

(APPROVED: 03/12/08)

**MOLOKAI PLANNING COMMISSION
REGULAR MEETING
JANUARY 23, 2008**

A. CALL TO ORDER

The regular meeting of the Molokai Planning Commission (Commission) was called to order by Chairman DeGray Vanderbilt at approximately, 12:43 p.m., Wednesday, January 23, 2008, at the Mitchell Pauole Center, Kaunakakai, Molokai.

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

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

Mr. DeGray Vanderbilt: Okay, everybody, I'd like to call the meeting of the Molokai Planning Commission, January 23rd, to order. And before we go any further, I wanna give people in the audience an opportunity to testify on any issue they think is related to Planning or enforcement situations, and even though it may not be on the agenda. Or if you have to get back to work and wanna testify on an agenda item now before it comes up, you can do so. And please come up to the podium. If it's an item that's not on the agenda, our Commission really can't discuss it other than say we may put it on another agenda, or it's something that's not within our jurisdiction and we can direct you to the State or County department that might be handling that. So with that, is there anybody that wants to testify early here before the agenda item comes up? Okay, seeing none, we'll move on.

And, Commissioners, we're on Item C, which is the approval of the minutes of the November 7, 2007 special meeting. Those minutes were given out to us at the last meeting. So I'm sure everybody's had a chance to look them over. I'd entertain a motion to approve the minutes.

C. APPROVAL OF MINUTES OF THE NOVEMBER 7, 2007 SPECIAL MEETING

Ms. Lynn DeCoite: Motion to approve.

Mr. Vanderbilt: Motion to approve by Commissioner DeCoite. Is there a second? Second by Commissioner Napoleon. Is there any discussion?

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

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

VOTED: to approve the minutes of the November 7, 2007 special meeting.

Mr. Vanderbilt: Minutes approved.

D. 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 following (matter discussed and deferred at the January 9, 2008 meeting.**
 - a. **JAMES and REITA DORAN submitting a Special Management Area Use Permit Assessment for the construction of a swimming pool and related improvements at 3468 Kaluakoi Road, TMK: 5-1-007: 062, Kaluakoi, Island of Molokai. (SMX 2007/0069) (SMX 2007/0154) (N. McPherson)**

The applicant plans to construct a 23,500 gallon capacity swimming pool and perimeter fence to be used as a fire suppression reservoir for a new residence.

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

Mr. Vanderbilt: Move on to Item D, Unfinished Business, which is Mr. Jeffrey 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 following, and that would be James and Reita Doran submitting a Special Management Area Use Permit Assessment for the construction of a swimming pool and related improvements at 3468 Kaluakoi Road.

At the last minute -- last meeting, we had a -- quite a bit of discussion on this item. We had only five members at that meeting. A motion was made to concur with the Planning Director's finding, but failed to get five votes on a four to one vote. We had a lot of new issues come up at the last meeting. We had two or three Planning staff members testify. We had two representatives from the owner testify. And as a follow-up to this meeting, I had requested that somebody from the Fire Department be here, which I don't see. I requested Thorne Abbott, who's with the CZM to be here. I see that he's not here to answer questions that were raised by his testimony. I had hoped that Molokai Ranch would send a representative. I'm glad to see John is here because -- I'm trying to figure out how to turn this thing off. There it goes. And we had asked for the West Molokai Design Committee to be here, and I see Darryl Kennedy over there is here, and thank you, Darryl.

So with that, I would like to -- Nancy, did you have any follow-up on this from our last meeting? No follow-up, okay. Okay, with regard to -- I'd also asked that the minutes from that January 9 meeting be made available because there was so much stuff on there, and there was a couple of Commissioners, Commissioner Pescaia and Commissioner DeCoite were not here, that it would be hard to come up to speed on what went down at the last meeting. So, Nancy, did you have something?

Ms. Nancy McPherson: Thank you, Chair Vanderbilt. Good afternoon, Commissioners. Nancy McPherson, Staff Planner. What I got was mainly from Thorne Abbott and it was sections of code that were referred to for the ag district at the last meeting. And I do have -- I do have that information. If you'd like, I can go run copies, and bring it back, and distribute it to you, but I can cite the sections of the code, if that would be helpful.

Mr. Vanderbilt: You know, Thorne was talking to us regarding the zoning side of the situation. And I guess the applicant and others here are trying to figure out about a pool, special management area. When an applicant goes into the Planning Director for an SMA assessment, they're supposed to have the zoning squared away that this allowed in ag zoning. And at the last meeting when Thorne Abbott got up, he was -- brought up some situations that led some of us to believe that the Planning Department hadn't come up with a real policy on what is allowed in the ag district. And so that caused some confusion. And then -- so I don't know if you have a summary of what Thorne said or he sent you anything. If so, maybe you could share that with us, Nancy.

Ms. McPherson: Well, I can kind of try to go through the reasoning that we went through at the meeting. In -- under 19.30A.030, Ag District Standards, we have a maximum developable area of 10% of the total lot area. That doesn't apply to any structure or a portion thereof which is used to support agriculture. And then it lists storage facilities, barn and silos, greenhouses, farm labor dwellings, and stables. So, you know, swimming pools or water storage -- well, it says "storage facilities." What we've -- in the original application, a swimming pool, just for a swimming pool's sake, was deemed to not support the primary ag use in the original application for the primary farm dwelling. What then happened, however, was that when the applicant went in for the building permit, the Fire Department responded with a comment that there needs to be water stored on the site because the house is -- well, they didn't outline all of these specific issues, but from a previous project that I brought to this Commission, the Pollack Project, it was stated by the Fire Department that if the primary dwelling is situated farther than 500 feet from a fire hydrant that there needs to be water stored on site for fire suppression purposes. So what happened when that letter came was they had submitted a plan that already had a pool on there even though the pool wasn't approved by the SM5, the original SM5 exemption, and the Fire Department said, well, you could build this pool here on this plan. So they went ahead and applied for a separate SMA assessment for the swimming pool based on its use as a fire suppression reservoir, which under the code for agricultural district, even though swimming pools aren't listed specifically, they could be construed in what perhaps would be a liberal

interpretation of the code to say that the swimming pool is to be used to protect an accessory use, which is the farm dwelling. So it actually does serve a purpose as far as the -- as protecting the farm dwelling goes. That's kind of as --

So under Section 19.30A.050, Permitted Uses, B, Accessory Uses, which are uses customarily used in conjunction with the permitted principle use of ag, if we go down to Item 13, we do have a section that says, "Other uses which primarily support a permitted principle use," which would in this case be the farm plan or the agricultural use, which in this case is conservation, soil conservation, as is handled by our department in approving the farm plan, "However, such uses shall be approved by the appropriate Planning Commission as conforming to the intent of this chapter." So I think where we are at this point is that the applicant needs to satisfy the requirement stated by the Fire Department, and this is why I was really hoping a representative from the Fire Department would be here, as far as meeting the water storage requirements onsite for the house as approved, so -- or as exempted in this case.

So ultimately, the different options I've seen presented to applicants in the past is a sprinkler system, storage tanks, or a swimming pool or pond. So these are the kinds of options that the Fire Department would consider to be adequate for fire suppression and fire protection for the primary -- well, for the accessory use which is the farm dwelling.

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

Mr. Steve Chaikin: Thank you, Nancy. I just wanted to get some clarification on the letter that's included in our packet from the Fire Department. It says in here that the proposed swimming pool for fire protection that is shown on the plans needs to be permitted for fire approval for this permit. What are these -- a separate fire permit approval or something?

Ms. McPherson: Well, I'm not sure, exactly. If anybody else knows, please come up, but my understand is that they would have to submit something to the Fire Department which would then satisfy their requirement for water storage. So if they were to get this pool exempted, then they could submit that to the Fire Department and then the Fire Department would sign off on their building permit. I'm pretty sure that's how it would work.

Mr. Chaikin: Just another question. I guess there is several options that the builder has to comply with the fire requirements. Are those -- is that a code or is that a policy of the Fire Department?

Ms. McPherson: There is a Fire Code. There is a Fire Code. There are plans examiners with the Fire Department who make those determinations. I guess we don't have any of them here today who could explain how they actually do this. I've had a lot of conversations with Greg Jenkins, who's here on Molokai at the Pukoo Station, about the

issues on the West End, and about the different options that property owners could avail themselves of, but that is not necessarily codified. We were just brainstorming about some possible solutions. The best solution would be for them to get a fire station out there, you know, then they would have quicker response times and that sort of thing. But part of the problem is that they wanna build their homes too far from the fire hydrant so --

Mr. Chaikin: I was -- you know, from the last meeting that we had, it was very clear that there was a lot of ambiguity about this particular issue and I was hoping that the Planning Department was going to have something for us at this meeting, which would clarify the situation, but I see that's not the case.

Ms. McPherson: Well, I was informed that someone would be here from Fire, and I guess that didn't happen.

Mr. Vanderbilt: Well, and -- so as far as you're concerned, there is, at this point, there is no firm policy, some internal memo, like there's a couple that I've seen recently, that says what is allowed on ag land. That swimming pools are not allowed on ag land.

Ms. McPherson: No, it's not ambiguous. They are not listed as a permitted use. They're not listed as an accessory use.

Mr. Vanderbilt: But you said in a liberal interpretation of these various rules, County, State, whatever, that you could make a case for a swimming pool. Would that be a fair assessment?

Ms. McPherson: Well, I think -- my determination is that it is up to the Commission's discretion. No?

Mr. Vanderbilt: Excuse me. I'd like Corp. Counsel to chime in here.

Mr. Michael Hopper: No, it can't be that as this point because that's not what's on the agenda. If it was on the agenda as approval as meeting the intent and purpose of 19.30A, then they could make that determination today. It's gotta be presumed at this point that, in this particular case anyway, this pool is allowed in this current zoning otherwise it shouldn't be before the Commission at this point.

Mr. Vanderbilt: Thank you, Michael.

Ms. McPherson: Well, I would just like to state that when I do the assessment, I'm making those determinations. But because concurrence is required by the Molokai Planning Commission, the Planning Commission can decide that they do not feel that there is sufficient information that makes the assessment adequate. They can also determine that

based on that, that the recommendation for exemption cannot be supported without additional research or information, and can make that decision as well.

Mr. Vanderbilt: Excuse me, Nancy. Are we under a timeline? I was under the understanding if we don't make a decision one way or the other by -- in 30 days of receiving the Planning Director's exemption approval, that it's automatically approved. Is that correct?

Ms. McPherson: Well, maybe --

Mr. Vanderbilt: Or is there anybody from Planning who can answer that? Clayton, can you -- can --

Ms. McPherson: Maybe Clayton can -- I've been told that it's 30 days, yeah.

Mr. Vanderbilt: Okay.

Mr. Hopper: It's actually in your rules. It says in your rules you have 30 days from the date that you get it. And I just do wanna clarify again, you're not approving the zoning here. Maybe if there was on your agenda something that said seeking concurrence that it complies with 19.30A along with the SMA permit, you could make that determination, but that's not what you're here to do today. So it's not whether or not you concur with Nancy as to the zoning. What it really comes down to is do you believe that the Coastal Zone Management Act, if that is being followed, and if it's safe to say that this is a type of project that is not a development under that code, and it's exempted by the department on the basis that it's not a development under the Coastal Zone Management Act. And that's what the decision has to be based on. And if there's a decision that it is a development, then you do have to have findings of fact, and conclusions of law showing why you believe it is a development. And that's what you need to determine today.

Mr. Vanderbilt: Well, and it's unfortunate after the last meeting that the Planning Department didn't figure out to amend the agenda so that we could address some of these items but it looks like we won't be able to, so hopefully, we can just get as much on the record just to clear up a few things that came up at the last meeting. So do you have anything else, Nancy, or does anybody have any --

Ms. McPherson: No, not at this time.

Mr. Vanderbilt: Okay. Commissioner Chaikin?

Mr. Chaikin: Yeah, let me just say that this is not the first time that we have been sitting here having this exact same debate. And at some of the previous meetings, we've actually went forward and done some due diligence. I think it was on the Walsh pool where we

wanted to find out from the State level from the -- what the State Water Resource Commission or whatever that is? We asked them specifically if they have any particular policy on residential swimming pools here on Molokai. And they actually did respond back to us. And they told us that, and let me just paraphrase it a little bit, that they don't have any specific policy for swimming pools but that the document that really regulates the whole thing is the Water Use Permit. And in the Water Use Permit, it says that the water has to be used for a reasonable and beneficial use. And they go on to say that given the water short nature of Molokai's water service, it would not be surprising to find objections to such use as being reasonable and beneficial. Now, we don't -- we don't know if it's reasonable or beneficial because we don't have all the fire information to see what alternatives are out there, but I just wanted to, you know, to throw that out there because we had, you know, checked on that in the past.

Mr. Vanderbilt: Thank you, Commissioner Chaikin. And just to back that up, the applicant's contractor provided a lot of good information last time. And one of the things he said is there's a lot of pools out there on the West End. And on some lots, there's two pools that have been approved. So there's going to be more and more and more swimming pools as more development comes. And we do have some concerns on this island about water. And so we're just trying to get a policy that's set so developers, owners, the Planning Department, and members of this Commission, who are all lay people, can understand going forward what the rules are so we don't get into these long debates. And that's what we were hopeful for this time is to get the resource people here to at least get an answer for the Dorans the best we could, and then use -- follow up with that with some solid policy position on this from the Planning Department or whoever has to come up with that policy. So anyway, thank you very much, Nancy. Nancy, you got something?

Ms. McPherson: Chair, would you like have the Commission make a motion to request that the department develop a policy memo?

Mr. Vanderbilt: We may do that later, but right now, let's stick on this, and let's -- we're gonna have to -- we're gonna open this -- if the Commissioners don't mind, I'd like to open this up to public testimony right now, and then we can get back to asking a couple of the resource people some questions, and then hopefully, come to a decision on this. Is there anybody in the audience that would like to testify on this item? Lori?

Ms. Lori Buchanan: Hi. My name is Lori Buchanan, community member. Before I testify, I just wanted to say I'm not sure, but if you're the Dorans, please don't take whatever I have to say personally. Okay? So excuse me in advance, but don't take it personally.

You're right. You went around and around about this in the past. So my answer is make your own rules. Stop depending on everybody else's rules because nobody's talking to each other. Last week there was a meeting that was a clear example of that from

Clearcom Sandwich Isles, Telecom, and Henkels and McCoy who was using 20,000-plus gallons of potable water a day to push mud through a drill out into the fringing reef of Molokai. At the meeting I asked if the necessary permits had been gotten by this Commission, and they reassured me that it was, and also that a presentation was made to this Commission. And after that, I found out from the Sandwich Isles representative that that was exempted, so it never came before you folks. So we were trusting that you guys had already reviewed the project. Needless to say, many community members are very mad because we don't know how many gallons total of potable drinking water was used for the project.

But besides this, let's get back to the pool issue. Yeah, we got pools all over the place. Maybe we shouldn't have pools all over the place. The Island of Molokai is a water management area, period, end of subject. There's a reason why the whole island is designated as a water management area. And that's because water use is up in the air. We have a Molokai Water Working Group who's gonna meet on January 30 where Department of Hawaiian Homelands along with Molokai Ranch is gonna make a representation to that board on water usage. So you have the County. You have the big players all using water but nobody's talking to each other. We all putting our straws into that same cup of water, and we're all drinking, but we all don't know how much we drinking.

My beef with the whole pools is I, at this point in time, until that Water Working Group makes an assessment of how much water we have on Molokai, a very good, science research-based guess on water usage, I have a problem using water for recreational purposes in a water management area. Okay? Period. It's hard for me to be sitting in Kalae, where we have some of the most rain on the island, be served a letter by the County of Maui which states that I am in water ration. Okay? The letter goes on to state that if I wash my car or I water my plants, I can have my meter taken away from me. It's hard for me to read that letter and do water rationing, and then go ahead and permit pool -- water for pools, waters to push mud through drills to do cable and fiber optics. So we're doing -- everybody is doing their own water use plans and using water, and here, I sit in Kalae wondering if somebody going come and take my meter out if I wash my car. I'm mad. I do not approve of recreational use of water on Molokai Island and that is my reason.

And is a pool a development? It is if it's using water. It's a development. I think so. Should it exempted? I don't think it should be exempted. I don't think anybody using water on Molokai should be exempted from anything, nor should that project that went through, made a big mess down at the fishpond, that shouldn't have been exempted either. You get any questions? So that's -- I'm against that. That's the reason why.

Mr. Vanderbilt: Okay, thank you. Thank you, Lori. Are there any questions for Lori? Just one thing, Lori, on the exemption, yeah, the Planning Director did exempt that, and he exempted it before we changed our rules where his exemptions have to come to us. And

then on the Water Working Group, I think isn't it the Hawaiian Homes and the MIS next meeting, the presentations?

Ms. Buchanan: I don't know. I'm not sure.

Mr. Vanderbilt: Oh. So many meetings.

Ms. Buchanan: We have multiple water meetings going on. That's why water is an important issue for Molokai. So -- and let's get on the Fire Department right now. They need to change their rules because when you're okaying the use of a swimming pool, and you're less than a hundred or 200 meters from one ocean where you can get water, then to me, that's not a good excuse. And they shouldn't be building away from fire hydrants and then using the pool as an excuse to have water to get a permit.

Mr. Vanderbilt: Thank you, Lori. Lori, do you have a copy of that? Or could you at a later date give a copy of your letter that you received from the Water Company whenever?

Ms. Buchanan: Well, I know everybody received one, but they've never ever went as far as saying we're gonna take your meter away if we find that you're wasting water.

Mr. Vanderbilt: Okay, thank you. Is there anybody else that? Yes?

Mr. Warren (?): Howzit. My name Warren. I work for Don Williams. And we've been trying to get this going since 2005. If -- what's the difference of one pool, tank, or what? We still going need the water. And why they had to set their house so far back is because the front of your lot, if you're that wide, that's how far you have to go back. So they're way beyond 500 feet from a fire hydrant. So no matter what, they going need the water for peel their house. That's all.

Mr. Vanderbilt: Thank you, Warren. Is there any questions for Warren? Excuse me, Warren. Commissioner Pescaia?

Ms. Mikiala Pescaia: It's more a technical question so I understand. Looking at different water storage facilities, are there tanks or holding facilities where you would fill it up and it wouldn't be continuously refurnished with water? You know like a pool, I think you need to continuously refill it. It evaporates. And it takes -- even though it's like 19,000 gallons, it actually would use more than 19,000 gallons. Is that a difference between --

Mr. Warren (?): I'll tell you the difference. Say the neighbor's house is burning. One chopper can get to their house, and pull water from the pool, and peel that house. That would be the difference because one tank is covered. It wouldn't be using that much more water. All the water would evaporate from the tank, not as much from the pool, but wouldn't be that much water.

Ms. Pescaia: The evaporation from a pool is not --

Mr. Warren (?): In a tank. It's only one cloth vapor that they put over the tanks.

Ms. Pescaia: So water evaporates from a holding tank?

Mr. Warren (?): Yeah, from the tank too.

Ms. Pescaia: Are there any like underwater storage or any other types of storage tanks that --

Mr. Warren (?): Not that I know of.

Ms. Pescaia: That don't evaporate? I just wondering.

Mr. Warren (?): One fire hydrant in their yard would be alright.

Ms. Pescaia: Okay. Is that an option for people to run pipe lines onto their property?

Mr. Warren (?): Ah, no, it isn't. I don't think.

Mr. Vanderbilt: I don't know. I think that's why -- I think that point came up last meeting, and another reason why I wanted the Fire Department here. Commissioner DeCoite?

Ms. DeCoite: I think --

Mr. Vanderbilt: Do you have a question for Warren or is this --

Ms. DeCoite: Actually, it's just a comment. And I know the Dorans are looking for a pool as one storage. I know if fire was an issue at that time or at any time, the ocean is right there, and I've seen the helicopters drop down and use that. The second issue was that when you going for one permit, you are told if your house does not have a fire hydrant within 500 feet, it's at the cost of the owner going in for that permit to put in that fire hydrant. And that was the last when I took a look at the County Codes was that the owner would bear the cost of putting in that fire hydrant themselves at the 500 feet distance. And, yes, I feel the same way that the pool becomes a luxury. And if that is the holdup, I think the balance out between the pool and putting in the fire hydrant is just about the same amount of cost at their expense.

Mr. Vanderbilt: Thank you. Are there any other testifiers? Yes?

Mr. Art Parr: My name is Art Parr, and I'm Chairman of the Design Committee for the West Molokai Association. And our mission in life is to help owners out there develop their

properties. And we will permit water storage tanks, but they have to be concealed from their neighbors, and the street, and the ocean. And Lori mentioned that she objected to water being used for recreation. This is not used for recreation. It's used for fire protection at least in the Doran case. And it seems to me that we've, you know, strayed away from that somehow or other. It's there for fire protection.

Mr. Vanderbilt: Is there any questions for Mr. Parr? Mr. Parr, I had a question. And there's also a choice that you can design a house with a sprinkler system in it. Is that true?

Mr. Parr: That's true.

Mr. Vanderbilt: Okay.

Mr. Parr: There's some disadvantages with that. It's a --

Mr. Vanderbilt: Now, you're on ag land. So if somebody put up a storage tank on ag land to support their ag products, you're saying he couldn't do that if the neighbors could see it?

Mr. Parr: That's right. We wouldn't allow it.

Mr. Vanderbilt: And you think that's consistent with State ag law or if somebody challenged you on that?

Mr. Parr: If you would or could read our CC&Rs, those lots out there, the Ranch Land lots are considered to be residential/agricultural. And it also goes on to say in the CC&Rs that agriculture for any kind of large scale operation is prohibited. That includes animals that exceed whatever number is appropriate for the owner's personal pleasure. Those kinds of activities are prohibited out there, and we would not approve a water tank, I guess, for any other use outside of fire protection.

Mr. Vanderbilt: And do you -- do you -- with other activities, have you ever had any problems with somebody building a barn? Does the barn have to be aesthetically pleasing, or can it be --

Mr. Parr: Yes, we've had two instances out there. One instance, they removed the barn. It was a metal technology. And the other instance, the owner is gonna go back and build a wood enclosure over the structure.

Mr. Vanderbilt: Okay, thank you.

Mr. Parr: So, yes, we don't approve --

Mr. Vanderbilt: You approve of barns, but just they gotta look nice.

Mr. Parr: Yeah. One of our requirements is that, in detailing and appearance, that all the structures on a property have the same kind of general motif or general appearance. And, you know, people will build a barn out of metal, but they don't wanna build their house out of metal. So, you know, rather than build a house out of metal, they're tear it down and do it over.

Mr. Vanderbilt: Well, I sleep in a queen-sized bed, but I wouldn't let my horse sleep in a queen-sized bed. I mean, that's for the animals – the barn.

Mr. Parr: Do you have a horse?

Mr. Vanderbilt: No, I don't. Anyway, thank you, Mr. Parr. Are there any other comments for Mr. Parr?

Mr. Dunbar: Yeah, kind of also that you --

Mr. Vanderbilt: Oh, Commissioner Dunbar?

Mr. Dunbar: Yeah, you weren't here last time and basically the vote was four to one with Mr. Feeter the dissenting vote. Mr. Chaikin, myself, and Mr. Kalipi, and Mr. DeGray voting for it. And the only reason why we voted for it was -- there are a couple reasons. One, this whole process started in 2005. I mean, three years getting a permit is just ridiculous. The fact that the local contractor who will be building it hires local people to do it was another plus for this project. The fact that it was going -- it was a special case as Mr. Abbott said that in this particular case, it was a special case. It doesn't mean that just because someone else wants a pool, they're gonna get it just because this one passes. There is no precedent-setting with this item. And as Mr. Kalipi brought up, he said hopefully, it would be of great instruction to those contractors, and your CC&Rs, and anybody else who wants to build a house out there that this was a special case. That if you're gonna have to do something, you're gonna have to figure it out, and not come to the board to expect to get a pool every time someone wants to build a house because they're 500 feet from the pipe. So because of those things, and the fact that there was no County liability, and the fact that Thorne and them had already approved this SMA way back when, and the fact that when they approved it, it really wasn't a function of the architect to come up with the pool design, that was a pool person's design, you know. And then when it ran into the problem of -- and they didn't even want a pool to begin with. Well, they had to have a pool in order to build a home. So when they brought that all forward, I mean, we all argued about this for hours.

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

Mr. Dunbar: Hold on. I'm still addressing him so you know where it's coming from. You know, and so we get torn over the coals of this as to how to make this work to take care of the local people, you know, to make sure that there's an adequate supply of water, you know. And we get bombarded with it. But because it was a special case, this is where we were. And so I'm telling -- I'm just addressing you that if this gets approved today, you folks better come up with some other plan as to how to make it happen, whether you gotta talk to the Fire Department, or Molokai Ranch, or the Lord Almighty, whoever you're gonna talk to, it better happen because I seriously doubt there's gonna be any other one approved. So that's just a comment for you to take back to your CC&Rs and figure out how to make it happen.

Mr. Parr: Yeah, it's difficult for us to change the CC&Rs out there.

Mr. Dunbar: I beg your pardon?

Mr. Parr: It's difficult for us to change the CC&Rs because it takes a majority vote. We can't even get a majority to attend our meetings in person or by proxy -- the general --

Mr. Dunbar: That's kinda tough luck, then, right?

Mr. Parr: Yeah.

Mr. Dunbar: I mean, that's not our problem. You know, so I mean what we looked at the last time was trying to make this work because these people had been in the mill for so long, and justifiably should not have been, you know, but what Mr. Kalipi brought up was this is the end. You know, you're gonna have to figure out another way to do it whether it be underground storage, or sprinkler systems, or whatever on any new design you got, you're gonna have to put in, and say this is how it's gonna be because I can almost guarantee you, and even though I'm not gonna be on here after March, well, I can almost guarantee you there's not another one gonna go down the pipe.

Mr. Vanderbilt: Okay. Are there any other questions for Mr. Parr? Thank you. Is there anybody else out there that would like to provide some testimony at this time? Aunty Judy?

Ms. Judy Caparida: Aloha. My name is Judy Caparida. I was here at the last meeting we discussed this. The thing is that we are under a water management plan. I sit on the Working -- Molokai Working -- Water Working Group. And it has been for years we've been trying to solve this. I say it's not a yesterday stuff. I mean, a lot of people are sneaking in to build pools, but it's because we're under a new management that was set for Molokai because of the water situation. That is why we so strongly for me to say you know what? Swimming pool, honey, there's a big swimming pool out there. The thing about the pool you talking about, how you gonna get the water from the pool to the fire? Oh, be in Molokai, they take the helicopter. They take the ocean water, and they spray the fire.

That's the way they do it. Not only the fire station, but they use that. So I think it's a poor excuse. For myself, water is so important. We're already trying to -- they already trying to plan all these big developments. And you know what? How they going get the water? That's the problem - the water. You cannot catch water. I had this guy tell me, you know what? I don't have to worry -- a developer -- because we can go put catch -- water catchment out there. I said, honey, you don't know Molokai because you don't live here. You're talking about living in a dessert. I said, so you know what? This is why they have to be a balance. There have to be a balance in water. And I am not for swimming pools because we can furnish a lot of homes with that extra water that you put in the pool. On Hawaiian homestead we need homes that need water. And that's where we getting a problem. The Ranch is getting problem because of water. Why we get all the land if you cannot give them water? You can go without electricity, but you cannot go without water. And that's important. That's why I come to every meeting because I like to know what are their plans for Molokai. Some of them they sit back, kick back, because why? They got everything already set up. But it's for those that is coming -- our own that's gonna live here is gonna be running out of water. And that's why I'm here. We don't have to wait for them guys make rules for Molokai. It's our priority as people that live here and ain't gonna move nowhere else to make plans for our future and our children's future. Why always we relying on what people wanna do and say for us? They no live here. They're in a air-conditioned office. They just turn'em out there and go do whatever they need to do. But they don't live here. That's the difference. So you know what? Our Commissioners, you make plans that fit our livelihood. You make plans because why? We live here and we ain't gonna move anywhere to die. So if you wanna live here, live here, but go by the rules of how we live. We love you guys, but you know what? No change us. Let Molokai change you guys. Thank you.

Mr. Vanderbilt: Thank you, Aunty Judy. Any questions for Aunty Judy? No? Thank you. Is there anybody else who would like to provide some testimony?

Ms. Kauila Hanchett: Aloha. My name is Kauila Hanchett. And I'd like to comment on the draft EIS, round two. I have some specific concerns about the new EIS.

Mr. Vanderbilt: Oh, hold on.

Ms. Hanchett: This is only about the --

Mr. Vanderbilt: This is about the pool right now.

Ms. Hanchett: Oh, I'm sorry.

Mr. Vanderbilt: Did you have to get back to work right away?

Ms. Hanchett: Yeah, but I can wait for any more pool.

Mr. Vanderbilt: Okay, thank you. Is there anybody -- does somebody from the applicant -- oh.

Mr. Darryl Kennedy: Good afternoon. My name is Darryl Kennedy. I'm the president of the West Molokai Association and have lived here on Molokai, as many you know, for 27 years. Our CC&Rs for the West End, the 7,000 acres at Kaluakoi were designed and built in Honolulu back in 1979, and they have been enforced ever since then. All of the buildings and all of the residences, whether they be condominiums or other properties, have had to meet the specifications of the West Molokai Association, whether it Papohaku Ranch Lands, whether it would be Makana Makini, the large properties. And, yes, our CC&Rs do permit pools. There are restrictions that are set up on those pools so that they can be used for fire suppression.

Speaking of fire suppression, as you may have known, we've had three fairly large fires on the West End this last year. And the helicopters, one or two at a time, have been out there. They don't go to the sea at this point to dip water. They dip water from the Fire Department's little dish, which comes from the fire hydrants at Kaluakoi.

We have had pools on the West End from the second house that was built at Kaluakoi back in 1984. Some of you may have known the Andersons who owned the *Dispatch* Newspaper. This was one was at and still is at their house. So, yes, it is a permitted thing in the CC&Rs for Kaluakoi. Has been in the beginning and still exists today. And I don't think there is a person that would be building a pool as a permitted item unless they plan and/or trying to protect their house because in my wife's and my living out there, we have had two houses that the fire has come right up to and bitten the house on the roof - one of the corners. Thank God we had the helicopters then dipping out of the water on the golf course at Kaluakoi. They are permitted. Yes, we are proud of it, and they are there for a purpose - both for fire and personal use.

We also permit, and there are some homes out there now doing it, catchment water systems. Yes, catchment water systems, only because there are some areas out in Kaluakoi that have a heck of a lot of more rain than we do down by the old hotel and the condominiums. Any questions from the Commissioners?

Mr. Vanderbilt: Thank you, Darryl. Are there any questions for Darryl? Hearing none, Darryl, who enforces the CC&Rs out there?

Mr. Kennedy: West Molokai Association enforces them.

Mr. Vanderbilt: And you're pretty diligent about enforcing them?

Mr. Kennedy: As much as we can. We do not have a police force.

Mr. Vanderbilt: Okay.

Mr. Kennedy: We don't have a fire station.

Mr. Vanderbilt: I've read some of those. And one of the things is that there won't be any commercial ventures on those lots. Do you recall that in the CC&Rs?

Mr. Kennedy: That is a true statement. We have attempted to get with the County and come up with what is a commercial venture. And at this point, so far, and again I've only been involved in West Molokai Association since April of this past year, we have been unable to get and get some guidance from the County, Planning Department, as to what restrictions they have concerning what is commercialization and what isn't. Thank you, DeGray.

Mr. Vanderbilt: Okay. Yeah, let me just follow up on that. And the only reason I ask, and it's not whether I'm for or against, or this, but you have transient vacation rentals with off-island owners renting out their houses for \$500 a night. That's, number one, not allowed under -- by the County under the zoning law, but number two, it's a commercial operation. And that's just -- but that's why CC&Rs are sort of this thing that's out there that doesn't seem -- it seems to be what the owners want, but a lot of times, they're not really consistent with the actual laws on the books. And when that happens, in my mind, they're of very little consequence because the County does not deal with CC&Rs. I mean, you can't trump County law with a CC&R so --

Mr. Kennedy: I totally agree with that.

Mr. Vanderbilt: Okay, so the CC&Rs are just a funny animal out there and I know you guys try to do the best you can. Commissioner DeCoite?

Ms. DeCoite: Yes, Mr. Kennedy, I have a question. You said you had a fire, two fires, out there by your house, and I just wanted to clarify. Did you say the helicopters got the water from the golf course or was it from your pool?

Mr. Kennedy: Back 15 years ago, 20 years ago, when the Sheraton Hotel was in operation, and we had the 18 holes in operation that we do now, we had additional tanks or groundwater in the ground that was being treated by the sewer system that now still exists on Kaluakoi property, and that water was used to water the front nine of the Kaluakoi Golf Course, and it was also used back then for -- when we got the first helicopter over here. I remember watching him, diving down, dipping the tank, and that water - the pond, if you will, on the front nine, coming over and dumping the water right on top of us almost because we were standing there helpless with inch and a half hoses. If it hadn't been for the helicopters dipping out of that particular pond, Kaluakoi, and Kanani Kai, and those condominiums wouldn't be here.

Ms. DeCoite: So that came out of the ponds at Kaluakoi, not the swimming pool?

Mr. Kennedy: Back then there was --

Ms. DeCoite: I just need to know --

Mr. Kennedy: There wasn't a swimming pool other than the pools at the Sheraton Hotel, Kanani Kai, and Paniolo Hale.

Ms. DeCoite: Okay, thank you.

Mr. Vanderbilt: Are there any other questions for Darryl? Hearing none, is there anybody else out there that -- thank you, Darryl. Is there anybody else out there that would like to testify at this point? Okay, hearing -- I'm gonna close public testimony on this item at this time. At the last meeting, and I'd just like to get some clarification on this from the representative of the owner, there was some talk that initially, you went to Molokai Ranch and were told something along the lines that the infrastructure was inadequate down at the resort. And I just want to understand what you meant by that -- what infrastructure.

Mr. Philip White: When I checked with the Ranch-- For those of you who weren't here last week, I'm Philip White. I'm the architect. And when I asked the people at the Ranch about the fire hydrants and things down there, they said that the water system wasn't, at this point, wasn't functioning the way it should. And that the fire hydrants, they said, you know, if I was you, I wouldn't wanna count on them. They weren't sure about the pressure. They weren't sure what they could deliver. Maybe that's changed, but at the point that I asked, that was the information I was given. And at that point I thought, well, you know, we have a choice. We can do this or we can do that.

Mr. Vanderbilt: So that led to your decision that if the pressure and everything else wasn't there, that might be an impact on doing sprinklers?

Mr. White: Well, it made an impact on a decision whether to make sprinklers directly come off the line. And those sprinklers would have to come off of a residential-sized meter and a pipe. And typically, if you're running things a ways, it's not adequate. There are other alternatives, but at that point, the Fire Department had asked for a pool. And the pool that we put in also has Fire Department hookup. You see those outside of buildings typically where a fire truck can come up, and I assume it's a pumper truck, and they hook up their hoses to the fitting, and just pump straight out of the pool, and shoot their hoses wherever they're gonna shoot them. I'm not an expert in that, but we do have a Fire Department fitting that was mandated by the Fire Department that's hooked directly up to the pool.

Mr. Vanderbilt: Now, when the Fire Department talks to you about you have a choice of how you wanna suppress the fire and you choose pool, they give you a certain amount of gallons that pool minimum that it has to be.

Mr. White: I think there's a -- the Fire Department never gave us a choice. They didn't say you can do A, B, or C. They said, we need a pool. We gave them a pool and said, I'm sorry, we need a bigger pool. We gave them a bigger pool, and said, you know what? I'm sorry, we need a big pool, and we need a Fire Department hookup for the pool.

Mr. Vanderbilt: Okay, so they didn't tell you, lookit, you can either put a pool, a sprinkler system, or storage tank? They sort of --

Mr. White: No. No. No, but I mean I did have those discussions, but it was not something that the Fire Department gave the --

Mr. Vanderbilt: Now, does the Fire Department -- alright, I can see you can have a minimum gallon swimming pool. This is 23,500, which is sufficient for the Fire Department, right?

Mr. White: It's far in excess of I think --

Mr. Vanderbilt: Well, that was my next question: does the Fire Department, if it's being used not for recreation, but solely for fire suppressant, can somebody say, well, I wanna put in a one-acre 80,000-gallon pool for fire suppression, but also for recreation?

Mr. White: I don't know.

Mr. Vanderbilt: Okay, so they didn't tell you -- they don't have any real standards on the pool size that's used for fire --

Mr. White: No, they do have standards.

Mr. Vanderbilt: The minimum.

Mr. White: It's a minimum standard. Your pool must contain this many gallons.

Mr. Vanderbilt: Can you recall offhand what that gallons was?

Mr. White: Well, I think it varies. I don't know how the calculations are made, but it varies according to maybe the size of your house or something else because I think sometimes they require smaller pools. I don't know whether they require --

Mr. Vanderbilt: Well, that's an unfair question. That was something we'd hope the Fire Department would be here to answer so --

Mr. White: Right, I can't answer your question.

Mr. Vanderbilt: Thanks very much, Phillip. Is there any other questions for Phillip? Commissioner Chaikin?

Mr. Chaikin: Yeah, I understand this pool is gonna be 23,500 gallons. I was looking through the plans, and I couldn't quite figure out or visualize what this is. I mean, how big of a swimming pool is this?

Mr. White: You mean is it like 20 feet by 40 feet long?

Mr. Chaikin: Yeah.

Mr. White: I'm not sure. I -- it's a big pool. It seems like a big pool to me. That's all I can tell you. I don't know exactly how big it is.

Mr. Chaikin: Aren't you the architect the designed the pool or --

Mr. White: Yes, I am, but, I mean, I don't wanna give you bad information. And I don't remember exactly how big it was.

Mr. Chaikin: Okay. Yeah, I was just looking through our material, and I was actually looking for the plans of the pool to try to figure out, you know, what it is that we're approving. And I couldn't see that in here.

Mr. White: Typically, at this stage, when you're going for SMA, you have very loose plans. The plans get more codified as you go for a building permit. So when we first went in for the SMA approval which we were granted in -- I think we applied in August, 2005. We finally got SMA approval in, I think, October 2006. The plans were much less detailed. Then when we went in for the permit, they said, okay, look, we need the pool, so we put the pool in. They said, we need more details on the pool, so we gave them more pool details. So I don't know how big it is. I apologize.

Mr. Chaikin: Okay.

Mr. Vanderbilt: Any other questions? No questions? Thank you very much.

Mr. White: I'd like to make one clarification.

Mr. Vanderbilt: Go ahead. Go ahead.

Mr. White: I -- although I appreciate Nancy putting together all that stuff for whether pools are allowed in an agricultural zone, in our conversations with other people at the Planning Department, the pools are permitted as part of the house in an agricultural zone, and they are permitted on a pretty routine basis. Witness all the pools that are at Kaluakoi. And there's ones that have been recently being given approvals for that. So it's -- I guess, you know, we've been at this, DeGray, as you know, we've been at this for two and a half, almost two and a half years. And when -- it's been confusing for us and frustrating. And even today, there seems to be a difference of opinion within the Planning Department about pools in agricultural zones. So, I mean, I don't know what to do other than --

Mr. Vanderbilt: Well -- and I appreciate your dilemma and all the mixed signals you got from when you started until today. We're getting the same mixed signals. And that's the thing that's gotta get cleared up. You're having to go through a painful experience because of that. We're having to go through a painful experience which is reported eloquently in the newspaper. And so I thank you for that comment. And hopefully, out of this, we can get the parties together, and get the policies dealing with pools, and everything else, and how they relate to County and State law, and blah, blah, blah, so everybody knows from day one what the score is.

Mr. White: Okay, thank you very much.

Mr. Vanderbilt: Alright. Any other questions for Phillip? Commissioner Dunbar.

Mr. Dunbar: Yeah, I have one question for either Nancy or Mike. Not to you, Mr. White. Thank you. The last time we discussed the liability on the side of the County. And my understanding was there was no liability because this was already prior -- this fire suppressant system was approved. I mean, if they put this in, then they could get the plans and it's a done deal. Now, my question is, if this turns out, for some reason, depending on -- I mean, no one can calculate what the fire is going to be, but if the fire turns out to be a biggie, and if this is inadequate, the question is, does the County -- if we approve this, does the County have any liability? And if so, what do we do to hold harmless the County?

Ms. McPherson: Is Ralph here? He's head of DSA. This --

Mr. Dunbar: Well, if you don't know, you ...(inaudible)...

Ms. McPherson: Well, it has to do with the building permit. And basically if they satisfy the Fire Department, then they can get the building permit for the house. Because they're proposing something that's outside of the original SMA exemption, then they had to reapply for another SMA exemption. They can't amend an exemption. They have to apply for another exemption. So that's what they've done. And it's mainly so they can get the house built. They have to build the pool so they can build the house.

Mr. Dunbar: Yeah, I understand that. My question is --

Ms. McPherson: Well, they can't build the house --

Mr. Dunbar: If the pool turns inadequate, is the County still protected? Is that a yes?

Ms. McPherson: I can't answer that question.

Mr. Dunbar: Okay, that's a no, then. Alright. Move on. Mike, do you know that?

Mr. Hopper: There's nothing that's gonna stop any lawsuit. I'll say that first and foremost because the County's gonna get sued for things that didn't deal with -- you know, the County will get sued for things that it doesn't have any liability for, and it's shown that in the past. But as far as -- I mean, what the person would be doing would be following the Fire Code. The challenge would have to be based on the Fire Code being inadequate to protect the person. I'm not familiar with any types of claims that would succeed at that point. If you're asking -- I'm not sure if building permits have any sort of indemnification in them. A lot of times permits we grant indemnification or insurance policies, but it's usually for a business and stuff, which is a lot more extensive than just someone building a swimming pool on their property. So I don't see any successful claims being brought on behalf of a landowner basically saying the County's Fire Code is inadequate to protect me. I mean, it's certainly not prohibiting the person from doing more to protect themselves if they, you know, if they wanted to do certain things. Or obviously not build there, or build in a different manner to be more protected, but I wouldn't see any successful claims.

Mr. Dunbar: Okay, thank you.

Mr. Vanderbilt: Thank you, Commissioner Dunbar. Nancy, the original house was done -- it was approved as -- it was exempted from the SMA, right?

Ms. McPherson: Yeah, the assessment was prepared --

Mr. Vanderbilt: Okay. Alright. So there wasn't an SMA permit. So as I understand exemptions, you can't put conditions on exemptions. So if a project has to go for an SMA, then you can put conditions to indemnify. So I guess we have to hope that the building permit indemnifies it or something to meet Commissioner Dunbar's concern. Are there any other questions for Nancy? Yes, Commissioner DeCoite?

Ms. DeCoite: Nancy, who owns the fire hydrants on the West End and that fire hydrant line?

Ms. McPherson: Well, that might be a question for Darryl or Art or -- I believe it's privately owned, but I'm not certain. I mean, I know the County doesn't own them. I'm pretty sure about that.

Mr. Vanderbilt: Does anybody know? John, you know if the -- it's the Ranch's water system. Darryl, if you know the answer?

Mr. Kennedy: I think I do.

Mr. Vanderbilt: Okay.

Mr. Kennedy: Darryl Kennedy, West Molokai Association president. The property that the fire hydrants are on, which is in general the same roads and easements that are on either side of the road, so therefore, the fire hydrants and all of the water piping is owned by the Water Utility, which is in turn owned by, at this point, Molokai Ranch under a public utility district operation.

Mr. Vanderbilt: Thank you, Darryl.

Ms. DeCoite: Okay, then my question is, because the Dorans are trying to put in for a swimming pool because of the inadequacy of the fire hydrants, I mean, why haven't this been taken up with the Ranch at this time to make sure you have sufficient water and these hydrants are working adequately?

Mr. Vanderbilt: Well, Commissioner DeCoite, I think there's a couple of problems. That's why it's so intertwined. There's some 500-foot magical number that once you get beyond that, the fire hydrants aren't a good way to go even if they're operating properly. At least that's what I'm trying to gather. So if they were operating properly and you move within 500 feet, then you're okay with the fire hydrant, but this house is outside of 500 feet and --

Ms. DeCoite: Well, that's why I saying, if they're coming back to County, and they looking at the SMA, and if they gotta go back in for their permits, County codes say that their house needs to be within 500 feet of the fire hydrant. And that is based on the County code.

Mr. Vanderbilt: Excuse me. Ralph, is Ralph here?

Ms. DeCoite: I just trying to get at the point, Mr. Chair, that --

Mr. Vanderbilt: Yeah, yeah, well, let's get -- Ralph, could you go to the microphone a minute? Thank you. Yeah, Commissioner DeCoite had a question.

Ms. DeCoite: Ralph, what is the distance of a dwelling to the fire hydrant for County permits?

Mr. Vanderbilt: To get a building permit.

Ms. DeCoite: To get a building permit.

Mr. Ralph Nagamine: In the Building Code? The Building Code doesn't have that kind of requirement. You mean for the distance from the fire hydrant to the house?

Ms. DeCoite: To the house.

Mr. Nagamine: The Building Code doesn't have it. It's in the Fire Code.

Mr. Vanderbilt: So the Fire Code has this magical 500-foot number that if you're --

Mr. Nagamine: That's correct. It's not a Building Code requirement.

Ms. DeCoite: It's a requirement? Okay. Well, we're talking about the fire hydrants and the swimming pool because they want an exemption to get the swimming pool and stuff, but what I saying is that if the fire hydrants are operation and the house is within the 500 feet to the fire hydrant -- because I'm looking at if the swimming pool is -- and you know, you're dealing with an open -- even if it's an irrigation system, you're looking at trans-evaporation. You're looking at lack of water loss. When water is held in a pipe, you don't have the water loss being that we are in a water ration situation. And my point being which is why I don't see suitable for a swimming pool to be issued if the fire hydrants is up to code. That's what my point is.

Mr. Nagamine: Yeah, yeah. I don't think it's just a matter of having the fire hydrant in close proximity to the project. Now, the fire hydrant also has to be able to perform. It has to be able to deliver an X-amount of water at a certain rate over a certain duration of time. And I think maybe the fire hydrant, although it's there, probably doesn't serve the fire protection that it needs to serve for the house, for the project.

Ms. DeCoite: So at this point in time, if it doesn't do that, would you would say that those fire hydrants should be condemned because it can't perform adequately?

Mr. Nagamine: Well, I don't know about condemn. Maybe they're inadequate but--

Ms. DeCoite: Well, that's why I say, so, I mean, you're looking at a water -- a major water problem if you cannot keep the pressure up. Could be due to low flow. And then we having issues with Mrs. Buchanan and the residents up in Kalae. And I just cannot see any further more of putting in these extra luxury amenities accommodations when the existing residents that do live here are being hit with letters by the County to cut back on their water usage.

Mr. Nagamine: Yeah, my understanding is that the Fire Department didn't actually require the swimming pool. I think they gave them a choice, various options. And the swimming pool storage reservoir was one of the options that was available.

Ms. DeCoite: I just think that that was a bad choice to put forward for these people for even for us to take a look at and concur with a swimming pool. That's where I coming from. Thanks.

Mr. Vanderbilt: Ralph, just one question. So if somebody goes in for a building permit, the Fire goes out there, and then they'll check the water meter no matter if it's 500 feet or 200 feet, and if there's not -- if it's inadequate pressure, then they're gonna have to come up with another fire suppressant plan which may be a pool. Would that be a fair assessment? As it comes from the Fire Department.

Mr. Nagamine: I don't know if they go out and check for every single application, but I do know that they do go out and check fire hydrants, but I don't know if they do it for every application.

Mr. Vanderbilt: Well, so there's not an automatic building permit if you were within 200 feet of a West End fire hydrant at Kaluakoi? You don't automatically get a permit, do you?

Mr. Nagamine: Unless it's known to the Fire Department that those fire hydrants out in Kaluakoi are inadequate.

Mr. Vanderbilt: At 200 feet.

Mr. Nagamine: Yeah, yeah, so --

Mr. Vanderbilt: Okay, so, thank you. Any other questions for Ralph? Hearing none, is there anybody else that wanted to testify? Okay. Well, gang, I'd entertain a motion now from anybody. We can have some further discussion after the motion.

Mr. Dunbar: Well, I'll make the same motion I did the last time which is because Thorne said -- I like to make a motion that we approve this predicated on all the County limitations to it. And the reason for doing it was that it's not -- this is a special case.

Mr. Vanderbilt: Well, wait. Can we get that in the discussion?

Mr. Dunbar: Okay, I make a motion to approve.

Mr. Vanderbilt: To approve the Planning Director's exemption of the pool. Okay, is there a second? Second by Commissioner Napoleon. Okay, is there any discussion? Commissioner Dunbar?

Mr. Dunbar: Yeah, based on Mr. Abbott's testimony, and I believe that it is correct that this is a special case going all the way back to 2005, and that no precedent would be set by this approval, and that there is no County liability, and we're aiding full-time residents here on Molokai by this approval, it's my reason for wanting to approve it based on where we're at.

Mr. Vanderbilt: Is there any other discussion? Commissioner Chaikin?

Mr. Chaikin: Yeah, you know, I think when you step back and you take a look at the big picture, swimming pools have always been normal and ordinary things that they have with residences. We can see that all across. There's all kinds of houses with swimming pools. Right now, the County is approving swimming pools. And now we're sitting here starting to rethink the whole thing. We're starting to get in a situation where resources are getting depleted. We're starting to try to get more sustainable. And we're starting to reconsider what we do. And I think that right now, whether or not we approve or disapprove, on the other side of the street, all those people are gonna have swimming pools because right now, the County is approving all the swimming pools. I think that, you know, my policy would be that what this Commission needs to do is we need to set some kind of a policy. And I think that policy has to be based on good information that we get from experts like the Fire Department, like maybe the Water Utility, maybe the Water Department where they can tell us things like do the fire hydrants work? What options are available to these people? Can they put in a lateral fire hydrant? Can they just have hoses onsite? Is the swimming pool a good option for the Fire Department? Just get all the information out on the table. Right now, they're coming before us for a swimming pool that cost \$70,000 to build. That's not really a very good, economical solution for fire suppression. So I think we, as a Commission, need to come up with a policy. Right now, we don't have that information. You know, we're lacking all kinds of information. I don't think it's fair to the Dorans to disapprove them when we haven't done our homework. We don't have that information from the Fire Department. We don't have that information from the Water Department or the Utility. I'd like to hear from the Utility. Do they have a water shortage? Do they approve of putting in a bunch of more swimming pools? Or do they feel there's a water shortage or what their information is?

So at this point, I'd be willing to support the motion, and at a future meeting, continue this discussion, and try to develop some kind of a policy as a board so everybody gets treated fairly and the same because we just got done approving a pool. And why would we disapprove this when we just approved the last one with the rationale there? You know, that would be very inconsistent. So I think that, yeah, we need to come up with a policy. And if we, as a board decide that, you know, we shouldn't have swimming pools there, then we need to petition the County to also do the same thing so across the street all those people don't have swimming pools, and the guys on the other side do have swimming pools. So that's all I have to say.

Mr. Vanderbilt: Thank you, Commissioner Chaikin. Is there any other comments? Commissioner DeCoite?

Ms. DeCoite: I agree with what Steve said on the policy, but I disagree in supporting this pool. First of all, we asked for the guys to come here. We asked for the Fire Department to be here. Are they here? How many guys work over there? We couldn't even get one of them to come over and comment on this? The Utilities. We couldn't even get that. You know, we gotta look at being fair to the residents that live here too. Future development on this island has already been set forward about water issues, but yet, we continue to come around and approve things without even laying the facts on the table. We've done this. The precedent is set already. We've approved the pool. Prior to this, the Walsh pool was the issue. We denied that based on environmental issues. And what happened? They went back. Mr. Fasi went back and asked for the exemption through County. That was one slap in the face to this Commission. Whether we going decide to make our own policy and our own rules to set forward from this point on. I understand we get local people working down there and I ain't bucking the local boys that work down there. I support that effort. But when come to swimming pools, this is ridiculous. This is ridiculous. That's a luxury. It's an amenity. It's stuff that you no need. If there's a fire, that's why we get fire breaks. That's why the Federal has kicked in all that funding now for fire breaks, but this is the precedent that if this Commission is gonna set, I cannot agree with this, and I not going support this. Thank you.

Mr. Vanderbilt: Thank you, Commissioner, DeCoite. Any other comments? Commissioner Pescaia?

Ms. Pescaia: This is my first swimming pool experience, so I don't have the history that some of the other Commissioners have. I have had the privilege of reviewing all of this information. And, basically, I feel my role is to make a judgement on just my jurisdiction. I cannot speak for the Fire Department and their needs - their permit. They need to speak for their permits. I cannot base my decision on their criteria, their policies, because that's not what I use to refer to in making this decision on this SMA permit. I do know that -- so I kinda drew this vin diagram of what the County does and doesn't allow, and what the Fire Department needs. And I try to fit if there are options available that would satisfy both what we need and what the Fire Department needs. And I truly believe that there are options. The County does not allow swimming pools as a permitted use. Fire Department is saying they do. They need the swimming pool or they need some -- I don't know. We had the architect say that they told him it had to be a swimming pool. And then we had somebody else come -- I think it was him come up and say that it doesn't have to be a swimming pool. It could be anything. So I do wish someone could've ran over the 500 feet to the fire station and called someone to come over here in the last hour and a half, but I don't know. Maybe it's not too late to go over there and actually ask someone to come over and comment because it might actually make a difference in what we decide. But then again, I go back and there are options to me. There are other options: storage tanks, stand pipes, fire

breaks. There are other fire suppressant tools, but I do know that the pool is not -- if it was a storage tank that they would go swimming in, but it's called the storage tank and they're -- it's referred to as a storage tank, and it was an application for a storage tank that we could sometimes go swimming in, then I think it would've been looked at different. But it's an application for a swimming pool and the secondary use is as a fire suppressant mechanism. Is that right? Whereas other storage tanks, the primary use is as a fire suppressant system. You could, I don't know, go swimming in your storage tank if you wanted to. That would be secondary.

So in keeping in line with just agriculture use, and trying to be fair to everyone on the island, and everyone else's concerns, I really believe this Commission needs to be held accountable and responsible for the decisions we make today, not based on what has happened in the past. We have had nine other people sitting on this table that have approved other pools, but we haven't had this group of people. And so this decision will follow us. I mean, you might say, you know, this needs to be looked at independently, but you know this community, they're gonna hold us to it. And I just think that's the most responsible thing to do -- stick with what we have jurisdiction over, the policies we have at hand, and not be swayed, I guess, by all the other entities, and force them, the other entities, the other County -- Department of Planning, Fire Department, all these other people who are issuing permits, they need to be accountable for their actions and that shouldn't be included in our decision.

Mr. Feeter: Mr. Chair, I recommend that this time that we adjourn and go into executive session.

Mr. Vanderbilt: For what reason?

Mr. Feeter: The primary reason is to discuss this from the legal standpoint as well as the ethical, professional standpoint.

Mr. Vanderbilt: Well, I think, Commissioner, I'll defer in a minute to our Corp. Counsel, but there's certain criteria for being able to go into executive session, and I'd just ask Corp. Counsel to give us a little guidance on that.

Mr. Hopper: I'll look it up and read it to you, if you feel it's necessary to go into executive session. If it would be with me, it's for very specific reasons. They would have to deal with the board's rights or the Commission's rights, duties, and liabilities with respect to the SMA permit you're looking to issue here. Let me get this for you. One moment. There's also certain voting requirements you have to meet. Okay. The reasons you would meet with me in an executive meeting it would state, "To consult with the board's attorney on questions and issues pertaining to the board's powers, duties, privileges, immunities, and liabilities." In this case, this would be respect to this particular SMA permit. HRS 92-4, it's the State law, it states that "A board may hold an executive meeting closed to the public

upon an affirmative vote taken at an open meeting of two-thirds of the members present provided that the affirmative vote constitutes a majority of the members to which the board is entitled," which in this case, it would. So the matters that we discuss in the meeting would have to be limited to what I just said, discussions related to the rights, duties, and liabilities of the board. And the reason for holding the meeting shall be publically announced, and the vote of each member on the question of holding the meeting closed to the public shall be recorded and entered into the minutes of the meeting. So we need to know why you're having the meeting. In this case, it's to discuss issues with your attorney. And then you would have to have a vote of two-thirds of the members present.

Mr. Vanderbilt: So, Commissioner Feeter, so you had an issue that you wanted to bring up to our attorney?

Mr. Feeter: ...(inaudible)...

Mr. Vanderbilt: Okay. Nancy, did you have something to add?

Ms. McPherson: Yes, Chair, I just spoke to Captain Akaka at the Kaunakakai Station. I did get an e-mail from Greg Jenkins, but he just got back from vacation, but Captain Akaka's on his way over here right now so --

Mr. Vanderbilt: Did he say he knows about the Fire --

Ms. McPherson: Well, he's gonna try to help however he can. So I asked him if he could talk about that, yeah.

Mr. Vanderbilt: Okay, thank you. So we have a request by Commissioner Feeter to go into executive session. We need a vote of two-thirds of the members present, which would be -- we'd have to have at least five votes. So -- and this is to consult with our attorney, right, Bill? Commissioner Feeter?

Mr. Feeter: ...(inaudible)...

Mr. Vanderbilt: Well, no. Read that first paragraph. Give me that first paragraph. Because it's very hard, Bill, to go into -- and it's complex, but they make it -- unless there's a real need to go into executive session for specific reasons, decision-making bodies can't just be going into executive sessions that are closed to the public. So where was that first section? Yeah, and so, Bill, to consult with the board's attorney on questions and issues pertaining to the board's powers, duties, privileges, immunities, and liabilities. Commissioner Feeter, would your request fall under the category of consulting with the board's attorney on questions and issues pertaining to the board's powers, duties, privileges, immunities, and liabilities?

Mr. Feeter: In a broad sense, yes.

Mr. Vanderbilt: Can you be a little more specific of why you wanna go into executive session, and then we can take a vote on it?

Mr. Feeter: I believe that based on the rural zoning types that we need to refer this -- get to discuss this, and resolve it from the standpoint of limited services in a rural area.

Mr. Vanderbilt: But this is an ag area, agricultural area.

Mr. Feeter: Okay, I'm not speaking specifically of zoning types -- of rural in the sense of sparsity of population, and the inability for or the lack of services such as trash pickup, and I can go on with other utility types. And this is -- and that's my point. This area -- in other words, I feel that the Fire Department really has no say in this. They're holding up the whole process. If they had not said that they needed such and such firefighting capacity that would have been provided by municipal services within a reasonable distance and facilities, then it would never have come up.

Mr. Vanderbilt: I think that's a good concern, but that's something that I would think that we could --

Mr. Dunbar: Mr. Chair, I think that's a policy statement that ...(inaudible)... before us. So let's -- if he wants an executive session, vote on it.

Mr. Vanderbilt: Alright, we'll get to that, Mr. Dunbar. Can you hold up, Bill, on your request? We have a member of the Fire Department here that might be able to answer some questions.

Mr. Feeter: ...(inaudible)...

Mr. Vanderbilt: Well, that's what we'll do, then. We'll just hear from the Fire Department.

Captain Godfrey Akaka: Aloha. My name is Captain Godfrey Akaka. I don't know what you guys like. I just got a phone call from somebody that said you have questions so ...(inaudible)...

Mr. Vanderbilt: Captain Akaka, I know -- what is it? Scott English over there handles a lot of the fire stuff as far as, you know, regulations and everything, distances from houses and all that. Are you familiar with the type of alternatives that the Fire Department allows for fire suppression to a homeowner besides just hooking up to the hydrant?

Captain Akaka: No.

Mr. Vanderbilt: Okay. No, no --

Captain Akaka: Honestly, I can find the answer for you if --

Mr. Vanderbilt: No, and I think somebody testified earlier that -- I think one of the Commissioners was concerned why we couldn't just go over and get one of our guys here, but that's something that's handled by the Maui guys, generally.

Captain Akaka: I mean, of course, there is a required fire flow for building a house, yeah. You need --

Mr. Vanderbilt: From the hydrant.

Captain Akaka: Well, you need some type of fire protection, yeah, to build a house, a water supply, whether it be possibly a swimming pool.

Mr. Vanderbilt: But there are some alternatives.

Captain Akaka: But don't, yeah, don't quote me on that. I gotta find the answer for you guys.

Mr. Vanderbilt: That's okay. Hey, you gave it a shot. You're about where we are right now. We know a little bit. So thank you very much, Captain Akaka. Any questions? Commissioner Pescaia?

Ms. Pescaia: Thanks. In your service here on Molokai, what kinds of methods of fire suppression have you maybe witnessed or seen put in use down at the West End besides the fire hydrants?

Captain Akaka: That's the only thing I can -- that I know of that we've been using is fire hydrants. Swimming pool is an alternative, but there's -- again, you know, as far as the restrictions, how far the swimming pool from the house and the access for us to get to the swimming pool, you know, it's common sense stuff like that.

Ms. Pescaia: Would the swimming pool to be effective need -- would the truck need to have direct access to the pool?

Captain Akaka: Yeah, I mean, again, don't quote me on that, but --

Ms. Pescaia: I mean just the practical sense like you would need to drive the truck to the pool to get the water out of the pool.

Captain Akaka: Yeah, practical sense, we gotta get to the -- yes, yes.

Ms. Pescaia: Okay. Would you -- alright, not just on the West End, but anywhere, have you ever used water from a storage tank or some other means of water storage?

Captain Akaka: I know that there are places that have, but I haven't -- we haven't used it personally, not yet.

Ms. Pescaia: Would the helicopters use -- if you were down on the or anywhere near the ocean, is using water from the ocean an alternative or an option?

Captain Akaka: Not for one house.

Ms. Pescaia: Not for a house?

Captain Akaka: Yeah.

Ms. Pescaia: You would use fresh water for a house?

Captain Akaka: Well, I mean, yeah, we would because it's a -- what do you call? A dedicated source and it's more guarantee, yeah? More guarans to use one water supply that's fresh water. And we wouldn't use a helicopter to put out one house fire.

Ms. Pescaia: You wouldn't use the helicopter to put out the house fire unless there was a brush fire in the immediate area threatening the house, and it was already being in use, then it would?

Captain Akaka: Yeah, I mean, like for example, the house backside, yeah, was on fire. And I know they probably did some water drops with the helicopter, but other than that, that is unacceptable. We wouldn't allow somebody to build a house based on using the helicopter to put out the fire.

Ms. Pescaia: Would -- only because on the West End, I don't know of any houses that have just burnt on their own. I mean, usually it's a brush fire that's a more common threat on the West End and they would employ helicopters. But you're saying that if the house -- I mean, if the fire was threatening the house, then the trucks would actually come in to deal with the house situation and not the helicopter?

Captain Akaka: Yeah. Yeah. Yeah. And if the helicopter is there, then we'd use the helicopter to help put out the brush fire.

Ms. Pescaia: Right, to help put out the brush fire.

Captain Akaka: And, of course, if the roof is on fire, yeah, you know, the helicopter would put -- but if there's another big fire on Maui at the same time, there's only so many amount

of helicopters we have access to, you know. If there's another big fire on Maui, then we're on our own.

Mr. Vanderbilt: Okay. Any other questions?

Mr. Dunbar: Yes, I do. Captain, in this particular request that we're looking at, the applicant has been told by the Fire Department that it must have, as you so said, a way to put out -- you know, to have fire control at site. The Fire Department has said that a 23,000-gallon pool would be adequate to supplement the fire control in this area because the home is over 500 feet from the stand pipes that are down there in Papohaku Beach Ranch Land. It is required that the applicant have an NFPA-24 hookup system because all your threads are different from normal pipe threads. And that would be to hook up a, I presume, it would be to hook up a pipe to your pumper truck, which would then provide the necessary PSI water pressure to fight a house fire. Is that correct?

Captain Akaka: Yeah.

Mr. Dunbar: So what does -- do you have any idea what the PSI is in this present system that's in the Papohaku Ranch Lands, and whether or not a good alternative for them would be to have this NFPA-24 system that would hook up to your pumper truck which would then provide the necessary PSI and water pressure to fight this fire if it were a house fire?

Captain Akaka: Yeah, yeah. I mean, it would be --

Mr. Dunbar: That would work?

Captain Akaka: It would. To have the swimming pool set up as our water supply?

Mr. Dunbar: Correct.

Captain Akaka: Yeah, absolutely, especially if the Fire Prevention is requiring it, yeah, it's necessary. There's no way around that, I mean, that I can see unless Fire Prevention said that there's another alternative, but if they're saying this is what you guys need, then --

Mr. Dunbar: Well, Fire Prevention knows that they have stand pipes down there and they're requiring the applicant to do this. Now, of course, there's other ways. You know, they could have a 5/8" water meter, and put in a sprinkler system in the house, and hope that after they turned on two sprinklers, there was enough pressure to put out some sort of a fire, which I doubt, but that's -- I mean, it would seem to me that that system was rather inadequate though this system that they're suggesting then provides adequate coverage for you folks to do your job.

Captain Akaka: NFPA 24, if I'm not mistaken, covers fire sprinklers, yeah? Yeah. I mean --

Mr. Dunbar: Well, it might be -- isn't it the pipe threading or is it the size of pipe?

Captain Akaka: So if it's talking about fire sprinklers like a sprinkler system in a home, yeah, or a building, then that makes a big difference, I mean, as far as fire protection because it'll put the fire out way before the fire even gets into a, you know, big enough stage for us to --

Mr. Dunbar: Right. I think in this particular case, what they're requiring is that this is the hook up that your pumper truck would hook to in order then get and generate enough water pressure to put out the fire.

Captain Akaka: Okay, so --

Mr. Dunbar: Do you know whether or not the stand pipes down in Kaluakoi are --

Captain Akaka: Honestly, they're terrible, terrible. Some of them -- I mean, a couple -- a few years ago, they were like 200 PSI. That's like off the charts. That's like way -- but we know that lines been rotting out. There's hydrants that don't even work down there. So sometimes we go down there and, you know, it looks like the hydrant working, but I tell the boys check the hydrant, and the hydrant not working. And I see the houses building right down the road. So, I mean, on paper, it may say it's working, but in reality, it's not.

Mr. Dunbar: Thank you.

Mr. Vanderbilt: Okay. Commissioner DeCoite?

Ms. DeCoite: Good afternoon, Captain Akaka. When you guys dispatch you guys trucks, how much water do the trucks hold?

Captain Akaka: Our truck holds average one thousand gallons. We got two trucks that hold thousand gallons.

Ms. DeCoite: So when you guys -- like I know you guys had this last fire on the West End. You guys' protocol back then because at that time, the Ranch's system could not put out water, you guys were told to go back down to the bottom of the hill and refill. Was that true?

Captain Akaka: No, we wasn't told by anybody to go back down the hill, but we had water supply from the hydrants down on Kaluakoi Road. There's a few hydrants that are working on Kaluakoi Road that we were using.

Ms. DeCoite: Because, as you know, we're trying to approve this permit for the pool of that 23,500 gallons of water. So if you telling me you're carrying a normal of thousand gallons on the truck, and this house's square footage is 4,000 square feet, okay? I'm assuming you guys take probably what? About 15 minutes to get there? Maybe longer?

Captain Akaka: Yeah, yeah.

Ms. DeCoite: Well, I guess a lot of factors would play into this one but, you know, I, for one, just cannot see because you guys have already known what's going on with that fire hydrants and stuff and I would assume that the recommendation would be made back to the entity of whoever's running those pipes to, I guess, put the thing back up to snuff, and be able -- so when these people come in to build, they have adequate supply of, you know, fire hydrants and stuff. You know, and that's what I'm having a problem with because I think that's a lot of water, 23,500 gallons of water in a pool, to put a fire out on the house, and then the excess of a thousand you're carrying on the truck. And I sure when you guys go West End, you guys dispatching all the trucks. So, I mean, so in your opinion, you think that's a lot of water in that pool?

Captain Akaka: Yeah, I mean, that is. That's a lot of water. So there is a minimum, I'm assuming, but I don't have that numbers with me, but, I mean, it's in black and white, yeah, the Fire Code. There's a minimum standard adequate supply of water that's needed to build a house. As far as 23,000 gallons, I don't know about that number.

Ms. DeCoite: You know why? Because this came back from Scott English, the Fire Plans Examiner.

Captain Akaka: Yeah.

Ms. DeCoite: When this women went in for a permit --

Captain Akaka: Is that the same paper I have?

Ms. DeCoite: They disapproved it because -- and they required her to get that 23,000 gallons for fire protection. So I having a little bit of a problem trying to see why she needs such a big pool, you know, so I just trying to clarify some stuffs.

Captain Akaka: If it says that in black and white, you know, all of the Fire Codes is, I mean, that is set in stone. And it's subject to change, of course, by law, but, you know, through trial and error, yeah, through houses being burned, people dying, that's how the code is developed. But if it's in black and white and it should be public, you know, reviewable by the public so maybe you could have Prevention send you where it, you know, where it states that, yeah, according to the Fire Code. Cause according to the square footage,

according to the type of house material that is built, that's what, you know, the formula that they come up with the required fire flow.

Ms. DeCoite: Okay, thank you.

Mr. Vanderbilt: Are there any other questions for the Captain? If not, thank you, Captain. Now, Commissioners, we have a motion on the floor and it's been seconded. We've had discussion. Bill, if you wanna have some more discussion, I'm not even gonna call for a vote on the executive session at this point because we have a motion on the floor, but you did bring up some points that you may wanna put on the record right now, but I don't think that it's something that we should exclude the public from hearing the discussion on, if you don't mind. So, okay. Alright, we have a motion on the floor to approve the Planning Director's exemption of the swimming pool from an SMA permit. There's no more discussion.

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

It has been moved by Mr. Dunbar, seconded by Mr. Napoleon, then

VOTED: to approve the Planning Director's exemption of the pool.

**(Assenting: K. Dunbar, S. Napoleon, S. Chaikin.)
(Dissenting: B. Feeter, M. Pescaia, L. DeCoite.)
(Excused: J. Kalipi; L. Kauhane)**

Mr. Vanderbilt: Alright. Motion doesn't carry. You need five votes to carry. Is there another motion? Now, if we take no action and there's not enough votes to approve or deny, our rules say we have a 30-day time limit, so it would seem to me that the 30 days is in there for a reason and that reason would be that by not being able to vote it up or down, probably the director's exemption stands as he did to allow the exemption of the pool. So without that, we'll just -- as far as this Commission's concern, we did not come up with enough votes to agree with or disagree with the director's recommendation to exempt this. So that's where it goes from this Commission's standpoint and -- unless somebody has some other reason to disagree. It seems like, based on our rules, that that would mean that the pool can move forward because the Planning Director's exemption stands. So thank you, everybody, that testified. Thank you, Commissioners, for getting through this. And we had a lot of good stuff on the record last time. We had a lot of good stuff on the record. We were missing some key resource people, but I think that we have enough of a basis now to move forward to come up with a policy that not only applies for pools within the SMA on Molokai, but pools, in general, on Molokai. And as Commissioner Dunbar said, he was told this didn't set a precedent. Or maybe it does. Maybe it doesn't. I don't know but, hopefully, the County Planning Department will cooperate with this

Commission and try to come up with a policy for Molokai. It doesn't have to be Countywide. It's just for Molokai regarding the development of swimming pools on Molokai, which is a designated water management area. Commissioner Chaikin?

Mr. Chaikin: Yeah, thank you. I, you know, I would just like to say I think that we need to take the lead. I don't think that we can sit around and wait for the Planning Department to come up with some sort of policy on swimming pools at the West End. I think that we should take the responsibility and try to do that ourselves. And so, I hope that we can not just let this thing go away, but actually let's try to develop a policy. Let's get the Fire Department here and so we can get the straight scoop on what's going on, and what the options are, what works, what doesn't work. And also maybe even get the Water Department or something so they can give us some information on the water utilization of swimming pools because I'm not convinced that a swimming pool is worse than a lawn. A lawn might take more water. You know, this is the kinds of information that I'd like to have to make an informed decision if we're going to change, you know, policies regarding swimming pools. So I hope, Mr. Chair, that we can get this on a future agenda with the Fire Department and any other important people that can provide information for us.

Mr. Dunbar: You know, Steve, I really second that.

Mr. Vanderbilt: Thank you. Commissioner, Dunbar?

Mr. Dunbar: Yeah, thanks. I really second that. And I think it's paramount that we initiate where we're gonna go because we need to inform whoever the Utility is down there thinking they're gonna keep building houses and keep getting pools, and it ain't gonna happen because if there's an inadequate fire, you know, flow down there, then they need to stop issuing permits until there is an adequate fire flow. So, you know, it doesn't come to us having to make a decision on making storage tanks, and alternate sprinkler systems, and putting the public through the gambit. So if they're -- we need to do the policy. We need to call the people out and say, you know, fix your dilemma. This is not our problem.

Mr. Vanderbilt: Okay, thank you. Commissioner Feeter?

Mr. Feeter: Yeah, thank you. Along those same lines, I'd like to make a couple of comments taken from the *Rural Planning Principles and Techniques*. And in that, I'll just read it to be brief. And that is, there is a specific program for rural service levels. And it's just a little previously I mentioned this and it's -- let me just read this: "It's important for local authorities to provide outreach materials and information explaining that rural living conditions directly imply lower service levels," lower service levels. And if so, therefore, people choose to live in a lower service level area, then they have to be responsible for the type of construction, firefighting, weed-control, etc., etc. These service levels then obviously are not the same that are provided in an urbanized area. And so that my point is that the Maui County Planning Department has got to be responsible and not put the Fire

Department in the hot spot of saying it's your determination to say whether a pool or a fire abatement area is set up. The Planning Department has to be concise on that, make a decision, and say, okay, if you wanna build a house out there, you're not gonna get support and -- from the firefighting and other utilities, even ambulance. It's gonna be delayed, in other words. And we all know that. And so the Fire people that make this decision, they -- let's eliminate that possibility. And it's gotta come from a higher authority and that's the Planning Department.

Mr. Vanderbilt: Thank you, Bill. Thank you, Bill. If there's no other comments, we have a pretty long agenda still, and I would like to call a five-minute recess, and we'll get started after five minutes on the next item, which is a communication item regarding the Molokai Properties' draft environmental impact statement for Laau Point. So we're in recess now.

(A recess was then taken at 2:35 p.m., and the meeting reconvened at 2:45 p.m.)

E. COMMUNICATIONS

1. **MOLOKAI PROPERTIES, LIMITED** requesting comments from the Molokai Planning Commission on its second Draft Environmental Impact Statement (DEIS) prepared for the Laau Point Project located at TMK: 5-1-002: 030 (portion), Kaluakoi, Island of Molokai. (EAC 2006/0017) (CPA 2006/0009) (CIZ 2006/0015) (SM1 2006/0040) (CUP 2006/0005) (N. McPherson) *(The Draft EIS diskette was previously distributed to the Commissioners.)*

The accepting authority for the EIS is the State Land Use Commission. The deadline to receive comments on the DEIS is February 22, 2008.

The EIS is a supporting document for the State Land Use District Boundary Amendment with the State Land Use Commission and various County land use applications. The County land use applications are for a Community Plan Amendment, Change in Zoning, Special Management Area Use Permit, and County Special Use Permit.

The County land use applications will be reviewed by the Molokai Planning Commission some time after the EIS process has been completed by the applicant with the State Land Use Commission.

- a. **The Molokai Planning Commission may accept public testimony from interested members of the public on the DEIS.**
- b. **The Molokai Planning Commission may take action to provide its comments on the Draft Environmental Impact Statement (DEIS).**

F. CHAIRPERSON'S REPORT

1. Laau Point EIS Process

Mr. Vanderbilt: I'm gonna -- I know there's one or two people that have been waiting around through the pool issue, and I'd like to allow them to testify. Thank you, Clayton.

Mr. Clayton Yoshida: Good afternoon, Mr. Chair, members of the Molokai Planning Commission. The notice of availability of the draft EIS was published in the January 8, 2008 OEQC Bulletin. There is a 45-day comment period which ends on February 22, 2008. Copies of the draft -- this draft EIS were circulated to the Planning Commission.

Mr. Vanderbilt: That's it?

Mr. Yoshida: Well, I guess the -- since then, the department has come up with a policy memorandum dated January 10, 2008 which it had circulated to the Maui GPAC at their meeting of January 10, 2008. And essentially, the department believes that due to the pending General Plan Update that we should respect the existing community plan boundaries until there is further progress in the General Plan Update process. We are asking developers to participate in the process rather than to submit independent requests. As an update of the General Plan goes through the process, more information will become available to guide future development. It would be contrary to public policy for a development to be approved now in an area where the updated plan may not provide for that type of development. Based on this, the department will not support any proposed development that includes a community plan amendment at this time. There are exceptions to this. The first one is the project offers a substantial public benefit. And if it is a private project, the public benefits are far above what would be required based on existing ordinances, policies, or other regulations. Or two, the project's impacts due to scale, location, etc., would not be specific. This policy will continue on an island specific basis until the County Council has adopted that island's plan update -- either the Maui Island Plan, the Molokai Community Plan, or the Lanai Community Plan. However, I guess we're in the process of reviewing an informational document with the EIS. And there's nothing to preclude, I guess, due process for the applicant, but that's the position of the department.

Mr. Vanderbilt: Commissioner Dunbar?

Mr. Dunbar: Clayton, the diskette, which, you know, you could sit and probably watch for eight hours, is it -- were you provided with some type of a summary which just answered all the particular questions that were raised versus a re-submittal of a whole new draft EIS?

Mr. Yoshida: Well, that is the draft EIS, a copy of the draft EIS that was submitted to the Office of Environmental Quality Control notice of which availability was published in the January 8th bulletin. So the diskette came from the applicant's consultant.

Mr. Dunbar: So, I mean, I'm kind of kuli, so I don't do anything really by listening. I'm a better reader. So do we have a document that we can read other than going to -- plugging into our hard drive and having it come up on a computer? Do we have some paper or we're saving the trees on this one?

Mr. Yoshida: Well, I guess hard copies of the document are available say at the library or here at our Molokai Planning Office.

Mr. Dunbar: Thank you.

Mr. Vanderbilt: Commissioner DeCoite? And we can bring back Clayton later, but go ahead and ask him a few questions.

Ms. DeCoite: Well, Clayton, you know, when we went to the library, only had one copy, and was kinda hard when you had 50 people wanting to use the one copy at the same time, cause like Commissioner Dunbar said, this is not cutting it for me either.

Mr. Vanderbilt: Okay. Any other comments? Commissioner Chaikin? And after Commissioner Chaikin, I'm gonna open it up to public testimony.

Mr. Chaikin: Yeah, I was just wondering if Corp. Counsel could kind of -- just kinda interpret what Clayton was saying in regard to the policy that they have come up with, and how that might affect the Laau project that we're looking at.

Mr. Hopper: I don't want to get too far off the issue of the EIS in this particular case, but if there is a policy, it deals with the Planning Department's recommendations, but nothing, I don't think, would preclude a developer from under existing law seeking a community plan amendment. That's something that's allowed for in the County Code. The community plan amendment as well as the change in zoning though are both legislative acts, which are completely at the discretion of the County Council. The County Council can choose to allow them or to deny them. So this may have a bearing on how the Planning Department wants it to go with the General Plan Update. It would allow an applicant to, I think, still apply under the existing law. Until that's changed, you know, or a moratorium by Council action placed on developments, but even with that, a community plan and change in zoning changes are both legislative acts, which are never required to be given. They're discretionary.

Mr. Chaikin: Thank you.

Mr. Vanderbilt: Okay. Okay, Clayton, I have a couple of questions, too, but I'd really like -- we've had a couple of people waiting for quite a long time. And so I'd like to open it up for public testimony at this time. Thank you, Clayton. Is there anybody here that would like to testify on this item?

Ms. Hanchett: Aloha, Commissioners.

Mr. Vanderbilt: Aloha.

Ms. Hanchett: My name is Kauila Hanchett and I'd like to comment on the draft EIS. I was very involved in the first round with the original draft EIS and the LUC hearings, the final EIS and the LUC hearings. And I have some specific concerns with this new draft EIS. I'm speaking on behalf of myself and my husband who couldn't be here.

First of all, the format which it was provided in. As you know, it is a very lengthy document and we have a time limit. It's very hard for those of us crazy enough to try and get through the whole document to use it in a pdf format which is what it is in now. I'd like to ask the Commission to request that the Ranch provide the draft EIS in a format that can be cut and pasted, also a format that can be searched. This will aid the community in the comment process. I also have concerns that there's only one copy in the library. And I'd like to ask for the Commission to request from the Ranch to extend the deadline by 30 days. The original draft came out right during the holidays and I know there was a big push to have that deadline extended. Forty-five days is simply not enough time for us to go through the whole document.

The other thing I'd like to point out is that the LUC hearings occurred on November 15th. And the Ranch re-submitted this new EIS I believe in the beginning of January. And if you were present at the LUC hearings, you know that the comments submitted by the community were very exhaustive, and they pointed out several reasons why the project was lacking. And for me, that less than two-month turnaround was like a slap in the face to the community. What could they have done to improve the document in two months? And the bottom line is that I think the Ranch missed the canoe. If you were there Thursday night at the hearing, you would've seen a sea of red T-shirts saying no. You would've felt the energy in the room saying no. This is not pono for Molokai. This is not the direction we want to take our children in. And I think the Ranch missed the canoe because all I heard from them after was they needed to improve the document. And they cannot improve the document to a point where it will ever be acceptable to this community because there are things they cannot mitigate such as water. We all know Molokai is a sole source aquifer. Where we gonna get more water from for this development? And we don't know how much water we have at this point.

The other thing that they cannot mitigate is cultural and social impacts. I tried to express many times at meetings and also in my comments that the people of Molokai and the aina

are one in the same. They are ohana. They are spiritually connected and tied. And what you do to the land, you do to the people. This was not addressed in my comments. Also, the social impacts are left unaddressed.

Another major reason the EIS was about to be rejected and later withdrawn is project segmentation. By law, if a proposal hinges on a greater whole, that whole is then subject to an EIS. The Laau Point Development clearly is connected to a whole, which is called the Master Land Use Plan. The way that they mitigate so many of these impacts is with the lands that are being donated to the land trust. So in other words, it's okay to take the water. It's okay to desecrate sacred land because we're giving you these other lands. And another major point is the re-opening of the hotel. So due to the inter-connectedness of the Laau Point Project with all these other pieces, by law, I feel MPL and the Ranch should submit an EIS for the entire Master Land Use Plan. And they did not do that.

Another thing that really bothered me was that throughout the document, MPL claims broad-based community support. Over and over they say the community supports this development. That is not true. And over and over the community has shown why we do not support this development. Just a few examples: at the EC vote, Save Laau candidates won by a landslide. Over a thousand people came out to vote. Eight hundred-plus voted for Save Laau candidates. That's one example. Another example is a petition that we've been circulating against the development. Over 1,000 signatures have been collected on this petition. Yet the Ranch still claims in this new draft EIS that it has community support. How can outside decision-makers make an informed decision when false claims are filtrated throughout the document? What should've happened long time ago was the community should've been given a voice. They should've been given a vote. We should've been allowed to vote on whether or not we agree with this development, but that never happened, so we have to show in different ways. The number that the Ranch bases their community support on are less than 300 names. And those names that are listed in the document are the people who participated in the planning process for the Land Use Plan, for the Molokai Master Plan. What it came down to was a vote of 20-something people who decided to take it to the community. That's the only numbers I could find in the document which support their claim of community support.

So I feel this is wrong. This development is not pono for this island. I hope that the Ranch can get on the same canoe as the community, and we can all paddle together for the generations yet to come. Molokai has a special destiny and we need to fulfill that destiny. And we need to hold on to what we have here not just for our own sake, but for the sake of our world. Indigenous cultures are disappearing. We need to hold on. Thank you.

Mr. Vanderbilt: Thank you. So, Kauila, did -- have you -- you attend -- you had testified at the Land Use Committee hearings?

Ms. Hanchett: Yes, sir.

Mr. Vanderbilt: Okay. And did you provide written testimony?

Ms. Hanchett: I did provide written testimony, including the petition to the LUC.

Mr. Vanderbilt: Okay. And the only reason I ask and it -- was that unfortunately, all of that good testimony -- we -- the Commission just got or the Commission office just got the minutes from the Land Use Commission meetings and, unfortunately, the Executive Director said take verbatim minutes on everything except the people of Molokai's testimony. So all of Molokai Properties' testimony, all of the Commissioners' testimony, the opening prayer, all verbatim, and then there's no record of what the people of Molokai said, which is -- I hope our Commission will look into that why that happened because the court reporter was there for two days. But -- so there was a lot of good testimony. And there was testimonies on both sides. And on both sides were not recorded, for some reason, when we haven't gotten to the bottom of that yet.

Ms. Hanchett: Yeah, I'd like to just address that issue because I was present throughout that two days. And I noticed that certain times she would be typing everything, and then other times, she wouldn't be. And I wondered why isn't she typing when we're talking? When the people are talking and sharing our concerns? Because as far as I know, LUC, they're -- the usual way they do things is to record everything verbatim because the minutes are then later posted on the website for community members and whoever who wants to access them. So that's a concern that I have. I also have a concern because the second day when the Ranch was asking to stop the timetable and just remove the item from the agenda meaning that they could then go back -- what they were trying to do is go back, fix the document, and give it straight back to the LUC bypassing the community. And again and again, I heard that. They said they -- that suggestion was from the Executive Officer of the LUC who, shortly after, resigned from the LUC. So I don't know what was pono or not pono in that proceedings, but I would like to urge the Commission to look into it on behalf of the community.

Mr. Vanderbilt: Thank you. Any other questions for Kauila? Hearing none, is there anybody -- thank you very much. Is there anybody else that would like to testify at this time?

Mr. Kennedy: Darryl Kennedy. I am now talking on behalf of myself and my wife, Jody Kennedy, at 27 years residence here on Molokai. Is that loud enough? Thank you. There really is the one issue, and it is water. And the issue now has been expanded greatly because of the Supreme Court rulings or lack of rulings, decisions, lack of interpretation of those decisions. And it leaves us here on Molokai who now live, who now own property, as to whether A) we're gonna have water, and B) whether we're gonna have a system to transmit our water to the West End. It's up in the air. You're gonna hear all kinds of stories, pro and con on this. We're having people telling us, oh, don't worry on the West End. You're gonna have water. But yet you've got the rulings that have been made or

opinions that have come down from the Supreme Court that there are problems with both transmission and Wellhead 17 as to who and who has not got water rights, and who doesn't have water rights, and why they may not have water rights. This needs to be answered by you here in our Commission that represent us property owners and people that live here whether it be the West End, whether it be Hoolehua, or any area here. If, in fact, we only have the one aquifer, then this needs to be answered, I think, first, before anything else happens. I'm not against Laau. I have no knowledge or no reason to be against Laau because history -- if history has anything to do with the West End and the development out there, it took us almost 30 years to build 50 houses out there. And the lots aren't worth two million dollars a pop. How long is it gonna take to sell and build on 200 two-million-dollar lots - water or no water? If history is a teacher, this is what we're looking at. And as we know now, believe me, the stock market is telling you, we're in a recession just like we were in in 1982 when Kaluakoi came to a screeching halt. You have members on your Commission who can attest to what happened back in 1981 and '82. They were here. They saw the problems, island-wide. I'm not against the Ranch. I'm not against Laau. But as we now know, the Ranch is in financial trouble. If you don't believe it, ask them. They have admitted it. I ask you, as a Commission on Molokai here, Planning, get involved, deeply involved, and represent us in your hearings. Thank you.

Mr. Vanderbilt: Thank you. Any questions for Darryl? Darryl, thanks for reminding us here on Molokai that there might be a recession. Sometimes the lifestyle on Molokai seems recession-proof. Anyway --

Mr. Kennedy: Does anybody realize the property value? What has happened?

Mr. Vanderbilt: Did you get a copy of the draft EIS? Have you request --

Mr. Kennedy: Negative. I would like to have the website so I can download it, if somebody can give it to me.

Mr. Vanderbilt: Well, I think you can go on the Office of Environmental Quality website, or you can probably ask John here for a copy of the DVD. They've been very good about getting as many copies out as they can.

Mr. Kennedy: I would appreciate that very much. Thank you, DeGray.

Mr. Vanderbilt: Well, you'll have to talk to John.

Mr. Kennedy: Thank you.

Mr. Vanderbilt: Thank you. Is there anybody else who would like to testify on this item? Okay, I just had -- John, did you have anything you wanted to say on this? I don't know if the Commission is -- how we would go about this, but I would like to send a letter, formal

letter, to the Ranch just asking them to put the document, post the document, on a little more user-friendly position that will help people cut and paste it. The original document that was released was in -- was released to some people in Word format. I think it just makes it a lot easier for people to cut and paste into their document and it makes it a lot easier for people to review. And I'd also like to ask the Ranch if they would put a couple more hard copies in the Molokai library. And I'd also like for our Commission to request that they extend the comment period by 30 days. And I'd like to entertain -- I guess there's no need for a motion, but is there a -- is it okay, or is there a consensus that we could send a letter just requesting? Okay. Alright, well, I'll do that. And another thing I would like to do is to get an explanation from the Land Use Commission as to why the court reporter was -- and she wrote a letter saying she was instructed by the Executive Director not to take down what the Molokai people said. Why that happened? Because in the initial meeting, May 4th in Hilo when we went down, all the testimony of Molokai residents and the public testimony was kept verbatim at that meeting. So there's something that doesn't seem right with that, and it's too bad because people could've -- I think Molokai Ranch has tried its best to answer the questions. They say they've responded to all the comments at that meeting, but how do we -- anybody know? I mean, there's no record around.

Ms. Pescaia: I believe it was videotaped, right? So it would be possible for them to go back and transcribe off of the video tape?

Mr. Vanderbilt: Well, that could be something we could ask the LUC to hire the court reporter back to do a transcript from the video on the portions that she left out. Yeah, Commissioner Dunbar?

Mr. Dunbar: Yeah, I mean, I certainly think that that's important, but I think the greater importance is why was it done? You know, why was that neglected? Why was she instructed not to do that if, in fact, she was instructed not to do that?

Mr. Vanderbilt: Well, I could see if she did it -- if they did all just one liners for everybody, but they did verbatim minutes on everything that the Commissioners said. They did verbatim minutes on the public testimony if they were asked a question by the Commissioners, and the response was done verbatim, but the actual testimonies of the concerns raised about the adequacy of the EIS were not documented in the official record.

Ms. Pescaia: Is that their practice at other hearings? I mean, other ...(inaudible)...?

Mr. Vanderbilt: I don't know. All I know is that the hearing on this issue, the first one, May 4th in Hilo, Hawaii, they kept verbatim minutes on the public testimony. And I believe they -- it's their regular practice to do that because they have summary minutes that the board approves that are two pages. And then at the bottom of that it says, "Refer to the court reporter's minutes for more detail." Well, in this case, you just wouldn't find the detail

there, so anyway, but if the Commission doesn't mind, I'll send a letter to that effect to the Land Use Commission and --

Mr. Dunbar: Okay, wait. Are we getting back into the letter-writing deal again that Mike counseled us on the first time about all of this or --

Mr. Vanderbilt: What did you counsel us on?

Mr. Hopper: Well, it's just a rules issue what you're talking about. You know, whether you take action by motion or if it's a relatively unimportant issue such as just sending a letter, if you wanna do that by consensus where there's no objections and nobody objects, that's the way you can do it. One person objects, though, one person says "I object," then you gotta take a vote. That's basically how *Robert's Rules of Order* works. And since there's been no objections for these last two, I don't see a problem under those rules with you taking action with no objections. Essentially, it functions as a unanimous vote so --

Mr. Vanderbilt: Is that okay? We can -- you wanna vote?

Mr. Dunbar: Well, I'm just -- certainly everything that we have discussed here I think is important to put in writing and send off to the Land Use Commission. What I don't want sent off to the Land Use Commission is something that is not discussed here and sent off. So I think it's important to note that we -- it be specific like we talked about the last time we did this.

Mr. Vanderbilt: Okay, to be specific on the Land Use Commission letter, we would send off a letter asking them the reason for not transcribing the public -- public testimony at their meetings: November 15 and 16 here.

Mr. Dunbar: Yeah, I think we can say that, you know, it's come to our attention that the court reporter did not transcribe all the minutes verbatim and we would like to know why that was done. I mean, you know, I can't personally say she didn't do it cause I wasn't there.

Mr. Vanderbilt: She didn't do it. We have a copy of the official minutes that came in and she has a disclaimer on there. As a matter of fact --

Mr. Dunbar: And why there is that disclaimer.

Mr. Vanderbilt: Yeah, well, she said the Executive Director instructed her not to do it, and she put that in writing at the end of the minutes. She said these are not verbatim minutes because the director, the Executive Director, who is no longer there -- so anyway, we'll get to the bottom of that, and then we'll see what the LUC might do to maybe transcribe from the tape. Now, I offered a copy of the tape. AKAKU in Maui made an extra copy of the

tape, and I offered it to Mr. Ching for the LUC records, and he did not want it because that was not something that he said "We produced." So it would be of no value to them. Those were his exact words to me.

Mr. Dunbar: This is Tony Ching?

Mr. Vanderbilt: Yeah, Tony. And so they don't have that, but maybe as suggested, they could take that tape, get the court reporter, if the Commissioners -- all we can do is suggest. And if they agree, then maybe they can do something, but I think it's important to get that stuff on the record because there's no record of it. I guess there's copies of some written -- if you handed in written testimony, the person that gave it has a copy, and then the Land Use Commission has a copy over in their office, but there's no copies here at the Molokai Planning Commission Office or anything like that. And I think the community -- and there were testimonies on both sides, and none of those were taken down. Commissioner Feeter?

Mr. Feeter: Yeah, do you suggest that this is a punitive type of action and that it should be pursued by the legal aspect?

Mr. Vanderbilt: I don't think we need to go there right now. I think we need to just ask what happened, and if there's something that they could do to rectify that because they might have the discretion to do whatever -- some of these guys got a lot of discretion. So I think at this point, we just appeal that it was an important part of the record. These guys are gonna have to make a decision going down the line. We're gonna have to make decisions going down the line. And this Commission or their Commission won't have the benefit of those minutes to look at. So anyhow, I can send that out and hopefully we can get some responses from the LUC, and maybe the Ranch may provide some of the things we asked for.

Mr. Dunbar: Oh, okay, and that's also gonna include the 45-day extension and the more copies ...(inaudible)...

Mr. Vanderbilt: The 30-day extension was what -- what is --

Mr. Dunbar: The 30-day --

Mr. Vanderbilt: Thirty-day.

Mr. Dunbar: Thirty? Okay. And then --

Mr. Vanderbilt: Two separate letters, yeah?

Mr. Dunbar: Yeah, okay.

Mr. Vanderbilt: Nancy?

Ms. McPherson: Mr. Chair, I'd just like to remind the Commission that until and unless the applicant agrees to extend the comment period that the deadline is February 22nd. So if the Commission would consider preparing comments individually, as we did the last time around, preferably to e-mail to myself so that I can compile those. You know, feel free to stream them to me as you make them. If you need to send them in writing -- you know, if you're typing it, that's the best, preferably, rather than handwritten. Try -- give me a floppy disk. I'll figure out how to get it off of the floppy, you know. But just to start getting those to me so I can start compiling them so that we will be prepared before the deadline for you to approve comments for submission on the draft EIS.

Mr. Hopper: And just as a reminder, don't send the comments to each other. You're going to send them to Nancy, if you have comments. And the purpose is so she can print them out and have them ready for you at the meeting so you can take a vote to adopt those as your comments, but just make sure you don't e-mail each other with the comment so it's, you know, a discussion outside the meeting.

Ms. McPherson: Yeah, your next meeting is February 13th also.

Mr. Vanderbilt: Yeah, and just -- and just regarding the process, I don't know, I forwarded, I think, to everybody this *Maui News* article on the new EIS submitted by the Ranch. And the reporter didn't quite get it. He said the last time around it took nine months from when the public comment period closed to when the Land Use Commission held its hearings. And the Ranch apparently is gonna apply to the Land Use Commission for the public hearings as soon as they can, but that nine months was not because of the Land Use Commission. That was because it took several months for the Ranch to respond to the comments. And once they give it to the Land Use Commission, the Land Use Commission has 30 days to hold a hearing and make a decision on the acceptability. So anyway, hopefully everybody will get involved and -- because this is an information document that is gonna be relied on by this Commission to make its recommendations. And whereas the Land Use Commission, when they -- they'll start their hearings after. Our hearings may have already been done by the time the Land Use Commission hearings start. So it's important that this document be complete and accurate from the get-go so that this Commission has the same abilities to make an informed decision at the Land Use Commission. So with that --

Ms. McPherson: Mr. Chair, could I add one more thing? I'd like to respond to Kip's question of earlier about the -- you know, is -- are the responses extracted and just provided in the summary form? Well, what we have received is we have -- we have a volume -- all of the documentation, all of the consultation that's happened to date in pdf format. What we have are all of the comments and all of the responses, all of the comments in writing and the responses that were submitted in writing. What we also have is a new document.

We have a new draft EIS. Now, I have been going through that. And throughout the narrative, there are places where these comments have been addressed, but they are not set out as such. Therefore, the onus is upon the reader to figure out where those comments -- you know, if they have been responded to directly in the previous final EIS that was submitted, then they were responded to directly, but then they've also been incorporated, those responses have been incorporated. I'm not -- you know, it would be impossible to tell if all of them were incorporated, but they have been incorporated into the narrative. So they're in the new document, in some cases. I haven't gone through the whole thing yet myself, so --

Mr. Vanderbilt: And I think in answer to Kip's concern is it could've been a lot easier on the public had the Ranch underlined and bracketed the new draft EIS to show the additions and what was taken out. Then you could just read through one document without having to go back and forth to see if that was new information or old information.

Ms. McPherson: Yeah, there's a French name for that? What is that called, anybody?

Mr. Vanderbilt: Ramseyer?

Ms. McPherson: Yeah.

Ms. Pescaia: Well, I think that's why the request for having it in a Word format is important because you're able to search the document for your key words. Like if you're concerned with water, you can search. And you know that you can go back on your list of comments that you had made and you know what section. It's easier to look if your concerns were addressed by doing word searches in the document.

Mr. Vanderbilt: Well, and also, you can cut things out, put them in your testimony, and then comment below it, and it makes it clearer for everybody. Commissioner Chaikin?

Mr. Dunbar: Well, you know, being a developer is -- development 101 is to make it as complicated as you possibly can. That's the first thing you learn in school.

Mr. Chaikin: Yeah, I just wanted to make some -- you know, I think we need to discuss a little bit about the comments. There's different categories of comments. There are our comments. There are the community's comments. And then there are the Department of Planning or the County's comments. And each one of those, we need to discuss to figure out what we're gonna do. Like for the County, I would like to know the process that the County's gonna go through to get comments from all the different departments so they can make some, you know, a little bit better comments than the last time around. Can you address that?

Ms. McPherson: Well, there are several, I don't have the list in front of me, but there are several County departments that are also being consulted to comment on this EIS. You know, I would -- as the Planning Department, we do have certain areas that we focus on such as the community plan, such as, you know, whether or not there's enough information to determine certain things. Another thing is, I think Clayton's gonna come up here and make a comment, but another thing is, the last time around I compiled the public's comments with your comments. I don't intend to do that again. I intend to keep the Commission's comments separate from the public's, but what you can do is then choose to adopt the public's comments, or pick and choose which ones you wanna adopt along with your own comments once we have those transcribed and ready as a draft.

Mr. Vanderbilt: Well, and there's a section in there that shows the responses to the Planning Commission's comments. And if we don't feel those were adequately addressed, we can bring that up.

Ms. McPherson: Well, and what I would also ask you to do is do the citation for the section in the document and preferably the page number as well so that it's easier to identify what are the areas that you're having a problem with.

Mr. Vanderbilt: Thank you. Clayton, did you have something?

Mr. Yoshida: Mr. Chairman, members of the Commission, I believe that the beginning of the process, the applicant does have a distribution list for public agencies and various Federal, State, and County agencies. And they do circulate the documents to these agencies for comments. And those agencies that comment within the timeframe, you know, their letters as well as responses from the applicant are included in the final EIS.

Mr. Vanderbilt: Thank you, Clayton. Clayton, I had just one followup question on your other testimony. You mentioned the internal policy memorandum. You said January 10, 2008.

Mr. Yoshida: January 10, 2008.

Mr. Vanderbilt: Seven?

Mr. Yoshida: Tenth. Tenth.

Mr. Vanderbilt: January 10, 200-- What is the year? 2000 and --

Mr. Yoshida: 2008.

Mr. Vanderbilt: Well, the copy I have says January 10, 2007. And just so the other Commissioners wonder where I got this, I was given this by a member of the Maui GPAC.

And he said, "Did you guys get this?" And I said, "No." And this is what -- this is the document. So it's 2000 -- this came out in 2008?

Mr. Yoshida: Yes, I believe the document -- the year was corrected and it was distributed to staff via e-mail. It says the same thing except the year has been changed from 2007 to 2008.

Mr. Vanderbilt: Well, why wasn't this given to this Commission a year ago?

Mr. Yoshida: No, again, the document came out in 2008. The document was signed on January 10, 2008, and it was distributed at the Maui GPAC meeting of January 10, 2008. So it's not like we've had this internal policy for a year. We've had this internal policy for 13 days.

Mr. Vanderbilt: Okay, good. But why -- okay, okay, alright. I just got thrown off by the date. But let me ask you something. This says that you're not gonna support projects that are working outside the General Plan process, community plan amendment. That's generally what that says, right?

Mr. Yoshida: Yes, it says we will not support the community plan amendment at this time unless it fell into one of the two exemptions.

Mr. Vanderbilt: Alright, the two exemptions says "Projects who offer a substantial public benefit." What is the definition of a substantial -- give an example of a substantial public benefit.

Mr. Yoshida: Well, I believe the County adopted a Workforce Housing Residential -- Workforce Housing Policy in December of 2006, which requires the applicant to provide 40 to 50% affordable housing depending on the sales price of the market units.

Mr. Vanderbilt: And then it goes on to say, "And if it is a private project," such as Laau, "the public benefits are far above what would be required based on existing ordinances, policies, and other regulations."

Mr. Yoshida: Yeah, so if they provided substantially above the 40 to 50% affordable, which is the requirement now by ordinance for the Residential Workforce Housing Policy, we may consider such a project as an exception if it goes, you know, far above and beyond what is the minimum requirement via code.

Mr. Vanderbilt: Alright. Now, there has been -- so as I understand the process, 30 days after the LUC accepts the draft EIS, 30 days after that, the County has to come up with a position of whether they support the Laau Project or not, and so does the State before the

Land Use Commission. They have to put in a memorandum of support or no support. Are you familiar with that?

Mr. Yoshida: They will be asking for a position statement. You know, how that fits into -- again, there is a 60-day challenge period.

Mr. Vanderbilt: No, no, that's after. Let's assume it gets through that. What is the County's position gonna be with regard to Laau and in regard to this policy statement? Is that still up in the air or --

Mr. Yoshida: I guess if we're not finished with the community plan update process and we've not deemed the project to meet any of the exceptions, we would oppose the district boundary amendment.

Mr. Vanderbilt: When is that decision gonna be made and who makes it?

Mr. Yoshida: It'll be the Planning Director.

Mr. Vanderbilt: The Planning Director makes it. And you don't know when he might make it cause --

Mr. Yoshida: Well, we still have to go through the process of completing the EIS requirements.

Mr. Vanderbilt: Well, that doesn't have anything to do with this document. This document says it was just involved with projects that are going through the community plan process, outside of the community plan process, and they're moving through before you finish with the -- adopted the respective island plan or the respective Molokai Community Plan. So somebody has to just determine whether it's exempt or not. And if it's exempt, then this policy wouldn't apply to Laau. But so Director Hunt is the guy that makes that decision, is it?

Mr. Yoshida: Right, based on the policy memorandum.

Mr. Vanderbilt: Okay. Thank you. And the other thing is that the Ranch or MPL in the draft EIS keeps referring that the houses are not in the SMA. And they don't say what the SMA permit will cover. But they sort of insinuate that maybe the SMA permit should only cover the park buildings and toilets, or whatever's in the SMA, and not the residential cause several places, they make a specific point that the residential units are outside of the SMA. This point has been brought up to the Planning Director a year ago to make a decision as to what the SMA permit will cover. At what point is the director gonna do that so that people will know what's coming down the line because even the Ranch has issued

statements saying our Commission will have -- the public will have many more says and the Commission will have the final say on the SMA permit? But the scope of the SMA permit needs to be determined, and when is that decision gonna be made and who makes it?

Mr. Yoshida: Well, certainly it will have to be prior to the publication of notice of hearing on the SMA.

Mr. Vanderbilt: But, you know, if you know that the bulk of the project is not gonna be included in the SMA permit, then you're gonna take a different attitude maybe on how you pursue the other things. You're gonna have to move forward because you don't have anything to fall back on. So you're gonna have to get all your questions answered in the community plan amendment, the change in zoning, because you can't wait for the SMA because the houses may not be included in there. So who makes the decision on that? Who makes that call? And who can this Commission ask to at least speed up the decision so everybody understands where the process is going? That's all I'm trying to say.

Mr. Yoshida: It would be the Planning Director.

Mr. Vanderbilt: The Planning Director. Okay, thanks very much, Clayton. Is there any other comments on this at this point? Commissioner Chaikin?

Mr. Chaikin: Getting back, our responsibility right now is if we so choose is to provide comments as a Commission, and also to listen to the public to see if they have any particular comments that we might wanna adopt to submit. Also, there's the County that I previously mentioned is gonna supply us some comments. The last go around, I think the County lacked. They did what I would've considered a really insufficient job of getting comments from the County. How do you see the whole process working in terms of pulling in all the resources you have in the department, and really analyzing the thing coming forward with, you know, constructive comments? Is there a process that's currently in place, or is it all on Nancy's shoulders?

Mr. Yoshida: I guess the Commission is reviewing the EIS and it will be providing its comments. It'll also have the benefit of any public testimony, which is submitted as part of its meetings. The department is also reviewing the EIS and it'll be coming up with its comments before the deadline. And, you know, it may be slightly different from the Commission's, but the department would've heard the testimony that's provided at the Commission's meeting as well as comments from the Commission itself.

Mr. Chaikin: So how is that working? You have a lot of people working in the department. Is the director gonna appoint certain people to comment, or does everybody have a chance

to comment? And basically, who's the quarterback that's gonna get all the comments together and give them to the director for him to take a look at. How is that gonna work?

Mr. Yoshida: Well, I guess, the director has a copy of the draft EIS. The primary person doing the initial review is the Molokai Planner, Nancy, because she's more familiar with the initial process during the first EIS. She will be drafting comments for review by the director and he would be signing off on the letter saying this is the comments of the Planning Department.

Mr. Chaikin: Okay. Yeah, at some point, we need to discuss whether or not we're going to attempt to get -- so far we have one comment from the community. Last time I think we may have elected to have a meeting in the evening to give the community an opportunity to come and present whatever comments they have to the Commission, and then we could, in turn, you know, adopt those, and submit them along with ours. So that's something that we gotta decide whether or not we wanna have a regular 12:30 meeting, which is the last meeting. Next meeting is our last meeting to get comments together before the deadline. So we need, I guess, to discuss that to see if we're gonna have a day meeting or night meeting, or what we wanna do.

Mr. Vanderbilt: Thank you, Commissioner Chaikin.

Mr. Dunbar: You know, this is a comment. I mean, I haven't read the EIS yet, so hopefully that green copy over there that sits in front of Nancy will be on my bed sometime tonight. You know, but I think I'd like to determine for myself whether or not, you know, they've even answered the question. You know, I mean, I don't need to solicit any more.

Mr. Vanderbilt: The first -- the first round of questions. You mean the first round.

Mr. Dunbar: Yeah, the first round, yeah. I don't need to solicit any more comments.

Mr. Vanderbilt: Well, I can tell you they didn't --

Mr. Dunbar: The comments that I'm trying to, you know, divulge from this document don't answer the original question I got. Then I still got all the same comments.

Mr. Vanderbilt: Well, that's a good place to start because they're in that draft EIS somewhere - the Planning Department's comments and their responses. And they did put the response under each comment. So at least when you get to that section, you can see. And I know under the alternatives, there wasn't much change in the alternatives, but go ahead, Commissioner Chaikin.

Mr. Chaikin: Yeah, I mean, it's gonna be very difficult for us to review every comment and see if it was adequately addressed. So one of the decisions that we need to make, as a Commission, is to decide whether or not we wanna go back, take all the old comments, and resubmit it, and put them on the onus of the Ranch to readdress them. And, you know, they can say, well, it's already in there, but it's gonna be difficult for us.

Mr. Dunbar: I don't wanna beat this to death because everybody wants to go home at 3:30, but I think the point is is that you don't want them just to say we did that, period. Or a County department saying, well, we have no comment. I mean, that doesn't get -- that's a no answer so far as I'm concerned. So I think I need to read it. I gotta see what's there. And if they've answered it, they've answered it. If they haven't answered adequately, then I think that's the comments we need --

Mr. Chaikin: I think last time we adopted all the comments. So, I mean, there were zillions of comments. So for us to go through and see if they address every comment adequately would be very difficult.

Mr. Dunbar: I agree with that, and I think what we did is, you know, we all bit off pieces of the pie that we particularly felt were important. I think we need to do that same thing again because we're not gonna through every one.

(Commissioner Pescaia left the meeting at 3:37 p.m.)

Mr. Vanderbilt: Alright. And I can get -- I just went through as a start, and that's all the further I got. And went through the old -- Kip, I went through the old table of contents and the new, and marked what is new and what is old, and so at least that'll help to find some of the new information, but it would've been so easy for the Ranch to just do it in Ramseyer format because now it's gonna -- it's a big document. It's two -- *The Maui News* said 1,600 pages. It's 2,650 pages.

Mr. Dunbar: Development 101.

Mr. Vanderbilt: Okay, thank you. Commissioner DeCoite?

Ms. DeCoite: I just wanted to say that when we did the LUC hearings and Steve represented the Commission, I think Steve did a really good job. And being that the deadline is headed for February 23rd, I would like to go ahead and have Steve resubmit his comments because I don't think, for one, that they answered the questions anyway. And I don't know if they're willing to give us the extension, another 30 days, or whether we're beating them with a stick right now, but I think he did a really good job on the comments he put together, if we're really pressed for time.

Mr. Vanderbilt: Well, I did review a lot of the comments that we had submitted, and there were a lot. We didn't have time to get into it, but there were a lot that weren't answered. So I'll do my part, and everybody do their part, and we'll just try to get something. And I guess the reason I was so concerned about the Land Use Commission minutes is that their attorney, Isaac Hall, they had his wording down in verbatim form. And he said:

When I heard the questions that were being raised by the people on Molokai, and even the ones that you are suggesting, the Commissioners, are inadequate, it really pained me as one who was familiar with the EIS. Unfortunately, many of the people involved haven't really read the document in the kind of depth it needs to be read in.

Well, Mr. Hall's employer, Molokai Ranch, effectively gave this community and the LUC Commissioners only eight days to review that proposed final EIS before the November 15 -- so I think this community, despite what Mr. Hall says, did a wonderful job of turning things around in a very short period time, and making a very professional appearance before the Land Use Commission. So I commend the Molokai community on that.

Mr. Chaikin: Chair? Yeah, I would just like to, you know, I concur that the community did an outstanding job. I mean, they came through with lots and lots of very productive comments. And I started to try to read the comments and, you know, some people put in 500 comments just themselves. I mean, there was a lot of stuff. But I just wanna caution that this is a new process. Okay? We are starting all over again. And so far we have one comment. And last time we had thousands and thousands of comments. So, you know, I just caution that, you know, we need to figure out how we're gonna address this, you know, so a lot of this stuff gets addressed. Nancy, last time, did we adopt all of those comments that the community put in or how did that work?

Ms. McPherson: Yes, you adopted all the -- the comments were summarized and where they were duplicative, they were only given once. And then you adopted all of those as part of your comments - everything that was given in public testimony.

Mr. Vanderbilt: And see just a quick look at the new draft EIS, it's the old draft EIS, and then they added a bunch of stuff. They didn't delete a bunch of stuff. So all those comments are still relevant, probably. And it's whether or not that they answered them or not.

Ms. McPherson: Well, I would suggest that you consider, you know, dividing the document up into your areas of interest. If there's a certain subject area that -- of impacts that you really wanna look at then, you know, I mean, then you won't be duplicating each other's efforts, I guess. And the other thing would be if you wanted to get additional comments

from the community, you may wanna consider having a special meeting or an evening meeting to do that.

Mr. Vanderbilt: Thank you.

Mr. Chaikin: But, Nancy, what's your feeling on, you know, we had a lot of comments last time. As I said earlier, it would be very difficult for us to go through every comment, try to look up, and see if it was adequately addressed. We're just not gonna know. I'm just wondering, is that appropriate, or do you think that's a good idea just to take all the whole comments and resubmit them in addition to new ones that we come up with?

Ms. McPherson: I think if you could spend a little time first kind of trying to do a triage and maybe look at, okay, this was -- these were my five most important comments. I'm actually gonna look in that section where that originally was commented on, and I'm gonna see if they did respond, if they did incorporate it into the document, and if it is adequate. So maybe you can kind of target your most important areas that you really think are non-negotiable and go from there. At least try that and -- well, the shotgun approach can work to.

Mr. Chaikin: I was just gonna say because, you know, I am definitely gonna look at my comments and see if they addressed them, but we, as a Commission, submitted thousands of comments. You know, so, I think it would be difficult. And, you know, I -- I'm just throwing out that shotgun otherwise we might end up with ten comments. And --

Mr. Vanderbilt: Alright. And, Mike, as far as Commissioners, if I wanted to talk to Commission Dunbar, or he wanted to talk to Commissioner Pescaia about a certain -- are you gonna answer this or I'm gonna answer that, what's the deal on that?

Mr. Hopper: What do you mean by if you're gonna answer or I'm gonna answer?

Mr. Vanderbilt: We're under a short timeframe. We only have one meeting. Wonder if I'm talking to Steve, say, and he says, well, I'm gonna cover this. And I say, well, I think I might cover this in my comments without really getting into the comments, but just from a logistic standpoint so we don't duplicate efforts, how can we do that and not break the Sunshine Law?

Mr. Hopper: Well, I mean, if you've got time now, I would go ahead and try to divide up what you wanna do. What you can't do is what they call a "serial communications" because people have tried this, and they just came out with an opinion that it's illegal. So you can't talk to Steve and agree on something, and Steve talk to Lynn and you agree on something, and then Lynn talk to someone else and then relay the information you got from other people. You can't do that.

Mr. Vanderbilt: Thank you. Well, we'll handle it. Don't call me, Lynn. Alright. Well, let's -- we got a few more things on the agenda so if there's no other comments, we can move on but --

Ms. McPherson: Did you make a decision about your -- I'm having a meeting, a special meeting, or a night meeting?

Mr. Vanderbilt: Well, we're gonna get to that. We got a couple more things to go through, and I'd like to get out of here as soon as we can. Okay, we are now on the Chairperson's Report. And the only thing I have -- we did the Laau Point EIS process. I didn't know Clayton was gonna put on that -- the whole other portion. So that's covered.

2. Protocol and Procedures relating to the working relationship between the Planning Department, its staff, and the Molokai Planning Commission.

(Commissioner Dunbar then left the meeting at 3:49 p.m.)

Mr. Vanderbilt: But procedures and protocol -- and we've just been having a -- Clayton, if you have a chance, you know, I wrote and asked if there are any procedures or protocol manuals of how this Commission, and the Planning Department, and the staff members on Maui and Molokai deal with each other to provide maximum efficiencies for this Commission to serve the public. Are there any? Who establishes protocol and procedure, Clayton? And if there aren't any set procedures and protocol, is there a possibility we could establish some written procedures and protocol?

Mr. Yoshida: Typically, the protocol and procedures would be with the department. In terms of setting up the agenda, typically it's with -- I guess input -- well, hopefully, it's better if it's at the prior meeting, you know, where the Body decides on the next agenda we wanna have this item or that item. But sometimes if they make a request, members make a request to the Chair, we could see if we could put it on the agenda rather than getting calls from nine different Commissioners.

Mr. Vanderbilt: How about other things like the Chair writing a letter, or somebody else, or procedures with what you give our Commission? At the last meeting on the big box stores, there were three random testimonies handed in that were -- had to do with testimonies given at the Maui Planning Commission. Obviously, we didn't get them all. We just got a few. So who determines what we get as far as correspondence or other documents like those ones that came in from the Maui Planning Commission? Why did we get those?

Mr. Yoshida: Well, because your recommendations -- in terms of legislation, your recommendations affect the County, conceivably.

Mr. Vanderbilt: But we didn't -- and we got some random ones on the TVR, but we didn't get them all. We couldn't have gotten them all, all the Maui ones, so who selects which ones we get?

Mr. Yoshida: Well, I guess those that come in through e-mail or through letter, we try to circulate those to the three Commissions.

Mr. Vanderbilt: And then as far as -- as far as the Molokai Planning Commission website and all that, there's a whole -- there's some -- one of the Planning Commissioners on Maui or was it a GPAC member forwarded an e-mail that said they were redoing all the websites, and they were asking for input. Is this Commission gonna have some input with the Planning Department as to what goes on anything that people tap into with regard to the Molokai Planning Commission?

Mr. Yoshida: Well, I guess in today's paper, I thought there was an article about the County trying to look at redesigning its website. So it's starting with our management information system group. I mean, if the Commission has suggestions, we'd certainly entertain any suggestions.

Mr. Vanderbilt: Well, let me ask you something, on an agenda like -- we like people to come in prepared. We like to be prepared. When we send out an agenda and it has some important documents, say there's a staff report on an important item, is there any reason that that can't be scanned in and so when somebody clicks on the agenda for the Molokai Planning Commission next meeting that they have that attachment that they can review? What would hold that up from happening?

Mr. Yoshida: Depending on the size of the agenda, and when it's submitted, I think we probably could read it in as a pdf. The legislation, you know, we've tried to put that on the website like the TVR and Bed and Breakfast Bills, and the Rural District Bill. Say --

Mr. Vanderbilt: Well, it would just be sort of a one-stop. We'd like people to go right to the Molokai Planning Commission agenda and not have to go searching everywhere else because it is pretty intimidating sometimes. So if maybe you guys could work with us on that and --

Mr. Yoshida: Yes, at the very least, we try to put the minutes and the agendas on the website.

Mr. Vanderbilt: No, but attached to the agenda, if there's an important staff report so somebody on an issue at least -- or some document that's -- would give people a background. There's a lot of stuff that you wouldn't attach there, but there might be a

couple of important documents that would be worthwhile giving the public the same advance review of those as we have so they can come and share their mana'o with us.

Mr. Yoshida: We could look at the feasibility of doing that given the time and resources.

Mr. Vanderbilt: Thanks. Well, that's all we're doing. And I think -- I really think we need to set up some procedures and protocols for future Planning Commission members because you're always gonna be here. You've always been here. But we're gonna be gone, and there'll be new Planning Directors, and there'll be -- you're the most senior guy around. But there needs to be some document where everybody knows what's expected of them, and where things are, and how things get done, and maybe that's just revisiting our rules. Would you think that might be a way to do it, too, part of it?

Mr. Yoshida: Well, I think that we had tossed out or maybe you had tossed out the idea of, you know, the Director or the Deputy and myself meeting with the Chair and the Vice-Chair to kinda talk about --

Mr. Vanderbilt: Okay. So if we can find a date, can we set that up with you?

Mr. Yoshida: Yes, I'll check with the director, but I believe that was the suggestion.

Mr. Vanderbilt: Thank you. Yeah?

Mr. Chaikin: Clayton, I mean, you know, one of the things that we were trying to do as a Commission is get information out to the public, you know, in a timely manner. And one of the things is the agenda because as you know, it doesn't -- the paper has a hard time coming out with the agenda sometimes in a timely manner, so we really wanna do is get it out to the public. And it is posted on the Internet. That's one way to get it. You also stated that another way to get it is to call up Maui County and ask to be put on the mailing list, and then you can mail out the agenda to them. That is not a particularly efficient way of doing it. You do have as a part of the website an area that's called "e-mail notification." Are you familiar with that?

Mr. Yoshida: Not as directly -- well, I guess we have some people in the department who are more familiar with the --

Mr. Chaikin: Well, what it is is you can sign up to get different things e-mailed to you. And there's a long list of things that you can get e-mailed to. Like if I wanna know the agenda of the Maui County Council, I can sign up. And as soon as the agenda comes up, boom, it's in my inbox. I don't have to keep checking back and forth to the site to see if it's posted. They also have it for the Molokai Planning Commission where you can sign up for e-mail notification, and it automatically comes to you in your inbox, at least the link comes to you,

but it doesn't work. So if you could check in to see what's going on with that, and maybe report back to us next time?

Mr. Vanderbilt: Are there any other comments on, Commissioner Feeter, on procedure and protocol types --

Mr. Feeter: Yup. There -- I have in front of me here Title MC-12, Department of Planning, Rules of Practice and Procedure. Is that not pretty close to what your no. 2 there in the protocol?

Mr. Vanderbilt: Yeah, they're just -- yeah, that is. That covers some, but if you look at some of those statements, you wonder if they're being adhered to, and who interprets how they should be adhered to?

Mr. Feeter: They're only as good as you wanna make them.

Mr. Vanderbilt: Yeah. And that's why I said that might be a good place to start right --

Mr. Feeter: ...(inaudible)...

Mr. Vanderbilt: No, I think everybody does. I haven't.

Mr. Feeter: ...(inaudible)...

Mr. Vanderbilt: But it doesn't -- a lot of things have been happening that aren't explained in there and not covered in there. And unless you feel we've been operating pretty efficiently in the last year.

Mr. Feeter: Well, no, I don't agree with that at all, but this is a guideline.

Mr. Vanderbilt: Yeah, and that would be a good place to start, and I'm glad you brought that up.

Mr. Feeter: We don't wanna to reinvent the ...(inaudible)...

Mr. Vanderbilt: Right. Okay, if there's no more comments on that, Clayton, did you have something on meetings and -- you put that on the agenda: Meetings and Quorum?

G. DIRECTOR'S REPORT

1. Meetings and Quorum

Mr. Yoshida: Yes. I know the Commission has been very busy as have all the Planning Commissions in the last four months. And I guess it would help us if we could get -- I mean, it's better now that we have more flexibility in terms of return flights to Maui rather than depending solely on Island Air, but in terms of from a budgeting perspective and time perspective for the staff, if we had, I guess, commitments from the Commission if we were gonna go overtime like till 6:30, if we could have, you know, at least five people say, yeah, we're willing to stay till 6:30, and then we can catch the 8:05 flight back rather than we lose quorum at 4:30, but we still have the 8:05 flight back. Or we go to add change fees, which kinda add up after you do it several times. That would help us plan our day maybe a little better.

Mr. Vanderbilt: Well, we'll try to work on that, and we'll try to make sure we have more attendance here.

Mr. Chaikin: Yeah, I mean, quorum has definitely been an issue here with this Commission. And I think last meeting, pointed that out where we had a lot of people coming from off-island and there was four Commissioners sitting here. So I guess my question to you is, you know, some of the Commissioners haven't been showing up. Is that -- is there any process if the Commissioners don't show up that eventually something might happen to that Commissioner?

Mr. Yoshida: Well, I guess the attendance is reported to the Mayor's Office regularly. I mean, they can see who comes, who's attending meetings and who's not attending meetings. And, you know, they may talk to folks that have a difficult time in attending meetings.

Mr. Vanderbilt: But there's nothing in our rules. In some Commission rules, if you miss so many meetings, you're off, or you're subject --

Unidentified Speaker: ...(inaudible)...

Mr. Vanderbilt: No, you can't be kicked off. You have to send a letter to the Mayor. So anyway -- But that's something, I mean, if you're gonna be on a Commission, I know it's a big commitment. But I know on Maui, I think, correct me if I'm wrong, they got a lot of stuff on their agenda, but those guys are there almost the full day, aren't they, when they leave?

Mr. Yoshida: Yeah, I believe yesterday's meeting went from 9:00 in the morning till 6:30 in the evening.

Mr. Vanderbilt: Yeah. So I think Commissioners are gonna have to make a commitment. Or maybe we have our meetings at night or something because all we're doing is just

reacting to deadline things. We're not revisiting our rules. We're not -- we're falling a little behind on a lot of things. And so anyway, hopefully, that can get straightened out. Did you have anything on the status of the Bed and Breakfast Bills?

2. Status of the Planning Department's Transmittal to Council on the proposed Transient Vacation Rental and Bed and Breakfast Bills

Mr. Yoshida: Yes, to the best of my knowledge, the TVR and Bed and Breakfast Bill package has not been transmitted to the Council yet, but is planned to be -- we plan to transmit it very soon. And we can provide you with a copy of the transmittal letter once it has been transmitted to the Council.

Mr. Vanderbilt: Alright. And the other thing I wanted to ask is that I went to the Mayor's press release or -- what do you call those things? Press conference on TVR enforcement. And Jeff Hunt was there and Jane Lovell from Corporate Counsel. And it seems that there's a policy that's working on Maui or something that we're not getting full knowledge of. They were sitting there and they were saying if people are cooperative, we're gonna give them more time to stay open, which is fine, but nobody really identified the extent of the cooperation, and based on the extent of your cooperation, how much more time you would get. Is there some kind of policy memo or something that the Mayor and Director Hunt are working off of that we're not aware of that our community should know about?

Mr. Yoshida: I believe you, the Commission, did receive copies of the July 2nd 2007 letter from the Planning Director to Gladys Baisa, Chair, of the Planning Committee. And that was for discussion purposes. But to my knowledge, there's no memo since then.

Mr. Vanderbilt: Well, were you at that press conference?

Mr. Yoshida: No.

Mr. Vanderbilt: Well, *The Maui News* reported what went on, and I was there, and they made a definite statement that if people cooperated with them, they encouraged people to apply for a conditional permit, and if they cooperated with them, they could stay open longer, but they -- there were no timelines, or there were no scope of cooperation, or anything. And I was just wondering what are some of the details of that sort of broad-brushed comments that came from both the Mayor and Director Hunt. Are you familiar or --

Mr. Yoshida: Well, again, there were those 80-some-odd folks that did file for an application. The department is asking them if they wanna proceed with the processing, and if so, we are proceeding to process their applications.

Mr. Vanderbilt: Now, will they be able to stay open until that process is proceed – completed?

Mr. Yoshida: I mean, well, you know, that's -- the enforcement is done by our Zoning Administration and Enforcement Division so --

Mr. Vanderbilt: But the director is making these -- what does that mean? I mean, then they said before we refused applications, but they were asking TVR operators to come in and apply, to come in and apply. Now, if they apply, are they gonna get shut down right away, or is that gonna be cooperating, and they can stay open until that conditional permit is processed? I mean, we gotta know because people ask us in the community. It was in *The Maui News*.

Mr. Yoshida: I guess it depends if there's a complaint against the operation.

Mr. Vanderbilt: Alright, let's say there's no complaint. And everybody in the community loves this TVR. They put in for an application for a conditional use permit. It comes to us. We send it up with a recommendation to the Council. And all while that process is going on, are they gonna allow -- be allowed to continue, or are they gonna be shut down just after they come in and apply? Like Commissioner Feeter, I mean, they've applied. We send a -- or we're sending a recommendation to the Council. So he's in the process. I understand that he got a cease and desist letter, but then that was withdrawn so he's -- It wasn't withdrawn? Well, I got bad information then. But he's certainly cooperating. Now what's his deadline? I mean, they're -- it's almost like this fire protection thing. He talked to one guy. He talked to another guy. And we're just sitting ducks out here on the pond, and people ask us in the community. It's really tough to not know what the policy is. How do we find it out?

Mr. Yoshida: Well, I believe if there is about thousand of these TVR operations in the County, and there's 80-some-odd folks that applied for a permit, we're not gonna go after the 80-something folks that applied for the permit first unless there's a complaint that's lodged against them. We would --

Mr. Vanderbilt: Wait.

Mr. Hopper: Clayton, I -- based on our lawsuit and with me discussing with the Planning Director, as I understand it, just because you've applied for a permit, you're -- there's no stay of enforcement anymore. That's what the lawsuit's been about. Those applicants were given six extra months to comply. Everybody else, if you were running a vacation rental, you had stop immediately, and you never were able to continue. They were given six months a while ago, which has just ended. I believe the official policy is that if even if you have applied, until you get your conditional use permit, you're not allowed to operate.

You're not allowed to operate, and that's what's been under the law for a very long time now, as I understand it. Now, if that's not the policy, I think Jeff needs to correct that. But as far as extra time, I mean, I don't believe the director needs to make his enforcement plans completely clear to everybody because he has the right under the law right now, under the County Code, and under the rules to issue a notice of violation to someone who's running a transient vacation rental. And that person has no legal right to run that until they actually get their permit. The director has full rights to go after someone even if they have applied for a permit if they continue to operate, as I understand it. There would be nothing preventing the director from issuing that notice of violation. Now, how the director wants to prioritize his enforcement efforts, that is up to the director. And he does not have to make that public -- how he's going to try to prioritize his enforcement efforts. He doesn't have to tip off people that they're gonna be subject to different things in those situations. Now, I know at the press conference he apparently said people are going to have more time if they're cooperative, I believe that may mean that if someone -- typically, you have to be given a notice of warning because you're given your notice of violation. That may mean that from the time you have your notice of warning from the time that your notice of violation is issued, which then gives you 30 days to appeal, then you would have extra time in those cases. And that's true of all zoning violations, not just TVRs. So that may be what he's talking about, but as I know, and this was with the lawsuit was about where specific operators that had applied for permits stating that they wanted the right to continue to operate until they had a hearing. And the County fought them on that, and the court decided that they would not have the right to continue to operate until their permits were heard. That decision is probably going to be appealed to the Ninth Circuit at some point. And then we would have a pending decision there, but as of now, that case has been dismissed. And so the County does not have to wait for someone to have their hearing on their permit before they enforce against that person.

Mr. Vanderbilt: Well, you know, Nancy's been used for some enforcement situations and everything else. And I would highly recommend that they enforce on -- just enforce on Maui, if they're gonna take a lot of Nancy's time on this thing. And, you know, I -- well, that's just another matter, but it's -- we're gonna -- we're gonna -- when we get to our community plan, we're gonna figure out about TVRs. And in the meantime to create a lot of chaos on the island it seems a little harsh, but --

Ms. McPherson: Mr. Chair?

Mr. Vanderbilt: Yeah?

Ms. McPherson: Nancy McPherson, Staff Planner. I actually got an e-mail today. Our department is being directed to start setting up outreach meetings on every island to discuss the permitting of vacation rentals to possibly facilitate that process for the public as far as getting their vacation rentals permitted. I think, you know, we have special

challenges on Molokai, of course, but I believe what this is gonna be is an effort to offer the kinds of information that you are saying people are coming to you for as the Commission. So I'm not sure how long it's going to take to set something up like that on Molokai, but we are looking into doing that in the near future.

Mr. Vanderbilt: Alright. Thank you. Yeah?

Mr. Chaikin: Nancy, I'm just wondering, you know, where -- you're gonna have these outreach programs in the middle of the County Council's deliberation of changing the law. So it's a difficult time now. Everything's influx. It seems like what we should do is find out what the County Council is gonna have as the law, and then keep that as the law, and go with that. But to make all these interim things right now seems like a lot of rigamarole.

Mr. Vanderbilt: And according to Gladys Baisa, they're not gonna be able to get -- they might get one Committee meeting in, if this get this vacation rental stuff from the Planning Department soon enough, but other than that, they start on the budget. So it's not -- nothing's gonna happen until June or July to move it on, so it could be some time. So anyway, okay, Clayton, you got anything else on there? You got the open and closed applications, right?

4. **Open Molokai Applications List**
5. **Closed Molokai Applications List**

Mr. Yoshida: Yes.

Mr. Vanderbilt: Okay.

Mr. Yoshida: We submitted a list of open and closed --

6. Agenda items for the February 13 meeting

Mr. Vanderbilt: And then on February 13, Commissioners, do you wanna have a night meeting that night? Start maybe at 4:30, then have the -- have the Laau thing still on there? 6:30, would that be alright? No, yeah, no, no, just have one or the other. You think --

Mr. Chaikin: You know, I think we oughta have a -- give the community an opportunity to come here and, you know, express their concerns. If that's what they wanna do, I think we should provide that opportunity.

Mr. Vanderbilt: And I think the newspapers would have time to get an advance out that that's gonna happen. And I think this sort of creped on everybody so quick. Nobody

really knew. Yeah. Okay. So 5:30, then? 6:00? 6 o'clock? Can we try to work on a 6 o'clock meeting, February 13th?

Mr. Yoshida: That's -- I guess it'll just limit the -- sort of the time of the meeting as far as the end.

Mr. Vanderbilt: Huh?

Mr. Yoshida: I mean, it'll probably go about 10 o'clock, at the latest.

Mr. Vanderbilt: Yeah, probably. Well, Commissioners, will you give me latitude to talk with the Planning Department on this -- see what we can -- cause they've gotta make arrangements, too. Probably have to stay overnight. And we could -- or we could have a special meeting on it, you know. That's the other thing. Alright. Well, we'll try to work out a regular meeting and get back to the Commissioners on that. So is there any announcements from anybody? Commissioner Chaikin?

H. ANNOUNCEMENTS

Mr. Chaikin: Yeah, just curious -- what happened. You know, we've had stuff on previous agendas that didn't get to, and then they just kind of evaporated and went away. One of them was the SMA update as far as, I guess, the boundary update -- where we are on that. And I'd just like to see if they have any comments on that. The other one was the subdivision ordinance. I don't know -- I don't remember getting an update on what's happening with that, and I just wanted to see if you had any information.

Mr. Vanderbilt: Clayton, you have any information on -- we have this letter that was handed out to us from Doug Tom. I haven't read it yet, but basically, is he up for rescheduling?

Mr. Yoshida: I believe he had a deadline to meet, so he just -- he wasn't able to make -- give his presentation at the last meeting. So he just circulated his -- what he was going to say.

Mr. Vanderbilt: Okay, so, but he's available if we invite him to this Planning Commission. I mean, he's been to workshops here before, right?

Mr. Yoshida: If he has time. I think he had tried to ducktail the two meetings on the Ahamoku Management meeting in the morning, and then present to the Commission in the afternoon, but it didn't work out the last time as far as the Commission presentation in the afternoon.

Mr. Vanderbilt: Okay, well, we'll see if we can't get him back, but I think it would be good to have him back with the --

Mr. Chaikin: Well, I didn't really understand, I guess. He's with the State. Is that correct?

Mr. Vanderbilt: State Office of Planning, the CZM.

Mr. Chaikin: I believe that the County was also working on this. You had a Heidi that was working on doing some kind of a study as far as the SMA boundary. And then she was gonna come present. Basically what we were looking for is some kind of an update because what we were doing is trying to figure out if we can adjust the SMA line. And it's just been in limbo for a long time. So we were trying to get some update on the -- on, I guess, Thorne Abbott's process on that.

Mr. Yoshida: Yeah, I believe at the last meeting, Thorne and Kaimana Lee, the graduate student, were here to make their presentation, but I guess Kaimana's a graduate student, so she's back in school right now. But I can check with Thorne if he'd be willing to --

Mr. Vanderbilt: Did she leave a copy of her report here? Huh?

Mr. Yoshida: I think they had a full on -- maybe a power point presentation and all of that.

Mr. Vanderbilt: Well, maybe she could get a copy of that to this Commission too. I mean, if she's done the report, why keep it in a file over on Maui, you know?

Ms. McPherson: It's a project that she was intern on. And the project head is Thorne Abbott, and he has all of the information that she generated. And so I'm sure he'll bring it all with him when he comes back.

Mr. Vanderbilt: Okay. So we can schedule him for-- Alright. And maybe we can get Mr. Tom to come over at that time. What about the ag subdivision? Is there anything more on that? Wasn't there some things being changed around on that or not?

Mr. Yoshida: I haven't seen an updated version of the draft bill from Public Works.

Mr. Vanderbilt: Who's drafting it?

Mr. Yoshida: Public Works.

Mr. Vanderbilt: And what was that gonna involve?

Mr. Yoshida: I believe they called for a public input.

Mr. Vanderbilt: Oh, public hearings.

Mr. Yoshida: On if it was over a certain threshold like—

Mr. Vanderbilt: Ten units.

Mr. Yoshida: Five lots or more.

Mr. Vanderbilt: Yeah. So is it moving or who's handling it in the Planning Department? It was sent to Planning, right?

Mr. Yoshida: Yeah, I believe, yeah, I believe the Planning Director meets with the Public Works Director once every two weeks.

Mr. Vanderbilt: Alright. Thank you. Are there any other announcements or comments? Okay, hearing none, this meeting is adjourned.

J. ADJOURNMENT

There being no further business to come before the Commission, the meeting adjourned at 4:18 p.m.

Respectfully submitted by,

SUZETTE L. ESMERALDA
Secretary to Boards and Commissions II

RECORD OF ATTENDANCE

Present

DeGray Vanderbilt, Chairperson
Steven Chaikin, Vice-Chairperson
Bill Feeter
Kip Dunbar (12:43 p.m. – 3:49 p.m.)
Michelle Pescaia (12:43 p.m. – 3:37 p.m.)
Lynn DeCoite
Sherman Napoleon, Jr.

Excused

Joseph Kalipi
Linda Kauhane

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Others

Clayton Yoshida, Planning Program Administrator

Nancy McPherson, Staff Planner, Molokai

Michael Hopper, Deputy Corporation Counsel

Ralph Nagamine, Administrator, Development Services Administration, Department of
Public Works