sister islands out of control. Look at Hana. Hundreds of vacation rentals. And the north and south shores of Kauai. I feel Molokai should feel proud to be the most Hawaiian of the islands of Hawaii. Keep Molokai Molokai. Let's not follow the other island and the mighty dollar. Aloha, Lee Mott.

Mr. Vanderbilt: Thank you, Tootie. Aunty Ruthy.

Ms. Ruth Manu: Aloha. I'm Ruth Manu. Well, about two or three years ago, when we had -- who was the -- well, anyway, when they came, we were talking about vacation homes, then our rentals, vacation rentals, I came up and testified saying about because they were saying they didn't have enough workers, that's why the law couldn't be enforced. I gave them a solution. I told them, when we get our new planner that lives here and works for Molokai with the Planning Commissioners, the solution was to make me and my sister to go with the planner, who's Nancy right now, deputize us, and we go get all the money that these vacation rentals are charging all these people. Those who don't have permit for not -- for building. We go and get the money so the money can stay here on Molokai. When Jeff came on, Hunt, I told him the same thing when we were on the GPAC. A solution to Molokai's problem because we don't have enough workers. This is volunteer me and my sister would go with Nancy to get all those who are delinquent. Now they gotta go backwards. They get all the guys that is out there already making it for so many years, having being paying nothing. Hello. Now, all of a sudden, these Feeter's come out, of course, we all against vacation homes, rentals, and whatever, cause Molokai is already loaded, filling up, so what is the solution our Planning Commission get for us now besides this solution I telling you guys? We love Molokai. So in order to make everything straight,

it doesn't only go for one, it goes for the rest of them. That's the only way Molokai will get money too. Hello. So our suggestion is that get on task. I know the Planning Commission has a lot of things just like GPAC. It's such a stressful job, you know. I don't want nightmares. Forget that. But you know what? I wanna congratulate you guys for sitting here. The part is that we need guys that would enforce the law, you know. Enforce the law, no only talk, sit down, make all the plan, and do nothing about it. It makes no sense, you know. So that is my opinion. We still for that if you guys say you guys no more workers. Eh, tell the kupuna get time for that. Aloha. Any questions?

Mr. Vanderbilt: Any questions?

Ms. Manu: If you guys get a better solution, I like know about it too.

Mr. Vanderbilt: Thank you, Ruthy. Is there anybody else in the audience that would like to share their mana`o on this issue with the Commission? Hearing none, we'll close testimony on this item at this time. Oh, excuse me. Yes, go ahead, Frances.

Ms. Frances Feeter: I appreciate -- I'm Frances Feeter. Thank you for listening to me. I appreciate hearing from everybody, and I understand where they're coming from, and Bill and I both are very firm in our belief that such things should be regulated. I have -- we have no problem with that, applying for a permit, and going by all the requirements they have made, which are very many, by the way. They kind of bend over backwards on safety in the home and fire, all those things. You have to have the same things that hotels do. We are not really trying to destroy a neighborhood. We -- our daughter did not start out to build a house and do vacation rentals. I don't want to belabor here personal situation but she went through a divorce after they were planning to move here and so now with custody they can't move here. She loves the house and wants to some day come here. So that's why she's doing it. She did not build it for a vacation rental.

But one thing I think maybe people don't realize is the money that's brought in. The transient accommodation taxes do come back to the County. In the 2008 fiscal budget for Maui County, the Mayor's budget message showed that Maui County's share of the transient accommodation taxes for this year amounts to 21,980,000, and that will account for approximately 4 percent of the County's total revenues for the coming year. And the way that's broken down, I thought this was very interesting, I hadn't realized this, that the transient accommodation tax is distributed like this: 55.2 percent of the revenue is deposited in the State Convention Center Capital and Operations Special Fund, so that's right off the top, it goes to the new convention center. Of the remaining revenues, 44.8 percent, is distributed to the counties of which Maui County receives 22.8 percent, and so that's 22 percent of 45 percent, so it's not 22 percent of the total. So the estimated revenues for this fiscal year, over -- well almost 22 million dollars and that is 7.1 percent of all general fund revenues for the County. So that's a significant figure. And while I

realize that vacation rentals are probably a small amount of that, we do receive benefit from those taxes and, of course, we pay the taxes, and I think almost everybody that does vacation rentals does pay the taxes.

We have a protocol that we give to all our guests, although I think most of the people here don't realize it, and we tell them what is expected of them as guests on Molokai. You know, I think we gave a copy of this to all the Commissioners. And people have been very receptive to that. They're really glad to know what's the right thing to do and what isn't. The local people around us, we've said come down, go out squidding, do whatever you wanna do, and our guests have really loved the interaction with the local people. And we -- well, Ed Kiwi does a lot of the yard work and he goes out all the time to go squidding and he's gotten gifts from our guests that have enjoyed him so much. So I don't see that this is really impacting the beaches in that neighborhood at all.

What else do I wanna say. Okay, that's the main thing. Oh, one thing, I know your concern, there's been some concern about say opening the floodgates or setting a precedent, but it seems to me a major precedent might be the people that have applied in good faith. I mean we were told by the Planning Department this is the way we do it. This is the procedure that the County has set up to do the things that people would like to do that maybe don't fit in, and so we've abided by that, we went through the whole process, which was of course very time consuming, nobody wants to hear that, but I think as far as precedent setting, the people that have tried to comply ought to get some consideration and maybe having the permit granted, although the talk about granting a permit until the County General Plan is developed and if it doesn't meet with it, then you lose your permit, I have a little bit of a problem -- that's kind of like telling somebody building a house, okay, you can build a house but if we decide to change the building codes, you have to tear it down. It's a little bit like that to me. But I think really you need to consider case-by-case basis.

And it is very true, a lot of local people are coming and using vacation rentals and many of them really do vacation rentals. We've had quite a few that have had weddings and they come and rent the house and their children's guests and friends come and stay, so it does fill a purpose when the canoe races are here, Ka Hula Piko, everything is taken. The hotels are -- and the condos are all booked up and there is a need for this. That's all.

Mr. Vanderbilt: Thank you. Are there any questions for Frances? Frances, I had one. Regarding the TAT tax, you pay it --

Ms. Feeter: Oh, we always have paid it.

Mr. Vanderbilt: Always. Commissioner Dunbar says he's paying it, but there's no way to really find out if somebody is paying it.

Ms. Feeter: I suppose you could contact the State office, couldn't you?

Mr. Vanderbilt: Well, the State will not release --

Ms. Feeter: Oh they won't? Oh.

Mr. Vanderbilt: They will not release. If I call up and ask if you're paying the TAT tax, they will not so -- and that's not your concern, but it's a concern of -- because we've heard testimony that there's good vacation rentals and there's bad vacation rentals on Molokai. We heard that from somebody I think that even supported your position. And so there's no way for us or the island or anybody else to know who's --

Ms. Feeter: Well, couldn't you require them to show you a copy of their return?

Mr. Vanderbilt: No, because we don't have that right to ask somebody if under State law it's confidential information.

Ms. Feeter: Oh, okay.

Mr. Vanderbilt: We can ask them, but they don't have to do it. So, anyway, there's a lot of unanswered questions and I think -- I think that that's the dilemma that we're having. I mean you mentioned that -- I asked earlier of the Planning Department about how are we going to deny, if we grant this permit, how are we going to take it away and the response was something, well, if the law changes and it's not allowed, well, that gets back to your argument, well, that's not right.

Ms. Feeter: Yeah.

Mr. Vanderbilt: So this is not so much just the, you know, the dilemma that we're in right now is going beyond just your application and -- but I think this Commission has -- is wrestling with it because you have done a very respectable job of trying to do the best you can both in running the operation and also in trying your best to follow the rules as they are explained to you by the County Administration. So thank you.

Ms. Feeter: I do think Kip was kind of right in saying that case-by-case basis is the thing to do.

Mr. Dunbar: Yeah, and, Frances, I think one of the things that you didn't tell the Commissioners is that when you operate a vacation rental, you're no longer operating on rural or residential property taxes, you're operating on commercial hotel tax, so you're paying a much greater amount of real property tax because of that designation. It doesn't affect your neighbors because, you know, they don't have the permit, but when you do

operate any type of operation whether it'd be, you know, a dog grooming shop or a jewelry shop, you know, you should be paying commercial rates on your real property taxes versus paying a residential tax. And, you know, those entities, I don't know who brought that up, I think maybe Steve did, those entities, you know, ought to be taken -- taken a look at too. I think Diane brought it up.

Ms. Feeter: Yeah.

Mr. Dunbar: You know, I mean if it's not permitted in the area regardless of what it is, you know, you need to get a conditional or a State use permit.

Ms. Feeter: Well that's true too. You know there are a lot of businesses in homes that don't have permits.

Mr. Vanderbilt: Thank you, Frances. Yeah, Commissioner Chaikin.

Mr. Chaikin: Yeah, I just have a quick question of Ms. Feeter. Can you just kind of go through this, just one more time, of when you first applied for these permits and kind of go through the time line one more time for us?

Ms. Feeter: We tried 2001, and Christy had a cottage, and, at that time, you know, nothing happened for quite some time, then -- and I don't have my time line on this, but there was a meeting here, the County Councilmembers, no, it was John Min came over and they had a meeting about vacation rentals and, at this time, our application was in and, after the meeting was over, I went up and talked to him and I said, you know, our application is in. He had talked about -- well, they were talking about developing an ordinance. And I said, "Okay, what do we do, you know, we've applied. What should I do now?" He said, "Oh, don't do anything. You know, wait until they have the ordinance." So, we didn't do anything, so then it just dragged on and dragged on, and then, finally, just this last year, we got a letter from the Planning Department, did we want to keep our application open? So I wrote back and said, yes, we did, so then we proceeded to complete everything they wanted and I guess that's it.

Mr. Vanderbilt: So, when you -- excuse me, yeah -- so when you met with John Min, at that time, he was the Planning Director for Maui County?

Ms. Feeter: Yes, he was the Director of Planning. Yes.

Mr. Vanderbilt: And then when you got the letter saying do you wanna keep your application open --

Ms. Feeter: Yeah, that was from Michael Foley.

Mr. Vanderbilt: That was Michael Foley --

Ms. Feeter: Yeah.

Mr. Vanderbilt: Who was the Planning Director, and now we have a new Planning Director, Jeff Hunt. Okay, thank you. Are there any other questions? Yeah, excuse me, we have one more testifier. Dan, could you identify yourself for the record?

Mr. Daniel Emhoff: My name is Daniel Emhoff. I just had to come up and, you know, represent myself as a community member here. And, vacation rentals, I just kind of really wanted to come up here and speak for young adults my age, you know, younger, 20 to 30, down to kids, down to 2 years, to kids not even born yet. You know, when we do drive around, all the development we see is property that, you know, as a young adult running and, you know, working a decent job, you know, I'm pretty lucky, happy, but, you know, I think about how am I going to afford to even buy land? Even on top of that, build a house? On top of that, get permits and everything? You know, these young kids -- why don't we do a study first before we even consider vacation rentals? How many people my age, I'm 30, how many people 20 to 30, young adults, still live at home on Molokai. What? Not just Molokai ...(inaudible)... she said not just Molokai but, hey, I'm here, this is where I'm at so I'm talking about Molokai alright. This is something that needs to be addressed, you know. With vacation rentals, they can make \$500 to \$1000 for a weekend, something around there. Why would they want to rent to people that live here a room or anything? Why would they even wanna consider building something that someone like me could rent? You know, I look in the papers that looking for someplace to move into to, you know, rent and affordable, you know, where I can still create something where I can save for myself and actually maybe have a future. Maybe? But it's just not -- not there. I look in the paper every week, alright, so that is problem that needs to be brought up. I sorry, you know, like but sometimes when there's something that needs to be said, I gotta come up and, you know, so I thank you guys. Aloha.

Mr. Vanderbilt: Thank you, Dan. Any questions for Dan?

Mr. Dunbar: Dan, just a point.

Mr. Vanderbilt: Commissioner Dunbar.

Mr. Dunbar: Yeah, just a point, it's not really a question, but it's not just the vacation rentals. You know, almost everything mauka of the road is all zoned ag and now you can't build a house on ag whether it'd be for short-term rentals or long-term rentals. So it's -- the problem isn't what are the vacation rentals is doing, the real problem is, you know, no one's really sat down and figured out what is good arable ag land that should never be put into anything but ag, and what is not arable ag land that should be split up and put into rural so

that guys, such as yourself, would have an opportunity to buy. But I mean I get -- I get guys that ask me all the time: Oh, yeah, you know any places out there for -- and there are no places.

Mr. Emhoff: Right, so --

Mr. Dunbar: You know, it's all 200 acres or 400 acres or, you know, 25 acres and, you're right, it -- but it comes down to what is zoned, not whether or not one would or would not, you know, sell to a local kid who's 20 to 30 years old.

Mr. Emhoff: Right. Right, and, you know, I'm a simple person. I don't really keep up with what the zonings are and all that kinda stuff. It's just this is an issue and this is part of it, you know, this is part of it, vacation rentals so --

Mr. Dunbar: Oh, yeah, right, no, I agree with but I just wanted you to know that it's not just the vacation rental side that's doing this.

Mr. Emhoff: That's what -- I understand. Yeah, I understand. I know there's a lot too. There's a lot --

Mr. Dunbar: It's a much bigger picture.

Mr. Emhoff: You know, and, yeah, there's taxes that they pay but that goes to the County and the State, and not to here, you know. It trickles down and drop drop, you know. Okay, thank you.

Mr. Dunbar: Yeah, another thing about the taxes though, another thing for you to know is that, you know, the real property taxes that are paid on Molokai are probably, you know, about three million dollars. Molokai receives about seven million dollars. So there's someone on either Maui or Lanai that's paying for people on Molokai because there's not enough real property taxes collected in order to pay for it. So when vacation rentals go into a commercial stance, they pay a much higher rate than just if it sat there as vacant land or ag land that pays relatively nothing.

Mr. Emhoff: Right. Well, yeah, I just feel bad for, A, myself, and, B, people that have lived here their whole life trying to make a life for themselves and looking for a place that they can call their own, you know, it's like almost mission impossible right now.

Mr. Vanderbilt: Thank you, Dan.

Mr. Emhoff: Thank you.



Mr. Vanderbilt: Are there any other questions from the Commission? Alright, is there anybody else that would like to speak? Yeah, I was reminded by our attorney that we closed public testimony. Well, that's too bad. We've just reopened it. I think that's the way the Planning Commission operates. Sorry, but thanks for reminding me though. Yes?

Ms. Roselle Kamaile: Hi. My name is Roselle Kamaile and I just came up to here cause I heard everybody else's testimony and I had something to say about it. First of all, nobody can say that we aren't changing because of vacation rentals because Molokai is changing and the beaches are -- sorry, I'm nervous -- are affected by these vacation rentals, and I was born and raised here, and I live in low-income housing and where does that get me? Where does that leave me? I live in Maunaloa in Kahalemoa and I'm still living my life as a Molokai person and my kupuna over here talking about how this place is getting changes, it is changing, and I am against vacation rentals. That's it.

Mr. Vanderbilt: Thank you. Are there any questions? Thank you. Alright, is there anybody else before we close public testimony again and take a ten-minute recess? Alright, seeing none, public testimony is closed and we'll take a ten-minute recess.

*(A recess was called at 2:43 p.m., and the meeting was reconvened at 2:55 p.m.)*

Mr. Vanderbilt: Okay, this is call the meeting back to order and, let's see, Nancy -- alright, Commissioners, we have several options that we've been discussing over the last few meetings and, of course, there's the option that the -- of denying the permit and passing it on to the council with the recommendation that they not take action on it until an ordinance has come through and then we withhold our decision on the SUP until the council has made a decision. Then there was the approval, and I assume we could make the same conditions or just the straight approval for a one-year period with conditions. And then there may be some consideration for taking no action and sending it to the council, again, asking them not to take any action on the -- on the final permit until there is a new ordinance that specifically deals with the governance of vacation rentals in Maui County, and then we withhold our decision on the special use permit. There may be some others but, anyway, do you have anything to add to that, Nancy?

Ms. McPherson: No, not really at this time, Chair.

Mr. Vanderbilt: Does anyone have a motion that they would like to make with regard to the application? Excuse me, we have Corp. Counsel.

Mr. Michael Hopper: I just wanted to state for the record that Commissioner Feeter has recused himself for the purpose of this vote so the motion would be -- would need five votes, just as a note for the record.

Mr. Vanderbilt: Okay, so we have six people, we need five votes to move it one way or the other. So, anyway, does anyone have a motion that they would like to make, and once the motion is made, then we can get into some discussion?

Mr. Dunbar: I'd like to make a motion. I'd like to make a motion that we approve based on the conditions of Maui County and I'd like to change one of the -- one of the periods, it says for one year, and I believe that two years would actually be a better -- a better end point because I'm not so sure that, you know, by the -- you have to apply six months in advance of -- of the end date and that would be the end of when the special use permit would be approved or denied by council, so one year is -- is a little short if you're going to -- if it's going to be approved, so that's my motion. All of the conditions and standards as highlighted by the Planning Department to be relative.

Mr. Vanderbilt: And your condition has no recommendation to the council?

Mr. Dunbar: Well, when you recommend approval of the conditional use, which we have the authority to do, recommendation for the special use would also -- well, it would be to approve to the council under the special use.

Mr. Vanderbilt: Oh, no, on the special use, we would -- we would approve that. We're the final say on the special use permit.

Mr. Dunbar: Oh, excuse me. You're right.

Mr. Vanderbilt: Yeah.

Mr. Dunbar: We approve the special use, recommend to County, conditional use.

Mr. Hopper: Yes, there would have to be a recommendation on conditional use and whatever you wanna do with the special use. I think, Planning, is this the conditions here, Nancy, this is for the conditional -- did you have a recommended conditions for a special use permit?

Ms. McPherson: I apologize. I should have read through the addendum report when the Chair asked me if I had any comments, but actually what we have to do for that is go back to the original recommendation because this is an addendum to that. So, on the original recommendation, the second part of it discussed the State Land Use Special Use Permit and the recommendation there was that it be deferred until the policy and ordinance that was going to be done by the council was acted upon.

Mr. Vanderbilt: Thank you. So maybe we'll just start with the, Commissioner Dunbar, if you don't mind, with just the motion and take action on the conditional permit and see where we go from there.

Mr. Dunbar: So you wanna split them up, is that -- is that what you're looking at?

Mr. Vanderbilt: I would think so, yeah.

Mr. Dunbar: Mike, is that --

Mr. Hopper: You can make a motion to do it either way you want. What we need to leave here with is a decision on the -- for the recommendations for the conditional permit, and either a deferral or a decision on the special use permit; both of which need to come with findings of fact and conclusions of law, and I'm not sure what findings and conclusions we currently have for the special use permit or any conditions there because the original application was to deny, so if you would recommend approval of the special use permit, there would have to be new findings, conclusions, and conditions transmitted, I believe.

Mr. Vanderbilt: And, as far as a special -- we do have the 90-day period we have to make our recommendation on the conditional permit; we have no time limit on which we have to make a decision on the special use permit.

Mr. Dunbar: Then I would amend my motion to approve the special use permit with whatever -- we don't have any conditions so it's whatever conditions are going to be deemed feasible, I'm not sure that they're so much different from the conditional, and then we would hold off and defer on the conditional use permit.

Mr. Hopper: Now there's -- the 90-day period, it applies to the conditional use permit. The special use permit has no time period. If you would defer on the conditional permit, then your time period would expire and then the -- it would go up to the council with no recommendation. I'm not sure if you had those backwards if you wanted to make a recommendation on the conditional and defer on the special? That's not what you said.

Mr. Dunbar: So the conditional is decided by us?

Mr. Hopper: Excuse me?

Mr. Dunbar: The conditional was decided by us?

Mr. Hopper: No, the special is decided by you.

Mr. Dunbar: The special is decided by us.

Mr. Hopper: The conditional by council. The conditional is the one that has the 90-day time period for you to submit your recommendations to council. The special does not have that time period. So you need to come out of this meeting at least with a recommendation on the conditional use permit.

Mr. Dunbar: Then I would recommend and make a motion that we approve the special use and, you know, usually there are all of the conditions that we're approving it under but it's not here and that being the case, I can only defer on the conditional.

Mr. Vanderbilt: So you would want to -- excuse me, Commissioner. We don't have the conditions on the special use permit, I don't believe, at least I can't find them right now.

Mr. Dunbar: They said it was in the prior ...(inaudible)...

Mr. Vanderbilt: Yeah, so -- and we have time to defer the special use permit but our clock is running on, if we want, to make a recommendation to the council, which probably has to be today. If we don't make a -- if we just -- if we defer action on the conditional permit, it'll go up to the council with no action. But if we take action on the conditional permit, it'll go up with an approval or recommendation for denial. And we can defer on the special use permit because we don't have a time limit and the council still gotta act on the conditional permit and when -- by deferring the special use permit, maybe we can determine the findings of fact and conditions that we need to support that.

Ms. McPherson: May I make a statement here?

Mr. Vanderbilt: Yes, go ahead, Nancy.

Ms. McPherson: I've been doing actually mostly long-range planning prior to this position. I've been studying, planning, or working in the field since about 1990. My understanding is, as I'm transitioning into the world of current planning, that these are tools to handle the exceptions that come up in the real world. On the other hand, the long-range planning tools that we have are the general plan and the community plans. Our dilemma here, from my perspective, is that, at this current time, we are entering into the general plan and community plan update phase. The reason that the original recommendation that you received previously recommended that the State Land Use Commission Special Use Permit be deferred, the decision on that be deferred, is because of this situation, because we are in a time of flux, and, yes, it's true that it's not fair to applicant who, you know, submitted all of their information in a timely fashion, but the problem with special use permits and conditional permits is that, in a way, they can parcel-by-parcel, although we are evaluating these as unique situations and one a case-by-case, parcel-by-parcel allow a defacto change in land use, that is what is the end result. And so in order to try to facilitate good long-range planning, the department's current position for these kinds of land

use change allowances, whether big or small, whether they're asking for a district boundary amendment or a, you know, a special use permit or conditional permit, is that we are trying to incorporate long-range planning into the radar; that this kind of thing needs to be on the radar and needs to be part -- we're not going to solve this issue here. We really need to solve it with the community plan update process.

Mr. Vanderbilt: Thank you, Nancy. Okay, getting back to Commissioner Dunbar and your motion.

Ms. McPherson: Sorry.

Mr. Dunbar: Well, just as a comment. You know, having had my vacation rentals and have no complaints about them; no -- you know, everybody loves them; I pay all my taxes; I pay all the increase, you know, corporate taxes on them; there aren't blue tile roofs sitting out in the open; I don't have perverts walking on the beach; you know, there is lots of access to go down and people lay nets out there all the time. My personal is that long-range or no long-range, you know, these things have been around since 1996, over ten years, and -- and they suited the community. You know, I get a lot of people that come and they -- I mean the Miguel's are going to be having a wedding and, you know, they're asking to book these things in. So the point I'm trying to make here is that we were looking at long-range 10-11 years ago and there's been no problem. You know, as I pointed out before, any vacation rental that's going to -- and B&B that's going to come before us, any business that has to come before us in order to get a conditional and special use permit are going to be judged on its individual merits where it rest on a property. This doesn't open up, you know, the floodgates for everybody in the world to have a vacation rental. So how this was written up today is rather confusing because, you know, you have the recommendations for the special use on one side, and you have the recommendation for the conditional use on the other side.

Ms. McPherson: Well, may I respond?

Mr. Vanderbilt: Respond, yeah, and then we'll try to come up with a motion here and then we can -- and then we can discuss it further.

Ms. McPherson: Okay, sorry. The idea is that with the conditional permit for a term of one year that that would allow that use to continue to occur legally while all these other pieces of the puzzle are sort of falling into place, then at the end -- you know, prior to the end of that time period that -- that use can be reevaluated.

Mr. Dunbar: Yeah, I think it's always reevaluated; I'm just not so sure that one year gives the applicant the time to figure out, you know, I mean she's going to have to come in in six months in order to apply again in order to have her come out in one year.

Mr. Vanderbilt: Okay, well, Commissioner Dunbar, what would your preference be for a motion?

Mr. Dunbar: Well my preference for a motion would be to approve and recommend approval to the council.

Mr. Vanderbilt: For a two-year period?

Mr. Dunbar: I believe a two-year period will allow, you know, would allow enough time to -- to see if there are any special problems within that area.

Mr. Hopper: And you would need to specify all of the conditions that you would want that approval to be in the motion whether it's based on what the Planning Department has provided or if you had additional. You can't have a motion, as I understand your motion now, it would be to approve unconditionally the way that you have stated it, so you'd have to state it if it's with conditions.

Mr. Dunbar: Well, it's with the conditions of the conditional use permit as shown on -- on this docket and I guess what we'd have to do is go back to the May 9 --

Mr. Vanderbilt: Nancy, are the conditions that are in the packet, the recommendation that was in our packet or the conditions that were in our packet, is that all the same conditions that were -- wait, no, those were the only conditions that had been proposed in the event of approval because before your recommendation was denial, so these are the Planning Department's recommendations if this Commission decides it wants to recommend approval to the council. Is that correct?

Ms. McPherson: These are offered to the Commission.

Mr. Vanderbilt: Which we can either take these as they are or amend them in any way?

Ms. McPherson: Yes.

Mr. Vanderbilt: Okay.

Mr. Dunbar: But the question is: Are these the recommendations for the conditional?

Mr. Vanderbilt: Yes.

Mr. Dunbar: Okay, so then where are the recommendations for the special?

Mr. Vanderbilt: We do not have those.

Mr. Yoshida: If I may say something.

Mr. Vanderbilt: Yes.

Mr. Yoshida: I believe the department had recommended deferral on the special use permit to allow the legislative body, the council, an opportunity to decide on the conditional permit because they need both approvals in order to, you know, get all the permits that they need. The council, the legislative body, will also be dealing with the general plan update and they will be dealing with the community plan update, so that was the purpose for the deferral on the State Special Use Permit.

Mr. Dunbar: Okay, then I amend my motion again to --

Mr. Vanderbilt: Okay.

Mr. Dunbar: To approve the conditional use with the recommendations that are listed 1 to 20 on this docket and defer the special use until the legislative body has an opportunity to act.

Mr. Vanderbilt: And the approval for a two-year period?

Mr. Dunbar: One year.

Mr. Vanderbilt: For one year. Is there a second to that motion? Alright, having no second, the motion dies. Is there another motion that somebody would like to make for this Commission to consider? Commissioner Chaikin.

Mr. Chaikin: Yeah, I just wanted a little bit of clarification. There's, what, there's six of us here. In the event that we get less than five to vote for a particular position, what does that mean? Is that the same thing as no action by this committee?

Mr. Vanderbilt: If we get less than five, our 90 days will expire. It will go to the County Council with no recommendation from the Planning Commission.

Mr. Chaikin: Well, let me just reiterate a little bit about what I said last time. I, basically, I was saying that I'm not supporting this application at this time, and it has nothing to do with the Feeter's. I think the Feeter's are outstanding members of this community. They donate their time and energy to the community. They have donated substantial funds to the community, and, in their application, they basically state that a percentage of the proceeds will go for the community. The reason why I don't support this at this time is because, basically, our community has a plan and this application does not fit into that plan. And if this Commission had another plan that we thought was a better plan, then that would

be great, but we don't. And if this particular application was, basically, an application where it was unique, I could somehow how we could pass this, but it's not unique. There's a whole lot of vacation rentals on the East End that are just like this one. So I'm just trying to figure out is if we did go ahead and approve it, and the next guy comes in, how could we tell that guy no because we just told the Feeter's yes. We can't tell that guy that we like the Feeter's better so we're not going to give you a permit. We can't tell the guy that it doesn't fit into the community plan. I mean what are we going to tell these people? And it wouldn't be that big of a deal if there were just few, but you've gotta step back and take a look at the big picture and the big picture is that, for years, there has been no enforcement, and now we have a new mayor, and the new mayor is coming forward and saying, hey, I wanna start some kind of enforcement policy. Now, we don't know what that means, but it can't be good news for people that are operating vacation rentals. And if she does come forward with some kind of enforcement policy, we don't know specifically what that is going to be, but if you look at Oahu and what their enforcement policy is, there is fines of \$1,000 per day for each vacation rental that's rented out without a permit. So, when you look at the vacation rentals that are operating illegally here on this island, they would either have to quit, or try to operate their vacation rental and not get caught, or come to this Commission for a permit. So we could have quite a few people coming forward to this Commission to try to get approvals and I don't see how this Commission, in good conscience, can approve these -- these permits when it's contrary to the community plan that we have in place. I think that it sends the wrong message out. I think if we approve this, it's sending out a message to the community that, hey, this Molokai Planning Commission is not open for business, we're accepting applications and approving applications for vacation rentals, and that simply would be kind of hot water for us because it's not consistent with our community plan. I think it also sends the wrong message out to people that come to Molokai and wanna build a house. People are building big huge houses on this island. Big resource hogs. I mean we have limited resources on this island. They're building these big huge houses. They don't even plan to really live here. And they're probably, in the back of their minds, thinking, hey, maybe we can just rent this out as a transient vacation rental, and we sent out the message that, hey, we're approving these things even though it's contrary to our community plan, I think we're sending out the wrong message. And I think that, you know, the Feeter's, you know, in all fairness to the Feeter's, they have done exactly what they were supposed to do. They came forward and they're trying to get legal and trying to do it right, and that's why my position is that what I think we should do is we should defer this until we get through the community plan process, and if we can make transient vacation rentals a part of our community plan, then this Commission should move forward and begin the process of approving some of these permits. Now, I'm not sitting here saying that, you know, I would like the whole East End to be vacation rentals. You know, my personal view is that I think if we had a small, a limited number of legal vacation rentals on the East End, it would be okay. But the current policy that we have is just -- it's too wide open and we don't know where we're going.



Mr. Vanderbilt: Commissioner Chaikin, do you have a motion you'd like to make?

Mr. Chaikin: So I would like to make a motion, I guess at this time, that we recommend to the Maui County Council to defer action on this request for a conditional permit up until the time that the Molokai Planning Commission takes action on the special use permit, and I think we would take action on the special use permit after we go through our community plan process and if this is acceptable, acceptable activity within the community plan, then that would be the time for the Feeter's to be first in line to get a permit. And if we cannot get vacation rentals to be part of the community plan, then I don't think that this Commission should be making those approvals.

Mr. Vanderbilt: So let me get the motion straight. You wanna make a motion for this Commission to defer action today or make no recommendation today on the conditional use permit and send a recommendation to the County Council that they don't take action on the conditional use permit until such time as the community plan process for Molokai is completed and --

Mr. Chaikin: That'll be correct. That's correct.

Mr. Vanderbilt: Okay, so that's the motion on the conditional use permit. Is there a second?

Ms. DeCoite: Mr. Chair, am I allowed to comment on this if I second this motion?

Mr. Vanderbilt: Well, you can --

Ms. DeCoite: We're going to have discussion after?

Mr. Vanderbilt: No, no, I would -- it's best to just second it if you want for --

Ms. DeCoite: Okay, I'll second the motion.

Mr. Vanderbilt: For discussion and then --

Ms. DeCoite: I'll second the motion.

Mr. Vanderbilt: Okay, now the maker of the motion, I'll give the mike to first for any further discussion you might have and if not, does anybody else want to get involved in the discussion at this time on the motion?

Ms. DeCoite: You know, I have to say I was actually going to deny it. You know, I've known the Feeter's a long time and it makes it even harder when we have one of the

commissioners sitting on the table with us, and, you know, in all fairness, it does not adhere to the general plan, the recommendation has come down from the Planning Department in Maui, and I also believe that when the general plan is done and final, it's in stone cold, that the Feeter's are first in line and that the enforcement, by county, is done. What's good for one is good for all so that the illegal vacation rentals would also be hit and that it is enforced properly by the County. Thank you.

Mr. Vanderbilt: Is there any other discussion?

Mr. Hopper: I just wanted to clarify the motion. When would the Commission act on the special use permit?

Mr. Vanderbilt: We didn't say. The motion is that we will -- we recommend -- we're sending it up to the council with no recommendation from the Planning Commission, and recommending to the council that it not take action on the conditional use permit until Molokai's community plan process has been completed. It had nothing to do with the special use permit.

Mr. Hopper: Okay, I thought I had heard differently.

Mr. Vanderbilt: Thank you.

Mr. Chaikin: Can I clarify my motion?

Mr. Vanderbilt: Go ahead.

Mr. Chaikin: Okay, yeah, basically, we would be sending it up to the County Council telling them not to take action on this permit request until the Molokai Planning Commission takes action on the special use permit. And, at that time, we can send a notification to them or whatever for them to take action and consider it at that point. And we, this Planning Commission, will take action on the special use permit whenever we feel that the time is appropriate to do that after the community plan is adopted by the County Council.

Mr. Hopper: I just wanted to note my concern. The special use permit, while the provisions are open, states that the -- the application for the special use permit shall be reviewed by the Planning Department and scheduled for hearing and action by the authority as soon as practicable. I believe that's the basis for sort of the open-ended time period for taking action. However, in this case, you have an existing community plan, I understand that there's an update, but you're not scheduling any sort of date where you're going to take action on the special use permit and I'm a bit concerned with that as far as not -- that you're not processing the application at all, basically. It's before you right now and I would -- it may not be practical -- practicable to act on the special use permit while you would be

waiting for council for their recommendations because the use couldn't continue and it couldn't be allowed to operate until the conditional use permit. However, you're talking about a community plan update period, which is uncertain at best, it could be two to three years from now, and I'm uncomfortable with the motion that would be that open-ended as far as the -- the time period for action. Essentially, you're just -- you're deferring the application completely.

Mr. Chaikin: Let me just make a comment. That this application was first filed in 2001, so it has been a considerable period of time, and I don't see why that since we're going through the community plan process now that we can't wait until we're finished. I think that's a reasonable request.

Mr. Dunbar: And, certainly, I can concur with that. You know, I mean it says "when practical." And when practical is going to be when the community's spoken on the plan. And so, yes, it's subject to interpretation, but that's what we're doing here, we're interpreting.

Mr. Hopper: I know that there's a motion and a second that you guys have to take a vote, but that's just my -- that's my advice on the legality of the situation.

Mr. Vanderbilt: Okay. Is there any further discussion? Okay, hearing none.

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

**It has been moved by Mr. Chaikin, seconded by Ms. DeCoite, then**

**VOTED: to recommend to the Maui County Council to defer action on this request for a conditional permit up until the time that the Molokai Planning Commission takes action on the special use permit, and the Molokai Planning Commission would take action on the special use permit after the community plan process is completed.**

**Assenting: K. Dunbar; L. DeCoite; L. Kauhane; S. Chaikin; M. Pescaia**

**Abstaining: B. Feeter**

**Excused: S. Napoleon; J. Kalipi**

Mr. Vanderbilt: Okay, the motion carries. So, with the -- with the Commission's consent, I would like to request that a letter be sent from the Chair, on behalf of the Commission, to the County Administration regarding their enforcement policy and that we ask the Planning Department to strongly consider exempting from enforcement action the Feeter's until a

decision has been made on their application given the fact that they duly put in all their documentation during the amnesty period, which was established by the administration, and that -- so that was basically it, that they get some consideration on the enforcement side while their approval is -- because their approval process would still be open based on this motion, they haven't gotten approval or denial, so they're still in the approval process, so unlike a lot of -- a lot of the other vacation rentals around so --

Mr. Dunbar: Yeah, Mr. Chairman, I think it appropriate that you do that but, you know, I'd only request that you pass it by us before it goes to the Planning Department.

Mr. Vanderbilt: Terrific. That's a good idea. We'll have Planning Staff draft it up.

Mr. Hopper: Yeah, in fact, for it to be sent on behalf of the Commission, you'd all have to take a, you know, five member vote on something like that whether it would even be -- it would be urging the administration not to enforce. I don't think there would be any authority to actually withhold enforcement. But, yes, you'd have to take a vote of five of the members in order to send a letter to that effect.

*(Commissioner Dunbar was excused from the meeting at 3:33 p.m.)*

Mr. Vanderbilt: Thank you. Alright, hearing -- there's no more on this issue, how we doing on time, Clayton? Suzie, can you still catch your plane or --

Mr. Yoshida: Well, I guess, we're, Mike and I, are here for the Land Use Committee meeting this evening. If the Commission wants to move forward through the rest of the agenda, we can do so.

Mr. Vanderbilt: Okay, we -- if it's okay with the Commission, I'd like to continue on because we've had -- we haven't been able to get to any of the other items on our agenda because of the short time frame we've been operating in and this issue has been fairly time consuming. So, does anybody have any objection of moving on with the agenda? Okay.

## **E. COMMUNICATIONS**

- 1. April 25, 2007 Letter Received from Molokai Resident Glenn Teves regarding amending the Maui County Agricultural District Ordinance.**

**The Commission may act to request a workshop, request that the County amend the County Code regarding ag subdivisions, request that the County amend Section 19.30A regarding ag subdivisions, or take some other action.**

Mr. Vanderbilt: Okay, next on the agenda is Communications. We received a letter April 29 from a Molokai resident, Glenn Teves, regarding amending the Maui County Agricultural District Ordinance. And down in the chair's report, we talked about having some kind of workshop process involved in -- regarding Molokai agricultural subdivisions, and I don't have Mr. Teves's letter with me so I can't recall, but I think his concern was that there's a lot of resubdivision of existing ag subdivisions, or at least one or two that are going through the process now from the West End, and I think there was some concern as to where this Planning Commission -- just understanding the whole situation with ag subdivisions, and so, anyway, that's just the communication and maybe if any -- anybody in the audience has any public comment on this, please feel free to come up. If not, I'd like to just open it up to the Commissioners to see if they would be amendable, at some time in the future, to having a workshop so we could better understand the agricultural zoning ordinance and how it may or may not apply to Molokai and how it might be improved or not improved. Commissioner DeCoite.

Ms. DeCoite: I think that's a good idea. Zoning's been changing day in and day out, and if I'm not mistaken, we also have a meeting tonight, right here, on zoning. So, yeah, I'm all for an ag workshop. Thank you.

Mr. Vanderbilt: Okay, so -- so there's consensus here that we'll ask staff to try to set up a workshop.

Mr. Chaikin: Yeah, I just wanted to say that I'm in concurrence with that, and I think it would also be good if we kind of expanded the subdivision thing to all subdivisions, even subdivisions that aren't in ag cause, you know, I, personally, don't understand that whole process of subdivisions, so if we could just get an overview of, you know, the whole subdivision process and the approval process for subdivisions, I think it would be good.

Mr. Vanderbilt: So would you be okay with it being a -- a workshop on subdivisions, ag and other subdivisions, as well as better understanding the ag ordinance, ag zoning ordinance?

Mr. Chaikin: Yeah, I think anything that we can do to educate us, I mean, we're way ahead because, you know, none of us understand any of this, I certainly don't and I'm sitting up here supposed to understand that stuff and I don't. So whatever we can do, you know, to educate us more I think is a big plus. And I would even take it a step further and even houses that aren't -- properties that aren't subdivided, you know, what is this ohana housing thing, you know, it's not really a subdivision but it's multiple houses, and I don't really understand who gets to do it and who doesn't get to do it and somehow if we could work that into the whole thing it would be good.

Mr. Vanderbilt: Well, Commissioner Chaikin, thank you for that, expanding the subject, because in our community plan, since 1984, has been a policy statement to change the

subdivision laws so that the community has some say, or public hearings at least. Right now, any major subdivision is approved at the County level with no input from the Molokai community unless it's in the SMA zone, so anything up behind Kaunakakai, up in Kalae, East End mauka of the road, just we -- we have no say on. So, with that, I'll instruct staff to try to schedule a workshop for us.

Clayton, I'm going to skip the chair's report right now, and can you give us your Director's Report at this time and I'll come to the chair's as soon as I find all my stuff?

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

- 1. Planning Department's Follow-up Report on matters raised by the Molokai Planning Commission at its April 25, 2007 meeting concerning legal challenges to Environmental Impact Statements at the State Land Use Commission level**
- 2. Pending Molokai Applications List submitted with the May 9, 2007 Agenda**
- 3. Pending Molokai Applications List submitted with the May 23, 2007 Agenda**
- 4. Pending Molokai Applications**
- 5. Closed Molokai Applications List submitted with the May 9, 2007 Agenda**
- 6. Closed Molokai Applications List submitted with the May 23, 2007 Agenda**
- 7. Closed Molokai Applications**
- 8. 2007 Hawaii Congress of Planning Officials Conference - September 26-28, 2007, West Hawaii.  
The Commission may vote to cancel or reschedule their meeting of September 26, 2007 so that members can attend the conference.**

Mr. Yoshida: Thank you, Mr. Chair, members of the Commission. Regarding the April 25 meeting regarding legal challenges to environmental impact statements at the State Land Use Commission level, Nancy, you had a chance to check on that? No? Okay. Okay, we're checking on that. We did submit the list of pending and closed Molokai applications submitted for your meetings of May 9, May 23, and today.

Mr. Hopper: I can talk briefly about Item 1. I think there was a question kind of posed to both of us three meetings ago or so.

Mr. Yoshida: Yeah, right.

Mr. Hopper: You want me to say something about that?

Mr. Yoshida: Yeah, if you have the ...(inaudible)...

Mr. Hopper: Yeah, the question a while ago, and I'm not even sure how many of you were here, but was by DeGray and he had asked about an EIS, if it's challenged in court by a commenting party or a party saying it's inadequate, what happens then, basically, and my statement at the time was that it would depend on the court's order about the challenge to the EIS, what would happen then, but that I would check with the Land Use Commission and the OEQC if they knew anything in particular about EIS's or EA's that had been challenged. The LUC got back to me. They said they didn't know of anything offhand and that they had not known of anything recently that had gotten successfully challenged in the court. And another -- I think the OEQC never got back to me about specifics but they did not know of an EIS in Hawaii that had been successfully challenged either. One of the -- I've seen, actually, case law expanding to the Federal Courts in which an EIS was deemed to be inadequate. Generally, the court order is to do more studies or include certain information in the EIS. It's not to begin the EIS procedure over again. You, in fact, have recently with the Superferry situation in Hawaii or with the State of Hawaii and the -- and Maui County challenging that in giving a ruling a from Judge August, recently, that the traffic study was inadequate, they actually have a specific evidentiary hearing scheduled in order to determine the remedy in that case and what sort of order it would be. So that sort of reemphasis my original advice that if an EIS is found to be inadequate, the remedy is generally crafted by the court and generally the remedy is here is the additional information you need to provide, or additional viewpoints you need to clarify, things like that, and I'm not aware of a case where the EIS process had to begin all over again.

Mr. Vanderbilt: Mike, when you were talking with the LUC, I know they couldn't recall of a successful legal challenge, but was there any information regarding whether there had been a legal challenge and -- on adequacy?

Mr. Hopper: I know there have been them. I've seen the case law on them. I've seen them in Hawaii. But the question that I was posed at this last meeting was that if there's a successful challenge, what happens, and I was correct in my original advice that it really does depend on the case and what the court orders in that case.

Mr. Vanderbilt: So, if a -- if the Land Use Commission says that a final EIS is adequate, and that's challenged in court, then that's just subject to the normal court proceedings and time -- time lines for those proceedings?

Mr. Hopper: Yes. Once it goes into the court, it's really the judge's case and the judge can decide what remedies would be needed in order to make the EIS adequate.

Mr. Vanderbilt: Thank you. Were there any questions from the Commissioners on this? Okay, and with regard to the pending and closed applications on Molokai, Commissioner DeCoite?

Ms. DeCoite: You know, I get one question. Couple months back, we denied a permit on Kawela, it was a swimming pool, and I was told we had the final say on that permit, and then that went back to Maui and that woman was granted her pool. So I kinda wanna know what's up with that? I was kinda lost on that one.

Mr. Vanderbilt: Clayton, do you have any -- would that -- would that have been the, the only I can think of is the Walsh pool. It came before us. Is the Walsh pool on this list? It's a closed application.

Ms. DeCoite: Well, I think Fasi went over and then they filed some kind of exemption through Planning and they got it and I mean, based on the EIS and whatnot, you know, I -- I denied it and --

Mr. Vanderbilt: Well, let's check this out to see if it's on our agenda. Do you see -- it would be I think the parties name was Walsh. Does anybody see it on -- it's gotta be on closed, it may not be on pending because -- and if it's not on the list, then I suggest that we schedule it for the next -- next agenda item. Okay, well, it doesn't -- do you see it on there anywhere, Clayton?

Mr. Yoshida: No, I don't. I don't see it on the --

Mr. Vanderbilt: Okay, since it's not on the agenda and it's not part of the pending or closed documents, I would suggest that, if you could, Clayton, check in to see what happened with that and could you -- could you give us just sort of a written summary of what happened after it left the Molokai Planning Commission?

Mr. Yoshida: Okay.

Mr. Vanderbilt: Thank you.

Mr. Yoshida: The final item we had was this year's Hawaii Congress of Planning Officials Conference that's scheduled for September 26 through 28, hosted by the Hawaii County Planning Department. We note that September 26 is a regular meeting date of the Molokai Planning Commission and we were wondering if the Commission would vote to cancel that meeting or reschedule that meeting so that the members, interested members, can attend the conference.



Mr. Vanderbilt: It's up to the -- it's up to the Commission, but I would recommend that we reschedule the meeting. If people wanna go to that conference, fine, but -- a motion? Okay.

Ms. DeCoite: I'd like to make a motion to reschedule our September 26 meeting to a further date so that we can attend this workshop.

Ms. Mikiala Pescaia: Second.

Mr. Vanderbilt: Any discussion?

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

**It has been moved by Ms. DeCoite, seconded by Ms. Pescaia, then unanimously**

**VOTED: to reschedule the September 26, 2007 meeting to a further date so Commissioners can attend the HCPO Conference.**

Mr. Vanderbilt: Motion carries unanimously. Okay, so maybe at the next meeting, Clayton, you can get back to us with some alternative dates that would work for you guys and us.

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

- 4. Duplicate Files in Molokai Planning Commission Office**
- 5. Format of Master Copy of Minutes filed in the Planning Department - Molokai Office**

Mr. Vanderbilt: Okay, just going down the Chair's report, Item F, item number -- Item No. 5, I sent a draft copy of something to the Planning Department, I don't have it with me, but, basically, if you go look in our files, they're sort of disarray, and we put a lot of time in here, and Suzie does a good job with the minutes, and it's a historical record, and I would like to propose that, with this Commission's consent, that we have a master minutes file where the minutes that we approve are there along with a summary sheet so if somebody goes there, they can see who attended, who testified, what documents were provided to the Commission before the meeting that would be attached, as well as attachment of all documents that were handed in at that meeting so that anybody, a year from now, any commissioner or any Planning staff member who's trying to get a historical read on a subject that's before the Commission can easily go back there and find it because, right now, I don't have any idea where a lot of stuff is in looking at our files. Commissioner Feeter?

Mr. Bill Feeter: Yeah, thanks, DeGray. Where would these be stored and would they have public access or commissioners access?

Mr. Vanderbilt: Definitely. They would definitely have public access, and I think it would be a service to the public and the staff and to future commissioners, and they would be stored, well, they could be stored -- they're going to be stored on Molokai but they can be stored on Maui too and, for three years, I think you remember, Bill, that we've been asking that we have duplicate files on this island and we still, to this day, do not have duplicate files on this island, and I think that's something else I'd like the Commission to agree that we -- we really push the Planning Department to get us duplicate files.

Mr. Feeter: Would a motion be appropriate to that effect?

Mr. Vanderbilt: Well, I think it would be good if we had a motion to create a master -- a master minutes file with a summary sheet and documents attached, as well as a request to the Planning Department to make sure we have duplicate files on Molokai. I would entertain that.

Mr. Feeter: Yeah, I'd like to suggest the public library as a receptacle rather than the Planning Office next door.

Mr. Vanderbilt: Well, I don't think we can leave the official documents in the Planning Department but we can certainly make it known -- I mean I know when I go over to Maui, you have complete access to their files. I think anybody coming over to the Planning Department has complete access to files and, Nancy, do you have anything you wanna add?

Ms. McPherson: Yeah, I'd just like to share with the Commissioners that I've been starting to work on a request to get -- pull all the boxes of Molokai Planning applications, as far back as we can go, including also the minutes, this is going to be a big project, but I'm hoping maybe we can get a student intern or somebody. You know, if I can, I'd like to bring them over to Molokai; if we have to do it on Maui, then I'll have to do it, you know, incrementally, but, basically, scan those documents and also copy them at the same time so that we've got optical storage of all Molokai files and we also have hard copies, and so I'm -- this is starting to -- I'm starting to formulate this project so --

Mr. Vanderbilt: And I think, thank you, Nancy, for that, and I think that's really important because, for instance, on this vacation rental, there was two large files on the Dunbar -- Dunbar approvals, whenever they were, sometime ago, which would have been very helpful for staff here to have in preparing reports. When we went over to Maui, they found one but they couldn't find the other one, and then they finally found it three or four weeks later in another storage box somewhere down in the storage place in Kahului. So I think

it's really important because a lot of history and precedent is set with these meetings and a lot goes into getting people out and we need to keep a record for future people that are involved, both public and government, in the planning process on Molokai so --

Mr. Chaikin: Chairman? So, Nancy, are we -- the current files ...(inaudible)... is that something that's doable or I mean what do you think?

Ms. McPherson: Well, I think the Chair has discussed that with the department previously and, you know, direction or request from the Commission would definitely not hurt but, currently, no, we're not doing that.

Mr. Chaikin: Okay.

Ms. McPherson: We do post -- the minutes are now scanned and posted as pdf's on the website. Since about 2001 possibly, I think it goes back that far, maybe not that far back, but I'm talking about I'd like to go back as far as possible and get everything eventually.

Mr. Chaikin: Well, you know, I just think it's, you know, I think if you have a limited amount of time and energy, it would be great to work on current stuff and make sure the current files are really complete, you know, and then, you know, if we need something from, you know, backwards, then we can maybe get it from Maui or something but, you know, if we don't even have current complete files, then we're a little bit in trouble.

Ms. McPherson: Well, what I've been doing is keeping complete files on Molokai. What I haven't been able to keep up with is having everything copied and then also stored on Maui. You know, I prefer optical storage, and then if someone needs a copy of something, then we can print it out cause it's been scanned, but, you know, I only travel back and forth one day a week and the clerical there is usually really busy and they really can't -- they don't really have the time to help me. It'd be better if we could do it here on Molokai, but that also involves coordinating with Nina and that sort of thing. Clayton has directed me to be doing that and so I just -- I haven't been able to keep up with it.

Mr. Chaikin: Okay, one other quick question. Commissioner Feeter brought up that, you know, maybe it would be a good idea to have, you know, a copy of the minutes in the library. Does that seem like a reasonable request or what do you think?

Ms. McPherson: I'll let Clayton answer that one.

Mr. Yoshida: Copies of the full agenda packet with the minutes are sent to the library.

Mr. Vanderbilt: Thank you, Clayton. And, Commissioner Feeter, I think that to supplement that, when the minutes, the final minutes are drafted and we can attach the summary sheet

and any additional stuff that came in during the meeting, like today we got three or four -- four pieces handed to us today that wouldn't be at the library because the only thing at the library is what we get initially in our package so --

Mr. Feeter: Actually, from what I heard Clayton say, and thank you for saying it, Clayton, that the minutes and the agendas are sent to our library.

Mr. Vanderbilt: Yes, that's the package that we get.

Mr. Feeter: Well, isn't that adequate?

Mr. Vanderbilt: Well, like today, for instance, there were several testimonies handed in, so all I'm saying is that we supplement that with -- with the summary sheet.

Mr. Feeter: Well, one last comment. I think that it's the quality, not the quantity and I see that some handed in ones may not be creditable, frankly, and I --

Mr. Vanderbilt: Well, you cannot say that they're not creditable, Commissioner Feeter. I mean everybody's testimony that we receive has equal weight, it really does, and -- and I think that what we could do is have a note in the library, when it's sent to the library, that any further documentation may be at the County files so then they can go check themselves, yeah.

Mr. Feeter: Yeah, well, one last comment. How long are they stored in our library because I know Sheree has very limited space over there and our library will be expanded, that's in the plans?

Mr. Vanderbilt: We can have Nancy check on that.

Mr. Yoshida: We also send copies of major permit application booklets for upcoming public hearings to the library so those are available at the library and at Mitchell Pauole. And we also send copies of any written testimony submitted at the meeting or handouts submitted at the meeting to Mitchell Pauole so copies are available at Mitchell Pauole.

Mr. Vanderbilt: Thank you, Clayton. And I guess what I'm saying that somewhere there ought to be one master that has everything right there because, otherwise, if you're trying to find out, you don't know what's missing or what isn't so --

**7. Report on State Office of Planning May 29 meetings on Molokai concerning Molokai Ranch Master Land Use Plan and La`au Point**

Mr. Vanderbilt: Okay, with that, let's see, I had a report on the State Office of Planning May 29 meeting at -- where did this come from? Oh, okay. Okay. Well, anyway --

Ms. McPherson: This was sent by email to me couple days ago.

Mr. Vanderbilt: As you recall, on the -- Office of State Planning came to Molokai on May 29 and its Director, Laura Thielen, who -- they came over here to get more information on both sides of the issue of Laau because the Office of State Planning represents the Governor and the State's interest before the State Land Use Commission, they're a party to Molokai Ranch's application to the Land Use Commission for a State zoning change that would be needed if Laau Point development wants to go through. Besides the State Office of Planning, the County office of Planning is also a party to that. Because of that, I had asked the State Office of Planning if they would mind if a representative from the Planning Commission sat in on the meetings that were going to be closed so that at least we knew what was -- and could do a report to the Commission and to the Planning Department. The Office of State Planning said that they did not want to make that request to the Molokai Enterprise Community or the Land Trust. I talked with Abby Mayer about doing that, and he said he would check, and whoever made the decision just decided it'd be better if they had the closed meeting because if you open it to the Planning Commission, you would open it to everybody. So, anyway, we don't know really what happened at that meeting. I did go attend the public meeting in Kaunakakai, as did Nancy, and all I can say is that there was a lot of issues brought up, there was an agenda, and it had a lot of issues and various members of the community presented those issues to the State Office of Planning, it was opened to all members of the public. There was very little in there that was new information that's not contained in the draft environmental impact statement with the exception that there was concerns raised that alternative means were not looked at for Laau and that, at this point, apparently, there is one or two major wind companies that are looking at an option of supplying power to Oahu and buying out the entire ranch and doing something to -- as an alternative to Laau. The Office of State Planning asked who those people were, I think it was Matt Yamashita that was speaking, and he said that he was not at liberty give those names out, so that's as far as that went. And so, anyway, I just wanted to report on that, on that meeting to the Commission.

Ms. DeCoite: You know, I wasn't there so I kinda just wanted to ask one question. Was there broadband support for Laau?

Mr. Vanderbilt: Well, the public -- the public did not have a chance to speak. The Office of State -- there was about 200 people there, and the Office of State Planning was late getting there, and so the public didn't have a chance to interact so it was only the speakers hitting various issues, legal issues, history issues, water issues, and each made a presentation, but there wasn't time to interact with the public. Well, one other thing. The meeting was filmed by AKAKU so it'll be -- it'll be airing on AKAKU. I don't know if it's

gotten over to -- Dan, has it gotten over to Maui, the meeting at Kulana O Iwi? Alright, he said it was sent over so it probably is showing as we speak and later in the week so, anyway, if any of the Commissioners wanna tune into that, they can get an update.

### **1. Rescheduling of the Starting Time of Regular Meetings**

Mr. Vanderbilt: And the other thing is No. 1, just to get -- I'd like to get some input from the Commission. Today, we had the luxury of a little more time because Clayton's staying over and Mike's going to be here for tonight's council meeting, but I was just wondering if the Commission might consider starting our meetings a little earlier, if -- only because I think the Planning Department catches the 7:45 plane from Maui, so they're over here by 8 and they usually have some things to do, so we could -- we could start a little earlier. I know on Maui they start at 9 and run all day but that's cause they have a lot more things, but I didn't -- we have two options: we can do that, or we can just request the Planning Department take the later flight, I think there's a Pacific Wings flight that goes at 7:30 now so --

Ms. DeCoite: DeGray, just -- I know, I think it was Ruthy or was it Aunty Judy, that commented if they could do it in the evenings. I know hotel is a issue and whatnot, but I don't know. Is that an option or --

Mr. Vanderbilt: Well, I think, in the past, what we've done is if there was a issue of great interest to the community, we would try to have a night meeting. I think this vacation rental application morphed into one that had a lot of community interest, and maybe we didn't -- we didn't gage that, but I would think, as far as a evening meeting, we should still maintain a position that if it's something that's of great interest, but I'm open to the Commission whether we wanna have evening meetings or day meetings, but I was just wondering if we might consider, and we can work with the Planning Department to see if we might come back with some options for maybe starting the meeting a little earlier. All of you work and it's tough to get here even at --

Ms. DeCoite: Well, you know, if we start early, you're going to have to bring us lunch, right, DeGray?

Mr. Vanderbilt: I'm not. Mike will bring the lunch. So, Mikiala? Commissioner Pescaia?

Ms. Pescaia: Would the time be set for every meeting? Like it has to be the same time? I mean would it be possible that if we know something is coming up on the agenda of high interest, that we could maybe schedule the meeting to start at 2 and run till 5, you know, a little bit later in the afternoon where people who were working would then have the opportunity to come in and kind of accommodate the workers but yet they can still get out on the 7:30 flight and we can still have enough time to get through the agenda?

Mr. Vanderbilt: Clayton?

Mr. Yoshida: We've done in the past if we had enough advance notice. Say when the Commission was dealing with the EIS, you know, they wanted to start the meeting later, so we had a late afternoon meeting and starting at 4:30. For that Bob Carroll TVR bill, that meeting was conducted in the evening because the Commission wanted to have people come out and have an evening meeting. So I think on the more controversial items, we'll consult with the Commission. But, typically, those are like late afternoon or evening.

Mr. Vanderbilt: Okay, so I guess as far as the Commission is concerned, we'll just continue to operate and try to make the time of the meeting fit with the public and based on the interest in the subject. Yeah, Commissioner Chaikin?

Mr. Chaikin: Yeah, and, Mr. Chair, if you could just work closely with them so if there is a fairly large agenda that we need to get through, then maybe you can get them to commit to take the later flight; otherwise, we're going to be, you know, we haven't gotten through our agenda yet, so I mean I think it needs -- you need to take a look at each agenda and see what's on it and kinda try to gage whether or not, you know, you think that they should stay late, if that's even an option.

Mr. Vanderbilt: Well, and I think that's one of the things in the rules, that's one of the chair's duties, the Planning Department is supposed to coordinate with the chair, but I don't know exactly what that means, but I haven't gotten many calls from anybody trying to coordinate with me, but maybe I'm just difficult to coordinate with. So, anyway, but --

Mr. Yoshida: I think we'll have an item coming up at your next meeting because the GPAC's are almost finished with the Countywide Policy Plan so then the next step is it goes to the planning commissions and maybe how you wanna deal with that.

Mr. Vanderbilt: Okay, well, that -- that won't be by our next meeting?

Mr. Yoshida: Yeah, we can discuss possibly scheduling at the next meeting.

Mr. Vanderbilt: Okay, thank you.

## **H. ANNOUNCEMENTS**

Mr. Vanderbilt: Okay, are there any announcements by any of the Commissioners or anybody in the public have anything they wanna share? No? Okay.

Ms. DeCoite: One --

Mr. Vanderbilt: Commissioner Chaikin?

Mr. Chaikin: Yeah, Mr. Chair, we've had, you know, in the past, we've had you know in the beginning of the meeting we allowed people to come up here and provide testimony on any planning item that they think's important, and, in fact, we have had people come up here and provide testimony to this Commission, and I think when those people take the time and the energy and the effort and get the courage to come up here and stand in front of everybody and say what they have to say, that they're expecting something more than no response from this Commission. And I understand that, in some situations, our best response is no response, but a lot of times there's issues that we really should at least consider taking a look at and we can't really talk about these issues because they're not on our agenda. So I would -- I just think it's important for this Commission to at least have some kind of a policy or some kind of a mutual understanding between us when somebody does come up here and provide testimony that we can't talk about what happens to that, or what, you know, what potential action can be taken. And I think that when somebody comes up and talks about something that we can't talk about that I think any of the Commissioners should just pipe up and say: Mr. Chair, I think that we should put that on a future agenda and, lacking that, I think you, as Chair, you know, can make the decision whether you think it's important enough for us to discuss, you know, at a future meeting.

Mr. Vanderbilt: Thank you, Commissioner Chaikin. And I will do that. It is my understanding, and Corp. Counsel can correct me if I'm wrong, that we do have the liberty if somebody comes up and it's obviously something that's not in our jurisdiction we can say it's best that if you check with the Department of Health, at least give them some guidance in that way. But if it's something that is obvious, something that we may have an interest or jurisdiction over, then we can, at that meeting, tell the person that we will put this on our next agenda so that it can be officially discussed in more detail. Is that satisfactory? Okay, thank you for that input, Commissioner Chaikin. Commissioner DeCoite?

Ms. DeCoite: Real quick. I know Nancy requested if she could get an intern to help her with some of that. I wouldn't mind requesting her that because took us so long to get one planner, I'm afraid she might run away if she get piled up with all that work, and she's getting piled with a lot of work right now.

Mr. Vanderbilt: Well, if -- if there's no objection from the Commission, I would be happy to write the Planning Director and just suggest that this is something that we have an interest in getting done and if he could do whatever he could to provide an intern or some other kind of staff assistance to accomplish it. Is there any objection to sending such a letter? Okay, thank you. Okay, do we have any -- anything else? I guess not. Do I hear a motion to adjourn?

Ms. DeCoite: Motion to adjourn.



Ms. Vanderbilt: Second?

Ms. Pescaia: Second.

Mr. Vanderbilt: Seconded.

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

**It has been moved by Ms. DeCoite, seconded by Ms. Pescaia, then unanimously**

**VOTED: to adjourn the meeting.**

Mr. Vanderbilt: Thank you, Commissioners. Thank you, staff.

#### **K. ADJOURNMENT**

There being no further business brought before the Commission, the meeting was adjourned at 4:15 p.m.

Respectfully submitted by,

SUZETTE L. ESMERALDA  
Secretary to Boards and Commissions

#### **RECORD OF ATTENDANCE**

##### **Present**

DeGray Vanderbilt, Chairperson  
Steve Chaikin, Vice-Chairperson  
Kip Dunbar  
Bill Feeter  
Lynn DeCoite  
Linda Kauhane  
Mikiala Pescaia (Arrived at 1:05 p.m.)

##### **Excused**

Sherman Napoleon, Jr.  
Joseph Kalipi

Molokai Planning Commission  
Minutes - 06/13/07  
Page 58

**Others**

Clayton Yoshida, Planning Program Administrator

Nancy McPherson, Planner, Molokai

Michael Hopper, Deputy Corporation Counsel

Ralph Nagamine, Administrator, Development Services Administration, DPW  
AKAKU