

(APPROVED: 07/25/07)

**MOLOKAI PLANNING COMMISSION  
REGULAR MEETING  
MAY 23, 2007**

**A. CALL TO ORDER**

The regular meeting of the Molokai Planning Commission (Commission) was called to order by Chairperson, DeGray Vanderbilt, at 12:37 p.m., Wednesday, May 23, 2007, Mitchell Pauole Center, Kaunakakai, Molokai, Hawaii.

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

Mr. DeGray Vanderbilt: Okay, I'd like to call the meeting of May 23 of the Planning Commission to order, and while Nancy's passing out some information, I'd like to introduce the Commissioners. We have, at the far end, Sherman Napoleon, Commissioner Napoleon, and next to him, Commissioner Bill Feeter; next to him, Commissioner Joe Kalipi; next to him, Commissioner Linda Kauhane, and Vice-Chair Steve Chaikin, and my name is DeGray Vanderbilt.

And as far as public testimony, if there's anybody here that has to get back to work and would like to talk about anything on the agenda items, feel free to do it now or you can wait until the item comes up on the agenda. Mr. Helm, could you identify yourself up at the podium.

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

Mr. Larry Helm: Good afternoon. My name is Larry Helm. I'm a Molokai resident. I'm here to testify on behalf of Bill Feeter's short-term vacation rental out in the East End. I would like to just say that Bill is a veteran, served his country, retired. While people are being lawyers and doctors and Indian Chief, there was a guy serving, ready to go when he was called upon. Now he is going through a process of getting a permit from the County of Maui and from you folks. And, from what I understand, there's no objection from his neighbors on what he wants to do. And I've known many vacation rentals on this island that never went through a process that got their place rented and never went through a process, and here's a guy trying to follow the law, doing the proper thing, and wants to have a place so he can maintain the property and have a little income for himself and his wife at this very young age that they're at. And I support you guys trying to make this happen. I don't see any infringement. I see that he's going through the process and being a veteran, I think he should get a little bit more special attention because he served his country and wanna follow the right way to do the right thing to get this permit. So I want you folks to consider that and that's my testimony for Mr. and Mrs. Feeter.

Mr. Vanderbilt: Thank you, Larry. Does anyone on the Commission have any questions for Larry? Hearing none, thank you very much for your testimony, Larry. Is there anybody else here that would like to testify on any agenda item? If anybody else wants to testify on any agenda item or any issue, if you testify on something that's not on the agenda, our Commission can't comment. You only have three minutes to testify on that. So if there's anybody else here that would like to testify early? Well, on the agenda today we have the -- a request for an exemption from the SMA for the Pollack residence on the West End of Molokai, at the Kaluakoi Resort, the Papohaku Ranchland Subdivision. We also have -- do we have any agendas today for the public? And we have Mrs. Frances Feeter requesting a State Land Use Special Use Permit and Conditional Permit to operate a short-term vacation rental out in the Puko`o area. And we have some Communication items regarding the ag ordinance, and then some miscellaneous things under the Chair and Director's Reports. But, as I said, you can testify on any agenda item or you can just provide public comment to us on any issue that you feel that is related to planning. But if you provide testimony on any issue, then we, as a Commission, cannot -- we cannot comment on that issue since it's not on the agenda. And, just to set the rules, it'll be three minutes and then I'll ask if you can conclude in a minute.

Mr. Walter Ritte: Yeah, I guess I'm under the any category, whatever that is. I'm here cause I just read an -- an article for a letter to the newspaper and that letter was saying very nice things about this body, and I agree with all those nice things that were being said about this body, and, basically, it has to do with Laau Point and it talks about the need for us, if we want to have the pulse of this community on any land issues, then this is the body that should be speaking out and taking those kinds of position and that's what would signal the voice of Molokai would be this body. I'm saying that because I testified about two months ago about the need to try and keep the Laau issue as simple as possible. And when the Ranch said that they wanted to do concurrent hearings, which meant that there were going to be State hearings and County hearings at the same time, that it would confuse this community because each one of those hearings would take more than one time or one meeting in order to solve the problems that we're faced with, so there's going to be a multitude of meetings, and I've been through this process many times before and it's really hard to tell people: There's a meeting tonight on Laau. They say: No, no, no. We did that one already. That was last week. And when people come to meetings and they talk, they talk real passionate, and it's kinda like it's hard to come up here and it's a big deal to come and speak at meetings, so for them to keep coming to meeting after meeting after meeting, is not going to serve this community's best interest. So, to top that all off, we're now having a third party coming to Molokai next week and that's the Office of State Planning, which is another State agency, and they're holding meetings, and we're -- we're asking our people to come out because whenever there's a meeting it's important for us to come out. So we're going to have all these kinds of meetings. So if this article, which is written by John Sabas, and I hope you guys all go get copies of it because it'll keep you in touch with what's going on, if we're going to have all these multitudes of meetings and

John Sabas is saying that this is the body that we should be coming to, and it's really confusing because Molokai Ranch, instead of coming to this body for a community plan amendment for Laau, they decided to bypass this body and go to the Land Use Commission, which took all of the marbles and all of the balls out of Molokai into a State arena, and that State group cannot really make a final decision until this body says, yes, we're going to amend our plan or not. So, basically, this should have been the first guys. So now he's writing that as saying that you guys are supposed to be the body that decides whatever, so it's becoming very confusing and I'm not quite sure what is going on, but I agree that this is the body because this is why you guys were formed so we can talk to people that we know. Cause when you talk to people who come from the outside, they don't know as much as you know. So I wanna encourage this body to keep track, not only of what's happening with the LUC and stuff, but also like next week when this State agency comes here, what -- what is happening with this State agency? Why are they coming here? What are they doing? What is their role? How they're going to impact this whole decision-making process? We need to have a group on Molokai that knows all of these kinds of things so I'm supporting this, this concept that this is the body that should be the pa`a of this issue, and I'm encouraging this body to keep track of all of these State agencies that are coming into our island in order to find out what's going on and make decisions for this island. Molokai is an island that really wants to control its own future. They don't want anybody else telling us that what happened to them was good and that they have all the answers and that we should be following their lead. We feel we know what we want and don't want on this island and we want to have our own pathway. So, please keep track for us what's going on because, sooner or later, all of these issues come back to this table. Thank you.

Mr. Vanderbilt: Thank you, Walter. Are there any questions from the Commissioners? Oh, excuse me. Corp. Counsel reminded me that that wasn't an agenda item so questions are not allowed. So, with that, I'd like to move on to Unfinished Business.

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

## **C. UNFINISHED BUSINESS**

- 1. MR. JEFFREY S. HUNT, Planning Director, requesting concurrence from the Molokai Planning Commission pursuant to their Special Management Area Rules, as amended, that a Special Management Area exemption can be issued for the construction of the Pollack Residence, a farm dwelling at 388 Kaluakoi Road, TMK: 5-1-006:062, Kaluakoi, Island of Molokai. (SMX 2007/0019) (N. McPherson) (Previously reviewed at the May 9, 2007 meeting.)**

**The Commission may act on whether or not to concur with the Planning Director's determination that an SMA exemption be issued.**

Mr. Vanderbilt: So with that, do we, Nancy -- okay, we have Nancy McPherson, who is the Staff Planner for the Maui department, Planning Department, and she is the official Molokai Planner and lives here on Molokai and has been doing a great job over the last few months. So, Nancy, could you give us a little update on this project?

Ms. Nancy McPherson: Thank you, Chair Vanderbilt. Good afternoon, Commissioners. Nancy McPherson, Staff Planner, Molokai. This item had public hearing at your last meeting and has been deferred until this meeting. I did a -- an SMA assessment and a letter that stated that the department is actually issuing, I kind of did the wording wrong on that a little bit, I stated that the -- that we were, you know, determining that it's exempt but Corp. Counsel reminded me earlier that actually what we're doing is recommending exemption and there is a request for concurrence from this body. So the -- you have received all the previous materials that went with the letter dated May 2, 2007, and the determination, what the determination was based on. You also received a copy of the assessment itself, I believe, and some exhibits that went along with it. Now, at the last meeting, this body requested additional information and that I apologize for that, not making it into the packets this time, but it was sent out subsequently. Did everyone receive the letter dated May 17, 2007? I believe it was sent in the mail and it was also emailed to those who have email addresses.

Some of the issues were project revisions, fire protection, and the intended use of the property. So, in the letter, I discussed the major points that were contained in the letter from Art Parr, who is an architect here on Molokai and is here today. In correspondence with Thorne Abbott, our Coastal and Shoreline Planner, who actually had the project first, and he worked with the applicants, he worked with Karin DeKock, who is the architect who was here at the last meeting, as well as Art, and they also worked with Art, and they made a number of revisions to the project in response to concerns about environmental impacts. So that letter was submitted to you. Also, attachment two was a table provided by Karin DeKock regarding the revisions that were made between the initial proposal and the revised proposal; that was submitted to me via email. Also, a letter from the owners stating that -- to the building department, which I guess now in order to get a building permit, they're requesting this, that they do not intend to use their home as a vacation rental. And, finally, attachment four is the fire protection plan for the Pollack property, which shows where the dwelling is to be relocated, where the water tank for that relocated dwelling is to go. The storage tanks for the main house are actually under the house, and those don't really seem to be shown on this plan, but that's where they're located.

So, with that, we're, again, requesting concurrence with the determination that this project's exempt, per Chapter 205A, our shoreline rules, and our SMA rules for Molokai, and if you

have any questions, I'd be happy to answer those. We really felt, Thorne and I both felt very strongly that this applicant made a good faith effort to be more sensitive to the environment, be more sensitive to the Papohaku area, and to Molokai in general, and they also realized that they are in an ag subdivision, they are doing the conservation portion to get their farm plan, so that's about it. And Art is here also if you'd like -- if you have no questions for me, then I'm not sure, Art, did you have any additional comments that you wanted to make?

Mr. Vanderbilt: Excuse me, Nancy.

Ms. McPherson: Yes? Okay.

Mr. Vanderbilt: We'll call him up if --

Ms. McPherson: Okay.

Mr. Vanderbilt: Okay, do any of the Commissioners have any questions? Yeah, Commissioner Kalipi?

Mr. Joseph Kalipi: Nancy, did they start any work, any grading or anything like that or --

Ms. McPherson: No. The previous owners had built a home there, a small home. I think it's stated in this table what the house was originally. It was, including the lanai, it was a little bit over a thousand square feet in area, and that's -- that house is two-stories, it has a big covered lanai, underneath are some garages, and I think some photographs were included with the original -- I might not have provided you with those though, I apologize for that, but I did go out to the site, I did inspect what's there, that -- it looks to me like that area and in the Papohaku Dune report, it's also discussed that, for this lot, there was sand mined many, many years ago, so it's kind of a -- the secondary dune was basically mined away, so what we have is we have an area that's kind of like a building pad area, that's where the house, the existing home is now. It's gradually very slightly sloping down towards the ocean; then it really dips down where the sand was mined. There are some native species in the area. It's a big bare spot. If you look at the photographs in the Papohaku Dune plan, it's a big bare spot. There's no kiawe right there. There's a little trail. The TMK line is marked with stakes very clearly and once you cross that area and go up towards the primary dune, that is the area that's in conservation, and going up then the kiawe starts pretty much at the crust of the primary dune. So I went and checked out the site pretty thoroughly. Art was there also. We walked around and they want to actually, as part of their farm plan, re-vegetate the area, the makai side of the property with native dune species per recommendations in the Papohaku Dune plan.

Mr. Vanderbilt: So the answer is there -- there's been no grading.

Ms. McPherson: No. Not -- not recently, no. It was done by a previous owner possibly.

Mr. Vanderbilt: Are there any other questions? Commissioner Feeter?

Mr. Bill Feeter: Yeah, thank you, Nancy. It appears there might be a public access on the west boundary. Could you clarify that, please?

Ms. McPherson: Yeah, there is a public access. It's actually a couple of lots down towards the beach park. This parcel is the eleventh lot south of the beach park parcel and so a couple of lots up is, one, is the first actual beach access past the beach park. It's the paved one, and then there's a little parking area, and then I think there used to be a little shower there. From the property itself, there is a pathway though that goes up and over the dune and I think with the implementation of the Papohaku Dune plan, they're going to be recommending dune walkovers and different kinds of things for the conservation district area and the owner has also expressed willingness to work with -- with DLNR to do those kinds of things. They're pretty environmentally conscious, in my opinion.

Mr. Vanderbilt: Are there any other questions from any of the other Commissioners? Commissioner Chaikin?

Mr. Steve Chaikin: Thank you, Mr. Chair. This is our first exemption that we're looking at and -- and I have to tell you that when I originally voted for this Commission to take a look at all of the exemptions, it was really not my intention that we were going to micro-manage what you're doing. I think you're doing a -- a, really, a very good job, and I think what is important and one of the reasons that I thought it was important that we take a look at all these exemptions is that we're responsible for what goes in a special management area, and there are big houses being built that we're totally unaware of, and so what this does is it brings these types of developments out from the dark and shed some light on it; it brings it in the public arena and everybody can take a look at what's going on and if there's any, you know, some glaring errors that, you know, people can speak up and -- and I've reviewed this. And another thing that this process does is it allows us, as Commissioners, to really get educated cause we don't really understand the whole process and so some of things that we bring up are just so we can understand a little better about what's going on. And this is the first one. And it's also a very good example of why we would wanna look at these exemptions. This is an incredibly large house on an incredibly fragile area that's going to be using a lot of resources, and it's something that this Commission should be taking a look at just so we know what's going on. And I do have some questions. I looked through there and there were some things that kind of jumped up and kind of caught me as, you know, what's going on here or maybe it needs a little further explanation.

I guess one of my questions has to do with this is ag land and there's a farm plan. There's a three-quarter inch water main, I guess, or meter that gets attached to that and they're

specifically prohibited from using that for agricultural crops, and I guess one of my questions is: If this is an ag land, is there other, you know, water lines in that area that they could actually do ag on that land? That's one question.

Another question is, it has to do with, I guess, you know, we have global warming and all that going on and a big issue is rising sea levels and, you know, I don't know what the height of this house is above sea level, but I'm just wondering what's going on at the County level in terms of whether or not you're communicating with these people that are developing on the seashore as to whether or not the County is going to protect them. Because I know, in California, there's a lot of erosion along the shorelines and a lot of places the cities and counties have to jump in and shore up the shoreline to great incredible expense to the taxpayers, and I'm just wondering if the County's having any kind of disclosure that's saying: Hey, you're building this at your own risk, you know, because there could be the possibility of rising shore. So that would be another question.

The other question I have is when you look at this particular property and, you know, I just look at the, I guess it's the site map, I see three houses, okay. Now, there's only supposed to be two houses and, you know, one of them is we're calling a pool house, so it's not really a house cause it's a pool house, I guess. When you put the pool in front of it, then I guess somehow it's not a real house. So I would like to, you know, hear a little bit more about, you know, how you differentiate I guess what's a house and what's a not house and whether or not -- I didn't see any site plan in there for exactly what's in that pool house, but just as a -- I lived in a pool house for six years so I'm a little familiar with what a pool house can be, okay. That was my third question.

The other question that, you know, I brought up last week that kind of disturbed me was that they were building this huge swimming pool because the Fire Department requires that they have a huge storage tank for fire protection or other measures, and not so much that I'm totally against swimming pools, but it kind of is an alarming thing where everybody that builds a house think, oh, now I might have to put in a swimming pool as required by the County.

So those are, basically, my four things that jumped out so, I mean, if you could address those things, then I would appreciate that. Thank you, Nancy.

Mr. Vanderbilt: Nancy?

Ms. McPherson: Okay, I think I'm going to split these questions up. I'm going to give a couple of them to Art. But I'll go ahead and tackle the shoreline and coastal hazard issue, the sea level rise issue, and the pool house. Thorne couldn't make it today but he's actually the one who negotiated the initial changes in the proposal. First of all, as far as coastal hazards and sea level rise, our department, Thorne and myself, have both been

working very closely with the Sea Grant Extension Agent, Zoe Norcross-Nu`u, and DLNR folks, Sam Lemmo and Dolan Eversole, and all of those, Chris Konger, and they have been doing a lot of wonderful publications. We are distributing those publications to, as much as we can, to the public. I believe you folks have also received several of those publications. What I've been doing is trying to give them to real estate agents and different people to, basically, they talk about what does it mean to buy beachfront property in Hawaii; what are your hazards; etcetera, etcetera. So we're trying to do a lot of education. Also, Francis Cerizo did the special flood hazard area development permit for this project and so he's very aware of the inundation concerns, the tsunami concerns, and there were actually additional measures that were taken for this project as far as coastal hazard mitigation, some structural --

Mr. Vanderbilt: Excuse me. Excuse me, Nancy?

Ms. McPherson: Yes?

Mr. Vanderbilt: I don't -- as far as -- I think what Steve was asking is the County working on any kind of ordinance or standards that are going to be required of people, or is it more just educate them that there's going to be -- there could be a rise in sea level and you're building at your own risk? Is the County taking a -- a proactive, at this time?

Ms. McPherson: Well --

Mr. Vanderbilt: To come up with --

Ms. McPherson: The Planning Director might know the answer to that.

Mr. Vanderbilt: Yeah, and I feel remissed that I didn't introduce our new Planning Director for the County of Maui, this is Jeff Hunt, and this is about his third meeting in the last few months over here, so we're real happy you've been attending some of the meetings, and the ball's in your court now.

Mr. Jeff Hunt: Thank you, Chair. The County doesn't have a specific program to warn people or to let them know that we're not going to come in and protect their land. The County requires permits in order to protect the land and there would be a determination as to whether that's allowed in the SMA or not and, in a lot of instances, the push is to not allow hard protection of shoreline. So the County has never, that I'm aware of, have gone in and protected someone's personal property, made the expenditures to do that, and, on the contrary, we would probably argue against it and try and let nature take its course.

Mr. Vanderbilt: Thank you.



Ms. McPherson: Nancy McPherson, Staff Planner, Molokai. Just to add to that, we also -- in a discuss that Thorne and I had with Zoe Norcross-Nu`u, we're also trying to emphasize the possibility of moving structures back if it's needed. In this case, there were some tsunami concerns that were addressed and so that's why the design kind of evolved the way it did. But, ultimately, we are emphasizing that, especially without the protection of a primary dune, which this house does have, we are recommending that, first of all, that houses be sited as far back from the shoreline as possible, as well as a consideration that they be moveable, so post and pier construction, that sort of thing, and to really limit the amount of fixed and hard structures that are going in and on the ground. Does that address the -- that question? Okay.

Moving on to the pool house. My understanding and in the letter, the copy of the letter that I gave everyone about the comments that were responded to, Thorne Abbott's comments that were responded to by the applicant, the idea was that the pool house was made smaller, so the idea -- I believe in Thorne's mind, although I can't really speak for him directly, was that you maybe make it just big enough to enclose the equipment needed to take -- support the pool and a changing room kind of thing. Now, I know Steve says that he's lived in a pool house before, and five hundred square feet is -- is, you know, a good size, but my understanding is the reason that the home is the size it is is because they have five or six children, five children, they want the whole family to come, it's going to be like a family reunion kind of place, and they want everybody to have a bedroom, and I don't think they intend anyone to stay out at the pool house. The main house is definitely going to be nice enough for everyone.

Mr. Vanderbilt: Thank you.

Ms. McPherson: And if Art wants to come up and talk about the water, ag water issue, that goes back to when the subdivision was originally created, a lot of these issues do, and, as far as the swimming pool as well. Yeah, we certainly wouldn't want everyone building a house down there to think they're required to build a swimming pool. I agree with you.

Mr. Vanderbilt: Okay, Nancy. Before you go, just to follow-up on Commissioner Chaikin's comment. You mentioned that, in the tsunami area, you wanted to make sure that things could be moved or up on post and pier and everything like that.

Ms. McPherson: Well, it's -- there's two sides to that.

Mr. Vanderbilt: Well you said that, right?

Ms. McPherson: Well, there's the -- there's the inundation side --

Mr. Vanderbilt: Well, let me just --

Ms. McPherson: And there's the tsunami wave side so --

Mr. Vanderbilt: Okay, the only reason I ask, the ohana unit is built up on post and pier, it's up, I think, five feet. Is that right, or somewhere in that area? Is the main resident built on post and pier?

Ms. McPherson: Well, maybe I'll let --

Mr. Vanderbilt: Okay.

Ms. McPherson: Let Art address that as well, if I may.

Mr. Art Parr: Good afternoon, Commissioners. My name is Art Parr, and I'm the architect of record. Karin, who was here two weeks ago, she's the prime architect. She has a contract with the owner and I'm, basically, working for Karin on this project. The flood elevation or the elevation, what they call the base flood elevation, are for a hundred-year storm, is at Elevation 24. Existing finish grade out there is at Elevation 14, 14 feet above sea level. And then, according to the rules, we have to build the finish floor about or no part of the floor can be within that hundred-year flood or the base flood elevation, so we're about a foot up above the Elevation 24, and the finish floor is about Elevation 25. I'd like to read --

Mr. Vanderbilt: Excuse me.

Mr. Parr: I'm sorry, go ahead.

Mr. Vanderbilt: That's on the main house?

Mr. Parr: That's right.

Mr. Vanderbilt: It's up on post and pier?

Mr. Parr: That's right. It's up on concrete piles.

Mr. Vanderbilt: Okay, thank you.

Mr. Parr: Twenty-nine of them, actually. The guest house now sits a little bit farther back and the base flood elevation at the guest house is 18 feet, so we've lowered that down to 19 feet above sea level, that is the finish floor of the guest house.

Mr. Vanderbilt: Excuse me, Art. I'm sorry, while we're going, this is so complicated, but it mentions that the house is 35 feet high. Is that from the first floor or from the ground --

Mr. Parr: That's from existing finish grade.

Mr. Vanderbilt: Okay, thank you.

Mr. Parr: The existing finish grade.

Mr. Vanderbilt: As oppose to existing natural grade?

Mr. Parr: No, okay, let me say that again then. It's 35 feet above existing natural grade.

Mr. Vanderbilt: Oh, okay. Thank you.

Mr. Parr: Okay. I'd like to just take a look at the CC&R's out there and, if you will for a minute, put yourself in the position of a property owner or a property buyer out there. This thing kinda goes around in circles.

*Each lot comprising Papohaku is hereby designated a single-family residential/agricultural lot. Next item says: Single-family architectural, or, excuse me, single-family residential/agricultural lot shall mean any lot zoned for agricultural use and intended to be used for single-family residential and agricultural purposes, which shall be governed and restricted in the same manner and to the same extent as a single-family residential lot and an agricultural lot are governed and restricted under the West Molokai Protective Covenants. Each lot may be used for any purpose and in any manner which either a single-family residential lot or an agricultural lot may be used under the West Molokai Protective Covenants as accepted as set forth below. Each lot shall be limited to the installation and use of not more than one domestic water tap being three-quarter inches in diameter. All water shall be used primarily for reasonable domestic purposes, including watering of normal residential landscaping, and shall not be used for any irrigation of crops or raising of livestock on a commercial or other large scale basis. Item five: No lot may be used for any commercial purpose whatsoever.*

As a prospective buyer or homeowner out there, you know, they look at these CC&R's, they see the only thing that's built out there are single-family residential units so, you know, they get the idea real quick that this is a residential subdivision and, in context, I think it really is although, you know, it's zoned ag, so explain it to me.

Anyway, they are limited to one three-quarter inch meter and there's no other water source for that particular property. Out in the road there is a main for irrigation water but it's -- there is no source of irrigation water out there.

Mr. Vanderbilt: Excuse me, here's Corp. Counsel, Michael Hopper.

Mr. Michael Hopper: Hi. I just had a question. These are private CC&R's, correct? These are not County -- this is nothing in the County Code?

Mr. Parr: Yes. Yes. Those are the CC&R's, right.

Mr. Hopper: Okay, yeah, the County has no ability to enforce those and, in this particular case, we'd be looking at 205A in order to determine whether or not, in this particular case, that this -- this development, which has been deemed not development because it's a single-family residence, may have a cumulative impact or a significant environmental or ecological effect on a special management area in order to determine if it should be defined as development, which the Planning Department has recommended it should not be. So the private CC&R's, just for the Commission, it's not something that the County has any right to enforce or to change or adopt. The County, at this point, needs to only look at the State and the Commission rules at this point.

Mr. Vanderbilt: Thank you.

Mr. Chaikin: Yeah, maybe if you could just address that one last question that I had with regard to the -- that fire protection law where you have to have a large water storage tank if you're more than what, 500 feet from the nearest fire hydrant. And I might just add that this particular house has a fire hydrant right in front of the lot. Is that correct?

Mr. Parr: Right. Right. The new construction is in excess of 500 lineal feet from that fire hydrant and you have to go along a path of travel, you can't go across the property in the most direct manner, you have to go around through the driveway, and that turns out to be more than 500 lineal feet. Now, there's a number of ways to address this issue and one of them is a fire sprinkler suppression system, which is basically a sprinkler system inside the house; you can have a big water tank, steel tank or fiberglass; you can have a swimming pool. And a fire suppression sprinkler system is kind of chancy solution for a house that will be unoccupied for certain lengths of time. If that system would be set off accidentally, you could ruin the contents of the house. The other problem is that if there were a wild fire out there, you're going to have all kinds of fire apparatus pulling water out of all the fire hydrants and it's questionable whether you'd have enough pressure left in that water system out there for the fire -- for the sprinkler system to operate efficiently. So the owner doesn't want a tank out there. To provide enough water for fire protection, we're looking at I believe it's 29,235 gallons. A steel tank that will hold that much water is 24 feet in diameter and 8 feet high. I wouldn't want that anywhere on my property. The other possibility is a swimming pool. And whether it's a pool or a water tank, it has to contain the same amount of water, 29,325 or whatever that number is. We don't want to store anymore water than what is actually necessary for fire protection. The pool will have a cover so the evaporation will be minimal. The water will stay clean so that it'll have to be back-washed 10 days, 2 weeks on center, or something like that, and so that will be the

only water loss and that water will be used for irrigation. So, you know, we think there's a reasonable case there for a swimming pool.

Mr. Chaikin: Alright, thank you. I'd like to maybe follow-up on one of those questions I had, maybe Nancy could, you know, shed some light on this. I'm not really familiar with this whole concept of the farm plan. Maybe if you can spend some time explaining what the farm plan is, what it's supposed to do, what it's supposed to include, and whether all these houses have to have a farm plan or how does that work?

Mr. Vanderbilt: Mike Hopper?

Mr. Hopper: I'd just like to note for the Planning Commission, the farm plan has been approved. The Planning Commission, right now anyway, doesn't have any review or recommending authority over the farm plan. Now, in this context, we're looking at the SMA and whether or not this exemption that the Planning Department has granted, if you concur with that exemption, but just to let you know, there's no review or voting authority over the farm plan. In this case, it's actually already been approved.

Mr. Chaikin: Okay, yeah, I understand that and I just wanted to have this Commission and myself at least understand what a farm plan is supposed to be because it was included in our packet and just so we can better understand the whole thing. Could you just explain a little bit about the farm plan given to us?

Ms. McPherson: Well, I -- Nancy McPherson, Staff Planner. I wish I was a little more conversant in farm plans. So far our zoning and enforcement division planners have been reviewing those and approving those. I went ahead, when the revised plan came in, that Thorne had been negotiating some changes actually in the farm plan as well and so there was more area in the front that was going to be coming under that. It can be one of three things. One is commercial agriculture, and then I'm not sure about the other two, but I know that one of those is conservation and native species restoration, that sort of thing, so that's what was recommended for this because they, basically, don't have the water supply for commercial ag anyway.

Mr. Vanderbilt: Excuse me, Nancy.

Ms. McPherson: Yes?

Mr. Vanderbilt: Yeah, just to -- I follow the farm plan pretty closely and I think what we're looking at or we know what a commercial farm is and everything else, but I think, as mentioned in this letter from Mr. Parr, it says, "We propose to keep the sour grass and the kiawe trees as the main elements in our soil conservation plan."

Ms. McPherson: Okay.

Mr. Vanderbilt: And the way I understand it in talking with planners, somebody could buy a lot down there, build on half of it, and keep the other half, don't even water it, just keep it in natural state and that would qualify for a farm plan. Maybe our -- maybe somebody, maybe -- I don't know if Director Hunt would know that, but I think that's what we're getting at is that -- and that's why this Commission is looking at if we're going to have ag subdivisions and all that, let's make them ag subdivisions, and there needs to be some amendments to the law. But, right now, we're dealing with the existing law that's on the books and I believe that the farm plan can just be maintaining half your property in its natural state.

Ms. McPherson: Well, you're also dealing with an ag subdivision that was created before the ag subdivision rules were amended, Mike, you might need to help me out here, but my understanding is that any ag subdivision that's created now does require actual agriculture to be occurring on the parcel, that's my understanding. This one was done in the '80's so --

Mr. Vanderbilt: Excuse me, Nancy. I think but one of the activities can be ag land conservation, which is just keep preserving the land so it doesn't wash away ...(inaudible)...

Ms. McPherson: Okay, Well, I'm not sure about that part.

Mr. Vanderbilt: And I think that's the concern a lot of people have but these guys are operating under the existing law and what they're doing is -- is a permitted use under the farm plan. Are there any other questions from the Commissioners? Yeah, I had some. When somebody buys a lot in the SMA right now, they feel they should be able to build a house and the State says that's exempt from being a development, basically. Now, these people have gone through and worked with Nancy and Thorne and made a lot of changes, and they've also made some commitments, and I think that's what I wanna focus on because I don't understand how they would be enforced. Mr. Pollack wrote a letter dated June 8 that said he will not do any vacation rentals. Well we all know there's many, many vacation rentals out in those subdivisions, and Mr. Parr has read the CC&R's that say there'll be no commercial activity on these, but no -- the CC&R people, whoever is in charge of these CC&R's out there at the resort, aren't enforcing that and our Corp. Counsel, Mr. Hopper, has told us that they don't involved in CC&R's, so it's really nice that Mr. Pollack made that commitment. He also made the commitment of -- of taking down the second story of the guest cottage, and there's also something they put in there about they were going to build a tennis court or tennis courts and I think I saw in the plan now it's called "future tennis court," so are the tennis courts a -- when I first understood it, I understood they had agreed not to build the tennis courts but is that just they're not going to build it now?

Ms. McPherson: No, that plan that was just submitted to you was the latest transmittal for fire protection was based on the old original proposal.

Mr. Vanderbilt: So that future tennis court is ...(inaudible)...

Ms. McPherson: No longer is part of the project now.

Mr. Vanderbilt: Okay. Alright, but now, okay, we've got all these thoughtful conditions in there, but how are those conditions going to be enforced? Can we, and maybe Corp. Counsel can ask this, if we concur with the director's findings that this should be exempt based on all these representations, is there any way we can put any conditions or enforcement criteria on the promises that the applicant made only from the standpoint that the resort owners or the CC&R people aren't enforcing like, for instance, vacation rentals ...(inaudible)... operates, and so is there any way that our body can make these promises stick in this?

Ms. McPherson: Chair -- Chair Vanderbilt, can I respond to that?

Mr. Vanderbilt: You sure can.

Ms. McPherson: My understanding is that the design that's proposed, that is what the SMA assessment and the determination and recommendation is based on; that is what has been submitted to the building department, and the letter about not using it as a vacation rental is to the building department, not to Planning, but I submitted it for your information because you requested that. My understanding is that what is approved based on the SMA has to be the same as what is being submitted for the building permit. So, basically, they can't get a building permit if they change it. They're going to have to come back and revise the SMA. That's my understanding. And so, basically, what is approved now or determined exempt is what needs to be submitted and already has been submitted for a building permit. What they're doing now is they're waiting for approval by this body of the exemption.

Mr. Vanderbilt: Okay, let's just take an example that they sell the property and the new owner comes in and wants to put in a tennis court but this thing's been approved based on the promise that there wouldn't be any tennis court.

Ms. McPherson: They would have to come back in for an SMA assessment again.

Mr. Vanderbilt: But is a tennis court -- I mean where would -- where would somebody say: Well, they can't build a tennis court cause that a condition of the original approval?

Ms. McPherson: Well, somebody already did, actually. Thorne advised them that a tennis court was not a use that is supporting the ag use for the ag district, which is what this is in, and so, therefore, they really couldn't build it and so that's why they took it out because it's not subsidiary to an ag use. It has no ag function.

Mr. Vanderbilt: So that's something that Thorne said to them?

Ms. McPherson: Yes.

Mr. Vanderbilt: And I guess all I'm -- we're all lay people and the community comes and testifies and we hear promises and then everybody goes away and does whatever they want, and so I'm just trying to get a handle on -- and maybe -- I'd like to hear from Corp. Counsel. What -- do we have any means of putting some conditions on this concurrence with the assessment or is -- that is not the place to do it?

Mr. Hopper: I do not believe you can condition an exemption. As far as the TVR's, that would be an illegal use anyway so there would be no reason for a separate agreement not to do that. It would be illegal both under the law as well as the CC&R's itself. It would be to the Planning Department to enforce the law, but you would not need a separate agreement to not break the law in order to enforce the law.

Mr. Vanderbilt: Thank you. And I guess -- oh, Commissioner Kalipi?

Mr. Joseph Kalipi: I get one question that the Chair is talking about, the vacation rental and the tennis court. I guess he was getting in enforcement and stuff like that, and having been on the board long enough, and it might have been answered in prior meetings or whatnot, and I don't want to be naive not to ask it, so I do want to ask you this question concerning vacation rentals, and this kind of ties in to what we're talking about now and this might be a kind of straightforward question but if you would know such answers, we know that there's a lot of illegal vacation rentals out there or bed and breakfast. We know that the laws hasn't caught up to -- to legalize them and whatnot. I guess my question would be: What would be the biggest problems here on Molokai in enforcing some of the illegal vacation rentals that are existing now? I know it's in Maui. I know it's everywhere. I know we had an article some months ago talking about vacation rental, I don't know if it was a bed and breakfast, I don't if the Chair remembers this, but there was a place in Honolulu that if they found you having an illegal vacation rental, they will fine you -- what was it? Ten thousand dollars a day? I forgot what the article was but we were given that article some months ago. And so the original question was the illegal vacation rentals cause there's much out there, what's stopping us of finding them or even enforcing and telling them, hey, it's illegal, shut down until we got some laws to legalize these?



Ms. McPherson: Well, I can try to summarize. Jeff's been working on this pretty closely. That had to do with what the sort of unwritten policy of the previous administration was and that also we were holding -- sort of holding things in abeyance while the Council tried to pass an actual ordinance that had a process for legalizing vacation rentals. Now, since that failed, and we had a new administration and new Planning Director, we've been taking a new tact on this, and the Planning Director's working on another ordinance and that is going to be spelling out our policies, as far as enforcement, and I'm not sure when that's going to be done, but soon hopefully, and we're going to do a lot of community education, and we're going to do a lot of outreach, and we're going to be letting everyone know what's going to happen next so that people can be prepared for that, but once that's out, then we're going to be moving forward. So we're kind of -- we wanna make sure that we're all together and we're doing it in the proper way that we're informing people completely.

Mr. Vanderbilt: Okay, Nancy, thank you.

Ms. McPherson: So soon.

Mr. Vanderbilt: Commissioner Kalipi, has ...(inaudible)... on the vacation rental?

Mr. Kalipi: No, I guess ...(inaudible)...

Ms. McPherson: Well, there's going to be enforcement soon. That's all I can say right now. Jeff can offer more details.

Mr. Hunt: You're asking what the -- what the challenges are to enforcing the existing TVR rules?

Mr. Kalipi: Somewhat; only because if this is -- we concur and he says, okay, we're going to just build this and then turn around and have a vacation rental, it really kind of make this looks bad of saying that, well, he said he wouldn't, we said that he wouldn't, but then he changes his mind ...(inaudible)... there's a couple of people that are on Molokai right now that intended to buy and say we're going to make this our beautiful place, we're going to live here, we're going to do this, and, in a couple of months, it became a vacation rental, and so we know that enforcement is an issue and so I'm just trying to figure out, you know, concurring with the proposed that is in front of us if we're not going to look like fools if we can concur and this happens, you know, where's the line of enforcement, and that's why he asked, okay, what if the new tennis court comes in, where's that enforcement now?

Mr. Hunt: The application before you does not include a TVR. You don't even need the application to state that it does not include a TVR. They cannot operate a TVR legally until they come in separately and get a permit. It requires a whole separate permit application similar to another agenda item that you're going to be discussing today. So you don't have

to worry about one getting slipped by you or something. The application before you does not -- does not involve a TVR. It doesn't involve a commercial store. It doesn't involve -- you know, you don't need to worry about all the things that it does not involve. All you need to worry about is what the application is before you. In terms of the question what are the challenges on enforcing TVR's, there's many challenges in enforcing TVR's. First of all, the number of enforcement officers we have. We have five positions even though we got two additional positions budgeted, but right now we have five enforcement positions; one's vacant, one's half-time, and one's on disability, so that leaves us two-and-a-half enforcement officers for all three islands for every zoning violation that comes before us are on -- on about 1200 zoning violations this year, so do the numbers. It's a challenge. There's also legal issues on enforcing TVR's. It's not like a building that is apparent from the public right-of-way, it was built into a setback or something, or it's too high where you can measure, take pictures, or whatever. A TVR is a use violation and it's more difficult to document. You have to get evidence that supports us issuing a violation. So there are a number of challenges but, at the same time, that like Nancy eluded to, we are trying to take a different tact and gear up where we've been working with legal counsel to come up with some rules of evidence and, like I said, we got additional enforcement officers, we're working with the Maui Visitors Bureau, they committed to not posting TVR's on their website unless they're permitted, so it's a multi-faceted approach, and, nonetheless, it's still going to be a very challenging situation.

Mr. Kalipi: Any enforcement position for the Molokai site, like how we had Nancy with us? It would be really nice.

Mr. Hunt: The strategy on Molokai is we don't have the resources to allocate an actual enforcement officer over here, but because you have a planner now, she can kind of be the ears and eyes and also the first step. A lot of enforcement is you go and talk to the people and, for the most part, people are reasonable and they'll, once they understand and once they realize that the County is serious about it, most people comply without any fines being issued. But so, in a lot of ways, you can get the initial stages of enforcement done with Nancy and have an occasional zoning inspector come over and kind of beef it up a little bit or take the harder approach. So having Nancy here on island should help you.

Mr. Kalipi: Thank you.

Mr. Vanderbilt: Are there any other questions? I just had the one, and I don't know if it would be Corp. Counsel or for the Planning Director, but we're concurring with the Planning Director's finding that this single-family residence, which is about 9,000 square feet and a pool house and a pool and everything, is not a development, and then maybe a month later somebody's going to come in with another 10,000 square-foot house, pool, are we bound to -- I mean if it's basically the same house, is the Planning Department going to sort of look at it the same way and what are the alternatives? If we -- I guess what

I'm trying to get at is that we're looking at this thing but here are the professional planners saying that it's really a permitted use, in a sense, in that area and it should be exempt because it's not a development, so what leeway do we have one way or the other and just say, just for argument sake, it was denied, what would that trigger if it was denied? Would that mean that the applicant can either fight it in court or file for a SMA permit?

Mr. Hunt: If you deny the exemption, then you're basically saying that it does require an SMA permit and because the amount of the project is over \$125,000, it would require an SMA major, which is a full public hearing, and notification, etcetera. If you then deny that permit on -- if you then approve that permit, then if other permits come in that have similar situations and circumstances, then it's difficult for the planners to say you can deny one but you approved another if the circumstances are the same unless you go into a cumulative effects argument. Once you go down the road of a cumulative effects argument, you have to be consistent in applying that so that every subsequent ag dwelling that comes in that is similar you have to approve, otherwise, you can't just pick and choose.

Mr. Hopper: I could comment on that as well. The -- the objective here and under your rule is to assess whether or not this is a development defined under 205A-22, the State law, and the reason this is initially exempted is because it's a single-family dwelling; however, any development that is deemed to fall under one of these categories, such as the single-family dwelling, and deemed not development can be then deemed development if there is a finding made that the use, activity, or operation, as I've said before, may have a cumulative impact or a significant environmental or ecological effect on a special management area. And under your rules, if you do not concur with the exemption, you are required to draft findings of fact and conclusions of law, Nancy can assist you with that in, basically, or writing that down, but you would have to come up with a list of facts that you have found today and, on the last meeting, based on the testimony you've had, and then the legal conclusion in this case would have to be based on those facts that you have found that the development would either have a cumulative impact or a significant environmental or ecological effect on the special management area. To me, that's not an appealable decision to court, that would then trigger the SMA major permitting process and they would go through that process. You would still need to make those findings and conclusions. As far as other applications, I think, personally, I would think it would be hard pressed to find the exact same application in every aspect. I think applications need to look at -- be looked at as a -- on a case-by-case basis in order to see the impacts of that particular development and if it's in the same area as a bunch of other developments which has happened, you could look at that as a cumulative impact fact. I think Jeff's right that if it's very, very similar, the exact same application, it does become difficult; however, you need to simply look at the, not simply, but you need to look at the legal standard before you of what is defined as a development and, based on the facts you have found today, if you believe that it is -- you concur with Nancy, the facts being her report, the testimony you've heard, and the questions you've asked, you believe her report is correct that it should not

have this adverse effect, what I've just read to you, then you can simply concur to it. You do not need factual findings or conclusions of law. It's just, in the event that you decide to go against the Planning Department's recommendation based on their report, you would have to come up with those facts and conclusions, and that's something that, based on the time period, which is 30 days from the date you first hear the application, that would have to be done today.

Mr. Vanderbilt: Thank you, Michael.

Ms. McPherson: Chair Vanderbilt?

Mr. Vanderbilt: Yeah?

Ms. McPherson: Can I make a clarification and I think it's a pretty important clarification. The actual proposed structure, the main house, is not within the SMA boundary. If you take a very narrow interpretation of the SMA rules, it could have been construed to say that this project was not even subject to an SMA assessment. What we chose to do with this one was review it, look at it in its entirety based on the farm plan. Because it's in the ag district and because the structures are subsidiary uses to the main use, which is the ag use, which in this case is conservation, soil conservation, that that included everything under the farm plan, and because a portion of the farm plan was in the SMA area, that's why we chose to do it this way, and that's an important distinction. Actually, the SMA boundary in the Papohaku area does not cover all of the lots, all of the dune lots. It covers, basically, I believe it is supposed to be covering to the trough between the primary dune and the secondary dune. In this case, the secondary dune is pretty much gone. And one other point I wanted to make was that I used the Papohaku Dune report for this analysis and I looked at every dune lot on an individual basis based on the GIS, based on the botanical surveys, and all the other appendices to that report, and I looked at that lot through that lens, so each one would be looked at individually.

Mr. Vanderbilt: So the Planning Department's position is that any of these lots that they have -- they're required to do a farm plan and if the farm -- if any part of the lot is in the SMA, then they need to go through the assessment process?

Ms. McPherson: Again, I'm looking at each one -- the department's looking at each lot individually but, at the same time, we are considering, you know, the concept of, you know, we're doing the SMA boundary study and we also are looking at the possibility of expanding the SMA in that area to the road for out there.

Mr. Vanderbilt: Okay. One last question then. None of the lots that -- or are east of the road, the beachfront road, they would all be out of the SMA. Is that correct?

Ms. McPherson: Yes, the mauka --

Mr. Vanderbilt: So they don't -- they don't even have to come -- they can just go straight to the building department and get a building permit. They don't have to go through what the Pollack's and Mr. Parr have gone through. Is that correct?

Ms. McPherson: Yes.

Mr. Vanderbilt: So, okay, thank you.

Mr. Kalipi: Nancy? Mr. Chair? I know the director said something about if we deny based on a cumulative effect, would that be like consideration, I'm just asking you if you would answer this, would that be like a cumulative effect would be like water, say that their swimming pool takes about 30,000 gallons and you've got another -- continuous homes continue to build in a similar fashion and you've got another 30,000 gallon pool here, not inclusive the garden or some of the plants and the grass and their home usage of water and supplies like that? And if you got enough 30,000 gallons of water, then there must be some point in time that says we've got too much ...(inaudible)... and we don't have enough water. Is that sort of like cumulative effect?

Ms. McPherson: Well, I did look at cumulative impacts and, in this project, they are doing water catchment, so they are trying to mitigate those impacts. I looked at the water as impounded water so it's water storage. They're using a cover so they're going to be minimizing evaporation. And because of the combination of that and the catchment system, that's why I felt that that was -- was not a significant impact. Now, as far as cumulative impacts based on the Fire Department's fire protection requirements, I think that's possibly a policy issue and something that the County has to discussed internally as far as, you know, there's no fire station out there, what -- you know, the whole fire issue out on the West End, as we all know, is a problematic one and that's kind of a bigger issue.

Mr. Vanderbilt: Thank you, Nancy. Are there any other questions? Just one quick question for Mr. Parr. Do you know, when you use the pool for fire suppression, what do they come and throw a submergible pump into the pool, or do they bring a helicopter and scoop out some water like they do in the ocean?

Mr. Parr: The fire apparatus for the fire truck has got a pump on it, and its got a four-inch hose on it, and it's 20 feet long. If you can, you can drive it up right next to the pool and pump out of the pool, but that puts you -- you have to be no closer than 40 feet or no farther than 100 feet from the structure if you're going to do that, so what we're doing is we're putting a standpipe out over there, connecting that to the pool, and that standpipe is within that 40 to 100-foot distance. And I would just like to respond to Mr. Kalipi for a moment and that is that whether we have a pool, in this case, or a steel tank, you know, we need that

water storage. We need to be able to store 39,000 gallons for fire protection and, you know, once you fill a pool, you never -- you never empty it, it's ...(inaudible)... you can add a little bit of water to it every ten days to two weeks but you never have to empty it and start over, so yet it'll cost these people about a hundred bucks to fill it, usually, but, you know, after it's full, like you never have to refill it.

One other thing I'd like to add, when they had the fire out there at the end of February, they ended up using swimming pools as a water source to put that fire out, and so, you know, it's part of the fire protection system out there.

Mr. Vanderbilt: Thank you, Mr. Parr. Are there any other questions?

Ms. Linda Kauhane: I have a question for Mr. Parr.

Mr. Vanderbilt: Commissioner Kauhane.

Ms. Kauhane: Excuse me, but one of the questions I have, I'm always addressing the fire issue, I'm aware that the road going down to Kaluakoi is a private road and that the governmental services they go down there, it's rather limited, and from say the response time from the Kaunakakai Fire Department down to the bottom of the road there, in the event of a fire, have you factored into your fire protection plan a response time it takes to get from Kaunakakai to your residence?

Mr. Parr: The -- I think the 22 mile distance is from the Hoolehua station and the people out there pay the highest premiums, insurance premiums, you know, that are on the schedule because of their distance, and the distance isn't even from a main station, it's from a substation there and so, you know, it's, you know, people say it's kind of a disaster out there waiting to happen and that's why people do a lot of things like mow grass around their homes and stuff like that to keep the fuel down.

Ms. Kauhane: How long is -- excuse me, how big is this property, please?

Mr. Parr: It's just slightly over five acres.

Ms. Kauhane: It's an incredibly big house.

Mr. Parr: Yeah.

Ms. Kauhane: Thank you.

Mr. Vanderbilt: Thank you. So I guess what Commissioner Kauhane was eluding to, you know, we always hear from the Fire Department about health and safety of parents and

kids and everything else, and although aesthetically a pool is a much nicer fire protection, it's certainly not the best fire protection for saving your kids or something at night if they're asleep then you would if you had sprinklers, and I think that's the thing that bothers me a little but that's an allowable choice for the owner, but we're continually talked to by government officials, whether it'd be Police or Fire, and they're always into health and safety issues and now they give all these aesthetic choices that don't take into consideration really the health and safety of quick response time, like the sprinkler system would, but that's just a comment, Mr. Parr.

Mr. Parr: Thank you.

Mr. Vanderbilt: Okay, are there any other questions from the Commissioners? Hearing none, do I hear -- does anyone have a motion? Oh, excuse me. Excuse me. You're right.

Mr. Walter Ritte: ...(inaudible)...

Mr. Vanderbilt: I know. Well, I'm learning. I'm learning this, you know. Thank you. Thank you. Alright, is there anybody from the public that would like to testify on this item? Yeah, right up there.

Mr. Ritte: This is two concerns.

Mr. Vanderbilt: Wait, wait, wait. Walter, ask us the question and we'll ask him cause we can't get the public -- thank you. Thank you.

Mr. Ritte: Two concerns. One was the sand dunes, and a lot of times people just pass that as a pile of sand, but these are extremely important systems, so I'd like for us to take a, you know, brief moment to think about that because ...(inaudible)... we cannot create these kinds of systems; man cannot; it's impossible. These are special systems and these are burials sites. Of course, we all know burial sites for our ancestors also so they're very special systems. I would like to know, in the dune plan, exactly what the impacts of this unit, whether it was built before or being built now, what -- what were the impacts on the these dunes and what are the mitigation actions being proposed to solve these impacts or to try and make sure we put back this dune system as much as we can. If this project is the first one and we're setting precedent, I would hate for the precedent to be it's okay, whether they bust it all down or sell it to somebody else and there's no -- nobody pays for all of the damage, it's not corrected, it's not mitigated, so I would like for somebody to make sure that we take careful look at the dunes and I would like to know what were the -- what did the study say about this specific area; what happened when these guys built all this stuff; what did they do and how can we create -- how can we mitigate those things.

The other issue is the water. You cannot -- it is so ridiculous to say we're going to make swimming pools so everybody can -- this water situation is going to get worse and worse and worse ...(inaudible)... this is the first again. We have a standpipe in the front of his lot for fire and he wants to build his house so that you gotta build a swimming pool and stack all this water down there. Build your house where you can solve your problem with the fire. Don't allow people to build there and put the pressure on us that we go allow swimming pools and all of our precious water to go down there. They should be -- he knows where his standpipe is and he knows the rules and the regulations about how far you gotta be. Why this architect went put the house where -- I don't know all of the details, but that's one of the problems that I have in my mind is make sure we're not making their problem our problem. Our problem is water on this island and it's going to get worse. So they need to know ...(inaudible)... if you're going to be an architect, you gotta design you house so that you fall in line with these water problems.

So I wanna know what are the dunes -- what were all the problems with the dunes and what is going to be done to solve those problems with this new owner, not just because he didn't do it, but he still has that problem. He bought that property.

Mr. Vanderbilt: Thank you. Any questions for Mr. Ritte? Nancy, do you -- could you sort of give a little synopsis of what the mitigation plan is for the -- if somebody does damage the dunes, who keeps an eye on that, and if somebody does it, what's the enforcement rules on that and the penalties and whatever?

Ms. McPherson: Well, the original impetus or the reason that the Papohaku Dune protection plan studies were done in the first place was because there were impacts to the dune system that were happening; both in the conservation district, which is under State jurisdiction, and in the County jurisdiction area, the privately owned lots.

Mr. Vanderbilt: What were those?

Ms. McPherson: Well, they were, I think at the very end, I think it was John McAfee's parcel, there were -- there was some construction going on in the dunes; there was grading; there was taking of piles of stones and, you know, those stones may have been possibly burial cans for chiefs, famous chiefs down there; there was heavy sand mining going on for many, many years, which was destabilizing to the system; there were -- people were landscaping in the conservation district without any permission, so, you know, OHA was appealed to because of the disturbance to the iwi that are in those dunes, them and some of the archaeological stuff that may still be down there. So OHA funded the study, worked with DLNR, and the students at U.H., so a number of studies were done. What they did is a native Hawaiian PhD student in the Geography Department did a GPS/GIS project where they located the edge of the primary dune and put it into the computer and



produced maps, so there are layers of that information. I don't have any electronic layers but I do have the maps.

Mr. Vanderbilt: Okay, so you know exactly where the dune is right now?

Ms. McPherson: Yeah, I use that information in my analysis.

Mr. Vanderbilt: So the plan that Walter was referring to and that we've got a copy of, I have to say that I haven't read the plan, but are there things in there that you would suggest be included in County ordinances or other laws that would call for certain protocol when building in the dune system and certain mitigation measures? Is that included in that plan?

Ms. McPherson: There are recommendations for the County to implement and we are hoping to do that. We're hoping to get also support from the Planning Commission for doing that.

Mr. Vanderbilt: So this is something that maybe the Planning Commission could take the position on at some further meeting that they would want -- they'd approve this plan and send it on to the County to implement the laws that would take that --

Ms. McPherson: Well, implement the recommendation.

Mr. Vanderbilt: The recommendation.

Ms. McPherson: By amending our different ordinances, etcetera. Now, I do have to say that the grading ordinance has been revised and I actually did the analysis of that in the dune study and there are a lot of very good discussion about not grading sand -- in sand, not using any earth fill in a sand area, in a dune area, so they're actually are already some very good provisions in the grading ordinance for protecting dune systems.

Mr. Vanderbilt: But, at this point, if somebody, like Mr. McAfee who I think got fined for it, it's just you gotta aware even if there's no ordinances --

Ms. McPherson: Right.

Mr. Vanderbilt: Somebody's gotta be aware and the person that has to be aware is the County's enforcement people?

Ms. McPherson: Well, the person who needs to be aware, as Jeff mentioned earlier, is me and then I can pass that information on to the enforcement or anyone who's concerned can do a request for service, either on paper or over the internet, and send it directly to the

County and they will handle that. They will have to follow-up on that request for enforcement.

Mr. Ritte: ...(inaudible)...

Mr. Vanderbilt: Walter.

Ms. McPherson: ...(inaudible)... the first home built down in the Papohaku area on the beach lot area.

Mr. Vanderbilt: Nancy, just deal with the Commission, please.

Ms. McPherson: Okay.

Mr. Vanderbilt: And, as far as the water, the Fire Department gives people a choice on that, of using a tank, a sprinkler system, or a swimming pool. Is that correct?

Ms. McPherson: Yeah, I believe so.

Mr. Vanderbilt: Okay. So that's under the current ordinance?

Ms. McPherson: Yes.

Mr. Vanderbilt: Which -- okay. Are there any questions? Can you go to the mike.

Mr. Ritte: Why no make this user-friendly, DeGray. All these rigama-rules and stuff is throwing me all off.

Mr. Vanderbilt: Well just --

Mr. Ritte: How --

Mr. Vanderbilt: Wait, wait, wait. Speak to us. Speak to us and then she'll listen.

Mr. Ritte: I tried that and everything got all upside down. How can we -- how can a community person as a question? We have to ask you first? Is that how it works? And then you ask her?

Mr. Vanderbilt: Well, I think that's -- I guess the Chair could do whatever he wants but what would you suggest, Corp. Counsel? How do we handle that? Can we be user friendly?

Mr. Ritte: I hope so, DeGray. We all --

Mr. Vanderbilt: Wait, wait, wait.

Mr. Ritte: We're just trying to figure out what the problem is and I don't need you for interpret because I tried and you never interpret 'em good. You went somewhere else with my question.

Mr. Vanderbilt: We couldn't quite understand you, Walter, so --

Mr. Ritte: Can I please ask the question?

Mr. Vanderbilt: Anyway, what is the question?

Mr. Ritte: I'm trying to find out, in this specific case, as it pertains to the dune plan, how did this project impact the dune plan and what is the mitigation actions to resolve the impacts of this project, whether it's now or prior to that, for this one acreage? What happened in this one acreage and what --

Mr. Vanderbilt: Okay. I got the question then.

Mr. Ritte: Thank you.

Mr. Vanderbilt: Based on the dune plan and the mitigation measures you said were recommended to the County, how did this project comply with those recommendations with some of them, half of them, all of them, and what were the ones they complied to?

Ms. McPherson: It's, basically, complying with all of them because it is set far back enough from the dune system. The only actual structure that they're putting in any proximity to the dune system is some straw bails. The idea is to not put any kinds of structures in an area where, even in the area of the secondary dune, where that -- what you wanna do is you want to allow that sand to migrate back in there, and the way the project is designed currently, that will be able to happen. The structure will not affect the geomorphological processes of the dune system.

Mr. Vanderbilt: Okay, so they met that mitigation measure.

Ms. McPherson: So that's covered.

Mr. Vanderbilt: What else did they do?

Ms. McPherson: And they're also going to be -- they're also re-vegetating with native dune species in the front. So the idea is if you have the dune species there, that they will help

capture the sand, so as the sand comes back in, it is able to be captured by the dune species roots, that's why only certain plants can be used, plants that are native to that area.

Mr. Vanderbilt: Alright, who is following-up to see that those -- those plantings are done and maintained?

Ms. McPherson: Well, I am not sure. I believe the County, you know, approves the farm plan.

Mr. Vanderbilt: This is -- this is part of the farm plan?

Ms. McPherson: We don't -- yes. We don't have a landscape maintenance agreement or anything like that with them. If it's on -- it's in the conservation district area, then DLNR will be monitoring that and they are planning to work very closely with the community, with the property owners to implement their kuleana, which is everything within the conservation district.

Mr. Vanderbilt: Does DLNR have an enforcement person on this island?

Ms. McPherson: Yes, they do. One person.

Mr. Vanderbilt: That's good. Are there any other issues that were recommended, mitigation issues, recommended in the dune plan that the Pollack's adhered to?

Ms. McPherson: Yes, they -- they're building on piles so they aren't doing slab on grade. They are -- were trying to observe the views.

Mr. Vanderbilt: Let me ask another thing. Are there -- is there anything that you recommended that they didn't adhere to?

Ms. McPherson: No. They, basically, responded to all of our requests and recommendations. And I went through the plan thoroughly to make sure I wasn't missing anything so because of this site -- because this site's already been, earlier, was graded and some of the sand had been mined out, the, you know, the issue is it's partially degraded already but the idea is to not allow anything in there that would prevent the restoration of the secondary dune system either naturally or by -- we're also looking, possibly, at sand replenishment so -- and the owners, I believe, are willing to be involved with that as well.

Mr. Vanderbilt: Have you asked the owners for any type of follow-up report or have you talked to them about inspecting it once a year or anything like that? If you haven't, that's alright.

Ms. McPherson: No, I haven't discussed that with them but I don't think they'd have a problem with that. I have a very good relationship with the -- Karin, who's in Vancouver and --

Mr. Vanderbilt: Okay.

Ms. McPherson: We're planning on, you know, going out there together when the project gets initiated.

Mr. Vanderbilt: Thank you. Are there any other questions? Okay, Commissioners, hearing none, is there anybody else who would like to testify? Walter.

Mr. Ritte: I wanted to know if one of the options was to move the house closer to the standpipe. It sounds like it was pretty close but just not close enough. As an option besides the swimming pool and the tanks and whatever.

Mr. Vanderbilt: Mr. Parr, I think the question was you have a standpipe, correct?

Mr. Parr: Right. That's right.

Mr. Vanderbilt: And so why do you need the pool if you have the -- oh, the standpipe is connected into the pool?

Mr. Parr: The standpipe is connected to the pool. That's right. It takes water from the pool, pumper truck pulls up to the standpipe and --

Mr. Ritte: ...(inaudible)...

Mr. Vanderbilt: Walter, please.

Mr. Ritte: ...(inaudible)...

Mr. Vanderbilt: Walter. Mr. Parr, you --

Mr. Parr: Yeah, the standpipe is on the property, right. Was that your question?

Mr. Ritte: ...(inaudible)...

Mr. Vanderbilt: Walter, come on we -- well, this is the last question on the standpipe.

Mr. Ritte: Okay, DeGray. I thought I heard that there was a standpipe in front of the property for the Fire Department.

Mr. Vanderbilt: Well, there's a fire hydrant.

Mr. Ritte: Fire hydrant, I'm sorry. And that the distance between the fire hydrant was too far so that's why you have to have the swimming pool or tanks or whatever. So my question --

Mr. Vanderbilt: For the primary resident it was too far. For the ohana unit it was close enough.

Mr. Ritte: Was that one of the statements? So I was wondering if one of the options is, when you're designing your house, that it has to be close enough so that you don't have to have swimming pools. If that was -- was that an option?

Mr. Vanderbilt: That could have been an option but we're dealing with a plan that was presented to us after consultation with the Planning Department and Planning Staff, and so we have an option to concur with their findings or we could not concur with their findings and require an SMA, which they may or may not have to do if --

Mr. Ritte: So one of the requirements would be to put your house closer to the fire hydrant?

Mr. Vanderbilt: But there is no requirement like that so, Walter --

Mr. Ritte: I'm just -- that's what I'm -- that's what I'm trying to get -- that's all I'm asking. I'm not saying do it. I'm just asking as a community member. In my mind I --

Mr. Vanderbilt: That would be an option for the owner if they wanted to do that but they're not legally required to do that.

Mr. Ritte: So, is that a -- is that something that this body would like to consider if we're setting precedent for everybody else that's coming down the line that they can all move no matter where they want on their property and just put in swimming pools?

Mr. Vanderbilt: No, we don't have that option today. We have the option of concurring or not concurring with the Planning Director's assessment.

Mr. Ritte: Okay.

Mr. Vanderbilt: We don't -- we can't put any conditions. We can't say we concur with the Planning Director if you move your house closer to the fire hydrant. We can't do that.

Mr. Ritte: Okay, so I just wanted to make sure that that's on the record that that's a concern.

Mr. Vanderbilt: Thank you. Is there anybody else out there that would like to testify? Hearing none, if there are no more questions from the Commissioners, do I -- I'll entertain a motion if there is one from the Commission. Commissioner Chaikin.

Mr. Chaikin: Thank you, Mr. Chair. I'd like to accept Nancy's expertise and go with her recommendation that this Commission exempt the Pollack residence from having to go through and get an SMA major permit.

Mr. Vanderbilt: Is there a second? Seconded by Commissioner Napoleon. Is there any discussion, Commissioner Chaikin? Any other discussion? I would just like to add, and I don't know, I'll have to ask Corp. Counsel, but not making it a condition of the -- of the concurrence or nonconcurrence, is it possible, can this Commission send a letter to the administration or Planning Department regarding the concerns that we would hope that the -- this owner and any future owners would comply with the -- with the I guess promises that were made for the swimming pool -- I mean for the no vacation rentals, for the tennis court, for taking down the second story of the cottage? There's no reason we couldn't do that is there? Can you think of any?

Mr. Hopper: That's going to be part of the motion? I mean there's a motion, seconded, are you planning on amending the motion to add that or something?

Mr. Vanderbilt: Yeah, I would like to amend the motion to say that we would concur with the Planning Department's approval and that this Commission or the Planning Staff will prepare a letter from this Commission to the appropriate people within the County to let them know that our concurrence was based on certain promises made and that be filed with the permitting or anything and that that apply to this owner and be a consideration for future owners if they come back and wanna do a tennis court or whatever.

Mr. Hopper: That can under no circumstances be a condition at all of the approval. You could -- I don't see necessarily a problem with just sending a letter but it can't be implied that there were conditions to the exemption in this case. The exemption's based on the facts in the application and they have to follow through with the application as presented or else they won't get their building permit; if they operate a TVR, it's illegal. I don't see a problem with the letter but I would recommend being extremely careful to create any implication that you're conditioning this exemption in this case cause an exemption, unlike certain other types of permits and things, can't have conditions to it.

Mr. Vanderbilt: Okay, well, I would like the Commission to entertain that amendment that we send a letter just noting some representations made by the owner voluntarily and that

we would hope that the various County departments would at least recognize those in any future decisions they may have on other developments on this property.

Mr. Chaikin: I'd just like to make a comment. One of those items was the TVR --

Mr. Vanderbilt: Excuse me, do we have a second to the amendment? For the -- just a second and then we would, if there's a second, we discuss, then we vote on the amendment, then we'd vote on the main motion. Okay, if there's no second -- if there's no second, the proposed amendment dies. Now we're on discussion of the main motion.

Mr. Hopper: Actually, the Chair can't make a motion to amend, he would entertain one, but there is actually no initial motion made.

Mr. Vanderbilt: Thank you. And there's no point in me entertaining a motion because it didn't even get a second when it was illegally proposed by the Chair. So, moving on to the main motion, we're under discussion on the main motion, is there any discussion? Commissioner Kauhane?

Ms. Kauhane: For clarification, if this goes through, does that mean that he, the applicant, is allowed the swimming pool and does it address the fire concerns that we've talked about this afternoon?

Mr. Vanderbilt: If we approve the -- if we concur with the Planning Director's finding that this is not a development, then they can go to the building permit department and get a building permit for the plan that was presented to us.

Mr. Hopper: I'd also like to make a comment that this would be an exemption only from the -- getting an SMA permit, which it's not an exemption from the fire code or from any other legal requirements they would have to comply with. It's for the sole purpose of whether or not, in this case, they have to get an SMA permit. There's a lot of other rules they have to comply with so --

Ms. Kauhane: Thank you for that clarification.

Mr. Vanderbilt: Thank you, Michael. Are there any other comments? Okay, I'll call for the question.

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



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

**VOTED: to accept Nancy's expertise and go with her recommendation that this Commission exempt the Pollack residence from having to go through and get an SMA major permit.**

Mr. Vanderbilt: Motion carries. Thank you. Excuse me, what time do you all have to leave? When's the flight? At seven? Okay. Alright, well then, we'll take a five-minute break here and let them get caught up over here and then we'll reconvene at 2:25 p.m.

*(A recess was called at 2:20 p.m., and the meeting reconvened at 2:25 p.m.)*

Mr. Vanderbilt: We will reconvene the meeting at this time. Corp. Counsel will be here. Hopefully, we won't have any legal questions before he gets here. The next item on the agenda is under Unfinished Business, C.2.

Chairperson Vanderbilt read Item C.2. into the record.

- 2. 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. Commissioners: *Please bring your documents distributed with the May 9, 2007 agenda and during the meeting.*)**

**The Commission may take action on the two applications.**

Mr. Vanderbilt: So, with that, Nancy, do you have any update from the last meeting?

Ms. McPherson: We did have public comments that came in, in writing, to the Commission at the last meeting, and you've received those. I have not received any additional information other than that since then so you have all -- all the latest information.

Mr. Vanderbilt: Alright. Now, we got some letters in at the last meeting and Commissioner Napoleon wasn't here at that meeting, were those made available to him at this meeting or through the mail?

Ms. McPherson: Yeah, he says he's received them so --

Mr. Vanderbilt: You got 'em now? You got 'em today?

Mr. Napoleon: ...(inaudible)...

Mr. Vanderbilt: Yeah, but then at the May 9<sup>th</sup> meeting, there were several letters that came in including a colorful one from the Akaula School. See this, Sherman? You got that? Huh? Okay, so you got that. Good. Alright, just checking. Planning Director Hunt, did you have something you'd like to say?

Mr. Hunt: I just wanted to add a few comments from -- based on the last meeting, if that's alright.

Mr. Vanderbilt: Fine. Go ahead.

Mr. Hunt: There was a lot of testimony at the last meeting regarding the character of the Feeter's and how they're very nice people and they contribute to the community, and the Planning Department has no problem with the Feeter's. This isn't an issue with the character of the Feeter's. We agree with the testimony. The issue before us, as planners, professional planners, is the issue of policy and, as Nancy showed in her staff report to you, there's a number of policies in the General Plan and the Molokai Community Plan that speak to restricting visitor accommodations or regulating visitor accommodations. Additionally, the conditional permit standards have standards that you have to meet in order to issue a conditional permit and whether it's detrimental to the public interest, you have to weigh neighboring impacts, you can include cumulative impacts, and this is where the Planning Department is making our argument is more of a cumulative impacts based on the housing crisis across the County, and we've had a lot of testimony again regarding the impacts that TVR's have on the housing situation that they result in fewer rentals being available for the local residents, the argument being that if they weren't TVR's, they would put on long-term rental, and they also -- the argument goes that they -- TVR's inflate the sales price of homes, the overall housing market because people can reasonably they calculate what they can afford to pay for a mortgage if they can do it -- get rental income, which is substantially higher than a long-term income. If they can get rental income, then perhaps they can afford this home even though they don't live here. So, again, it's a cumulative effects argument that we're making.

You also have to be careful, again, like we talked about last time, about allowing certain applications under conditions and then rejecting others that are similarly situated, and if you conditions are based on character, the Planning Department isn't comfortable of saying, well, because these people are long-term residents of the community and they've contributed a lot of money to this or that, or they're just nice people, and somebody else comes in and they're a newcomer and you don't like them or whatever and so they don't get a conditional permit, the Planning Department can't go down that road. You guys can

but we wouldn't suggest it. So, again, if -- so, again, our recommendation is based on policy and it has -- and not the Feeter's, not the character of the Feeter's. Again, we think they're very nice people from what we can tell.

Mr. Vanderbilt: Okay, I'm going to open this up to public testimony. Is there anybody here that would like to -- Gladys, please.

Ms. Gladys Brown: Good afternoon, Commissioners. I'm here to testify today, not because the Feeter's are very great people, but because I've gone to their establishment they have out the East End and it is a very attractive, well kept area, and it's inside of the road so it's not visible to the general public where the people who occupy it would have lots of privacy. And I'm sure that I've looked into the idea of where they've been following all the regulations concerning vacation rentals and I'm sure they've all been carried out. And I feel in my own heart that this vacation rental that I've seen is an asset to the community. It's a very nice place to be and I'm sure that any visitor that come to Molokai will really have the aloha spirit that we want them to have. But, as you know, it's an option. It's among all the options they have for coming to Molokai whether they go to hotel or condo or whatever, but I really would recommend this establishment for people who come because they will be very well satisfied. Thank you.

Mr. Vanderbilt: Thank you, Gladys. Are there any questions for Gladys? Hearing none, is there anybody else in the audience? Linda. Please state your name for the record, Linda.

Ms. Linda Place: My name is Linda Place. Actually, I didn't wanna make a -- let's see, anyway, aloha, Commission and Planning Department. East End is very unique and the majority of our permanent residents want to protect and maintain the -- maintain the uniqueness. State and County agencies, with our community, has made rules and regulations for a reason, and then here comes the new owners -- newcomers who walk in and decide they want to change things for their benefit, which is more money. Anyway, today I'm here to say B&B's should be for local residents only who have lived in their properties. No vacation rentals. Vacation rentals belong in hotel, condo, and business districts. This is what zoning laws are for. No to residential, no to ag lots, and no to rural. Our laws must be enforced. Our laws and regulations are to preserve, care, and protect Manae. Allowing our development -- allowing over development of B&B's and vacation rental will turn Manae into a tourist community, destroying our community and our beautiful island. Let's learn from our sister islands. We are the last of a true Hawaii. Aloha and mahalo. And this I make my statement for myself. I spoke two weeks ago and I didn't want to speak again but only if there was no other testimony, I wouldn't have spoke today. Thank you.

Mr. Vanderbilt: Thank you, Linda. Are there any questions for Linda? Linda, where do you live?

Ms. Place: I live at Ohi`a and I've been there for 32 years.

Mr. Vanderbilt: Thank you. Any other questions? Thank you very much, Linda. Is there anybody else who'd like to testify? Walter.

Mr. Walter Ritte: Two concerns. One is the impacts on the taxes of people, people buying whole bunch of properties and turning them into these kinds of things. If we can take a look at that to make sure that we don't run the East End people out of East End because they cannot pay their taxes. That's always been a problem and that's always a worry. The other issue is in our Molokai General Plan there's a Manae addendum attachment. I scared look over there now, DeGray. I going get scolding again. There's a attachment in our General Plan that talks about East End and I don't think that has ever been amended or changed or dropped, it's there, and that's the opportunity where the East End people got together and they made their own plan as it pertains to Manae. The Manae plan. And in that plan, it says very, very clearly, "No tourist related activities would be allowed in Manae." And that was to protect the Manae area, and the goal, I guess, was to push tourism into another section of Molokai other than Manae. So I don't know what -- how you guys are going to treat that attachment. All I know is that it took weeks and months and months of staying up late every night and the community, there was hundreds of people at these meetings that created this attachment, or I don't know what the name it, attachment or addendum. So if we give it no respect as being part of the plan, that's your prerogative, or we can say to the people of Manae that you need to change this if you want these things in there or somebody gotta change that because it's there, and to ignore it I think would be a big mistake in the planning process when you ignore what people spend a lot of hard to do or try to encourage that we change that section if they want tourism activities at Manae. Thank you.

Mr. Vanderbilt: Any questions for Walter? Thank you, Walter. Alright, is there anybody else here that would like to provide some public testimony? Yes, Frances, please.

Ms. Frances Feeter: I'm Frances Feeter. I'm the applicant, obviously. Good afternoon, Chairman DeGray and Molokai Commissioners and staff. It's exciting to have Mr. Hunt here again this time. There are a few things I'd like to say.

When we first applied for this, we were told by the Planning Commission this was the appropriate method to get the special permit and the conditional use permit. It seems to me that when you apply and try to be legal and go through the process and then they say: Oh, no. We've changed our mind. We're going to make a new ordinance and it will not make it legal so we can't do this. And we were told: Just wait. Don't do anything several

years ago, so we took that in good faith from John Min, and now we're faced with the feeling that this should not be allowed anywhere on Molokai, particularly the East End.

Interesting enough, we were driving Sunday around and we, this is in relation to taking away long-term rentals, we identified, just from the road, at least eight empty housing units. Why aren't these being rented to people? Where is the push to get people that own vacant houses to make them available to long-term rentals? It seems to me that's just as important an idea as converting vacation rentals to long-term rentals.

But I really feel we have, in good faith, tried to make everything legal, we've done everything possible, we've gone through all the process, and now they're telling us: No, we've changed our mind. It's not going to be legal for you to do this now. That's kind of like you start going to college and they say: Okay, you have your curriculum and this what you have to take in order to get your degree. Well, it takes you maybe five or six years till you had to drop out and work for a while. And then you come back to finish up and, oh no, we've changed the rules. You've gotta go and take a whole semester of extra courses. It's kind of the same idea. When we started this, we were fulfilling all of the obligations that were required of us and now they're saying: No, we've decided we don't want to do this. Is that really fair too? And I think maybe the people of Molokai do not realize how many local people are actually doing vacation rentals. It's not just us haoles. There are a lot of local people that depend on this and get an income from it. So I want -- I think you should be very careful about saying: No, there will be no vacation rentals. We've had our application in a long time. We've been trying very hard to be legal. Why should you change the rules?

Walter, I might remind you that you --

Mr. Vanderbilt: Excuse me, Frances?

Ms. Feeter: Yeah. Is that three minutes? Okay.

Mr. Vanderbilt: No, no. Just speak to the Commission.

Ms. Feeter: Oh, okay, DeGray. I won't -- I won't belabor Walter.

Mr. Vanderbilt: Thank you.

Ms. Feeter: Walter and I, we were on the ...(inaudible)... board together and I told Walter we should call him our designated dissenter, so we've been friendly adversaries for a long time. But I have to say Christy bailed him out once when he did something illegal with the USDA. Her money bailed him out. Thank you very much ...(inaudible)...

Mr. Vanderbilt: Thank you. Are there any questions for the applicant? Yeah, Commissioner Kauhane.

Ms. Kauhane: Aloha, Mrs. Feeter. I've done some research on your particular issue and one of the things that I did read about is, I was checking out how the -- Maui was debating this particular issue and I can't remember if it was from the February Commission meeting or perhaps March, but one of the comments that I believe Mr. Hunt made is that Molokai and Lanai are not one size fits all type situation ...(inaudible)... and then I also was looking on the internet too because I have a great respect for neighbors getting along and, you know, you do have private property and that's what laws are for, we have to follow them and all the other good stuff, but one thing I'm curious about is, on one of the websites that I found, and I'm assuming that these vacation rentals that I found online are not licensed here, I couldn't find any information online that said they were, they weren't, so for debate purposes I'm going to assume that they're illegal, this one website says that their nightly rate is \$90 a night, a weekly rate is \$560 per week, and a monthly rate is \$750 per month, and it seems like this involves a lot of people, and I know in your application you had said that there were only going to be six people per year or was it six months?

Ms. Feeter: Oh, six people is the number of persons the house will hold. Is that what you mean?

Ms. Kauhane: Okay, six people in the house, but how many people per year would you be having visiting?

Ms. Feeter: Well, that kinda depends. A lot of time we only have two people in the whole house, many times, so I haven't actually -- I think as of the time I put the application in, we'd only had 60 people, but it's hard to say. Sometimes we'll have six people, and many times we have just a couple here on their honeymoon.

Ms. Kauhane: I see. Maybe perhaps a question to Corporation Counsel is: How are you going to or does the County of Maui have plans to regulate other vacation rentals? Or, in other words, what are the plans to address the vacation rentals that we all know are illegal?

Mr. Vanderbilt: Let's finish up with Ms. Feeter first. I don't think that she's in a position to comment on the County enforcement so -- do you have any other questions?

Ms. Kauhane: I guess I just wanted to be more informed about, you know, what your plans are and, after looking on the internet, there's quite a few unlicensed activity around you so I would think that it's something that maybe the County perhaps needs to help us understand is, you know, if we give it to you, then what happens to the others that aren't doing it or vice-versa, you know, maybe what I'm trying to get at is figuring out is if we grant it, is it in perpetuation or is there going to be a review process? Just asking questions.

Mr. Vanderbilt: Well, I think that's something -- I think that's something that we can ask when we get into discussion after the Planning Department recommendation is read. If you don't mind waiting till then.

Ms. Kauhane: Thank you.

Mr. Vanderbilt: Alright, are there any other questions for Frances from this body? Hearing none, thank you very much. Is there anybody that would like to testify? Okay, hearing none, Nancy, could you read the recommendation from the Planning Department that was referenced by Director Hunt?

Ms. McPherson: Thank you, Chair Vanderbilt. This is in the matter of the application of Frances Feeter to obtain a State Land Use Commission Special Use Permit and a County Conditional Permit to operate Hale Maluhia in the State Rural District and the RU0.5 Rural Zoning District at 8770 Kamehameha V Highway, Tax Map Key 5-7-007:011, Pukoo.

Conclusions of Law. The application, as presented, is as follows: The propose action is not consistent with various policies in the Maui County General Plan, the Molokai Community Plan, and the East End Policy Statement, as noted in the Planning Department's report; 2) The proposed action, as presented, does not meet the definition of a bed and breakfast home, as defined in Chapter 19.04 of the Maui County Code; 3) The Planning Department is in the midst of updated the Maui County General Plan where the issue of transient vacation rental regulation may be addressed and introducing new legislation regarding the regulation of transient vacation rentals since the Council filed the previous resolution regarding transient vacation rental regulation in mid-March 2007.

Conditional Permit. The Planning Department finds that the proposed request does not meet the intent of the conditional permit to provide the opportunity to consider establishing uses not specifically permitted within a given use zone where the proposed use is similar, related, or compatible to those permitted uses, and which has some special impact or uniqueness such that its effect on the surrounding environment cannot be determined in advance of the use being proposed for a particular location. Further, the proposed use may be significantly detrimental to the public interest, convenience, and welfare and may not be in harmony with the area in which it is to be located. The subject property is located in the rural single-family neighborhood.

Recommendation. Conditional Permit. The Maui Planning Department therefore -- Maui County Planning Department, therefore, recommends that the Molokai Planning Commission recommend denial of the conditional permit request to the Maui County Council.

In consideration of the foregoing, the Planning Department recommends that the Molokai Planning Commission adopt the Planning Department's report and recommendation prepared for the May 9, 2007 meeting as its report to the Maui County Council and authorize the Director of Planning to transmit said report and recommendation to the Maui County Council.

State Land Use Commission Special Use Permit. Furthermore, since the General Plan Update process has commenced and the Planning Department is expected to introduce new legislation regulating transient vacation rentals shortly, the Planning Department recommends deferral on the State Land Use Commission Special Use Permit until after the legislative body, the Maui County Council, has decided on the conditional permit as the Maui County Council will have to decide on the General Plan Update and any legislation regulating transient vacation rentals. Approved, Jeffrey S. Hunt, AICP, Planning Director.

Mr. Vanderbilt: Thank you, Nancy. Are there any questions from the Commissioners? Commissioner Kalipi.

Mr. Kalipi: Question. I have a couple of questions, Nancy. One is if we do approve it here, then the -- this goes to the Maui County Council and they have the final approval on the Feeter's request for a special condition permit? Is that correct?

Ms. McPherson: Yes.

Mr. Kalipi: Okay, secondly.

Mr. Vanderbilt: Excuse me. Excuse me.

Ms. McPherson: Well, these are the bodies --

Mr. Vanderbilt: Joe --

Ms. McPherson: Sorry.

Mr. Vanderbilt: Excuse me, Nancy. Let me give the mike to our Corp. Counsel on that question.

Mr. Kalipi: Go ahead.

Mr. Hopper: Just to clarify. To operate, they need two permits: One's a conditional use permit and one is a special use permit. You're the final authority on the special use permit, so Council doesn't see that. The conditional use permit, you're recommending to the Council so, in the Planning Department's report, they recommended that you make a



recommendation to Council on the conditional use permit and then hold off on the special use permit until the County Council makes a decision on the conditional use permit because you need both. But there's two separate permit applications and two separate standards for granting those permits, and the conditional use, you don't actually have the final say on, that's a recommendation to the County Council.

Mr. Kalipi: So then if we approve it, it's actually approving both permits but one of the permits will stand before the County Council?

Mr. Vanderbilt: No, I think what we're doing is we're going to make a recommendation to the County Council either to approve the recommendation of the Planning Department or come up with another recommendation, and then that's going to go to the County Council and then they'll either agree with our recommendation or make their own decision that might not be in tune with what we recommended, but they have the final authority on the conditional use permit. Now they need both permits, as our Corp. Counsel said, so we would hold -- we're the final authority on the special use permit, and they need both of them, so we would wait and see what the Council did since they're the one that put this law on the shelf and see how they handle the conditional permit. If they deny it, there's no point in us acting on the special use permit because they need them both, so it's basically sending up our recommendation to the Council, letting them act on that, and then when they've acted, if they say -- if they approve it, then it comes back to us and we act on the special use permit.

Mr. Kalipi: Okay, thank you. To add to that, then I guess maybe Mr. Chair would answer it or you can jump in Nancy, could we also put conditions, like say a one-year or two-year?

Mr. Vanderbilt: You can put conditions on a conditional permit. Any other questions of Nancy? Yeah, I had a question, Nancy, or, no, I guess I had a question of Corp. Counsel. This Planning Commission is under certain time frames in which to make approvals on certain types of permits from the time they get the application, do we have the luxury of sending our recommendation to the Council and waiting, say, six months before we act on the special use application?

Mr. Hopper: I believe there is a -- there's no specific time limit or time period for the granting of the special use permit. As for the conditional use permit, you have to make your recommendations within 45 days of a certain date, that date's begun to run, you're within that period. If you don't make your recommendations to the Council within that time, then Council could act without your recommendations. But for the State -- for the special use permit, there's no set time frame for that and you could hold that in abeyance pending Council's decision.

Mr. Vanderbilt: Thank you. Nancy, where are we in the 45-day period for the conditional use permit that we have to make a recommendation to the Council, and when did that 45 days start?

Ms. McPherson: I believe the 45 days started at the last meeting with the public hearing, and please someone correct me if I'm wrong about that.

Mr. Vanderbilt: We have Corporation Counsel checking that out. You don't have to read it.

Mr. Kalipi: Commission Chair?

Mr. Vanderbilt: Oh, okay.

Mr. Kalipi: DeGray? Commissioner DeGray?

Mr. Vanderbilt: Yeah? Commissioner Kalipi.

Mr. Kalipi: Even if we have like a 45-day window, is there any chance of an extension period too, if he's looking up that?

Mr. Vanderbilt: I'm not a lawyer but I think we have to meet that 45-day time limit. If we don't, it just goes on up to the Council without our recommendation. Well, we're getting near that 45-day period so we're going to have make some kind of decision probably today, and if we don't make a decision, there's a chance it'll just go up with no recommendation and the Council will have to deal with that. Are there any other questions for Nancy on the --

Mr. Kalipi: Public testimony.

Mr. Vanderbilt: No, there will be some -- you can -- well, we'll allow the -- we haven't closed public testimony. So, anyway, does anybody have any questions on the report?

Mr. Kalipi: I got one more question for Nancy.

Mr. Vanderbilt: Okay, Commissioner Kalipi.

Mr. Kalipi: If you know, the General Plan, Molokai General Plan, it was mentioned that that's not a place that -- and some comments, East End was not the place that they wanted any vacation rentals. Do you know if our current Molokai General Plan, I don't know, our Chair probably knows this answer too, is that did it have -- did it state there that -- that the vacation rentals will be allowable on the West End or any place?

Ms. McPherson: My reading of the Molokai -- it's the Molokai Community Plan. I looked at the -- the Countywide General Plan, the Community Plan, and then I think it's Exhibit D is the East End Policy Statement. The East End Policy Statement has been a part of the Molokai Community Plan since 1984. It was reaffirmed in 2001. When that -- when the plan was updated and approved by the County Council. So that's been in there a long time. And in the East End Policy Statement, it does talk about commercial uses in Manae that are supposed to be serving the local population out there. So I read that to, you know, I interpreted that to mean that that doesn't provide for commercial establishments that are serving a population outside of -- of Manae even, but that's a narrow interpretation. Actually, I would interpret it more along the lines of a population outside of Molokai, so the idea is that there could be a gas station; there's the Neighborhood Store, you know, Manae Goods and Grinds; there could be other kinds of commercial uses that actually are for the local population of long-term residents. But it seemed pretty clear to me that the emphasis in the rest of the Community Plan, and it's also mentioned in the East End Policy Statement, is that commercial, resort, and hotel, and tourism activities are to be concentrated on the West End of the island, and I believe my understanding is that was in response to some fairly large scale resort, marina, and condo proposals that were actually being introduced at that time for Manae, at Puko`o and Pahala, I wanna say, I forget the -- Puahala. Puahala. And, you know, they went as far as to dredge for a marina, which you can see in the aerial photographs, the Wavecrest went in, and my understanding is that renting those out, short-term those condos is actually been grandfathered in, that that's okay; Molokai Shores as well because it's a multi-family use. But the single-family residential, ag, and rural districts, that is not to be used for hotel resort uses.

Mr. Vanderbilt: Thank you. Are there any other questions? I had a question. You said in the last paragraph, since the General Plan Update process has commenced and the Planning Department is expected to introduce new legislation relating to transient rentals shortly, number one, give us an idea what shortly is, and, number two, what has to happen. They introduce it but doesn't it have to go before the Council and come back to our Planning Commission? Maybe Jeff could --

Ms. McPherson: I'll let the Planning Director because he's working on that.

Mr. Vanderbilt: Yeah, that would be great.

Mr. Hunt: The draft bill that we're working on should be sent to Council within a few months and they would have the option to refer it to Committee and then take it from there back to the Planning Commissions. So it would go through this Commission, if that's what your question is.

Mr. Vanderbilt: If a conditional permit were granted for a year or two, that doesn't necessarily exempt the operation from whatever new ordinance comes out?

Mr. Hunt: During the length of the time that the permit is valid.

Mr. Vanderbilt: Well, if you get a conditional permit for say two years --

Mr. Hunt: Yeah, for two years.

Mr. Vanderbilt: And just say the law comes out in a year.

Mr. Hunt: Then, generally speaking, a conditional permit, we actually do put time limits on them and then they review them after the time period is coming up and, in theory, you'd have an opportunity to then review the permit again and perhaps deny the permit at that time if you -- under the scenario that you approved it the first time.

Mr. Vanderbilt: Thank you. Corp. Counsel?

Mr. Hopper: I'd also like to make a comment. Yeah, the -- such an ordinance would, since it's a land use ordinance, it would have to come to all three planning commissions before the Council could act on it, at least for recommendations. As well, the applicability of any new ordinance would also have to be set forth in the ordinance whether it would apply to valid existing conditional use permit or however that would apply. Also, on the separate note, as for the time limit for making your recommendations to Council, the time limit is actually 90 days from the date in which the -- after which the application is deemed complete by the Planning Department, that's a 90-day period from the date that the Planning Department deems the application complete, so I'm not sure what the date is right now that the Planning Department has deemed the application to be complete, but beyond 90 days after that, the Council would have the right to act on it, that's not to say that they will, but they do have the right to, and you could still make recommendations after that, it's just they would have the right to act before you would make those without your recommendation.

Mr. Vanderbilt: Nancy, do you know when this application was deemed complete?

Ms. McPherson: It needs to be deemed complete in order to schedule for public hearing and we normally do that 45 days before the public hearing so, hence, the 45 days from the public hearing, 45 and 45 is 90.

Mr. Vanderbilt: But, as I recall, because of health reasons, this has been deferred. So when was the first advertisement made for a public hearing and, as I understand what you're saying, before you made any advertisement, it had to be complete? I'm just wondering because if the 90 days is passed --

Ms. McPherson: Right.

Mr. Vanderbilt: The 90 days is passed.

Ms. McPherson: Well, and there actually was some additional information that I got from the applicant after that, that initial scheduled date, so I --

Mr. Vanderbilt: No, but --

Ms. McPherson: Yeah, I understand.

Mr. Vanderbilt: You said that the application has to be deemed complete before you'll advertise it for a public hearing so I'm -- all I'm saying is when did you first advertise it for a public hearing cause I'm assuming the application was complete at that time?

Ms. McPherson: Right. Well that would have been the -- in March. Yeah, so that would have been March, March 13 or 14, I think. I think it's in my staff report.

Mr. Vanderbilt: Thank you. So we're within the 90 days. No, no. She's saying that the department has to deem it complete before they will advertise it for public hearing.

Mr. Hopper: What's the Planning Department's position on when the application was deemed complete? What time period are we running from?

Mr. Vanderbilt: Suzie, do you have any information you could add to that?

Mr. Hopper: I'm not concerned with when the -- if it was erroneously noticed initially or whatever, what happened. When's the date you deem the application complete as the department? I don't know if it necessarily has to do with when the public hearing was first advertised or actually held or whatever, when did you deem it complete, and then you know when Council can act. I don't know if they're going to act, I mean considering they haven't even gone back to their -- their next round of committee meetings and won't be doing that for while, but just for information purposes, do we know when the application was deemed complete?

Ms. McPherson: Well, frankly, I was still getting additional information up until the time that the staff report was completed, so it could conceivably have been, let's see -- okay, so Frances is telling me March 10. I apologize for not knowing exactly which day I -- it's kind of a moving target so, Jeff, you wanna --

Mr. Hunt: Is the March 10 date when the first hearing was scheduled?

Mr. Vanderbilt: Somebody must have in the file when the first ad ran for a public hearing even though it may have been deferred because of health reasons.

Mr. Hopper: That doesn't necessarily -- conceivably could not necessarily matter because if there was additional information submitted and you didn't deem it complete until later on, just what's your position on when it was deemed complete and I -- that's just --

Mr. Hunt: The Planning Department will not schedule an application for public hearing until we deem it complete and we deem it complete when all the necessarily information has been submitted, agency comments, any necessary reports, any follow-up comments, etcetera. Once we have all that information that we feel is valid, then we send a notice to the applicant stating that a hearing is scheduled and we actually set the date in that letter, so the date of that letter is when the clock would tick in my mind because that is when we determine the application complete, not the date of the hearing.

Mr. Vanderbilt: Do we have a -- do we have a copy of that letter that went to the applicant?

Ms. McPherson: At this point, I'm not sure the letter was sent to the applicant, actually.

Mr. Vanderbilt: Was there -- was there an ad for a initial public hearing because the director said that they will not --

Ms. McPherson: Yeah, it was published in the newspaper, and it's in the staff report here.

Mr. Vanderbilt: Okay.

Ms. McPherson: Because it was duly noticed.

Mr. Hopper: Because there were --

Ms. McPherson: Well it says: *On January 22, the Maui Planning Department mailed a notice to the applicant and appropriate State and County agencies notifying them of the scheduled public hearing on March 14, 2007. Subsequently, several errors of substance were discovered in notice and the public hearing was cancelled and rescheduled for May 9, 2007.* Now, in the meantime, I received additional information. And then, on February 8, the applicant mailed a letter of notification and location map to all owners and recorded lessees for the March 14, 2007 meeting.

Mr. Vanderbilt: Alright, thank you, Nancy. I think, and Vice-Chair Chaikin made a good point, this really isn't relevant at this point. We can still make a decision and send it up to the Council. If we're a little outside the 90-day period, that -- if they act, they don't, you know, they can act before they get our recommendation or whatever, but -- so I think this Commission needs to -- to make a decision on this at this time, and are there any other questions for Nancy at this time because I wanna allow John a chance to talk? Okay, John. And I'm -- I guess I was at fault here. I think, in the future, we're not going to allow

public testimony once we get into the staff report and have a -- there's normally a chance at the start but I didn't outline the rules and John's been sitting here patiently all day so go ahead.

Mr. John Sabas: Thank you, Mr. Chairman. I can fully understand why you wouldn't let Walter ask Nancy some questions, but I'm sure you'll be alright with me asking her some questions, huh?

Mr. Vanderbilt: Oh, yes, you're my friend. Can you state your name for the record, please?

Mr. Sabas: John Sabas from Molokai Ranch, and I don't have a copy of the staff's recommendation in front of me, but there was -- there was something that was said that I think you and me have also recited, DeGray, that causes me concern because it goes to the issue that Mrs. Feeter raised also that we're changing, you know, the game, the rules of the game here in the middle of game, and this one specifically references that issue of the Planning Department possibly introducing new policies that would affect the General Plan. There will be other applications before you including those from us, from Molokai Ranch, and if that's going to be cited as a reason why we should hold up acting on an application, I would agree that it's not fair to change the rules of the game in the middle of the game so, anyway, I just wanted to bring that to your attention because it's kind of like a moratorium of sorts and you guys would have hardly any reason to meet, if that's going to be the case. Thank you.

Mr. Vanderbilt: Thank you. Thank you, John. Any questions for John? Okay, is there anybody else here that would like to say anything? If not, I'm going to close the public hearing. I just wanted to read something from a March 16, 2007 Planning Committee Report from the County of Maui, this is when they decided to shelve the law for the time being. They couldn't come to an agreement and here's what was said, the chair, at this time, was Councilmember Gladys Baisa: *Your committee further noted that strong and unanimous opposition to the draft bill transmitted by Resolution 6-32, expressed by the Planning Director and the planning commission. Your committee acknowledged its appreciation for the well considered advice provided by the County officials and many concerned members of the public. After due consideration of all viewpoints, your committee expressed its desire to accept the guidance provided by the Department of Planning and the planning commissions, the Maui, Molokai, and Lanai Planning Commissions, that the Council not pass the transmitted bill of Resolution 6-32, therefore, your committee voted to recommend filing the communication,*" which means, just not acting on it. And then it goes on to say: *In your legislative oversight of the Planning Director's fulfillment of this responsibility -- let's see, no. In your committee's view, County laws, including zoning ordinance, need to be enforced fairly and consistently in compliance with the Charter, the Hawaii State Constitution, and the United States Constitution. Consequently, your committee voted to recommend that the matter of the Department of*

*Planning's enforcement policies related to transient vacation rentals be referred to your committee for further considerations.*

So two things are happening. The initial draft bill was sent out to all the planning commissions and they all recommended that it wasn't an appropriate bill, so the Council took that advice and other advice from the public and they shelved it, and now the director is coming up with another draft, which will go to the Council, and then come to the planning commissions, and I don't know if the Planning Department has gotten back to this Planning Committee with any guidelines of how they're going to enforce situations between now and when the time of the new law comes on and maybe the Planning Director could fill me in on that cause this last sentence says: *Consequently, your Planning Committee voted to recommend that the matter of the Planning Department's enforcement policies relating to transient vacation rentals be referred to your committee for further consideration*, and I'm not quite sure what that means. Does it mean you're coming up with a new draft or -- or does it mean, while all this is going on, you're going to call a moratorium on enforcement?

Mr. Hunt: There's two issues that are kinda going along simultaneously but separately, and one is the draft bill that you talked about. The first bill that came around, the planning commissions all opposed it cause they felt it was too liberal. The Planning Committee filed that bill and directed staff to come back with another bill and that's what we're doing. There's a whole separate issue about enforcement of non-permitted TVR's. The bill is -- would allow conditions under which TVR's and B&B's would be allowed, and then there's the whole issue of people who haven't even applied, and that's the enforcement side of the equation and the direction from the Council was to start enforcing TVR's more aggressively, to not give an amnesty policy that had been effect for at least two administrations where if you apply for a TVR, you're allowed to operate until the TVR permit is acted on, conceivably that could be years, and some of them had been years. So that's the enforcement side. They told us to be more aggressive in that.

Mr. Vanderbilt: Okay, I know there was this amnesty period and in that a few -- quite a few people on Maui applied. How many people, Nancy, applied on Molokai to at least try, like the Feeter's did, to become compliant?

Ms. McPherson: I think we have about five, including the Feeter's.

Mr. Vanderbilt: Five? Okay.

Ms. McPherson: Maybe six.

Mr. Vanderbilt: And then all the other -- they've just -- they ignored the amnesty and have been operating? Okay.



Ms. McPherson: Yes.

Mr. Vanderbilt: Okay, thank you. Are there any other questions? Okay, Commissioner Chaikin.

Mr. Chaikin: Well I can make a few comments on this. This is a very difficult issue and it affects a lot of different people in a lot of different ways and -- and I'd like to just lay out my position on how I feel about all this, but the role of this Planning Commission is to implement the Molokai Community Plan. The Molokai Community Plan is prepared with professional planners, they get together with the community, go through a lengthy process, and then finally come to a consensus for a strategic long-range plan for responsible control of growth, and that's what this Commission is supposed to follow. When we look at our current Community Plan that we have, it's a bit outdated. It doesn't do a real good job at addressing transient vacation rentals cause maybe back then they weren't as big as they are today. There are some statements in there that do come close, but the wording is pretty vague, and I think if you had ten different individuals, you could come up with ten wildly different interpretations of what that plan is telling us. I think that when you look at the plan and you look through there, nowhere in that plan does it say that we should be encouraging the development of transient vacation rentals in Puko`o, and I think for us, as a Commission, to somehow come to the conclusion that it does say that would be a stretch. I think that this Commission shouldn't be changing residential to commercial, or changing single-family to tourism without some pretty clear language for us to do that. I think if we're going to have any hope of keeping Molokai Molokai, we're going to have to be faithful to the process and committed to the Community Plan. So I'm not going to be voting in favor of this application. But with that said, that does not mean that I don't support transient vacation rentals. I don't think Molokai needs to stay in the dark ages. I don't -- I think that there can be a place for legal vacation rentals on Molokai, and I would like to remain optimistic and think that we can strike a balance between having some economic activity going on and, yet, preserving some of the characteristics that make our communities what they are, basically, keeping Molokai Molokai.

I think that the regulations that we currently have in place, the statutes, the ordinances, the codes are, basically, ineffective in dealing with the transient vacation rental issue. Basically, the regulatory structure is broken and we need to fix it. But this is not how you fix it. There's processes for fixing it, and the Community Plan process is probably the best first step, and I would encourage everyone that supports vacation rentals to show up at those meetings and make sure that your voices are heard so that we can make transient vacation rentals a part of the community plan and a part of our vision for the future for Molokai. I can tell you that I will be there to support vacation rentals because I think that there is a place, you know, I'll be willing to support a limited number in a limited number of areas for a limited term.

Now, as far as the Feeter's go, they did everything that they were supposed to do, and it takes a lot of time and energy and money to get to the point where they are today, and the director has recommended that we recommend denial of this permit, the conditional permit. I'm hoping that we don't have to do that. I'm hoping that there's some way that we can defer this application, basically, putting it on ice until we can go through the planning process, the community planning process, and if we are successful in making transient vacation rentals a part of our vision for the future, then that would be the time for the Planning Department to start accepting applications and for this Commission to start approving permits. And if the Feeter's had their application there, they would be well positioned to be one of the first ones in line to get an approved permit. So that's all I have. Thank you.

Mr. Vanderbilt: Is there any other comments? Yeah, I'd like to just make a comment. I think that one advantage that the Feeter's have is that they did try to follow some rules that were given to them by a prior administration, and there was an amnesty period, which everybody could have tried to become legal, but only five people on Molokai did. Now whatever this Commission decides, if this permit is not approved, I would think that, from an enforcement standpoint, the Feeter's would be way down on the list because they're, basically, still trying to get approval because it's going to the Council and the Council's going to do something, and if there's any future laws, and a lot of future laws grandfather people in, it may be that there will be a grandfathering of those people that made the commitment to go through the process during the amnesty period, which was very few that bit the bullet and did that. I, personally, don't like to be put in a position of approving a conditional use permit, which is basically an exception because I've been involved in planning a long time and we've seen our Community Plan go through and there's always an exception and so nobody can rely on the document and that's the thing that bothers me the most, this whole issue of conditional permits, and I think it's a problem that the Planning Department has. So, with that said, I certainly appreciate the Feeter's going through this process because it's brought it here and there's a lot of good stuff on the record that's going to go up to the Council, and we'll see what happens with that. So is there any other comments before we go from --

Mr. Kalipi: Okay, I'll comment.

Mr. Vanderbilt: Okay.

Mr. Kalipi: I somewhat agree with Commissioner Chaikin there about what he said in the earlier statement, but I do wanna add, we do share a different of opinion or vote in a sense, I would like to see a conditional permit granted to the Feeter's based on one year and the reason being is I would like this Commission to send a message that when people wanna do things right, and they're going to go through the process, then we're going to back them in doing things right. It might not be -- the General Plan might come out next year or

whatever, they might come out and just totally just deny you, shoot you down or whatever, and come out that there is no vacation rentals allowed on the East End. I sure don't wanna see multiple vacation rentals on the East End. I really believe in the General Plan that they belong on the West End. If that was our intention, then keep the intentions to keep on the West End. But in the same sense, send a message to the County and everybody else that if you're going to do things right, we're going to try to support you as much as we can. But, again, if that's -- when the final say come, when the General Plan comes and everything is cleaned up through the County laws and all the laws catch up with where we should be, beside blaming administration changes or enforcement burdens or budgeting, then let it be so. But I truly believe in the General Plan. I truly believe in I don't wanna see Manae ruined with vacations rentals and taxes going up crazy. I don't wanna see all the illegal vacation rentals out there and people doing the things right being shot down. And so I just wanted to add that two cents in.

Mr. Vanderbilt: Thank you, Commissioner Kalipi. Is there any other comments? If not, you now, I'll entertain a motion at this time and after that motion is made, we can have further discussions so -- what have we got? We're down to five people. Okay, is there a motion that anybody wishes to make?

Mr. Kalipi: Okay, I'll make a motion, as I said, I make a motion to send a conditional permit, a request for a conditional permit acceptance for the Feeter property, that vacation rental that sits before us for a one-year condition.

Mr. Vanderbilt: Is there a second?

Ms. Kauhane: I second.

Mr. Hopper: I also have to note that that you need to transmit to the Council, the law says: *The commission shall transmit to the County Council findings, conclusions, and recommendations for all changes in zoning and conditional use permits.* In this case, Nancy has drafted findings, conclusions, and recommendations; however, it appears that the current motion would differ from those findings, conclusions, and recommendations, so you need to draft new findings, conclusions, and recommendations in support of the -- whatever conclusion that you draw and have those transmitted to Council.

Mr. Kalipi: Okay, could Nancy help us to draft that or --

Mr. Hunt: If it's okay with the Commission, the Planning Staff could do draft and bring it back to you for your review.

Mr. Vanderbilt: When?

Mr. Hunt: Generally, it'd be at your next meeting, if Nancy can make that.

Mr. Vanderbilt: Well, I think first we have to see if we have a successful motion and, with that, was there a second to the motion? Who seconded that, I'm sorry?

Mr. Kalipi: Commissioner Kauhane seconded.

Mr. Vanderbilt: Oh, my apologies. It was moved by Commissioner Kalipi, seconded by Commissioner Kauhane. Is there any discussion, Commissioner Kalipi?

Mr. Kalipi: I don't know if it's a discussion but it's a question for counsel, Corp. Counsel. Seeing that quorum is at five here, and I think I asked you Mr. Chair but I just wanted to get a feedback from Corp. Counsel, does, here, does the Chair have to vote in this area? Would his vote count?

Mr. Vanderbilt: Yeah, my vote would count because I have to vote to either break a tie or allow an action to happen.

Mr. Hopper: Of course, if the vote is two to two, he wouldn't have to because you would need five votes so he would only vote if it's to take an action or break a tie. If four of you voted one way, then, yes, he'd have to vote. Other than that, he doesn't have to.

Mr. Kalipi: Thank you.

Mr. Vanderbilt: Alright, is there any further discussion?

Mr. Chaikin: Thank you, Mr. Chair. I just wanna make a couple observations. You know, as a Commissioner, I can see going out on a limb if this was really a unique piece of property, but one of the problems I have is there is a whole bunch of houses that are substantially equivalent to this one, so if we approve this one, we will have a very difficult time for the next guy coming down for this Commission to say no. And one of the problems that we have is we don't have clear direction in the Community Plan to do what we're doing, the recommendation is to not do what we're doing, and so I'm a little concerned. And I think the issue here is that there's a proliferation of illegal transient vacation rentals occurring in Molokai and that number seems to be increasing and increasing and they have actually taken over whole communities. And as some of our testifiers have brought to our attention is that this is -- this is a very serious concern and, you know, for us to -- that we should, you know, take into consideration. Anyway, that's all I wanted to say is that if we did approve this, we better be prepared to approve other ones that come down that are equivalent to this one.

Mr. Vanderbilt: Alright, and I'd like to just say something. I would be hesitant to support the motion. I think that we would get a lot of other applications come in that have not put in the time that the Feeter's did and I really believe that the Feeter's were going to be in a better position as far as any new ordinance of having a possibility of being grandfathered in, which would be something that I would support fully for somebody to consider just because they went through the process. If we approve this and they come out with a new law, they're just going to have to abide by the new law, and I really think that the fact that you did apply and we don't open the door for a lot of other conditional permits at a time when the County's trying to work something out, that you'd be in a better position, but that's just my take on that, but I really am not a big fan of conditional permits in this situation. If there's no more comments, I'll call for the question.

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

**It has been moved by Mr. Kalipi, seconded by Ms. Kauhane, then**

**VOTED: to send a request for a conditional permit acceptance for the Feeter vacation rental for a one-year condition.  
(Assenting: J. Kalipi; S. Napoleon; L. Kauhane)  
(Dissenting: S. Chaikin)  
(Abstain: B. Feeter)  
(Excused: K. Dunbar; M. Pescaia; L. DeCoite)**

***Motion Failed.***

Mr. Vanderbilt: Alright, the motion doesn't pass. I -- well I thought I had to vote. I'd already expressed that I wouldn't support the motion but there wasn't -- there were -- it was three to one but --

Mr. Hopper: Someone say nay? I didn't --

Mr. Vanderbilt: Yes.

Mr. Hopper: Okay.

Mr. Vanderbilt: So I would entertain a motion that we support the recommendation of the, and I'm entertaining a motion, I'm not making a motion, I would entertain a motion that we support the recommendation of the Planning Department and along with a caveat that -- that the Council take into consideration down the line, you know, the fact that the Feeter's did meet this amnesty situation and no matter how this whole law comes out -- I mean when they're considering the law, not when they're considering the conditional permit, but

when they're considering the final ordinance that they're going to send out as far as any concessions that they -- they consider those people that have gone through the motions and tried to be compliant during the amnesty period. So that would be a motion that I'd like to entertain.

Ms. Kauhane: Commissioner, I have a question please. Does that mean, at a future point, there would be a reconsideration of her application, or by denying it, it's a flat out denial forever? I just want a clarification.

Mr. Vanderbilt: The conditional permit is denied but --

Ms. Kauhane: Is denied.

Mr. Vanderbilt: All I was saying is that in crafting the final ordinance, that consideration be given possibly to the Feeter's willingness to try to become compliant during the County amnesty period, which was granted and which I think expired in February 23.

Mr. Chaikin: Mr. Chair, I think what I was advocating in my statement is that I was hoping that we didn't have to do what the director has asked us to do and recommend denial of this permit. I was hoping that there was a way that we could defer, recommend deferral of this and we defer any action on the special use permit so we can keep the application alive, and then as soon as there is language in our Community Plan that says that we should be doing this, we should be, you know, it's acceptable to have vacation rentals in Puko`o then, at that time, we can move forward and, you know, and process this application, but I guess that's a question of whether or not that's an option for us is to defer this.

Mr. Vanderbilt: Corp. Counsel, we have a time frame that we send it up to the Council. Do they have a time frame that they have to act on the conditional permit?

Mr. Hunt: You have an option to defer any application that comes before you so -- but you would not be sending your recommendation to the Council by deferring.

Mr. Hopper: Council could act. If you take no action, they could do whatever they want with the permit. They could --

Mr. Hunt: There's -- if you defer the application, it's not being sent to Council. You're just saying we have not acted on it.

Mr. Hopper: Right, but they could act on it without your recommendation because you've got a 45-day period in the code that says you have to provide a comment.

Mr. Hunt: That's true. Council could, on their own volition, act on it.

Mr. Chaikin: But can we make a recommendation to the Council to defer action?

Mr. Hunt: You're supposed to make a recommendation on the permit and, generally speaking, it should be either a yes or a no, or conditional. I don't know, Mike, can they -- can they make a recommendation --

Mr. Vanderbilt: We can also make no recommendation.

Mr. Hunt: No recommendation?

Mr. Chaikin: Well, what I'm trying to do is keep their application alive. Once they deny it, then, you know, they're back to square zero and, you know, I would like to, you know, have their, you know, their thing stay alive so when we get this thing sorted out, that they can move forward and get their permit.

Mr. Hunt: And I'm trying to work with you. Let's think it through. Your recommendation to the Council would be for them to defer it?

Mr. Vanderbilt: Yeah, that would --

Mr. Chaikin: Right. For them to defer until they hear back from this Commission.

Mr. Hunt: You can make that recommendation.

Mr. Vanderbilt: Excuse me, I would like to -- nobody seconded by motion but I'd like to make a -- entertain another motion which would be that this -- this Commission recommend that the County Council defer action on the Feeter's conditional permit until the new zoning ordinance has been passed and that this Commission will hold the special use permit, a decision on that, until they hear back from the Council.

Mr. Kalipi: Could we add to that? Could I add to that?

Mr. Vanderbilt: Well, it wasn't my motion. I was just entertaining a motion.

Mr. Kalipi: No, I'm just -- I'm just entertaining a thought to add to your thought.

Mr. Vanderbilt: This is entertaining. Okay, go ahead, Joe.

Mr. Kalipi: I wanna add some comments to that, you know, in the sense of I agree 90 percent, maybe 95 percent of what Commissioner Chaikin said and to say, you know,

these things we wanna add in our recommendation that we're deferring this and our comments is this is why we're deferring it because of these reasons, so it's almost as if we're drafting a letter to support our position that's saying that we want them to defer.

Mr. Vanderbilt: Well I think if, and correct me if I'm wrong, that the minutes will be transcribed from this meeting and I think all of us have expressed our appreciation for the Feeter's doing what they're doing. I don't know if --

Mr. Kalipi: I hear you. It's just that I'm not sure everybody would read through a three-hour reading rather than a letter that's on a one-page packet.

Mr. Vanderbilt: Excuse me, Director Hunt, you have something you wanna add?

Mr. Hunt: A couple things. We've got a 4:15 flight to catch. How about this, and I'll just toss it out, that you guys vote to defer to the next meeting and, in the interim, staff will come back with some proposed language. It sounds like you wanna recommend to the Council that they defer until the new ordinance is drafted or something along that line. We can come back with some options and you guys can discuss it a little bit more thoroughly next meeting.

Mr. Chaikin: Well, let me just make a comment on that. As far as, you know, what I was hoping was that we would defer it until our Community Plan is complete and if transient vacation rentals are a part of the vision, you know, for Molokai, then that would be the time for this Commission to move forward, not wait for some offshore ordinance that may or may not ever pass.

Mr. Hunt: Okay, we can come back with some different options and you guys can vote on it and wordsmith it next time.

Mr. Kalipi: I'll make a motion to defer the Feeter's application.

Mr. Vanderbilt: Is there a second?

Ms. Kauhane: I second.

Mr. Vanderbilt: Is there any discussion?

Mr. Hunt: We need to a date certain.

Mr. Vanderbilt: Excuse me?

Mr. Hunt: To a date certain.



Mr. Vanderbilt: Till?

Mr. Hunt: Next meeting?

Mr. Kalipi: To the next meeting.

Mr. Vanderbilt: Thank you, Commissioner Kalipi. The second was by Commissioner Kauhane. Is there any discussion?

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

**It has been moved by Mr. Kalipi, seconded by Ms. Kauhane, then**

**VOTED: to defer the Feeter's application to the next meeting.**  
**(Assenting: J. Kalipi; S. Napoleon; L. Kauhane; S. Chaikin;**  
**D.Vanderbilt)**  
**(Abstain: B. Feeter)**  
**(Excused: K. Dunbar; M. Pescaia; L. DeCoite)**

Mr. Vanderbilt: Motion carries. Okay, what time do you all have to be leaving? Right about now? Okay, I was just looking over to see if there's anything -- are there any announcements? Excuse me, are there any announcements from the Commissioners, or any announcements from the staff, or any announcements that the public would like to share with the Commission? If not, do I hear a motion -- I'll entertain a motion for adjournment.

Mr. Chaikin: I'll make a motion that we adjourn the meeting.

Mr. Vanderbilt: Second?

Mr. Kalipi: I'll second.

Mr. Vanderbilt: Second by Commissioner Kalipi.

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

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

**VOTED: to adjourn the meeting.**

Mr. Vanderbilt: Meeting adjourned.

**K. ADJOURNMENT**

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

Respectfully submitted by,

SUZETTE L. ESMERALDA  
Secretary to Boards and Commissions

**RECORD OF ATTENDANCE**

**Present**

DeGray Vanderbilt, Chairperson  
Steve Chaikin, Vice-Chairperson  
Sherman Napoleon, Jr.  
Bill Feeter  
Joseph Kalipi  
Linda Kauhane

**Excused**

Kip Dunbar  
Lynn DeCoite  
Mikiala Pescaia

**Others**

Jeffrey Hunt, Planning Director  
Nancy McPherson, Planner, Molokai  
Michael Hopper, Deputy Corporation Counsel