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CULTURAL RESOURCES COMMISSION

February 21, 2008, 8:43 a.m.

Planning Commission Conference Room

First Floor, Kalana Pakui Building

250 South High Street

Wailuku, Maui, Hawaii 96793

REPORTED BY: SANDRA J. GRAN, CSR NO. 424

Registered Professional Reporter

1 APPEARANCES:

2 CHAIRPERSON: Sam Kalalau, III

3

4 VICE-CHAIR: Dorothy Pyle

5

6 COMMISSIONERS: Perry Artates

7 Erik Frederickson

8 J. Ke'eaumoku Kapu

9 Veronica Marquez

10 Lee Kalei Moikeha

11 Nani Watanabe

12 Lon Welchel

13 DEPUTY CORPORATION COUNSEL: Michael Hopper

14 PLANNING DEPARTMENT: Stanley Solamillo

15 OTHERS PRESENT: DeGray Vanderbilt

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1 PROCEEDINGS:

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3 CHAIR KALALAU: Good morning, everybody. Will the
4 CRC meeting please come to order, the special meeting to
5 address the Molokai Properties, Limited EIS.

6 MR. SOLAMILLO: Good morning, commissioners. The
7 agenda item is Molokai Properties, Limited requesting review
8 and comment on its second Draft Environmental Impact Statement
9 or DEIS prepared for the La'au Point Project located at TMK:
10 5-1-002: 030 at Kaluakoi, Island of Molokai.

11 The deadline to receive comments on the DEIS is
12 February 22nd, 2008, which means that all comments received
13 today will be turned around in 24 hours.

14 The Maui County Cultural Resources Commission may
15 accept public testimony from interested members of the public
16 on the DEIS.

17 And the Maui County Cultural Resources Commission
18 may take action to provide its comments on the DEIS.

19 The planner for the project is Nancy McPherson,
20 Molokai planner.

21 MS. McPHERSON: Aloha kakahiaka, Commissioners.

22 GENERAL RESPONSE: Aloha.

23 MS. McPHERSON: Nancy McPherson.

24 I would like to start out our session this morning
25 with some public testimony from the Land Use Commission

1 meeting. It's cultural testimony, so I thought it would be
2 important because I don't know if any of you attended those
3 meetings. There was a lot of written testimony submitted,
4 there was a lot of manao submitted, but this in particular is
5 very interesting because it is only in hula. And it's a very
6 short segment of what was videotaped by Akaku. So I would
7 like to request that you view this. Would that be acceptable?

8 CHAIR KALALAU: Sure.

9 MS. McPHERSON: Okay.

10 (Playing video.)

11 UNIDENTIFIED SPEAKER: Who is this?

12 MS. McPHERSON: This is a hula halau that put
13 together this presentation for the LUC.

14 Sorry about this.

15 (Playing video.)

16 MS. McPHERSON: This was made very quickly, so
17 you're going to have be patient, I think.

18 (Playing video.)

19 CHAIR KALALAU: Nancy, I have a question. You know
20 these parts of the land use meeting, is this the parts that
21 were not recorded in the minutes?

22 MS. McPHERSON: Yes. That's correct.

23 CHAIR KALALAU: You know, I am looking at that
24 video, how many percent of that video is not documented as
25 minutes?

1 MS. McPHERSON: I believe all of the public
2 testimony was not transcribed. None of the public testimony.

3 MEMBER FREDERICKSON: So none?

4 MS. McPHERSON: Right. Correct.

5 MEMBER FREDERICKSON: Okay. I have a question.

6 What is the status of that at this point? What has the Land
7 Use Commission said?

8 MS. McPHERSON: Well, the chair of the Molokai
9 Planning Commission and others are trying to petition the Land
10 Use Commission to have those -- that public testimony
11 transcribed. I do not know what their response is yet. I
12 haven't gotten word of any response as of this time.

13 MEMBER FREDERICKSON: The Land Use Commission in
14 what I looked at last time, it said the former -- former
15 executive director had resigned and it's -- From what I read,
16 it sounded like the executive director resigned after these
17 minutes were, I don't know, whatever, just taken out of the --

18 MS. McPHERSON: I really don't know if there was a
19 connection. He already, you know, was headed towards another
20 job, so that could have started before, way before the
21 hearings. But it wasn't probably the best way to go out,
22 actually.

23 MEMBER FREDERICKSON: What -- Is the Land Use
24 Commission -- Who sits on that? Is it a volunteer commission?

25 MS. McPHERSON: It's a quasi-judicial, yeah.

1 MEMBER PYLE: Appointed by the governor.

2 MEMBER FREDERICKSON: Okay. So it's a -- it's
3 something -- It's a commission that's acting in the public
4 interest, greater good?

5 MS. McPHERSON: Yes.

6 MEMBER FREDERICKSON: I personally think that we
7 should -- it would be a good idea to write a letter to the
8 Land Use Commission asking why -- Not asking, demanding why
9 testimony on this project was stricken? Who did -- How could
10 it be authorized? It's --

11 MS. McPHERSON: My understanding is -- I'm not sure
12 if it was the executive director, but it may have been. The
13 court reporter was directed to only do action minutes and not
14 transcribe the public testimony verbatim.

15 The Cultural Resource Commission could write a
16 letter, you know, vigorously requesting that those
17 transcriptions be made and provided.

18 MEMBER FREDERICKSON: Yeah. I think it's a joke
19 that that has happened. And nothing's -- nothing has occurred
20 since.

21 CHAIR KALALAU: Okay. Dorothy.

22 MEMBER PYLE: I totally, completely agree with you,
23 but I can hear or I can see what's going to come about is that
24 all of that testimony was made for the first DEIS, which was
25 withdrawn. Therefore, from the point of view of whoever

1 the -- the persons, the ranch or whoever, that is a completely
2 moot point because they have submitted a second DEIS for us to
3 review. And whether there will be testimony at the Land Use
4 Commission about the second one is now what the subject is. I
5 totally agree with you. It's totally bizarre.

6 MEMBER FREDERICKSON: Okay. This testimony was from
7 the first --

8 MEMBER PYLE: Exactly. And it was withdrawn.

9 CHAIR KALALAU: Two years ago.

10 MS. McPHERSON: No, last November.

11 MEMBER PYLE: It was withdrawn. And in the
12 withdrawal process, then, that whole flow of action has
13 stopped because their request was withdrawn. So now they have
14 come back with the second one, which is what we are being
15 asked to review at this point in time, which was actually on
16 that DVD thing that we got.

17 CHAIR KALALAU: The 370 pages.

18 MEMBER PYLE: More than that.

19 CHAIR KALALAU: Maybe more from the next appendix.

20 MEMBER PYLE: So that is what a subject for review
21 now. We tried to ask, I think, in our last meeting how much
22 of the actual cultural resources information had changed.

23 MEMBER FREDERICKSON: And I heard none.

24 MEMBER PYLE: And we really didn't get much of an
25 answer aside from the fact that it was very minimal.

1 MEMBER FREDERICKSON: Yeah.

2 MEMBER PYLE: So --

3 MEMBER FREDERICKSON: I don't know why that
4 information should not be --

5 MEMBER PYLE: Well, exactly. So from our
6 perspective, the testimony concerning the cultural resources
7 of the first DEIS should be applicable to the second one. And
8 to not have that available to us severely infringes on our
9 ability to make any judgements.

10 MS. McPHERSON: And to be balanced, not all of the
11 cultural testimony was actually supportive of -- you know,
12 necessarily supportive of La'au as a necessarily sacred area
13 or significant to the Makahiki. So it's not all con. There
14 was some pro testimony as well.

15 MEMBER PYLE: Sure.

16 MEMBER FREDERICKSON: But it's all part of the
17 picture.

18 MEMBER PYLE: But to not even have -- you know, the
19 visual part is really impressive, but even to not have part
20 the words.

21 MS. McPHERSON: Well, and there was more. There was
22 ole. There was --

23 MEMBER PYLE: I'm sure.

24 MS. McPHERSON: There was Pilipo Solatario; there
25 was a practitioner, Matt Nahikanda; Auntie Vanda, you know,

1 there were a lot of people who testified. And, you know, my
2 guess is that they'll be -- come to the next hearing as well,
3 but I also think that it may not be exactly the same. And it
4 is public record. It was a public meeting.

5 MEMBER FREDERICKSON: Yeah.

6 MS. McPHERSON: It's a public record and I believe
7 the public has the right to request that that be provided.

8 MEMBER FREDERICKSON: And even if the EIS was --
9 first the draft was withdrawn, it's still -- it's still public
10 information.

11 MEMBER PYLE: Oh, I agree. I totally agree. But I
12 can see how this would line up, saying that: Why is that
13 important to us because we are now reviewing a second -- at
14 this meeting, a second DEIS and that's what we should be
15 reviewing.

16 CHAIR KALALAU: Lee.

17 MEMBER MOIKEHA: What does corp counsel say? Do we
18 have any grounds for doing anything?

19 CHAIR KALALAU: Okay.

20 MR. HOPPER: Mr. Chair, as far as I know of the land
21 use commission, they are subject to the same testimony
22 requirements as we are for the Sunshine Law, which does not
23 include requiring verbatim minutes. They are completely
24 within their rights to do summary minutes.

25 Another issue may be: What do those minutes have to

1 reflect? Do they have to say more than just testified for,
2 for, against, against, or do they have to state more of the
3 substance? That's an issue for the LUC to deal with.

4 As far as you having recourse, I would say you would
5 be in the same situation as any member of the public as far as
6 whether or not the testimony was adequate from the Land Use
7 Commission. I know that you can do summary minutes. A
8 question for me, and I think the commission, was that: What
9 does the LUC normally do? And if the LUC does typically
10 record all of the testimony verbatim --

11 MS. McPHERSON: They do.

12 MR. HOPPER: If they do, then it would be -- it
13 would be, you know, interesting to have an explanation. But,
14 legally, as long as those summary minutes were adequate
15 summary minutes, they would be under no obligation to, you
16 know, transcribe every word.

17 You know, it would be the equivalent of the CRC one
18 day just saying, We're going to do summary minutes. We don't
19 want to verbatim minutes. Why you would do that? You had a
20 court reporter there. I believe court reporters get paid, you
21 know, by the hour, so I don't think it would be a difference
22 for the court reporter to either take down the testimony or
23 not as long as he or she was there. If, for example, there is
24 a situation where you didn't have a reporter or something and
25 didn't -- you know, the tape broke, I could see doing that.

1 Or if that was typical practice.

2 As far as what the LUC typically does, I don't know.

3 I don't practice in front of them and I don't advise them.

4 But I do know if they're -- if you're looking strictly at the

5 Sunshine Law, you can do summary minutes which just say each

6 testifier did -- you know, said such and such. I would

7 imagine it would perhaps a bit more than just saying you

8 testified for or against the project. It would, you know,

9 perhaps be a bit more detailed. Even, you know, testified --

10 For your purposes, testified on the cultural significance of

11 the area or testified on water issues or things like that.

12 So -- And so that's the issue. It's certainly true

13 that they don't have to take verbatim minutes, but to the

14 extent to which there -- you know, the minutes summarizing the

15 testimony were adequate, that's an issue for the -- that the

16 LUC is going to have to deal with, you know, legally. As well

17 as why they decided to break what appears to be their

18 precedent of taking verbatim minutes, which, frankly, is

19 oftentimes easier than summary minutes because you don't have

20 to --

21 UNIDENTIFIED SPEAKER: Think about --

22 MR. HOPPER: -- you know, summarize them, which

23 is -- as you all know, to take the time to condense something

24 down sometimes is harder than just writing it fully out.

25 So you can certainly -- I mean, you can certainly

1 send a letter requesting it and raising these concerns. You
2 can maybe do that along with your comments to say, We were
3 very concerned that we did not receive -- that there was no
4 transcript. You know, we understand that it was videotaped,
5 but we didn't have the time to have that, you know,
6 transcribed and we feel that there would be, you know, some
7 testimony be useful in your evaluation of the project, if
8 that's how you feel. And that's something that could go along
9 with your comments in addition to any, you know, notes that
10 you wanted to make on, you know, a time extension or lack
11 thereof.

12 MS. McPHERSON: Commissioners, if I just may make a
13 comment? For a culture that is based on oral history and oral
14 tradition, you know, it would seem to me logical to try to
15 capture as much of that as possible.

16 MEMBER FREDERICKSON: Yes.

17 MS. McPHERSON: And, yes, it was videotaped by
18 Akaku, and so people can view the videotapes, but at the same
19 time, not everyone has the time to do that, so --

20 CHAIR KALALAU: Okay. Dorothy.

21 MEMBER PYLE: Do you know whether -- what the actual
22 minutes include, what the summary minutes look like?

23 MS. McPHERSON: I have not seen those minutes yet,
24 but I do believe we could -- We're not going to have time to
25 get them to you, obviously.

1 MEMBER PYLE: Well, I understand that, but I'm just
2 curious whether there is this statement at the end of these
3 minutes that say that now there will not be -- there's no
4 record of -- or whether there really is a one-line summary for
5 each testifier or what.

6 MS. McPHERSON: The person who would know that is
7 supposed to be here to testify, and that's the chair of the
8 Molokai Planning Commission, DeGray. And so as soon as he
9 gets here, we can ask him that question, 'cause he does have a
10 copy. He has a set of the transcript, what was done for the
11 minutes.

12 MEMBER PYLE: Because it does seem that the minutes
13 of a meeting of this magnitude --

14 MEMBER FREDERICKSON: Yeah.

15 MEMBER PYLE: -- for an issue of this magnitude
16 would be widely disseminated in the community, I would think.
17 Not just on Molokai, but on Maui and even in Honolulu because
18 of the importance of this whole thing. And to expect the
19 public, who are the recipients of this -- these minutes to
20 find an Akaku video that they can then play for themselves out
21 of context of the whole meeting is ridiculous. It's just
22 ridiculous not to have the official documentation done
23 correctly. It just boggles my mind.

24 MEMBER FREDERICKSON: Yes. It's not acceptable.

25 MEMBER PYLE: No.

1 MEMBER FREDERICKSON: It's not acceptable. And I
2 just -- I'm really concerned as to what -- you know, why the
3 Land Use Commission --

4 MEMBER PYLE: Chose to do that.

5 MEMBER FREDERICKSON: -- chose to do that. And
6 there needs to be an explanation for that. Because if there
7 is no explanation, it is -- it looks very, very fishy. You
8 know, the executive director happens to resign. It happens to
9 be a very controversial project that they just happen to
10 completely alter their normal --

11 MEMBER PYLE: Procedures for.

12 MEMBER FREDERICKSON: -- procedures for. And then
13 that's -- That's what one is left with, which is -- That's not
14 right.

15 MEMBER PYLE: But it still leaves us in a very
16 complicated position.

17 MEMBER FREDERICKSON: Right.

18 MEMBER PYLE: Because we don't have that
19 information. We don't have that testimony to look at, to
20 hear, to see, and, yet, we are faced with the fact that, no,
21 there is no extension of the deadline to respond and we are
22 required to look at the second DEIS and make comments about
23 it. And we can complain 'til we're blue in the face that we
24 don't have the proper information, that it hasn't been given
25 to us, that the Land Use Commission perhaps behaved

1 inappropriately, I don't know, but the fact of the matter is
2 tomorrow is the deadline and what do we do?

3 MS. McPHERSON: Commissioners, I would just like to
4 mention that -- two things: That a request that's on the
5 record would probably not be a bad thing. We've got quite a
6 few for time extensions, et cetera. And the other thing is
7 that Mr. Vanderbilt here was the one who actually got us the
8 excerpt that you did view. And he's here now, so perhaps if
9 you want to hear some testimony from someone from the public,
10 he can provide that and answer some of your questions.

11 CHAIR KALALAU: Okay. Any more questions for Nancy
12 before we open the floor for anyone from the public who wants
13 to testify?

14 MEMBER FREDERICKSON: Yeah. I've got, let's see, a
15 couple more questions. I'm assuming there -- What is it
16 called? MPL, Molokai Properties, Limited, I'm assuming they
17 chose not to have a representative be here today?

18 MS. McPHERSON: We were told that Mr. Orodenker, who
19 was here at the last meeting, would be here today, but he
20 isn't here yet. He may still arrive.

21 MEMBER FREDERICKSON: Maybe their plane is late or
22 something.

23 MS. McPHERSON: Right.

24 MEMBER PYLE: Anything else?

25 MEMBER FREDERICKSON: No. Not right now, anyway.

1 CHAIR KALALAU: Okay. Thank you, Nancy.

2 Okay. We will now open this portion of the meeting
3 to the public. For anyone who wants to testify on this agenda
4 item, please come forward and state your name.

5 MR. VANDERBILT: Thank you, Chair Kalalau and
6 members of the Cultural Resources Commission. My name is
7 DeGray Vanderbilt. I'm currently chair of the Molokai
8 Planning Commission. I'm here today really on my own behalf.
9 Nancy had asked me if I could get at least a copy of the DVD
10 portion that had the chant, the hula portion of the LUC, so I
11 guess you have had a chance to look at that.

12 And I guess more than anything, I was kind of
13 disturbed at what happened with Mr. Orodener's letter in "The
14 Maui News." I don't know if you recall last meeting, but I
15 did -- at the lunch break I did provide you with a -- I went
16 up and typed up some comments and added some things about the
17 Land Use Commission, I had some articles on that, but in my
18 letter of February 7th to you which I gave after the break, I
19 said, "I am concerned that the ranch has not responded to our
20 Planning Commission's extension request," which I think one or
21 more of your commissioners were skeptical of them granting
22 yours because they haven't even responded to the Planning
23 Commission's of January 24th.

24 I then followed up and said, "I am also concerned
25 that now that the CRC is setting up a special meeting date,

1 that MPL may use this action to deny not only the CRC's time
2 extension request, but also our commission's request."

3 And that's exactly what they did. I've passed out
4 Mr. Orodener's viewpoint and -- in this package I gave you.
5 He sort of -- At the bottom of the page he says, "The
6 inability of the CRC commission to provide comments to the
7 Draft EIS at the February 7th meeting was not the result of
8 Molokai actions or of the 45-day time limits."

9 Then he goes on and gives a sort of a patronizing
10 comment to you guys, "To the commission's credit, it has taken
11 steps to meet again within the deadline period and to provide
12 comments within the required time frame." Like this is just a
13 matter of business. We should have been able to do it,
14 everybody else. The extension request by OHA, by chairman --
15 Councilman Mateo, by our commission -- If the CRC can do it in
16 time, why can't you guys? And so they have left it like this.

17 And then they say, "Molokai is cognizant of the fact
18 that a small number of requests to extend the public comment
19 period has been received, but we believe it's in the best
20 interests of the community that there be no further delays in
21 having this project proceed through various government
22 proceedings."

23 Now, at the end of that article down at the bottom
24 of page 2 I put in an excerpt from "The Maui News" January
25 17th, 2007, article in which the ranch agreed to extend the

1 deadline and was very happy to do so. And John Sabas, general
2 manager, community affairs for Molokai Ranch, said, "The
3 project is extremely important to the people of Molokai and we
4 want to ensure there is sufficient time for review." And I
5 attached that article here, too.

6 I know this is -- Dorothy is -- I know that you guys
7 want to get in and we can complain and everything, but -- I
8 don't know if you sent in a request for an extension, but -- I
9 knew Mr. Orodener. I wrote him an e-mail and I hope -- I
10 said -- I told him what I was going to say and I said, "I hope
11 you're there to clarify some things for the CRC." I wrote him
12 an e-mail yesterday. And he didn't show up. And that's the
13 style they've been doing. They'll one guy here and one guy
14 here and they disrupt things and they don't show up and
15 everybody is just sort of left, Well what's the deal here?

16 But I really appreciate you guys having the special
17 meeting. I tried to get some people to come over, but there's
18 so much happening on Molokai now and everybody else is up
19 against this February 22nd deadline, too. So everybody's
20 really cranking and so -- I know you scheduled the special
21 meeting, but this is very costly to a lot of you, you're
22 taking time off work, it's not just, oh, you've got the time
23 to sit around and do this and placate what the ranch wants.

24 So, anyhow, that's just a little background. And I
25 would hope that this commission would send a letter to MPL

1 just expressing this -- their displeasure, if it's still
2 there, with this whole scenario and sort of offsetting this
3 viewpoint by Mr. Orodener, which I'll guarantee you will be
4 sent around to other government agencies to show that CRC
5 could do it, but all these other guys are just crying and
6 whining and everything else.

7 And I think our community and everybody that's
8 participated in this project, including the CRC, has done a
9 tremendous job. If you look at the first Draft EIS to what's
10 come up now, it's improved 1,500 percent with more and more
11 information because the ranch could not just push it off to
12 the side. And that is the whole purpose of this EIS process,
13 is to get complete and accurate data so that decision-makers
14 can make a fair and informed decision down the road. So
15 everybody has been trying to do their best.

16 And had there been an extension, I don't think it
17 would have been costly to the ranch. I think they would have
18 gotten some merit points on that. And certainly the EIS
19 process would have been much better served because it would
20 have been a tremendous improvement by more public input into
21 the Final EIS.

22 I guess the only other thing I have to say, I have
23 read through this EIS and it's just -- it's very sloppy. I
24 mean, it's hard for you guys because it's two or three
25 thousand pages long and you might not recall some of the

1 things that were said before, but basically, I think -- And
2 this is my own opinion -- in the annual report for Molokai
3 Properties -- They're owned by a Malaysian company, Guoco
4 Leisure, who is a billion dollar company headquartered in
5 Singapore. In that annual report they touted this great EIS
6 that was surely going to be accepted by the Land Use
7 Commission back in -- last year. That didn't happen.

8 And then they had said to their shareholders they
9 would be before the Land Use Commission in the first quarter
10 2008. That didn't happen. So now they're into damage
11 control, so they slap together a sloppy DEIS, another DEIS,
12 sent it out for public comment. They're going to probably not
13 take a lot of time responding to public comment and get it
14 back before the commission in order to do as much damage
15 control as they can for the presumptuous statements that they
16 made to their shareholders. And that's just my opinion, but
17 I've got the annual report and I know what it says.

18 So, anyway, I'm sorry to burden you with this, but
19 I'm just really angry because this isn't the first instance.
20 The manipulation of this process is continuing. And as I -- I
21 did put on the last page of what I handed to you, there was a
22 letter from the OEQC to me stating -- I don't know if -- Do
23 you all have that on -- Well, I put that on there because I
24 got sort of a smile when Mr. Orodener in his piece said, "We
25 are concerned that variation from strict adherence to state

1 procedures will cause confusion and disarray in the process."

2 Well, I've never gotten my hard copy of the document
3 as a consulting party. Other people hadn't. They did give
4 hard copies to the library. Mr. Orodener went to OEQC, they
5 told them exactly what he wanted. He was trying to save money
6 by not having to send out hard copies, but he ignored that
7 request.

8 Now they're going back and trying to put pressure on
9 this terrific staff person who has been around forever and is
10 truthful as truthful as the day is long. And they're going to
11 try to discredit what he put in writing. I'll guarantee you
12 that's going down right now.

13 And I'm going to -- I'm going to do what I can to
14 try to head that off even if it means going up to the
15 governor's office, who has come out in support of this whole
16 project. So with that, I'll quit my whining and let you guys
17 get back to --

18 MEMBER FREDERICKSON: I have a question for you.

19 MR. VANDERBILT: Yeah.

20 CHAIR KALALAU: Go ahead.

21 MEMBER FREDERICKSON: Is there more than one hard
22 copy of the DEIS at Molokai Library now?

23 MR. VANDERBILT: Yeah. They finally got -- About a
24 week after our request they got another one and then about
25 three or four days ago they got a third one.

1 MEMBER FREDERICKSON: Okay. So they've got now
2 three copies and the third copy arrived, what, less than a
3 week before the deadline to --

4 MR. VANDERBILT: Probably a week before.

5 MEMBER FREDERICKSON: For comments.

6 MR. VANDERBILT: But, you know, they did send -- and
7 I'll give them credit for that, they did send that. But we
8 had asked that they make a user friendly copy of the DVD. I
9 mean, we just got an audit report from the state auditor on
10 the Molokai irrigation system and they encourage public
11 participation and that was sent out in Word format --

12 MEMBER FREDERICKSON: Yeah, so you could --

13 MR. VANDERBILT: I mean, so you could cut and paste.
14 Maybe you couldn't change the original, but could cut and
15 paste and type. And that's all they had to do. It would have
16 been easy to do and it would have been easy to provide the
17 hard copy especially to the people like our commission
18 members. I mean, they only gave one to Planning Department.
19 Planning Department has got to deal with you guys, they got to
20 deal with our Planning Commission and they've got to deal with
21 their own comments.

22 And Nancy is burning at both ends right now. And I
23 don't know how she does it. She's got to do all the projects
24 on Molokai and she's solely responsible for getting the
25 Planning Department's comments out and helping us. And she

1 was nice enough to come over here today to see if there was
2 anything she could do to help out the CRC staff going forward.

3 So, again, thank you.

4 CHAIR KALALAU: Any more questions? Okay.

5 MEMBER FREDERICKSON: I've got one more question.

6 CHAIR KALALAU: Okay.

7 MEMBER FREDERICKSON: Have you heard anything from
8 the LUC about the missing minutes?

9 MR. VANDERBILT: No. And I told our Planning
10 Commission -- I did meet with the interim director, Rodney
11 Maile, the other day, and he said, "Well, I just got here."
12 And he's an attorney. And he was sort of trying to figure out
13 how this might have been happened, but he didn't know.

14 But we're going to try to get -- We're going to try
15 to get on the Land Use Commission agenda. And we've got all
16 the data. We've talked to the court reporter, who said this
17 never happens. And it's just strange and --

18 MEMBER FREDERICKSON: Has the Molokai Planning
19 Commission sent a letter to the LUC.

20 MR. VANDERBILT: We've approved sending a letter.
21 The chair is supposed to have had that out over a week ago.
22 The chair is derelict in his duty. I don't know who the chair
23 is. There's no chair.

24 But, anyway, we got our letters out to the USGS.
25 They've responded. They normally don't comment, but they were

1 concerned about some of the water allegations. But they said
2 if they got a letter from another government agency such as
3 the Planning Commission, they would comment. So they've
4 already commented. And we did send --

5 What was the other letter we sent out?

6 MS. McPHERSON: Time extension?

7 MR. VANDERBILT: Oh, the time extension one, yeah.

8 So, anyway, but we're going forward. We've made a
9 copy of the total three days of meetings, three DVD's, for the
10 LUC and are going to be asking them to recreate -- hire the
11 court reporter and recreate the record. We're going to try to
12 see if they'll do that. And they may.

13 Yes.

14 MEMBER PYLE: I think one of the questions that we
15 were talking about was: What actually was included in the
16 official minutes? Was there absolutely nothing, or just
17 summaries?

18 MR. VANDERBILT: Oh, no, no. And that's what the
19 new deputy director -- He didn't -- He hadn't even see the
20 minutes. So he'd go on talking, he said, Well, sometimes we
21 just do summary minutes.

22 And I said, Well, I would have no problem with that,
23 but the opening prayer was verbatim, everything the
24 commissioners said was verbatim, everything the County and the
25 State said was verbatim, and everything was verbatim that the

1 public said in response to a question from the commission.

2 But the actual testimony of the people of Molokai, Senator

3 Clayton Hee, other people was not included in the minutes.

4 MEMBER PYLE: That was what we were curious as to

5 what the minutes actually did say.

6 MR. VANDERBILT: Yeah. And, again, if they --

7 MEMBER PYLE: Very selective, isn't it?

8 MR. VANDERBILT: It was selective -- selective

9 whatever you call it. I don't know.

10 MR. HOPPER: DeGray, in the points where they didn't

11 have the verbatim testimony, did they include summaries? Did

12 they say testified for, testified against?

13 MR. VANDERBILT: Yeah. They had -- For instance, I

14 would have been: 47, DeGray Vanderbilt, Yes. And then it

15 said at the bottom of the -- No, wait. The Land Use

16 Commission has summary minutes that it approves at each

17 meeting. They don't approve the verbatim minutes, but you

18 have the short summary minutes which had: DeGray Vanderbilt,

19 No. 47, approves. And then at the bottom of each of those

20 summary minutes it says, Refer to the verbatim minutes from

21 the court reporter for more detailed information. And that's

22 on all -- I checked back, that's on all of their summary

23 minutes.

24 So you go to the verbatim minutes and look under

25 DeGray Vanderbilt, "DeGray Vanderbilt, No. 47," it does say

1 sworn in and for -- he was against accepting, but that's all.
2 So there's no -- And the law says that -- The law says that
3 you don't have to have verbatim minutes, but that the minutes
4 that are kept have to reflect an accurate view or a full view
5 or something of what the participant said. And the thing that
6 concerned me is all the time Molokai spent with very short
7 notice preparing great testimonies, there was a lot of
8 cultural stuff on there, that could have just -- that would
9 have been here, whether it would have been helpful to you or
10 not, but why just waste the public's participation?

11 I think that's what is really frustrating people all
12 over with public processes. The public takes so much time and
13 then it just seems that nobody listens or whatever. So -- but
14 on Molokai I know the public, they just keep coming out and
15 they will continue to. And, again, thank you for your help.

16 CHAIR KALALAU: Okay. Any more questions for
17 DeGray?

18 MEMBER FREDERICKSON: Not for now, anyway.

19 CHAIR KALALAU: Not for now. Thank you.

20 MR. VANDERBILT: Thank you.

21 CHAIR KALALAU: Is there anyone else from the public
22 that will testify? Seeing that we have none right now, we'll
23 just close the floor right now.

24 And Stan.

25 MR. SOLAMILLO: I have a question. Can the DVD that

1 we saw just a part of, can that be entered into the public
2 record, or do we have to view the entire DVD for cultural
3 information?

4 CHAIR KALALAU: Corporation Counsel.

5 MR. HOPPER: What do you mean by "entered into the
6 record" --

7 MR. SOLAMILLO: Well, Nancy brought it from Molokai;
8 right? It contains cultural information that was produced for
9 a hearing that was held last year for the first DEIS. Since
10 there's no time to -- Since this is a document, it would be
11 like me entering a document from -- something in support of,
12 can this DVD be entered in the public record as testimony on
13 this item, or must the commission members -- Do we have to sit
14 and listen to the entire thing? Which I would like to love,
15 but time constraints, unfortunately, prevent us from doing
16 that.

17 MR. HOPPER: You have no -- You're not concerned
18 about any rules of evidence or anything like that. If you
19 want to see a video clip of whatever, that can be, I guess,
20 part of your record. The question would be: What you would
21 do with it? If you wanted to keep a copy on file with the
22 department in case someone was looking at the minutes and then
23 say you could refer to such and such which is with the
24 department, you could certainly have just that video clip as
25 part of it. In fact, you should have just that video clip as

1 part of it, as that was the only matter -- you know, point
2 that was discussed here.

3 MR. SOLAMILLO: Correct.

4 MR. HOPPER: There would be no reason for you to
5 have the whole thing and be required to view, you know, the
6 whole thing. I would, you know -- So, yeah, that's -- you
7 know, to that extent, to keep it with the Planning Department,
8 that's fine.

9 As far as entering it into the record beyond that,
10 I'm not sure what else you would do. But the record is going
11 to be the minutes of this meeting, which, obviously, are going
12 to be transcribed verbatim. And if you wanted to have a
13 reference to that -- the video clip and keep that as part of
14 the department records, I don't think there's a problem with
15 keeping a video record.

16 MR. SOLAMILLO: I think my question was more: Can
17 we keep the entire testimony that's included on the DVD so
18 that it becomes part of the record, not just the clip that we
19 saw, or must the commission see the entire DVD? That's my
20 question.

21 MR. HOPPER: It's not part of the record if you
22 haven't seen the entire DVD. It's not -- It wasn't here and
23 it wasn't viewed. It's part of the Land Use Commission's
24 record because it happened before them, but not -- I wouldn't
25 see you'd be able to do that unless you viewed the other

1 parts, yeah. But no one has seen it, so the record is
2 literally what was recorded at the meeting. And since it
3 wasn't recorded at the meeting, I wouldn't see how that would
4 be part of the record.

5 CHAIR KALALAU: I have a question, Corporate
6 Counsel. So, in other words, as the testifier presented this
7 thing as part of her presentation, so we only can keep in
8 record that -- the short section that we've seen?

9 MR. HOPPER: Yes.

10 CHAIR KALALAU: It's not presented -- The video is
11 not presented as the entire package to us?

12 MR. HOPPER: If you have a copy of the entire DVD of
13 the meeting and -- You know, you don't have to necessarily sit
14 there and watch it for the whole meeting, but unless you have
15 got the whole DVD submitted to you and I would -- It would be,
16 you know, like public testimony submitted to you in general.
17 The problem would be that, as with any testimony that's
18 submitted to you, you know, in writing, you would have to read
19 it or view it, I think. I suppose it could be part of the --
20 you know, kept on file with the department, that wouldn't
21 necessarily be a problem. But to have it on like the record
22 of the minutes or something like that, that would be
23 problematic.

24 MS. McPHERSON: Hi, Commissioners. I have a
25 question. Nancy McPherson, staff planner, Molokai. Would the

1 commission -- This might be a question for Mike. Would the
2 commission be able to direct the cultural resources planner to
3 view the video in its entirety, you know, and I can assist,
4 and then to draft comments on the part of the department based
5 on what was viewed on the video as far as questions about
6 cultural impacts?

7 Because I have -- I was at the hearings and I took a
8 lot of notes, but I haven't had time to go back and look
9 through all that. So, I mean, the Molokai Planning Commission
10 directs me at times to look at public testimony that's been
11 submitted and then identify the comments that are pertinent
12 from a planning standpoint, from a community planning
13 standpoint, and go ahead and phrase those and make those
14 comments.

15 So I don't know what the precedent is with the
16 Cultural Resource Commission, but I was just wondering if that
17 would be an option.

18 MR. HOPPER: I would highly recommend against that
19 just because that type of -- that type of broad authority with
20 only one day remaining for comments, it would be relying on
21 you entirely to determine what in your view was the most
22 important comments to submit.

23 Now, you as the Planning Department are certainly
24 free to do that as the Planning Department's comments. But I
25 would advise the CRC that if -- that they would want to --

1 And, you know, I don't know how possible this is at this stage
2 just because the -- you know, the video is very long and they
3 haven't viewed it, but that they would decide on their own
4 to -- you know, as to which comments they thought they wanted
5 to have addressed or, more specifically, adopted as their own.

6 You know, the CRC as a body is going to make their
7 own comments on what they feel needs to be addressed. And,
8 you know, certainly if they feel like they would have liked
9 more time to view the video, they could note that and state
10 that, unfortunately, they didn't have the time to view the
11 entire video.

12 To give you the broad authority to do that would be
13 a bit unusual because they would be almost, you know,
14 delegating their entire responsibility to you in that case.
15 And not to say that you wouldn't do a good job of it. It's
16 just that you wouldn't be the CRC in that case. To do that
17 and then come back before them and have them approve of what
18 you did could be possible, but it's just unfortunate there's
19 not more time to do that.

20 CHAIR KALALAU: Stan.

21 MR. SOLAMILLO: Okay. I guess given that scenario,
22 then, we should begin our comments.

23 CHAIR KALALAU: Okay. Commissioners, you guys want
24 to comment on the questions first or as a whole?

25 MEMBER PYLE: Questions? What do you mean by

1 questions?

2 CHAIR KALALAU: You know, on the questions that we
3 asked about a year ago and they came back with the comments
4 and stuff. Because a lot of the answers, a lot of the
5 commissioners didn't agree on them. And it wasn't answers
6 that answered our questions. And then whatever comments that
7 we do have, you know, with the new EIS.

8 MEMBER MARQUEZ: Sam.

9 CHAIR KALALAU: Yes, Veronica.

10 MEMBER MARQUEZ: Okay. With this one, the one that
11 was sent to all of us.

12 CHAIR KALALAU: Yeah.

13 MEMBER MARQUEZ: Okay. Page 95, bullet Education,
14 Cultural and Environmental Components. I remember the last
15 time when we discussed this on the first EIS that I wanted
16 something in there, yes, we're going to educate all of these
17 homeowners and all of these people; however, we also need to
18 educate people on Molokai, our local people. I don't see that
19 in there. So my take on this was, yes, all you newcomers
20 learn the manao of Molokai, learn the culture and the customs;
21 that's fantastic. However, I truly believe that those living
22 on Molokai already should also be educated. And so that way
23 we can all work together. We hear the same manao, same time,
24 people stay the same page. I don't see that in this. Mahalo.

25 MEMBER PYLE: Kind of along the same lines -- And I

1 know that it's impossible to put so much information in these
2 particular documents, but, okay, all the homeowners who buy
3 these lots are going to be educated, and so then they rent
4 their house either as a vacation rental or as a long-time
5 rental and whoever those people are have no clue about any of
6 the information that's been given. Or in a year they sell the
7 lot, perhaps they haven't built a house yet, but they sell the
8 lot; where is there any kind of a requirement that the new
9 owners or the builders of a house would have any kind of
10 information presented to them?

11 Who is going to be responsible for developing this
12 education program? What will it really contain? You know,
13 from me being a history teacher, I get really concerned
14 sometimes -- I remember we went through this with a couple of
15 the large developments on the west side and there was this
16 whole thing about the property owner -- And Olowalu was a
17 really good example of this, where they were going to be
18 required to do something like this, but then when it came
19 right down to it, who was developing the information?

20 And then when the person who was developing -- I
21 remember this really clearly -- developing the information had
22 just about gotten it done, the property got sold and that
23 company was no longer involved and so then it was -- none of
24 that information available. This is just a nightmare.

25 Another comment that's more general, perhaps.

1 There's many, many references in this to what is always
2 referred to as this, in quotes, land trust. And it has -- you
3 know, I think I asked this question the last time, you know.
4 Who is the land trust and how are they responsible? And what
5 I see, and maybe it's just me being very skeptical of things,
6 is that the Molokai Land -- What are they? The Molokai Land
7 Properties, is that what they are?

8 MEMBER MARQUEZ: Properties, Limited.

9 MEMBER PYLE: Yes, okay. MPL, right. That they
10 have in this document shifted a lot of responsibilities to the
11 land trust to continue to monitor, to organize different
12 groups of people, to make sure that the resources are going to
13 be used correctly, and yet: Are they giving them money? Are
14 they going to support the land trust? Who is going to run the
15 land trust to actually fulfill the requirements that are in
16 this document?

17 MEMBER FREDERICKSON: Yeah.

18 MEMBER PYLE: And I find that to be an enormous
19 loophole that makes it seem for the MPL that they are doing
20 all of these things, but they're not responsible.

21 MEMBER FREDERICKSON: Yeah. It's a way of passing
22 the buck and probably not attaching any bucks to the pass,
23 either.

24 MEMBER PYLE: So I'm very wary of that particular
25 issue. And it's throughout this whole thing.

1 MEMBER FREDERICKSON: Yeah. And I -- That's
2 something I was going to bring up, Dorothy, is, you know -- I
3 mean, it sounds great and the land trust, awesome; but nuts
4 and bolts, how -- Where does the funding come from? The
5 developer in making -- if they do develop this project, is
6 going to make a lot of money. And, yeah, they've handed --
7 They've granted lands, et cetera, et cetera, which is good,
8 but how is the land trust going to function? And it's going
9 to have to have money to function. And that's a -- It would
10 have maybe -- maybe the representative from MPL will be here
11 today, but that's a question.

12 MEMBER PYLE: Actually, I would like the
13 representatives from the land trust to be here. They're the
14 ones I would really like to hear from as to how are they
15 really going to do these things.

16 MEMBER FREDERICKSON: Sure. But I -- My question
17 for the Molokai Properties Limited is, okay, they're forming
18 this trust, how are they going to enable --

19 MEMBER PYLE: The trust.

20 MEMBER FREDERICKSON: -- the trust, besides just
21 saying, Here, take care of all these problems -- issues for
22 the developer? Because they are big issues.

23 CHAIR KALALAU: Veronica.

24 MEMBER MARQUEZ: And that's why we need to refresh
25 memories. The last meeting the first of this month I stated

1 that you all should know that there is a plan, a plan with all
2 these manao you're talking about that was discussed on Molokai
3 with community groups. And I think -- DeGray, I don't know if
4 it's called the Enterprise Community manao, but let me finish
5 this. There is this plan that has all this trust manao in
6 there, and that's why I asked: Why are we not hearing that in
7 conjunction with the --

8 MEMBER PYLE: Right. It's the master plan. It's
9 the Molokai Master Plan, is what they call it.

10 MEMBER MARQUEZ: I don't know if it's the master
11 plan.

12 MEMBER PYLE: Well, that's what they call it in
13 here.

14 MEMBER MARQUEZ: So, to me, I think that's the
15 missing piece here. And that's why people sitting here -- all
16 of us are sitting here are going: What's this? What's that?
17 And that's what I requested last time, and we're here again
18 today, the day before submission.

19 So I'm sure Mr. Vanderbilt would like to add that
20 manao, but there is something in hard copy. There is a plan.
21 I'm not saying that it can answer all of your questions;
22 however, I think you folks should have that information.

23 MS. McPHERSON: May I make a comment, Commissioners?

24 CHAIR KALALAU: Okay, Nancy.

25 MS. McPHERSON: That it is Appendix A of the

1 document that was submitted. It's in the appendices.

2 After the last meeting I had a short conversation
3 with Dan Orodenker, and he asked me if he thought someone from
4 the EC or the land trust or, you know, those sort of folks
5 should come for this meeting. And I said, Yes, I thought
6 Stacey Caravallo would be a good person to come. And I
7 figured they would work that out how someone representing
8 those bodies could be here, but, obviously, that didn't
9 happen.

10 MEMBER FREDERICKSON: I have a question. Okay. So
11 I didn't look at Appendix A. I looked at the archeology,
12 which was a large undertaking in its own thing. But the thing
13 with the land trust, in that appendix does it say -- if you've
14 looked at it in detail, does it say anything about how the
15 land trust will be enabled, funded?

16 MS. McPHERSON: My understanding is at the stage
17 that the master plan was prepared and approved by the
18 Enterprise Community, a lot of the concepts were put in place.
19 The framework, the general framework was set up. There was --
20 A lot of the manao that was collected during the public
21 meetings was reflected in the master plan, but a lot of the
22 details hadn't yet been worked out. And my understanding is
23 some of those details are in the EIS that's before you now,
24 but you have to really read through it carefully.

25 MEMBER FREDERICKSON: Thank you.

1 Okay. I'm going to make a comment to the
2 commission. Okay. That, to me, is a glaring problem. And it
3 should be something that's clearly stated in the EIS because
4 it's -- What this appears to be doing is, okay, it's setting
5 up this land trust, which is really good -- I mean, a lot of
6 it sounds great, but, you know, it's the feel good stuff
7 that's kind of put down on paper and then the nitty-gritty
8 funding, I don't hear it. I certainly haven't seen anything
9 about it. I haven't heard anything concrete about it.

10 MR. VANDERBILT: Mr. Chair, could I just make a
11 comment?

12 CHAIR KALALAU: Okay.

13 MR. VANDERBILT: And it's more in general.

14 CHAIR KALALAU: State your name again.

15 MR. VANDERBILT: Thank you. In the document -- And
16 this is the trouble with not having enough time. There's the
17 CC&R's that address the rentals and the education of rentals
18 and everything else, but also the CC&R's can be changed even
19 though the community has said, We want CC&R's that can't be
20 changed.

21 But as far as the land trust, they get -- They're
22 going to deed them as part of the lands the radio towers that
23 have \$250,000 a year income, too. So that's 250,000, which is
24 a good start. OHA is just granted \$100,000 along with the
25 Cook Foundation another 100,000 to the land trust. And that's

1 not in the EIS. One of the land trust -- All of the six or
2 seven land trust members were people that were on the EC with
3 me that voted yes for the project. There was no public
4 process of how they were going to be selected. I think
5 Collette Machado from OHA was in charge of selecting. Ricky
6 Cook and then the Cook Foundation gives 100,000 and then she
7 goes, gets 100,000 from OHA, which I don't -- So they got the
8 money. That's not it.

9 But the community is very uneasy with the land trust
10 because nobody in the community was involved in how they would
11 be selected. And even as throwing out a peace offering maybe
12 you could have had some from both sides. Because everybody
13 worked hard on this master plan. I was on there. And, as I
14 said, I went against the master plan because I felt they
15 wouldn't move off La'au and that was going to split the
16 community and tank the whole master plan, probably.

17 The trouble with this short time frame -- Because
18 these are all good questions you're raising, but there's 2,000
19 pages that you don't have time to look at where a lot of those
20 questions would be answered. So when you ask the question,
21 they'll say, Well, it's already there and then -- you know,
22 people are going -- It just compromises -- This short time
23 frame compromises everybody's ability to do the due diligence
24 they need to do. And we felt it on our commission and I'm
25 sure you guys are feeling it, too.

1 But, anyhow, I've read through this thing so much I
2 don't even -- don't want to read it again. But, anyhow, I'm
3 available for any -- if there's any specific questions.

4 CHAIR KALALAU: So, DeGray, what you're trying to
5 say is that a lot of the concerns we have, it's already
6 documented, like the land trust, you know?

7 MR. VANDERBILT: All the land trust documents are in
8 there.

9 CHAIR KALALAU: And the homeowner association?

10 MR. VANDERBILT: No. They put draft -- They finally
11 put draft CC&R's in. We've been requesting those since the
12 get-go.

13 And at the Land Use Commission meetings in the
14 verbatim transcripts, the Land Use Commission asked, "Why
15 didn't you put these CC&R's in earlier?"

16 And they said, Well -- Their lawyer, attorney said,
17 "Well, the management was divided on that and we decided not
18 to, but maybe that was a wrong decision." Because that
19 controls everything.

20 And then there's other documents that aren't in here
21 that -- easement documents that govern the 26,000 acres of ag
22 and rural land easements, that's not included in here. So,
23 unfortunately, the developers play a game with these
24 processes. They start off by giving as little information as
25 possible. The public says you're missing this, this and this.

1 And they come back and come back and they keep rope-a-doping
2 you all throughout the process until you finally can't even
3 stand up anymore.

4 But, anyway, there's a lot of stuff in the master
5 plan that would probably answer a lot of the just basic -- not
6 the master plan, but in the -- There's Addendums A through Y
7 now, and -- But nobody has the time to go through that.

8 So, anyway, that was just -- I'd like to just --

9 CHAIR KALALAU: Yeah. I've got one more question
10 for you. On access and over-utilization, they mention about
11 enforcement is through the resource manager. Who is the
12 resource department in this?

13 MR. VANDERBILT: Well, they're saying -- There was a
14 fellow, a Halona Kaopuiki, on Molokai. He initially voted
15 against the plan. He's a good friend of mine. He voted along
16 with me and several others against the plan. He subsequently
17 was hired by OHA and he's in line for now being the
18 management. He's reversed his position and is now supporting
19 the project. He's a wonderful guy. I don't know how one
20 guy -- I mean, to do it properly, you're going to -- It's
21 going to be tough.

22 Because, as Dorothy mentioned, the owners can go
23 right to the beach. Their friends, all their families can go
24 directly to the beach. And in this thing, somebody is going
25 to card you or ask you questions to make sure you've gone

1 through some education class. It's almost laughable to people
2 on Molokai and it's -- So, anyway --

3 CHAIR KALALAU: So this resource manager is going to
4 be -- is not going to be with DLNR, but he'll be like under
5 the private company or the homeowner association?

6 MR. VANDERBILT: The homeowners, they're going to
7 kick in money for that. And originally everybody was going to
8 use the extreme access points. I think even this Cultural
9 Resource Commission suggested putting some fences up to make
10 the homeowners use the extended accesses like the public.

11 Well, they are going to put the fences up, but they're all
12 going to -- allowed to have gates now, so --

13 But, no, people are going to go directly to the
14 beach. If you read in there some places it says they'll be
15 deterred because of heavy, dense kiawe, but then you read
16 somewhere else and it says the homeowners are going to have a
17 plan and donate money to get rid of the invasive species.

18 Well, obviously, they're going to cut down the kiawe. That
19 will make it easier to get to the beach, improve the views and
20 everything else.

21 And I think that's one of the other really tough
22 things in this. The OEQC guidebook says these documents
23 should be easy to read without a lot of undue
24 cross-referencing. And this thing just -- I mean, it's like
25 watching a tennis match. I mean, you just -- you're

1 cross-referencing and you've got to have all these documents
2 out there. So it's a real exercise in research.

3 MEMBER FREDERICKSON: Sam.

4 CHAIR KALALAU: Yeah.

5 MEMBER FREDERICKSON: I've got a question. I like
6 that reference. I was going through looking at the
7 archaeology that's been conducted in the area -- And I've got
8 a bunch of comments on those, too. I'll kind of save those
9 for a little -- in a little bit. But I could only find two
10 letters that the State Historic Preservation Division had sent
11 that were contained I think it was in Appendix L. In your
12 wanderings through the DEIS, have you seen any other letters?

13 MR. VANDERBILT: No.

14 MEMBER FREDERICKSON: Yeah. And I looked around a
15 lot and the -- I'm going to -- I'll go into some of my
16 concerns about the archaeology. The -- Okay. This is a huge
17 project. There's an enormous amount of cultural resources
18 contained there. Now, the DIES focuses on a study that the
19 Bishop Museum did essentially just over -- about 15 years ago,
20 an archaeology inventory survey of over 6,000 acres, which is
21 huge area.

22 Now, the only letter that the Draft Environmental
23 Impact Statement contains is a letter that the State Historic
24 Preservation Division sent August 24th, 1994, Doc No.
25 9407-SC-13. In that letter they didn't exactly approve the

1 environmental -- or, excuse me, the archaeological inventory
2 survey. They said, you know, most likely it adequately
3 covered the project area, but there were missing pieces of
4 information that they needed before they would actually be
5 able to approve the inventory survey report.

6 So in this environmental impact -- this Draft
7 Environmental Impact Statement, they are saying, Well, the
8 work that was done in 1993 --

9 MEMBER PYLE: Is adequate.

10 MEMBER FREDERICKSON: -- is adequate. And I don't
11 see a letter from the State Historic Preservation Division
12 that accepts a revised archaeological inventory survey report.

13 MEMBER PYLE: And even the fact that it was done 15
14 years ago.

15 MEMBER FREDERICKSON: Oh, that's another issue all
16 together. I mean, that is -- I mean, that's outdated at this
17 point. There could be some sights that back then were
18 considered, oh, this isn't very important, because archaeology
19 has evolved through the years. I mean --

20 MEMBER PYLE: Just GPS.

21 MEMBER FREDERICKSON: Oh, sure. But, typically -- I
22 mean, if there's an archaeological inventory 15 years old, the
23 State quite often -- the State Historic Preservation Division
24 quite often will say, Hey, there needs to be additional work
25 done. And they have some things in place to try to do some of

1 this work, but there's no review letter accepting this
2 original level of work which they're saying in the report --
3 in this DEIS was adequate.

4 MEMBER PYLE: Actually, can I --

5 CHAIR KALALAU: Okay, Dorothy.

6 MEMBER PYLE: There's also a statement in here which
7 completely follows what Eric's saying when they say the
8 archaeological sites -- This is on page 82 at the top -- will
9 be treated in one of three ways: Preservation, data recovery
10 or no action. And then you go on and it says, "No action is
11 planned for those sites that were deemed not significant in
12 1993 in the Bishop Museum report."

13 MEMBER FREDERICKSON: Yeah.

14 MEMBER PYLE: But if the Bishop Museum report has
15 not been an acceptable report or not had any revisions or more
16 up to date information, this is just like blanketly saying in
17 1993 someone missed a site or didn't really record its
18 significance, and so it's not significant. Boom, it's done.
19 Also --

20 MEMBER FREDERICKSON: Or you can -- Go ahead,
21 Dorothy.

22 MEMBER PYLE: And then two paragraphs down further
23 it says, "The preservation plan, burial treatment plan,
24 monitoring plan, data recovery plan are contained in Appendix
25 L," which I didn't look at. Maybe Eric did.

1 MEMBER FREDERICKSON: Yes, I did.

2 MEMBER PYLE: And it says that by letter the State
3 Historic Preservation Commission has approved the data
4 recovery, but not the revised monitoring or preservation
5 plans. And the burial treatment plan hasn't even been
6 submitted yet.

7 MEMBER FREDERICKSON: Yeah.

8 MEMBER PYLE: So here we're putting in here that all
9 these things are happening, but none of these things have been
10 approved by the State Historic Preservation Department. And
11 yet the implication here is that it's all fine.

12 MEMBER FREDERICKSON: Yeah.

13 MEMBER PYLE: And it's not.

14 MEMBER FREDERICKSON: No, it's not.

15 MEMBER PYLE: It's not.

16 MEMBER FREDERICKSON: And I just go back to this
17 1994 letter. I mean, what -- Was the report ever revised?
18 And if it was, that needs to be in the DEIS. I can't believe
19 that something that is as simple to do as that has not been
20 done. I mean, that's a glaring oversight. I mean, it's kind
21 of -- It's a bit humorous.

22 MEMBER PYLE: But just tell us that they're doing
23 these things, that's fine. I'm happy they're doing them.

24 MEMBER FREDERICKSON: Yeah.

25 MEMBER PYLE: But how can we say in an environmental

1 impact statement that we can accept that when there's no
2 evidence that it's actually really been done.

3 MEMBER FREDERICKSON: Yeah. Right. I mean, there
4 needs to be this -- there needs to be some sort of a response
5 letter that occurred after 1994 when the State Historic
6 Preservation Division got those comments. And to not have it
7 in there, I mean, that's just -- It's like some -- It's like
8 one of the -- It's kind of the base, the basis of which they
9 keep referring back to, and there's no final approval letter.
10 And I know Boyd Dixon and, you know, I'm sure they did, you
11 know, a good job, et cetera, et cetera, but there's no --

12 MEMBER PYLE: It's still 15 years ago.

13 MEMBER FREDERICKSON: Yeah. And there's no approval
14 letter, final approval letter for that report.

15 What Dorothy said earlier I totally, you know, agree
16 with, too. The monitoring plan -- or the revised monitoring
17 and preservation plans were submitted 2007, September 10th,
18 and they haven't been reviewed yet. And there's -- The
19 revised burial treatment plan still hasn't -- you know, at the
20 writing of this DEIS, that hasn't been submitted, apparently.
21 And those are all components within the archaeology that are
22 very important.

23 MS. McPHERSON: Can I make a point of clarification,
24 Chair?

25 CHAIR KALALAU: Okay.

1 MS. McPHERSON: Nancy McPherson, staff planner. In
2 this Appendix L, Archaeological Plans, there is a letter from
3 State of Hawaii DLNR, State Historic Preservation Division
4 dated February 13th, 2007, signed by Melanie Chinen, who is no
5 longer the director, saying that this plan is approved. And
6 that is the revised -- It says, "Thank you for submitting the
7 revised data recovery plan." So I guess that --

8 MEMBER FREDERICKSON: Yeah, I got that.

9 MEMBER PYLE: That's the only one they've approved.

10 MS. McPHERSON: So I guess that's the only one
11 they've approved.

12 MEMBER FREDERICKSON: That's the second letter.

13 MS. McPHERSON: Correct.

14 MEMBER FREDERICKSON: The first letter is the one I
15 spoke about, the draft letter -- or the draft report that's
16 never been accepted -- or, apparently, never been accepted.

17 MEMBER PYLE: The Bishop Museum report has never
18 been accepted.

19 MEMBER FREDERICKSON: The 1994 letter. And then the
20 second one, that's -- I was going to get to that. Thanks for
21 bringing it up. It's the 2007 --

22 MR. SOLAMILLO: What's the date?

23 MEMBER FREDERICKSON: February 13 letter.

24 MR. SOLAMILLO: Thank you.

25 MEMBER FREDERICKSON: The Doc. No. 0702-NM-10 on

1 that one. And that accepts the revised data recovery plan.

2 But that data recovery plan looks at the 1993
3 inventory survey report. I think there is also some
4 additional work that was carried out which I wasn't able to
5 find and I didn't see any communication from the State
6 Historic Preservation Division that any of those reports, if
7 they ever were submitted, had been reviewed. Maybe they have,
8 I don't know, but I didn't find them in the Draft
9 Environmental Impact Statement. And it's supposed to be easy
10 to find this stuff. Not just have it be like, you know, a
11 reference was earlier, like it's a tennis match, the ball is
12 bouncing back and forth and trying to find stuff is -- it's
13 challenging.

14 CHAIR KALALAU: Dorothy.

15 MEMBER PYLE: Another issue that I might like to --
16 And this is only my ignorance of some of the things on
17 Molokai, and so you can help me and DeGray and Nancy can also
18 help me. When I'm looking on page 89 and it's talking about
19 mitigation measures and it's so nicely -- And it's true, you
20 know. There's 26,200 acres or 40 percent of Molokai Ranch
21 lands donated to the land trust. And it has the unique
22 missions of doing these things, all of which are commendable
23 in the max and I totally agree with that. But what I find a
24 little bit kind of irking is that here's this nice, beautiful
25 list of the premier Native Hawaiian Legacy Lands, and it's

1 kind of like they're telling me that the mitigation for
2 messing with La'au is the fact that they're donating property
3 that's not in La'au. And I don't get that.

4 If this is supposed to be an Environmental Impact
5 Statement about La'au Point, it should concern La'au Point.
6 It should not be telling us, Aren't we great that we donated
7 20,000 acres of land someplace else that has Legacy Lands on
8 it? What are we mitigating about the problems we're creating
9 in La'au? It doesn't say that, I don't think, unless some of
10 these places are actually in La'au and I'm ignorant of that.
11 And that -- you need to help me with that, because I don't
12 know.

13 Anyway, it was just something as I was reading
14 along, I thought, Huh? That's not really -- It doesn't belong
15 in this EIS, does it?

16 CHAIR KALALAU: DeGray.

17 MR. VANDERBILT: If I could just add something --
18 And I think that's one of the big dilemmas here. You know, at
19 the Land Use Commission there was all this segmentation, you
20 know. They say they need La'au to open the hotel, to do all
21 this affordable housing, to give the Legacy Lands, but then
22 they want to really limit the comments on the impacts to
23 La'au, even though they're saying La'au is just a component of
24 a master plan. And, therefore, I think people have been
25 coming on the whole master plan to really see what the impacts

1 of this are.

2 But there are -- The Legacy Lands do not include any
3 lands at La'au. And as far as the easement and ag lands,
4 rural and ag easement lands, 24,000, they're going to maintain
5 ownership of those. And even though the land trust manages
6 them, they have no say on whether they could -- they can't
7 sell them or not. I mean, if they have a buyer, they can buy
8 them. So nothing has really changed on those. Those are in
9 the same position as they were before this whole La'au issue.

10 MEMBER PYLE: But, you know, if I were to think
11 about this -- And we'll just use as an example for Maui island
12 A&B, for instance, because they're a large landowner on Maui.
13 If AB wanted -- and, I mean, I was trying to think about this.
14 They wanted to do some construction in Haliimaile, which is
15 probably something they do want to do, and then they present
16 an EIS and say, But we, A&B, are going to preserve all kinds
17 of land out at Hamakuapoko and instead we want to develop
18 Haliimaile. That's not -- It's like apples and oranges. And
19 that's how I kind of see this, is we're supposed to be talking
20 about La'au Point and, yet, we're actually not.

21 MEMBER FREDERICKSON: Yeah.

22 MEMBER PYLE: And that's a really bothersome thing
23 in this thing.

24 MS. McPHERSON: Chair, may I make one more point of
25 clarification?

1 CHAIR KALALAU: Yes.

2 MS. McPHERSON: They are requesting an increase in
3 the conservation district area for the shoreline area, and so
4 that is also mentioned as a mitigation. One problem with that
5 that I saw was that they were not recommending an increase in
6 the conservation district subzone at this time. They were
7 mentioning that it could just be in general and, you know.
8 And there was a mention of the limited subzone.

9 Now, for archaeological resources, many times the
10 protective subzone is recommended. So I think the question
11 with the -- Expanding the area of the conservation district
12 could be seen as a mitigation measure. I think the point that
13 needs to be clarified is: What would the subzone of that
14 conservation district be? And would DLNR be involved in
15 management and enforcement in that conservation district?

16 MEMBER PYLE: Thank you. I think that's really a
17 good comment.

18 MEMBER FREDERICKSON: Yeah, that's really good.

19 MEMBER PYLE: But that's not what they say here. If
20 you look on page 89, it doesn't say anything about the
21 conservation district. Instead it just says that the
22 mitigation measures are the donation of this land and these
23 Native Hawaiian Legacy Lands. And so if they wanted us to
24 include the conservation zone upgrades as part of their
25 mitigation, they didn't say so.

1 MEMBER FREDERICKSON: That needs to be stated.

2 CHAIR KALALAU: And, also, I think this commission
3 on the first meeting we discussed that conservation zone area
4 in front of all the lots. I think that we asked for an
5 extension, that it be wider because of the fauna and the ocean
6 vegetation that goes down there. And we didn't want people
7 trampling on all those native plants and stuff like that.
8 This is why I think we asked for access on the farther ends of
9 that area. And we also --

10 MEMBER PYLE: They talk about that on page 97, not
11 on page 89.

12 CHAIR KALALAU: Right.

13 MR. SOLAMILLO: Thank you.

14 CHAIR KALALAU: Okay, Eric.

15 MEMBER FREDERICKSON: I'm going to -- I have some
16 more -- I guess there's, obviously, been a lot of work put
17 into this DEIS process and, you know, I've got a -- I'll give
18 the developer a credit up to a point for that. I mean,
19 there's been a lot of community input, but this kind of sort
20 of push -- It's kind of a rush job now and I've got a big
21 problem with that. It's very -- I don't feel comfortable with
22 it.

23 This is a very involved, large project. It's going
24 to have a lot of impacts. And I get really disturbed when
25 I -- when this -- It was just handed out to us, you know, this

1 45-day time limit is more than adequate and et cetera, et
2 cetera. And I -- That, to me, it just raises flags and -- in
3 my mind about, you know, the ultimate intent here of the
4 developer. I mean, we're involved in a lot of EIS projects
5 and I always appreciate when developers can be flexible on
6 time.

7 And especially, this isn't like it's a polished
8 document. There are a lot of, I think, problems and
9 shortcomings that need to get addressed. And to just be
10 saying that -- or from what this was released to "Maui News"
11 on February 15th, not giving any more time and saying 45 days,
12 practice has shown that that's enough, and in this situation I
13 don't -- just doesn't cut it to me.

14 But I know they've -- I will say that the develop --
15 I mean, this is a very complex project and there's been a lot
16 of time put in on it, but instead of trying to rush it right
17 at the end, a little more patience on the part of the
18 developer I think would pay big dividends in terms of public
19 relations. But that's just my comment.

20 CHAIR KALALAU: Thank you, Eric.

21 We're going to take a short break right now and
22 reconvene in about five minutes.

23 (Pause in Proceedings: 10:10-10:25)

24 CHAIR KALALAU: Okay. Commissioners, now that we
25 have our corporate counsel here and staff here, this meeting

1 is now in order.

2 Okay. We'll have -- Mr. DeGray will speak right now

3 and --

4 MR. VANDERBILT: Yeah. I just want to make a short
5 comment and then I can get out of your hair. But I do seem to
6 think you guys may have more fun than our Planning Commission.
7 I'm hearing the word champagne and parties and maybe we ought
8 to hang around here a little bit longer.

9 But, anyway, no, the only thing we put -- In our
10 draft comments, our Planning Commission made it real clear as
11 a preamble into our comments that we were very disappointed by
12 not extending the time frame. And I would hope that this
13 commission would at least put on the record in their comment
14 letter whatever they feel about not getting the time extension
15 and how that may have impacted the -- you know, your ability
16 to do the due diligence that needed to be done. So that
17 would -- it would be helpful, especially after that piece that
18 appeared in "The Maui News," which I'm sure will surface
19 again.

20 So, anyway, thank you very much for letting me share
21 my mana'o and --

22 CHAIR KALALAU: Any questions, anybody?

23 MEMBER MOIKEHA: Just I asked him a question during
24 break, so I want it on record, so --

25 CHAIR KALALAU: Okay.

1 MEMBER MOIKEHA: And I asked him about the master
2 plan, you know, and as far as if it holds weight, if it's law,
3 you know, like and --

4 MR. VANDERBILT: Well, I was on the -- This whole
5 plan was done in partnership the Molokai Enterprise Community
6 and MPL. And they got together and talked about reopening the
7 Kaluakoi Hotel and that, apparently, led to getting everybody
8 together for a master plan for all of the ranch's property.
9 So the EC formed an Enterprise Community Land Use Committee on
10 which there were about 25 members. I was on that. And for
11 two and a half years we worked on the master plan. A lot of
12 the EC board members were on that. There were a lot of ranch
13 employees on both the EC board and on the Land Use Committee.

14 This plan has no force and effect of law. It's just
15 like any other developer's internal plan, basically. Like
16 some of you, I give the ranch credit for initiating the plan.
17 I was excited when I got involved, but then when we needed to
18 do about six months more work to put standards on the resort
19 development, to get, really, everything done, the ranch really
20 pushed for us to make a decision. And the decision was: You
21 got to go for La'au or the whole master plan is down the tube.
22 Okay?

23 So that was approved 19 to 6 to move it on to the EC
24 board. The EC board approved it 10 to 2. So 29 people voted
25 for it. If you take out the ranch employees, the duplicate

1 people that were on the EC board and the Land Use Committee
2 and take off the people that only came to less than 20 percent
3 of the meetings, you end up with less than a dozen people that
4 approved this plan. So the community base thing is a little
5 out of whack. That's what it was intended when it started and
6 there were a lot of good things that were happening and -- but
7 at the end of the process, we were just rushed and we needed
8 about six more months of work.

9 And I think it was Commissioner Frederickson brought
10 up the same thing. This document needs a little more time.
11 And I think the extension, the 30-day extension would have
12 helped everybody out. And as you guys said at the last
13 minute, I think you were skeptical about the ranch extending
14 it. And I really felt, as I wrote in my letter to you last
15 meeting, that they were going to use this meeting to show all
16 of us other people that asked for extension that, Hey, this
17 Cultural Resources can do it in the time frame, so we're going
18 to deny it.

19 So, anyway, thank you very much. I'll see you guys.

20 CHAIR KALALAU: One more question, DeGray. You
21 know, all these community planning and general plan, isn't
22 some of this information going to be put into the EC with like
23 the Maui County planning, the whole package for Maui County?

24 MR. VANDERBILT: We didn't -- I was on the GPAC. We
25 didn't put any of it in. But I think, you know -- I just

1 think, as I mentioned at the break, too, that I really think
2 that this plan was hatched before anybody even came to
3 Molokai, because basically all it is is that Molokai
4 Properties is giving up 26,000 acres of nonstrategic lands, as
5 they call them, which are not developable in anybody's
6 lifetime -- no water, protected by cultural resources -- and
7 in return getting a high-end coastal development. But,
8 basically, they're keeping everything else.

9 They're keeping all the resort properties. They're
10 keeping those properties up at Kalai. They are giving some
11 lands for affordable housing around Kualapuu and Maunaloa, but
12 they're not giving them. They're going to keep ownership and
13 they'll sell them to whoever is building affordable houses.
14 And they are giving a thousand acres in Kaunakakai for
15 affordable housing. But other than that, it's basically the
16 same plan that they had before we started all this work, so --

17 But I really feel comfortable that something good is
18 going to come out of this, because everybody is focused,
19 whether you're on one side or the other, everybody is focused
20 and I think that, hopefully, an alternative to La'au will come
21 out and that we can preserve some of the -- an alternative
22 that's consistent with the other environmentally sensitive
23 parts of the master plan. I think it will be really helpful
24 to Molokai. I think all of the other ranch properties will go
25 up in value because it'll get a lot of good publicity.

1 So I think there's a potential for a lot of good
2 things to come out of this. It's just a trying time right now
3 that everybody is having to go through. So, anyway --

4 CHAIR KALALAU: You know, one more question. What's
5 your feeling on if the Molokai Ranch people sold out that
6 whole area to somebody else?

7 MR. VANDERBILT: Well, that -- If you read the
8 marketing and economic, they have sort of come to -- They have
9 said to our community -- They describe it as implementing
10 their Doomsday scenario on Molokai, which is shutting down the
11 ranch, land banking everything and selling everything off to
12 other owners. That doesn't bother anybody. Somebody else is
13 going to come back in, buy up the lodge, probably open the
14 hotel a lot quicker and people are going to be back to work
15 after being off for six months or eight months collecting
16 unemployment for a while.

17 The problem we have, though, Mr. Chairman, is that
18 we have no assurances from these billionaire companies, Local
19 Leisure, Limited or Global Group out of Singapore and Hong
20 Kong, we don't have any assurances that if they get the La'au
21 Point approvals, they're not going to sell out. Because right
22 now they have nothing to sell. They're losing \$5 million in
23 operations. But if they get La'au, they're going to have
24 something to sell.

25 So people don't put much -- That threat of the

1 Doomsday scenario doesn't bother anybody on Molokai. Molokai
2 will survive. And whoever comes in, hopefully, will see --
3 take the best parts of this master plan and we can move
4 forward on a positive basis. So whatever happens, I think
5 something good is going to end up for Molokai.

6 CHAIR KALALAU: Veronica.

7 MEMBER MARQUEZ: Yeah. I would just like to thank
8 and say mahalo (Hawaiian). It's good to hear the positive
9 points.

10 MR. VANDERBILT: Thank you, Veronica. All right.

11 MEMBER MOIKEHA: One last question from me, that is.
12 There's so much information here. Is there something that you
13 would recommend? Is there something that we're missing or
14 you'd want us to kind of focus in that perhaps this is what we
15 should be looking at rather than rehashing?

16 MR. VANDERBILT: Well, I don't -- I tried to get
17 something together, but then I left it on Molokai. A little
18 bit -- But there's just so much and you don't have the luxury
19 of time. You're just going to have to pick out -- And it
20 seems like you're circling around a few good ideas and already
21 picked up some stuff.

22 I get concerned when our real -- some of the real
23 cultural specialists on Molokai -- John Kaimikaua had also
24 mentioned this. In the chants and everything that the La'au
25 area was -- had a real significant identification with the

1 ancient Makahiki games. That's where the closing ceremony is.
2 And then I get disturbed when I see members of the land trust,
3 respected members in our community saying things like they
4 found -- in their research, they could find nothing in
5 writing.

6 Well, I don't know how much is in writing from
7 ancient times and passed down through the chants. But I know
8 Vanda Hanakahi, who is Molokai's representative on the Aha
9 Moku Council, she has given testimony at length. I think I
10 provided this commission at the last go-around a copy of her
11 testimony to the Planning Commission. And she's been very
12 adamant about the connection of La'au area to the ancient
13 Makahiki and also to the fact that this is a sacred area,
14 so --

15 Unfortunately, again, with the time frame, it's too
16 bad people couldn't get over here and --

17 CHAIR KALALAU: Okay, Veronica.

18 MEMBER MARQUEZ: Just a point of interest. Isn't it
19 interesting that the Makahiki Festival has been going for 20
20 something years. Right, DeGray, 20 plus years? This is the
21 only year that they culminated that activity with the La'au
22 manao, so I thought, How timely?

23 MR. VANDERBILT: Well, no. And I think it was just
24 out of respect for what people have learned out of this
25 process.

1 MEMBER MARQUEZ: Education.

2 MR. VANDERBILT: Education. And I have heard from
3 some cultural specialists that somebody on the land trust is
4 saying, Well, it's obvious. If you have the Makahiki now
5 at Nai, but the closing ceremonies would be there. But then
6 from some cultural specialists that was -- there was nothing
7 that said that the closing ceremonies had to be where you held
8 the game. So I'm not a cultural person, I don't pretend to
9 be, and --

10 But, anyway, there's just a lot of information out
11 there. And, see, that was stuff that was mentioned at the
12 Land Use Commission hearings and all of that stuff would have
13 been good to have on the record. So there's been a lot of
14 hitches in the road here that have caused everybody a lot more
15 stress. So I guess we've got to do the best we can.

16 MEMBER MARQUEZ: Okay.

17 MR. VANDERBILT: But we'll keep you in touch over
18 the Land Use Commission, because we're not going to let that
19 one go.

20 CHAIR KALALAU: Thank you.

21 MR. VANDERBILT: All right. Thank you very much.

22 MS. McPHERSON: Chair.

23 CHAIR KALALAU: Okay, Nancy.

24 MS. McPHERSON: Nancy McPherson, staff planner.

25 After going through a little bit more of the video, I did find

1 another section, a short section of ole and manao on cultural
2 issues by Pilipo Solatario, and if you would like we can
3 present that to you now. It's up to you. But it's the -- I
4 was looking mainly for the hula and the ole, and this is the
5 ole part that I was looking for. So it's up to the
6 commission. Do you want to take the time?

7 MEMBER PYLE: That's what we're all about.

8 CHAIR KALALAU: Go for it.

9 MS. McPHERSON: You will?

10 CHAIR KALALAU: Roll it.

11 MS. McPHERSON: The County needs to get us some
12 better equipment.

13 (Playing video.)

14 MS. McPHERSON: Shall I stop or you want to let him
15 finish?

16 (Playing video.)

17 MEMBER MOIKEHA: Is he still working?

18 MEMBER MARQUEZ: Yes.

19 MEMBER PYLE: They wouldn't dare. He's absolutely
20 right, though. And as DeGray has also said, this is just
21 tearing the community apart.

22 MEMBER MARQUEZ: And to be fair to all, it depends
23 on who you talk to, what manao you get. That man, if you
24 don't know, is well represented in the Hawaiian cultural
25 manao, arena. And, yes, he is employed by MPL and, yes, he is

1 a Hawaiian cultural specialist. And gets respect from the
2 island alone, let alone that this man's own cultural
3 (Hawaiian) has deep roots. So, yes, if you live on Molokai,
4 like some of us try to and we do, it depends on who you
5 (Hawaiian) talk story with, and you should. And then you will
6 hear ten different people with ten different manao. So in all
7 due respect, we need to hear everybody.

8 CHAIR KALALAU: What was his last name?

9 MEMBER MARQUEZ: Solatario. Very well respected.

10 CHAIR KALALAU: And now we have Stan.

11 MR. SOLAMILLO: And I have very little wisdom.

12 (Laughter.)

13 MR. SOLAMILLO: I'm just going to make an aside
14 comment. I went to -- Well, I think a lot of you know that I
15 came here when I was little and was away for a very long time,
16 then I came back. And when I went back to Texas -- I was
17 living in Texas. It was like 20 years I was living in Texas.
18 When I first came back from Maui, I wouldn't wash my feet, I
19 wouldn't wash the dirt from my feet because that's how
20 important it was for me to come back.

21 When I did come back and I saw what happens, I was
22 in shock. I went to an SHPD conference in 2007 and I said,
23 They use Hawaiian to sell everything. And all the
24 archaeologists and historians looked at me like I was some
25 idiot, kind of like: So? And it was like -- Because whether

1 you're dealing with Hale this or Hale that, everyone names
2 their projects and everything. And then going and the more
3 you learn about Hawaiian culture and how important it is
4 and -- How it's sold. It's all of the aina and the sea and
5 the sky and it's everything, and how little bits and pieces
6 get carved off and -- It disturbs me inside. But, needless to
7 say, that's the advocate talking.

8 We have a limited amount of time because I have to
9 go to a budget hearing at 1:30 and Suzette has to go to Hana.
10 Right? And so does Mr. Hopper, our corporate counsel. So if
11 you could, we need your comments because I've got to turn this
12 baby around in 24 hours and send it via fax by COB tomorrow.
13 So if we could just -- I hate to be this way because I would
14 love to sit and see the whole presentation --

15 CHAIR KALALAU: Okay, Eric.

16 MEMBER FREDERICKSON: I've got a comment. Just
17 seeing this last -- I guess it's still called video, even
18 though it's not on tape -- but I'm even more disturbed about,
19 you know, this missing minutes and just this whole -- the
20 whole project. I'm just --

21 I'm going to read something from -- This is the
22 review letter for this data recovery plan which is based, as
23 far as I know, on the Bishop Museum report on saying these are
24 the sites, which, as far as I know, there never was a revised
25 report that was submitted. Certainly the DEIS doesn't have --

1 well, that I could see -- any more correspondence from the
2 State Historic Preservation Division. But this is just -- For
3 you folks' information, this was when the State Historic
4 Preservation Division was in disarray and --

5 So this is the February 13th, 2007, letter, Doc No.
6 02 -- excuse me, 0702-NN-10. But just the first -- the first
7 sentence here, this is what it says: "Thank you" -- And I'm
8 just reading what's here. "Thank you for submitting the
9 revised data recovery plan, which is 875 acres for a
10 residential community comprising of mixed residential uses,
11 cultural preserves, parks and shoreline access." It doesn't
12 appear that there was a lot of proofreading going on on that,
13 but --

14 Anyway, this is a problem that's been a couple years
15 in the making. The State Historic Preservation Division has
16 been chronologically understaffed. And I guess my comment as
17 a commission member and someone from the archaeological
18 community -- And this is -- doesn't directly have to do with
19 the DEIS, but it does in some respects because the State is
20 under -- the State Historic Preservation Division is
21 understaffed. And with understaffing comes not enough time to
22 do what they are charged with doing.

23 The person that wrote this letter is now the acting
24 director, but she was the Kauai archaeologist and then also
25 was -- had to cover Molokai because there are a whole bunch of

1 folks that quit the department. And there are still staff
2 shortages and I -- This comment goes to the governor and also
3 to the new chair of the -- of DLNR, Laura Thielen: Please
4 fund the State Historic Preservation Division promptly so
5 there's adequate staffing, period. It's a department that has
6 a critical function in the state and it's not broken, but it's
7 not working very well.

8 Now, coming back to the DEIS, the concern I have --
9 one of many concerns is the -- does SHPD even have -- do they
10 have enough time to look at this massive volume of material
11 that's kind of -- they've been getting, I'm assuming, the
12 last -- this last couple years in this process? I mean, do
13 they have enough time to do that or enough staff? I don't
14 think so. So that's something I'm -- I am disturbed about.

15 Now, the fact -- Going back to what I'd talked about
16 before, the fact that there's only two letters in this whole
17 DEIS from SHPD for this very large project is -- I'm really
18 troubled by that. Whether it's an oversight on the preparers
19 of the DEIS or if that's all there is, either way, it's a
20 problem I have with the DEIS.

21 CHAIR KALALAU: So, Eric, what you're trying to say
22 is that we should send a letter to SHPD and -- telling them
23 that, you know, we're not satisfied with their decision on the
24 DEIS and that we feel that because they're understaffed, that
25 they're not making the best decision that the State should be

1 offering to the community?

2 MEMBER FREDERICKSON: I'm concerned that there's --
3 that there's not -- they're not enough staff to adequately
4 keep track of a huge project like this.

5 And I'm also concerned: What's the status of the
6 1994 letter that requested revisions to this large, large
7 inventory survey? Was there ever a letter prepared? Were the
8 revisions ever sent out? From looking at the DEIS, I don't
9 have any clue.

10 MEMBER PYLE: It seems like what Eric is talking
11 about are two different channels of direction.

12 MEMBER FREDERICKSON: Yeah.

13 MEMBER PYLE: One is that as a commission, we should
14 be -- And, really, directing it to the State Historic
15 Preservation Department is not the direction to go in.

16 MEMBER FREDERICKSON: I think DLNR or the governor.

17 MEMBER PYLE: Perhaps to the governor and the
18 director of -- or the chair of the Department of Land and
19 Natural Resources, because it's through their appropriations
20 and their work plan that the staffing for the Historic
21 Preservation Department is done.

22 MEMBER FREDERICKSON: Yep.

23 MEMBER PYLE: But I think that we probably should
24 comment to that. And then Stan will remember that for the
25 last three years that I have been sitting here, I've been

1 grousing about the fact that we get very little information
2 from the DL -- from the State Historic Preservation.

3 You've been copying all those letters for us.

4 MR. SOLAMILLO: No, Susie has.

5 MEMBER PYLE: Well, somebody has been copying and
6 we've been getting them. And I've paged through them, and I
7 have asked to have someone from their department come and
8 speak to us numerous times.

9 MR. SOLAMILLO: That will finally happen this year.

10 MEMBER PYLE: To figure -- Well, of course, it's
11 finally changing, but --

12 CHAIR KALALAU: And you're leaving us.

13 MEMBER PYLE: Yeah. They didn't want to see me.
14 But -- Because just sending us -- sending the County a letter
15 about a huge project does not fulfill what I consider to be
16 their obligations. And we don't have an intact process for
17 the County to work with them. We just simply don't. And that
18 needs to be improved greatly. So I think there does need to
19 be some correspondence about our frustration, perhaps, in
20 trying to deal with major archaeological historic preservation
21 issues in Maui County. As a commission, we're not getting the
22 proper information from the State Historic Preservation
23 Division and without that, we can't do our jobs properly.
24 That's one direction.

25 And I think the other direction that you're talking

1 about is that because there has not been adequate staffing and
2 because the proper information -- yea or nay, the proper
3 information is not available in this DEIS, it's making it
4 extremely difficult for us to make any judgements. We don't
5 have adequate knowledge of the archaeological inventories and
6 the archaeological mitigation plans that have been presented
7 or approved or disapproved by the DLNR staff. So I think
8 that's a very serious issue.

9 MEMBER FREDERICKSON: Yeah.

10 MEMBER PYLE: So that's my summary. I don't know
11 whether that's --

12 MEMBER FREDERICKSON: That sounds good.

13 MEMBER PYLE: Two different directions.

14 MEMBER FREDERICKSON: Yeah, there are -- I do have
15 those two concerns. One is about the state of SHPD, the
16 staffing, the adequate staffing. And there is not adequate
17 staffing. I know it. I've grown up on Maui. I've been
18 involved in archaeology here forever. And this is the worst
19 that I have ever seen the State Historic Preservation
20 Division, the worst shape I've ever seen it in.

21 And it doesn't -- that doesn't mean that, you know,
22 the DLNR chair needs to start calling up, you know, folks at
23 SHPD on Maui and say, "Hey, work more." There's not enough
24 people to do the work here, period. And, also, I don't know
25 what the status is on the Big Island, but I know for a long

1 time the Maui archaeologist, when there were two, had to go
2 over to Big Island and cover work there.

3 MEMBER PYLE: And now there's none.

4 MEMBER FREDERICKSON: And now there's one Maui staff
5 archaeologist and there should be two. And there should be
6 one tomorrow, but --

7 MEMBER PYLE: Who is that person?

8 MEMBER FREDERICKSON: Who is there now?

9 MEMBER PYLE: Yeah.

10 MEMBER FREDERICKSON: Jenny.

11 MEMBER PYLE: Okay.

12 MEMBER FREDERICKSON: But going back to the DEIS
13 itself, I'm concerned, again, about that -- You know, the
14 Bishop Museum study was of a very large area, over 6,000
15 acres, and it's been a long time already. Fifteen years ago
16 IS when that fieldwork was done. In '93, that's 15 years.
17 And not having the -- what they're basing a lot of this
18 information on is -- Well, we don't need to do work that was
19 during the 1993 survey interpreted as those sites weren't
20 significant anymore, but they're basing the work format, if
21 you will, on a report that's very old. And from looking at
22 the EIS, I see nothing that says it was accepted finally,
23 officially accepted.

24 MEMBER PYLE: A question about that. Because, you
25 know, what I start talking about all this, my memory goes

1 backwards, because I was previously on this commission quite a
2 while ago. And it would be interesting or perhaps informative
3 for us to know what the impetus for the Bishop Museum survey
4 was in the first place.

5 MEMBER FREDERICKSON: Yeah.

6 MEMBER PYLE: And if my memory serves me, it was the
7 ranch.

8 MEMBER FREDERICKSON: I'm sure it would have been.

9 MEMBER PYLE: So what was the impetus for this
10 survey in the first place? Then what was or was not
11 acceptable about it? And without -- Probably if somebody can
12 dig up any of the CRC records from the mid 1990s, which I'm
13 sure nobody wants to do --

14 MEMBER FREDERICKSON: Even earlier than '90.

15 MEMBER PYLE: -- there probably -- If my memory
16 serves me -- And, Eric, you might remember Sara Collins.

17 MEMBER FREDERICKSON: Yeah. She was the Molokai
18 archaeologist.

19 MEMBER PYLE: She was. And she came several times
20 to our CRC meetings to discuss the -- And she was working for
21 the SHPD. And she was discussing the issues about the sites
22 that were, I guess, in question. So my memory is that there
23 was some kind of give-and-take back and forth in the 1990s
24 that -- you know, I can't be positive, because I can't
25 remember that well, but it could definitely concern large

1 areas of the west end of Molokai that the State Historic
2 Preservation Division was concerned with back then.

3 MEMBER FREDERICKSON: Yeah. In the review letter
4 that reviewed the first -- well, the draft inventory survey
5 report that was submitted -- I didn't bring those, but I think
6 there were three -- two or three pages of -- in the comments
7 section that were requested revisions or -- and/or SHPD
8 disagreements with the significance criteria that were posited
9 in the report and, also, I believe some of the mitigation
10 commitments, too. So there are a number --

11 MEMBER PYLE: So were those ever done?

12 MEMBER FREDERICKSON: Yeah, yeah.

13 MEMBER PYLE: Is what the question is. Anyway, lack
14 of information.

15 MEMBER WHELCHER: What year was the CRC formed?

16 MEMBER PYLE: 1990 maybe.

17 MEMBER WHELCHER: And we're looking --

18 MEMBER PYLE: I came into the CRC at the end of the
19 first five years and I cannot remember the first year that I
20 was involved. So it might have been '89-'94 and then I was
21 here from '94 to '99 or '93 to '98 or something like that.
22 Eric's mother crossed over with me a few years in CRC at that
23 time.

24 MEMBER MOIKEHA: Chair, a question. Do we start our
25 recommendations now, or is it just going to be dug out and

1 they are going to compile or do we have formally phrase
2 everything and --

3 CHAIR KALALAU: Stan, what are you --

4 MR. SOLAMILLO: What I have actually been doing,
5 because we have a lag time between when we can get finished
6 minutes, is actually taking your comments now and those will
7 be incorporated in the comments tomorrow.

8 One thing that has -- I touched briefly on it was
9 the -- and Nancy may correct me if I'm incorrect, and I often
10 am -- the structure of the protective body, which consists of
11 the homeowners and residents and members of this trust --

12 MEMBER PYLE: Land trust.

13 MR. SOLAMILLO: -- land trust group operating almost
14 ad hoc, free of any kind of oversight with regards to cultural
15 resources to me is extremely disturbing, you know. And,
16 frankly, you know, if you're going to put something and you
17 want to preserve something, it either goes to the State or it
18 goes to the feds. I mean, I just -- This quasi-public/private
19 thing is really disturbing.

20 MEMBER FREDERICKSON: Stan, yeah, that -- But,
21 typically, the sites typically follow the property. So let's
22 say there's a, you know, site sort of slated for preservation,
23 so there would be a preservation document that has the site
24 descriptions, et cetera, and those are -- actually follow the
25 deed, so there is a public record.

1 MEMBER PYLE: Enforcement.

2 MEMBER FREDERICKSON: Yeah. And that's what I was
3 going to say, that the enforcement part is the tricky --
4 that's the tricky part. And I have seen good cases and then,
5 you know, bad cases of it, but --

6 So the -- typically, the land or the -- excuse me.
7 The archaeological sites that are being preserved will follow,
8 you know, the deed, so to speak. So who owns the property
9 ultimately, to some extent, may own the site, but they're not
10 allowed to do anything to it. Sometimes there will be a
11 trust, like -- I don't think this land trust is the same
12 thing, but sometimes there will be something called a cultural
13 overlay that's in place. And one of the large projects we've
14 been working with on the west side uses -- has used that
15 before, this cultural overlay concept that other developers
16 use it -- developments use that, too, sometimes. Not all the
17 time, though. But it's not -- it's certainly not a perfect --
18 that doesn't work perfectly. It's in -- The preservation
19 system is evolving.

20 MEMBER PYLE: My memory also tells me that twice --
21 at least twice that I can think of, this commission was
22 informed by someone in the community that a buffer area that
23 we had definitely created around -- the commission had created
24 around a cultural site had been violated by the developer.
25 And so we had to haul them back in here and then get the

1 Planning Department and the County to enforce. And so they
2 were very -- The one -- Makena Surf is the one that I remember
3 very well. They were very, very, very annoyed because it made
4 them tear out retaining walls and construction that they had
5 done because -- but they were in violation of the agreement of
6 the buffer zone.

7 But there is no enforcement. Unless someone
8 actually goes and sees it, there is no enforcement whatsoever.
9 And a golf course, do you really know that they have preserved
10 all of the areas that they say they're going to? And suddenly
11 they're just -- Who knows? So it's a real problem.

12 MEMBER FREDERICKSON: And what you said, it's
13 typically someone from the community. And that's how the
14 State Historic Preservation Division responds to things when
15 they have adequate staff, is community members will -- some,
16 you know, concerned citizen will call in and say, Hey, you
17 know, X, Y and Z is going on. And then, you know, someone
18 from SHPD will go and investigate that. Or somebody from
19 DOCARE, the enforcement arm of DLNR, but someone from SHPD
20 typically will --

21 MEMBER PYLE: But it's reactive, not proactive.

22 MEMBER FREDERICKSON: Yeah, you're right, it is.

23 CHAIR KALALAU: Yeah. I mean, we had a lot of those
24 kind of problems on the burial council.

25 MEMBER FREDERICKSON: Sure.

1 CHAIR KALALAU: It was supposed to be a buffer zone
2 and there were encroachments. But it was bad, yeah, because a
3 lot of times the complaint is coming from the public people.
4 Enforcement is a major problem. You know, you get one
5 inspector for the whole county, for half of the state and
6 stuff. And if the public don't come out for it, you know, you
7 lose a lot of those stuffs.

8 MEMBER FREDERICKSON: You know, Sam, you reminded me
9 of something. I didn't get a chance to look over the cultural
10 impact assessment quite as much as I wanted to, but throughout
11 this document there are occasionally references to, you know,
12 if -- you know, if burials are discovered, then the State
13 Historic Preservation Division would be notified, OHA, but
14 there's no mention in there of working with Molokai Burial
15 Council. And I -- you know, that -- you know, I didn't --

16 MEMBER PYLE: It has precedence over that.

17 MEMBER FREDERICKSON: Yeah, it certainly -- that
18 certainly should be in the DEIS. I mean, at least the
19 sections I looked at, I didn't see any reference to Molokai
20 Burial Council and --

21 MEMBER WATANABE: I have a comment, too. I sit on
22 the Native Hawaiian Historic Preservation Council. We talked
23 about having cultural monitors on site and they talked about
24 actually doing workshops to train people to become cultural
25 monitors, but, of course, the problem there was, you know, the

1 monies. There are some cultural monitors that -- you know,
2 they are from the island and some was willing to do it without
3 pay. But part of it is having monitors on site when
4 developers are building. And the problem we also saw was the
5 contacts, like who do you contact, you know, especially -- and
6 who is your representative on the island. Because I think
7 there's a lot of glitches there because a lot of people, they
8 don't -- What is the process? But I know they really talked
9 about having cultural monitors on sites when developers are
10 building.

11 MEMBER FREDERICKSON: There is a -- excuse me -- a
12 reference in here someplace, I think it's in the body of the
13 EIS, where they indicate that a revised monitoring plan is
14 going to be submitted, but --

15 MEMBER PYLE: They haven't done it.

16 MEMBER FREDERICKSON: That hasn't been submitted.
17 And I would assume that the monitoring plan would have some
18 contacts, again, but I don't know. I didn't see that. I may
19 have missed it. I'm assuming it must be in one of these
20 appendices, but I didn't see it in my -- Actually, I did see
21 one of them in I think it was Appendix L, but I didn't have
22 enough time to go through and see if Molokai Burial Council
23 was referenced in there.

24 But they certainly should be a party, one, that was
25 consulted about this. I mean, because there are a lot of

1 burial sites, et cetera, in this whole large project area.
2 And a lot of potential burials that have not been noted
3 because that Bishop -- Even in the EIS, the Draft EIS when
4 they're talking about this road, they're saying, We'll go back
5 in because there could be sites that were missed in the
6 inventory survey from 1993. Which, you know, I agree with,
7 yeah, there certainly could be. Not just because it was done
8 15 years ago, just because it could have -- if it was done in
9 the winter, there would be hot spots and tall vegetation, et
10 cetera.

11 MEMBER WATANABE: Exactly. Changes.

12 CHAIR KALALAU: Nancy.

13 MS. McPHERSON: Well, a couple of things. There is
14 language in the cultural impact assessment that talks about
15 the community-based master land use plan for Molokai Ranch
16 provides measures to mitigate the overall impacts of the
17 proposed development at La'au. It goes on quite a bit to talk
18 about that. So, again, the -- It also says that impacts will
19 occur from the project.

20 MEMBER FREDERICKSON: Sure.

21 MS. McPHERSON: So I would just like the commission
22 to focus, if they could, since we're kind of running out of
23 time. It would be good if you could target your comments to,
24 one, requests for additional information where you feel that
25 there's not adequate information in the document, you would

1 like to see that information provided.

2 Two, areas where you feel the mitigations proposed
3 are inadequate, that they will not adequately mitigate the
4 impacts that have been identified. Or if there are impacts
5 that you feel that haven't been adequately identified.

6 And then, three, if you feel that the rationale for
7 proceeding with La'au Point -- notwithstanding the unavoidable
8 effects, if you feel that rationale is adequate. So those are
9 just a couple of points.

10 I was going to mention the burial council issue. It
11 is mentioned -- And I can't remember where in the document,
12 but it is mentioned. The burial council is mentioned. There
13 is no mention of the fact that it's currently inactive because
14 it doesn't have a full complement of members, so that needs to
15 be addressed.

16 And there is a map in the document on cultural and
17 historic resources, Figure 12, and it does have sites
18 identified. And there is a lot that actually has burial --
19 possible burials on it. And I really don't know how they're
20 going to deal with that. I don't see that specifically
21 discussed in the document.

22 MEMBER FREDERICKSON: Yeah. I see at least two with
23 possible burials.

24 MS. McPHERSON: Well, some of it's common area and
25 then some of it are lots, so --

1 MEMBER FREDERICKSON: Oh, yeah. I see what you're
2 saying, yeah. The one, I guess, would be in a common area.

3 MS. McPHERSON: Yeah, I can understand how they
4 could possibly protect it in a common area, but it's going to
5 be a lot more problematic -- They are going to be doing
6 building envelopes, so I would think that part of the analysis
7 of where to locate the building envelopes on the final
8 subdivision map would have to do with location of cultural and
9 archaeological resources.

10 MEMBER FREDERICKSON: But that needs to be --

11 MS. McPHERSON: But I don't know if that's
12 articulated.

13 MEMBER FREDERICKSON: It needs to be stated more
14 clearly --

15 MS. McPHERSON: Yes.

16 MEMBER FREDERICKSON: -- in the Draft Environmental
17 Impact Statement. That's the purpose of the document, or
18 supposed to be the purpose of the document.

19 MEMBER PYLE: Well, since none of us can probably
20 remember all the things that we have already said, hopefully
21 Stan is keeping notes for us.

22 MR. SOLAMILLO: Yep.

23 MEMBER PYLE: And perhaps is thinking of the three
24 different areas that Nancy talked about, which I can't
25 remember all those, even, now.

1 MS. McPHERSON: I can repeat them, if you would
2 like.

3 MEMBER PYLE: If we can look at the various things
4 that we have said and perhaps slot them into categories. Does
5 that make sense? And at least we're moving in the right
6 direction.

7 MS. McPHERSON: Well, and if you can just -- If that
8 would stimulate, you know, some ideas of questions that you
9 had when you were going through the document. Are there
10 particular places where you think information is missing? Are
11 there mitigations that you're not sure will actually work?
12 That sort of thing.

13 MEMBER FREDERICKSON: Oh, I have one. This is just
14 kind of a manini question, but on the cultural impact
15 assessment on the cover -- Oh, gees. What did I do with it?
16 Let's see. On the cover the author -- the primary author and
17 then the secondary author are both -- you know, they have
18 their titles: "Professor, Ethnic Studies Department,
19 University of Hawaii Manoa" and then "Department of Urban and
20 Regional Planning, UH Manoa." Does that mean that UH got
21 monies for -- Typically, when you do research or something,
22 the university gets a cut. Does that -- Did the university in
23 this case get monies?

24 MS. McPHERSON: I really don't know the answer to
25 that question. I actually know Sean McNamara and Davianna

1 McGregor is on my committee for finishing my master's degree.

2 So, you know, she has a very good reputation.

3 MEMBER FREDERICKSON: Oh, yeah. No, I --

4 MS. McPHERSON: And Sean was a very good grad

5 student --

6 MEMBER FREDERICKSON: I'm just curious if UH got

7 some funds.

8 MS. McPHERSON: I don't know how that was funded,

9 actually, but I know that Sean was working on it for Davianna,

10 but I'm not sure if it was through the university.

11 MEMBER FREDERICKSON: It's just that I'm not sure,

12 you know, what the ethics are involved -- If you do a job

13 outside of UH, if you're supposed to use all of your titles.

14 Because, I mean, to me it looks like -- And I'm not --

15 MEMBER PYLE: The university is supporting this or

16 whatever.

17 MEMBER FREDERICKSON: Yeah. And I just --

18 MEMBER PYLE: I hear you.

19 MEMBER FREDERICKSON: As a taxpayer, that's kind of

20 what I think. And it's like, Oh, that's neat if UH got some,

21 because that's usually how it works. If you have a research

22 contract, you get -- the department gets a share of it. Or I

23 guess the general fund of it gets a share of it, actually, but

24 maybe that's changed. But that's just a question I had. And

25 it's not a -- you know, to me that's not a show stopper or

1 anything for the cultural impact assessment at all, but it's
2 just a question I had.

3 MS. McPHERSON: That could be made as a comment.
4 That could be phrased as a comment, yeah.

5 MEMBER FREDERICKSON: I mean, that's not a big --
6 that's not a concern, even. Well, it's a slight concern. If
7 it's completely private, then I think it's not appropriate to
8 have, you know, your state occupation on a document.

9 MEMBER PYLE: So, Nancy, it seems to me that the
10 biggest comment or the one that seemingly has come forward the
11 most of lack of information concerns archaeological
12 information. That it seemed -- And everybody just needs to
13 correct me on what I'm saying here, but it seems that from the
14 commission's point of view, the lack of support documents
15 concerning the 1990's archaeological -- Bishop Museum
16 archaeological review leave many questions that are
17 unanswerable at this point in time.

18 It also seems that -- from my point of view, that
19 there's a great amount of emphasis placed on the preservation
20 of important archaeological and cultural resources, but that
21 those are mostly, if not all, not in La'au. And so I find
22 that to be inappropriate in this particular document to tell
23 us how much they're really doing in the land trust when that
24 really isn't the central concern of a DEIS about La'au Point.
25 So it seems to me that's a little confusing for the

1 information that we have at hand.

2 Do you want to add more about the archaeology?

3 MEMBER FREDERICKSON: Yeah. The other -- Well, one
4 of the other comments I would make is the State -- in their
5 February 13th letter, 2007, SHPD, second -- third paragraph,
6 it's one -- two sentences: "This plan also mentions the road
7 survey and resurvey work. We recommended that this be
8 completed as soon as possible." But I don't know, you know --

9 MEMBER PYLE: What that means.

10 MEMBER FREDERICKSON: -- has anything happened with
11 that?

12 MEMBER PYLE: Right. And, also, as we pointed out,
13 it says on whatever page that is that they have had -- the
14 data recovery has been approved, but none of the other plans
15 that they have submitted -- we have no evidence of any
16 approval from SHPD for any of those plans.

17 MEMBER FREDERICKSON: And to me, my -- And I didn't
18 have the time to cross-check all these sites that they're
19 talking about, but if some of those sites are sites that were
20 in contention in the 1994 SHPD review letter, it didn't
21 complete -- I mean, it requested revisions in the inventory
22 survey report and this document, this DEIS does not have that.
23 If there is a revised letter for that inventory survey report,
24 the document doesn't have it.

25 MEMBER PYLE: It says no action is planned for sites

1 that are deemed not significant in this same 1993 Bishop
2 Museum report, and without more validity of that report some
3 of these -- some sites could be quite important and could be
4 very much endangered because no action is planned for them.

5 Come on, you guys, you all have things to say, not
6 just Eric and I.

7 MEMBER FREDERICKSON: I will say one more thing and
8 then I'll jump back in a little bit later. But I am glad that
9 there are -- you know, there are steps being taken in this
10 Draft Environmental Impact Statement to, you know, place
11 historic properties in preservation status. I'm always, you
12 know, certainly in favor of that.

13 I guess just a general concern would be the impact
14 of the development on the integrity of the cultural landscape
15 itself. And the cultural impact assessment does point out
16 that, you know, some of these -- you know, that there are
17 concerns that people in the community have expressed, yeah.

18 There's -- I'll read one thing. It's on page 87.
19 This is in the DEIS body. "The overall general concern is
20 that the development of the area will destroy the special
21 quality of La'au as a special place of spiritual mana and
22 power. The overall spiritual quality of La'au area as a wahi
23 pana" -- Am I pronouncing that properly? "Wahi pana and wahi
24 kapu cannot be quantified and deserves recognition and
25 respect." And I mean, you know, that's a toughy. I mean, how

1 does one --

2 MEMBER PYLE: Respect a place and then dig it up.

3 MEMBER FREDERICKSON: -- respect a place that's

4 being developed with -- you know, with this level of

5 development. And, you know, like people in the community from

6 the two clips that we saw, these aren't homes that are going

7 to be purchased by folks that live on Molokai. This is a

8 high-end development, period. And, I mean, the cultural

9 implications for something like that in an area like this

10 is -- I mean, that concerns me just as a commissioner.

11 CHAIR KALALAU: Veronica.

12 MEMBER MARQUEZ: A general comment. I remember I

13 think a representative from MPL stated that the second DEIS

14 had no changes to the original DEIS when it came to the

15 cultural manao. Am I right for that?

16 MEMBER FREDERICKSON: Yeah.

17 MEMBER MARQUEZ: So here's my question: Do we still

18 consider our initial recommends --

19 MEMBER PYLE: 57 questions.

20 MEMBER MARQUEZ: 57, was it? And now we're adding

21 additional manao to make it 57 plus? Or do we wipe all that

22 out because that was withdrawn and we only take the manao

23 today? So what's the status?

24 MEMBER WATANABE: I would think manao today.

25 CHAIR KALALAU: Today's manao.

1 MEMBER MARQUEZ: Nothing?

2 CHAIR KALALAU: Hold on.

3 MEMBER FREDERICKSON: Well, if we feel that the
4 questions were adequately addressed in the first ones.

5 MEMBER MARQUEZ: So is it, Corporate Counsel?

6 MR. HOPPER: Oh, no. I -- Just as a guiding point
7 legally, yes, a new set of comments. But if you don't think
8 that your comments were adequately addressed, I would
9 recommend, you know, asking them again. And now -- you know,
10 normally you wouldn't get this sort of second crack at it
11 because the EIS would either be -- you know, could be
12 accepted. You're not guaranteed to have a second crack at it.
13 So you generally wouldn't necessarily be looking at your
14 comments again, although you could be making those comments to
15 the Land Use Commission as a member of the, you know, public.

16 MEMBER FREDERICKSON: Yeah, a concern.

17 MR. HOPPER: But now you could -- you know, you have
18 a chance to look over them again. You could say, I think
19 these were adequately addressed. Or the ones you didn't think
20 were adequately addressed, you could have sort of another
21 crack at them saying, This was the response. I don't think
22 this was an adequate response. And so maybe when they come
23 back with their second final EIS, they'll have a more in-depth
24 response to your comments than they would have had the first
25 time, potentially.

1 MEMBER MARQUEZ: So as a group here, Commissioners,
2 we'd better make sure that we are well versed on our first 57
3 manao in relationship to today's manao; otherwise, we're paa.
4 We have to be pono and paa.

5 CHAIR KALALAU: That's right.

6 Okay, Stan, you got a question.

7 MR. SOLAMILLO: So I guess my question is: Has
8 everybody reviewed the comments that were submitted by MPL?
9 And I know that Mr. -- Or the responses to our comments,
10 pardon me. And I know that Mr. Frederickson probably has --
11 at least has indicated that some of the responses were
12 inadequate.

13 MEMBER FREDERICKSON: I'd have to go back and look
14 at those again, too.

15 MR. SOLAMILLO: Did you check them?

16 MEMBER FREDERICKSON: Is this -- Are you talking
17 about this one or that other handout? This one, yeah?

18 MR. SOLAMILLO: The one that was a response to -- It
19 would be with the letterhead, MPL letterhead. So,
20 technically, we could go through that and then you could tell
21 me which ones are inadequate. Or has anyone looked at that
22 document?

23 MEMBER PYLE: I did look at them, but two weeks ago.

24 MEMBER FREDERICKSON: Yeah. I didn't spend a lot of
25 time looking at these. I was looking at the stuff I hadn't

1 been able to look at before, but --

2 MR. SOLAMILLO: Right.

3 MEMBER FREDERICKSON: Let me just go -- Well, let's
4 continue on and then I'll --

5 MR. SOLAMILLO: Continue on and then come back and
6 if you have anything that's substantive to those responses,
7 then we'll include those as part of these comments as well.

8 MEMBER FREDERICKSON: Well, here I have one right
9 away. This was No. 5. "How many areas in the development
10 itself provide access for residents only?" This was a
11 concern, I think, that people brought up about, Hey, you know,
12 it's -- what about the general public?

13 And response, two sentences: We are unclear about
14 the question. Residential common areas and private lots would
15 be private property accessible to its residents and guests
16 only, i.e., gated community." I find that an unacceptable
17 response.

18 MR. SOLAMILLO: Thank you.

19 MEMBER FREDERICKSON: No. 4, this was -- I guess
20 this was coming from the director, Planning Department
21 Director Jeff Hunt. "In my experience with CC&R's, 50 percent
22 of them don't read the covenants and of the other 50 percent
23 that do, 20 percent of those don't understand what they are
24 reading. How will you guarantee compliance?"

25 And it just goes on and on, but it -- Let me just

1 read a little bit. Let's see. "The CC&R's will be monitored
2 and enforced by the board of the association of owners of
3 La'au Point, affected lot owners and in certain circumstances
4 Molokai Properties, Limited as a declarant under the CC&R's.
5 The land trust will also have some enforcement powers over
6 some CC&R's."

7 I'm not comfortable with that. And they have --
8 They put in some language in there, but I --

9 MEMBER PYLE: Well, I think this speaks back to one
10 of the questions that we had a long time ago that might be
11 additional to this particular thing, is that the lack of
12 clarity throughout the whole cultural resources part of the
13 DEIS of the relationship between Molokai Properties, the land
14 trust, the homeowners association, the resource management
15 with no real -- And there may be something in an appendix, but
16 if there is, one of the things that we've mentioned for an EIS
17 is that there should be an ease of access to information. And
18 this is obviously not true. So we're left with no real
19 clarity of whose responsibility it is to enforce any of these
20 particular things. No clarity.

21 CHAIR KALALAU: Yes, Veronica.

22 MEMBER MARQUEZ: Number 22: "If you're going to
23 have enforcement, will the homeowners be educated about the
24 people who are there? Are they going to know that these
25 people are allowed to be there because of their rights?"

1 Answer: "Yes." Summarizing here is: All
2 homeowners, including those who are owners following future
3 resales should be achieved. Now, we don't monitor
4 enforcement. It's just manao that that's how they answered
5 the question. Okay.

6 MEMBER PYLE: Should be. Doesn't say will be.

7 MEMBER MOIKEHA: The only comment I really have is
8 just total enforcement of a lot of different things. Even in
9 item No. 4 where it says, "La'au Point aims to attract people
10 who respect the unique character of the site." And Molokai --
11 Who is going to ensure -- How do you ensure that you can
12 attract that kind of people? You know, all those kind of --

13 MEMBER PYLE: You interview them before they, you
14 know -- Show me how you respect the land.

15 MEMBER MOIKEHA: Yeah. All those you can't -- Yeah.

16 MEMBER FREDERICKSON: It's all fuzzy, feel good, but
17 there's no --

18 MEMBER MOIKEHA: I mean, they answered all the
19 questions, but --

20 MEMBER PYLE: No teeth.

21 MS. McPHERSON: Maybe the strategy could be to
22 identify the comments that actually were responded to
23 adequately. That might narrow things down for you. And then
24 just readopt all the rest.

25 MR. SOLAMILLO: Thank you.

1 MR. HOPPER: I would recommend, also, in fairness,
2 though, that you let the LUC know -- or the applicant and
3 then, for the record, the LUC know why you thought the
4 response was inadequate, lest the LUC simply say, We believe
5 this is an adequate comment. They are the ultimate judge as
6 to whether or not they were adequate responses and if they
7 fulfilled their duties. But if you've got a specific reason
8 why you think it's inadequate, I would recommend that you note
9 that for the record so that the LUC eventually could see in
10 case the MPL simply says, We're just going to reiterate the
11 same response because we believe they were adequate despite
12 your concerns.

13 MEMBER PYLE: All right. Now, let me make a
14 clarification here for everybody, too. The LUC, the Land Use
15 Commission is hearing this because there is a request for a
16 land use change from agricultural to conservation or something
17 for some of the land, but that is only the first of a series
18 of zoning requests, I would think, that have to go -- would be
19 coming into place with this. Just having a land use change is
20 one step. Is that right?

21 MS. McPHERSON: Yeah. The district boundary
22 amendment -- The reason Land Use Commission is accepting this
23 is the accepting -- or approving authority is because of the
24 district boundary amendment application. There is also a
25 community plan amendment, change in zoning, SMA, Special Use

1 Permit.

2 MEMBER PYLE: Those come through the County.

3 MS. McPHERSON: And those come through the County.

4 And if -- you know, they have the choice. They could have
5 applied for the community plan amendment first and then it
6 would have gone to the Molokai -- the EIS would have gone to
7 the Molokai Planning Commission. But they chose to go the --
8 go for the district boundary amendment.

9 MEMBER PYLE: First. They would have had to do
10 that, anyway, somewhere along the line.

11 MS. McPHERSON: Right. Yes. And a lot of it is ag
12 to rural rezoning.

13 MEMBER PYLE: And conservation.

14 MS. McPHERSON: And expanding -- Yeah. Taking more
15 ag and turning that into conservation.

16 CHAIR KALALAU: Nancy, you know, just looking at the
17 map on the conservation zoning, it says just the total
18 acreage. Do they know what's the distance from the waterline
19 to the house property lines?

20 MS. McPHERSON: I believe that the minimum to the
21 TMK lines will be 200 feet, and then there would be an
22 additional 50-foot buffer. So I believe the maximum -- or the
23 minimum distance that any structure, any private structure
24 will be built to the -- or at least a private home will be
25 built to the shoreline will be 250 feet.

1 MEMBER PYLE: The shoreline or the highest wash of
2 the waves, which is public beach?

3 MS. McPHERSON: That's the shoreline. That's
4 considered the shoreline.

5 MEMBER PYLE: The highest wash of the waves?

6 MS. McPHERSON: Yes.

7 MEMBER PYLE: Not the actual --

8 MS. McPHERSON: No. That's the waterline, that's
9 different.

10 MEMBER MARQUEZ: So, Nancy, is that the same as the
11 high water mark, as we say at home?

12 MS. McPHERSON: Yeah. It's the highest wash of the
13 waves at the highest tide at the highest tide time of the year
14 evidenced by vegetation, scouring, scarps, various different
15 types of evidence. They have not had that certified, though,
16 yet.

17 MEMBER PYLE: People plant all kinds of things that
18 grow down onto the beach and then they say that this is not --
19 their property extends this way instead of the waves wash that
20 way. Wonderful problem.

21 MS. McPHERSON: Well, I think they originally
22 proposed to be closer, and then I think they added about 100
23 feet on, pushed it back about 100 feet.

24 CHAIR KALALAU: Right. And once they turn the
25 agricultural to conservation, it's going to be added on to

1 that natural conservation zone.

2 You know, we also talked about the fence and one of
3 the questions was about who will be putting up the fence. And
4 they said the land trust is going to be putting up the fence
5 and whether -- They said if the homeowners -- You know, you
6 get, what, almost 70 lots right along the shoreline over here.
7 Are they going to have 70 individual pathways to the beach?
8 This was one of our concerns, as I was saying, about putting
9 up the fence, because now they're saying that they're going to
10 have individual gates.

11 MS. McPHERSON: But they also say that the kiawe is
12 going to block everyone from going directly down to the beach,
13 so -- But, you know, if I was building a house that could only
14 be one story, even if it's going to be on the upper edge of
15 the parcel, I wouldn't want to have kiawe blocking my view of
16 the ocean on my million dollar lot. So I think there's a need
17 for a viewshed analysis.

18 There is some discussion of the views across the
19 landscape from heiau to heiau. There's views of the Koa, the
20 fishing shrines from up above that need to be preserved. And
21 without a -- without building envelopes and without a thorough
22 analysis of the viewscape or the viewsheds, we can't
23 necessarily make that determination if those are going to be
24 preserved.

25 CHAIR KALALAU: Right. And what they're saying is

1 that the land trust is going to be making all those decisions.

2 MEMBER FREDERICKSON: Passing the problem.

3 CHAIR KALALAU: I know. I mean, you know, you read
4 all their answers to our questions --

5 MEMBER PYLE: What I kept saying about the land
6 trust.

7 CHAIR KALALAU: -- it's the land trust. The land
8 trust is going to be --

9 MEMBER PYLE: It's all very vague.

10 MS. McPHERSON: Well, it's about the CC&R's and it's
11 about the shoreline area management plan.

12 MEMBER MARQUEZ: That's right. So page 19, the
13 response, I go straight to the "however." "They will be
14 required to adhere to the rules of the AMP, which designates
15 certain protected areas in conservation zone as off limits to
16 noncultural practitioner. The SAMP is appended to the final
17 EIS."

18 MEMBER PYLE: That means the homeowner is included?

19 MEMBER MARQUEZ: Yes.

20 CHAIR KALALAU: And then the land trust is going to
21 make that decision.

22 MEMBER PYLE: Who's going to enforce that one?

23 CHAIR KALALAU: The land trust.

24 And, you know, this concerns me about the land trust
25 because they're like the key person here making all these

1 decisions. You know, they're supposed to be making the
2 educational plan. They're supposed to be making the
3 guidelines. They're supposed to be making access plans,
4 enforcement plans. And who appoint these people to the trust?
5 Does the community vote members of their community to sit on
6 this land trust? No.

7 You know, every question that they mention the land
8 trust is hard for me to bite because who is the land trust?
9 You know, they're not even a government body and they're
10 making all these enforcement decisions and access decisions
11 and code -- building codes and land zone issues and --

12 MEMBER PYLE: Actually, that's wonderful question.
13 If someone is in opposition to the land trust's rule, what
14 power does the land trust to enforce it? Can the person be
15 evicted? What power -- Will they be arrested? What law are
16 they really breaking if these are covenants that are within
17 the land trust and the homeowners, but they are not County
18 ordinances? So what kind of enforcement will even be possible
19 under these circumstances? It's a really good question.

20 MEMBER MOIKEHA: The only real enforceable laws or
21 rules will be the building codes and everything that goes
22 along with that, but that would be the shoreline -- What do
23 you call that? The coastal --

24 MEMBER PYLE: Special Management Area.

25 MS. McPHERSON: Well, there's --

1 MEMBER MOIKEHA: You know, that whole thing that the
2 whole Planning Commission did a couple years ago and set the
3 whole new rules for the shoreline, the corridor --

4 CHAIR KALALAU: The corridor.

5 MEMBER MOIKEHA: The setbacks and everything.

6 MS. McPHERSON: The Molokai Planning Commission
7 shoreline rules, the Special Management Area rules.

8 MEMBER MOIKEHA: In other words, they can't -- Like
9 what you said, it's 250 feet and that's the only enforceable
10 thing; right?

11 MS. McPHERSON: And anything makai -- Well, if it's
12 in conservation district, the State has jurisdiction, so that
13 would be DLNR. And I didn't see -- really see any mention in
14 there about how the shoreline area management plan would be
15 implementing the laws and the rules of Chapter 205.

16 MEMBER MOIKEHA: But that's where the county
17 inspectors would come in?

18 MS. McPHERSON: That's land use. That's actually
19 the State.

20 CHAIR KALALAU: The state, yeah.

21 MEMBER MOIKEHA: But who does -- But the special --

22 CHAIR KALALAU: It comes to the County for --

23 MEMBER MOIKEHA: The other one I'm talking. That
24 shoreline --

25 MR. SOLAMILLO: SMA?

1 MS. McPHERSON: The County doesn't have jurisdiction
2 over conservation district lands.

3 MEMBER MOIKEHA: You know, when Star Edwards-Riggs
4 was the chair for the planning commission, that was her
5 outgoing thing. They spent so many months on that as far
6 as -- That was, to me, the only enforceable thing that I can
7 see as far as -- you know, I mean, it was very specific as far
8 as how far you can build. I mean, they went on and on. They
9 brought in all the specialists --

10 MEMBER FREDERICKSON: Shoreline setbacks?

11 MEMBER MOIKEHA: Yeah.

12 MS. McPHERSON: Well, they're avoiding the 150-foot
13 minimum shoreline setback. Or maximum, that's the maximum,
14 actually. And if you look at -- I'm trying to see which map
15 it's on. There's a map that has the SMA and the conservation
16 district boundary on it. They kind of wiggle in and out of
17 each other, but they kind of generally follow the same
18 trajectory. So -- And that's kind of difficult to deal with,
19 too, because in some places all of the conservation district
20 is, you know, within the SMA and other areas it's a little bit
21 outside of the SMA. So it kind of goes in and out like this.

22 This is a similar problem that we have at Papohaku
23 Beach. And I have studied that a lot and I have worked on
24 projects out there. And there's a lot of these similar
25 cross-jurisdictional issues and co-management issues. And

1 it's really difficult to manage. It's really challenging. So
2 the idea, I believe, is to have a shoreline area management
3 plan, but it's not clear that this technically satisfies the
4 definition of a true management plan, what's presented here in
5 this document. And that's just my opinion as a professional
6 planner. So there are -- you know, the department also has a
7 lot of questions about some of these things.

8 MEMBER PYLE: These enforceables.

9 MS. McPHERSON: Well, and just how easy or difficult
10 will it be to manage in that area.

11 MEMBER PYLE: Inconsistencies in the boundaries and
12 conservation areas and so on and so forth. So inconsistent
13 boundaries, also, perhaps.

14 MS. McPHERSON: Well, it's difficult because the SMA
15 is there, also, but it doesn't -- The parcels themselves are
16 going to be drawn outside of the SMA boundary, so they will
17 not need to get SMA permits, technically, once it's approved,
18 unless the boundary is expanded when they come in for their
19 building permits.

20 MEMBER PYLE: So there's not going to be much
21 control over --

22 MS. McPHERSON: It won't apply, no.

23 MEMBER PYLE: The building permit process will not
24 have very many limitations on --

25 MEMBER FREDERICKSON: I have a question --

1 CHAIR KALALAU: Go ahead.

2 MEMBER FREDERICKSON: -- about the conservation
3 district. I mean, how -- So from what I am hearing on average
4 it's about 150-foot wide in this development, is that what I'm
5 hearing? I mean, not, obviously, up in the gulches and where
6 there are these big blowouts where ag land is going to
7 conservation, but in general what's the setback right now with
8 this project? Is it 150-foot minimum or is it more?

9 MS. McPHERSON: Well, actually, I'm not certain. I
10 know that the TMK's don't start any closer than 200 feet to
11 the shoreline.

12 MEMBER FREDERICKSON: Okay. So it could be up to
13 maybe 200 feet?

14 MS. McPHERSON: Maybe a little more.

15 MEMBER FREDERICKSON: Okay. And in some areas,
16 obviously, it's more.

17 It's just interesting because we've been involved in
18 a project that's no where near this size, but they have a
19 300-foot setback, conservation setback.

20 MS. McPHERSON: I think, just for your information,
21 the last time around with the community plan update that the
22 community actually support a 600-foot buffer around that whole
23 coastline, but then that was challenged at the council level
24 by the landowner and that was reduced or set -- it wasn't
25 changed, basically.

1 MEMBER FREDERICKSON: Do you know what the setback
2 is at Kaluakoi?

3 MS. McPHERSON: For large properties it's always --
4 For very large properties it's 150 feet. That's the maximum.

5 MEMBER FREDERICKSON: Oh, that's the maximum?

6 MS. McPHERSON: Yeah. And it's based on the average
7 lot depth.

8 MEMBER FREDERICKSON: Right.

9 MS. McPHERSON: If it's a smaller lot, then you're
10 going to have a smaller setback. But it's -- you know,
11 basically, the shoreline buffer is 40 feet, so you really
12 don't want anything happening within 40 feet of the shoreline
13 if possible.

14 CHAIR KALALAU: Okay. Corp Counsel.

15 MR. HOPPER: Yeah. Nancy, did they mention anywhere
16 in the Draft EIS about any possible conditions of zoning that
17 would be tacked on to their property or anything to that
18 effect?

19 MS. McPHERSON: No. They didn't even specify which
20 specific zoning they were applying for.

21 MR. HOPPER: Okay. You see, that's an issue. Most
22 of the times with these projects from the County's
23 prospective, I can tell you that CC&R's aren't a huge concern
24 for the County because the County doesn't enforce them at all.
25 It's entirely dependent on the landowners themselves. And in

1 my experience, you know, sometimes you have CC&R's that are
2 rigorously enforced and sometimes you don't. It all depends
3 on who the homeowners association is, you know. Sometimes
4 they're real strict and sometimes not so much.

5 So where a lot of these issues come into play are at
6 the change in zoning stage, which is a legislative act in
7 which the County can decide in its sole discretion whether or
8 not to change the zoning of the property and could decide to
9 not change the zoning and, you know, has very, very broad
10 discretion in making that decision. As such, it oftentimes
11 attaches conditions to the change in zoning, as it does with
12 most projects. Those conditions are then recorded on the
13 property and the developer has to comply with those
14 conditions; otherwise -- You know, those conditions are law.

15 Now, of course, you have the issue of enforcement
16 which on Molokai is more difficult even than on Maui because
17 you have inspectors that need to travel over there to do that
18 enforcement. Not to say how hard it is to do on Maui when you
19 only have three inspectors for the whole island, you know, a
20 few more in general.

21 But those conditions of zoning is really the
22 opportunity and, you know, SMA permit conditions, also, but
23 that's to a lesser extent because there's less -- there is
24 less discretion for the Planning Commission to put on SMA
25 conditions as there is for the county council to put on

1 conditions of zoning. That's where a lot of these types of
2 issues -- mitigative measures are dealt with.

3 And, you know, and the County could in its
4 discretion, if it believes that the project is not
5 sufficiently mitigated by whatever, you know, conditions or
6 whatever else, can deny the change in zoning. Because the
7 zoning was set when they purchased the property and if it
8 decides not to change the zoning, it doesn't have to. That's
9 why they call it a legislative act. It's entirely within
10 their discretion. But that's where you'll see most of the, I
11 think, conditions that will be enforceable from the County's
12 perspective.

13 The State Land Use Commission will also probably
14 propose conditions, and that's where, for example, you could
15 take the CC&R's verbatim and make them conditions of zoning
16 and, therefore, they would then be enforceable by the County.
17 They would have the force and effect of law, and there's a lot
18 that the County can do at that stage.

19 And I'm surprised it's not addressed more in the
20 EIS. Probably because, you know, the landowner would -- you
21 know, you don't have to have conditions of zoning and they may
22 not want them or may not just be able to predict what the
23 council is going to want. But just so you know, that's where
24 a lot of these types of mitigation measures come up and
25 they're not necessarily -- And I would not recommend that you

1 rely solely on private CC&R's that are enforced by someone
2 else.

3 MEMBER PYLE: Well, I think we just are noting very
4 clearly that this is a weakness in this particular EIS that
5 there is no reference made to those possibilities. There's
6 seemingly no clarity to these various requirements and there's
7 no clarity to who among the various private groups would be
8 responsible for many of these ideas. I just don't think
9 there's a lot of clarity in there at all.

10 MEMBER WHELCHER: Usually the CC&R's have their
11 rules. The homeowners association checks the plans as the
12 homeowner wants approval, but when they sell -- When they
13 purchase the piece of property, they are normally asked to put
14 a \$5,000 deposit down to be refund as soon as they get the
15 approval of their construction. If they're not complete, if
16 they have infractions, then the \$5,000 is withheld until
17 that's taken care of. So it's within the CC&R's, they're
18 enforcing their own stuff.

19 MEMBER PYLE: But you have to know who's doing it.

20 CHAIR KALALAU: Okay.

21 MEMBER PYLE: I have to go in about ten minutes.

22 CHAIR KALALAU: Yes. We need to wrap it up because
23 we might be losing some of our commissioners.

24 MEMBER FREDERICKSON: I just want to make a comment
25 before we attempt our wrap-up. My concern is that this is

1 just such a huge project and there are a lot of shortfalls or
2 shortcomings in the DEIS. And I -- To me, it needs a lot of
3 work still, the document itself. From what I have seen of it
4 and from what I have heard and -- that's a concern I have, a
5 very strong concern.

6 MEMBER MOIKEHA: I have a comment, too, Mr. Chair.
7 I mean, you can see what development does amongst communities,
8 be it Molokai, be it Maui, be it Lanai, whatever. They're
9 very similar wherever we go and take a look at it. Just a
10 general comment. It basically really pulls families apart
11 sometimes.

12 CHAIR KALALAU: Veronica.

13 MEMBER MARQUEZ: Comment to your comment. You know,
14 I believe in conservation. I believe in all that. However,
15 you know, Molokai is Molokai. We want to keep it there.
16 However, you know, people still need to sustain life not only
17 from the aina and the wana, but they need some sort of income.
18 So to me, if there -- should there be any development, I don't
19 know if there's such a thing, or maybe this is an oxymoron,
20 that there is controlled development. And I really, truly
21 feel there it can happen. And, again, it is everybody pulling
22 together.

23 CHAIR KALALAU: And just on this note, so we need to
24 make sure that it's fair for everybody, for both sides, you
25 know. That's why we're here. We need to make sure that our

1 decision is the best ones that we can. And if we make the
2 best ones without all the informations that we need to make
3 the best decisions, it's very difficult.

4 MEMBER PYLE: That's right.

5 CHAIR KALALAU: Dorothy.

6 MEMBER PYLE: I have -- you know, I've said this
7 many times and I will say this my -- kind of like my parting
8 shot here or something. And that is that we're on this
9 commission as a Cultural Resources Commission and developers
10 come, nondevelopers come, opposers come and they all give
11 their testimony. The one thing that doesn't come is the site.
12 The site doesn't speak. And that is our job.

13 So we always need, from my perspective, to take into
14 consideration what it is that the site would like to say and
15 what it can't say, because this person is saying that, this
16 person is saying that. Sometimes, you know, sites get old and
17 weary, too, and think, Enough already and just go ahead and
18 tear me down. But sometimes sites speak very, very loudly
19 about their purpose in the community still and the value that
20 they still have. And I think that what we do needs to reflect
21 that.

22 And so often, very often the decisions that we make
23 seemingly are in opposition to what some people might want us
24 to do, but we're speaking for the sites. That's how I look at
25 it, anyway. That's why we're here.

1 MS. McPHERSON: If I may add, a lot of the
2 testifiers at both the Planning Commission and the Land Use
3 Commission hearings spoke about that very thing. They said
4 that if you go down to the site -- And I haven't been down
5 there myself, I have to admit. I'm in the office too much, I
6 guess, but need to get out there. But that the people who
7 have gone down there and spent time down there speak very
8 eloquently about what they have experienced down there. And
9 so I would advise all of you to -- if you can get the chance,
10 to take a little trip down there sometime and just experience
11 it for yourself before -- you know, if and when things change.

12 CHAIR KALALAU: Okay.

13 MEMBER MOIKEHA: Last real comment. I think Molokai
14 is real courageous. When you match them up against anybody in
15 the state, it's fabulous. Even to hear what Pilipo said, I
16 mean, you know, that's -- I mean, that's very -- it's -- I
17 mean, I -- The best way -- word I can think of is just
18 courage. It's very courageous. And you see what they have
19 and what they've been able to do and accomplish.

20 I mean, Honoula, he was a great person that sailed
21 with Moikeha, who came across. And he said to Moikeha, This
22 is where I want to live. And anciently that's what they did,
23 they named their places after them. And that's who -- that's
24 that area is called Honoula, that's the guy that jumped off
25 Moikeha's canoe. So it's an amazing thing.

1 But, you know, all these things when I look at it,
2 it's tough. I can understand, you know. But even like
3 Dorothy said -- And I'm glad she reminded me of that once
4 again -- somebody has to speak for the site. When somebody
5 wants to come in and demolish a building, somebody has to
6 speak for that building. I mean, you know. And that's part
7 of it, too, so -- But aloha, Molokai, man.

8 MEMBER FREDERICKSON: I have one last comment, at
9 least for now. The importance of this area, I mean, it's --
10 We have to try to keep in mind, you know, this term "cultural
11 landscape." It's an area that there has -- there are a lot of
12 cultural resources there. I'm talking more about the, you
13 know, structural remnants that are, you know, from Hawaiian
14 culture, but that it's also got importance for the current
15 cultural practices that continue there.

16 And I am real concerned just about, you know, this
17 sort of development with a lot of -- not loopholes, but not --
18 You know, references to the land trust and, you know, CC&R's,
19 who's going to do what to whom? And I'm concerned about the,
20 you know -- And the cultural impact assessment or the
21 statement had some information in there about that, you know,
22 the importance of this area, the cultural landscape, the
23 cultural value of the area. And having however many high-end
24 homes there with -- where the public is required to go access
25 from two ends of the project and, you know, the homeowners can

1 go down basically where they would like to go and so that's --
2 I'm petering out on this, but that's a concern I have.

3 MEMBER PYLE: Okay.

4 CHAIR KALALAU: I am hoping that Stan is on it. He
5 got every word you said, Dorothy.

6 MR. SOLAMILLO: I had 50.

7 MEMBER FREDERICKSON: Fifty words?

8 MR. SOLAMILLO: No, 50 comments.

9 MS. McPHERSON: New comments?

10 CHAIR KALALAU: That's not too bad.

11 MR. SOLAMILLO: Two points of interest. Do you want
12 to adopt your old comments that you felt were inadequately
13 addressed?

14 MR. HOPPER: Wait. That's one point. Nancy, do we
15 know -- Since this is a new Draft EIS, did they include the
16 original responses in the new Draft EIS?

17 MEMBER FREDERICKSON: Yeah.

18 MS. McPHERSON: When they distributed the second
19 EIS, it was Volume 1 and Volume 2 were the appendix -- Volume
20 2 was the appendices. And they also -- on the CD that they
21 sent out, they also sent out the previous document with the
22 comment letters and responses that they had received. But it
23 is not -- To my understanding, and this is might need to be
24 clarified with OEQC, it's not considered part of this DEIS.
25 It was provided as reference material. But, you know, I'm not

1 the authority on that, so --

2 MEMBER FREDERICKSON: So potentially all of the
3 comments that the CRC issued the last time are not -- may not
4 be included in the -- in this second version of the DEIS?

5 MS. McPHERSON: I would advise, just to be on the
6 safe side, that you might want to submit them again.

7 MEMBER PYLE: It seems like we could say very
8 clearly that as we were informed at our February whatever
9 meeting it was before by the representative from Molokai
10 Properties that the cultural resources --

11 CHAIR KALALAU: Comments.

12 MEMBER PYLE: No -- parts of the DEIS were not
13 changed. This is the same -- It has the same thing;
14 therefore, the questions and the comments that we had
15 previously still apply. And that as a commission we've
16 reviewed the responses that were sent to us and we find them
17 generally to be lacking. And we would like to resubmit our
18 questions and, also, add these additional statements.

19 So then we've covered everything. We've put the
20 ball in their court. We've sent them back our original
21 statements, told them we didn't like their answers, and we now
22 have added more things.

23 MR. HOPPER: In fact, as a matter of protocol, even
24 if you thought the responses were adequate, if what Nancy is
25 saying -- if OEQC has some doubts as to whether or not that's

1 even technically still a part of the record, even if you get
2 it back on the record -- even if you were satisfied with those
3 responses, because they withdrew and there is a new draft, you
4 may want to just do that anyway, even if you were satisfied
5 with the responses.

6 MS. McPHERSON: Yeah. My understanding after the
7 last Land Use Commission hearing when the DEIS -- or the
8 proposed Final EIS was withdrawn -- And this is from the
9 planning director -- that it was they were starting from
10 square one. Fresh slate, clean slate, starting over again.

11 MEMBER PYLE: So we do need to send them all of our
12 questions and comments from the previous go-around again and
13 then add the comments that we have made today. I think that
14 makes good sense.

15 MEMBER FREDERICKSON: Yeah.

16 MEMBER PYLE: So can we summarize in 50 words or
17 less everything that we've said?

18 MR. SOLAMILLO: Can I summarize it?

19 MEMBER PYLE: Yeah.

20 MR. SOLAMILLO: Ah.

21 MEMBER PYLE: The answer is no.

22 MR. SOLAMILLO: Okay. I'm going to read verbatim
23 and --

24 MEMBER PYLE: Okay.

25 MR. SOLAMILLO: As we were informed -- And this is

1 verbatim as I took it down. As we were informed in the
2 February blank, 2008, meeting that parts of the DEIS were not
3 changed, the questions and the comments that we had previously
4 still apply. We find the responses that we received to be
5 generally lacking and add the additional statements. And then
6 I've got the note to send all the comments from the previous
7 communication, which would be dated February 2007.

8 MEMBER PYLE: Right.

9 MR. SOLAMILLO: In addition to that, I've got 1
10 through 50 comments. And I'm not going to read them to you
11 now. They may be condensed down because there was some
12 repetition in the conversations. In general, it was found, I
13 think, that we had problems with archaeological sites,
14 preservation plans, burial treatment plans, mitigation
15 measures, enforcement, master plan, enabling legalities of
16 law.

17 MEMBER PYLE: Lack of clarity for responsibilities,
18 I think is what we have talked about.

19 MR. SOLAMILLO: Yeah. The dated survey information
20 that we had and everything being predicated on dated survey
21 information.

22 MEMBER FREDERICKSON: Inventory survey. Dated
23 inventory survey.

24 MR. SOLAMILLO: Do you want a revised survey,
25 inventory survey?

1 MEMBER FREDERICKSON: I would like to see what the
2 State Historic Preservation Division said about the revisions
3 that should have been -- I'm assuming were submitted.

4 MR. SOLAMILLO: I'm got that, but I'm just saying,
5 would you like another survey?

6 MEMBER PYLE: An updated survey. We could ask for
7 one. We could say that, you know, given that the field of
8 archaeological has substantially changed and the methodologies
9 have changed in the last 15 years, that it would be very
10 appropriate to update the information.

11 MEMBER FREDERICKSON: To update it. Not necessarily
12 reinvent it, but, you know --

13 CHAIR KALALAU: Just update.

14 MEMBER FREDERICKSON: -- update information.

15 MEMBER PYLE: Which could also, then, reevaluate --
16 or what's the term that I want? It could change the value
17 placed on certain sites.

18 MEMBER FREDERICKSON: Right.

19 MEMBER PYLE: Because of more information being
20 available.

21 MR. SOLAMILLO: Okay. That will be 52.

22 What we've also looked at was cultural landscapes.
23 And I think this is becoming more and more -- specifically
24 when we were working on the general plan, cultural landscapes
25 are becoming more important. I'm starting to see parts of

1 this island look like Texas and it shouldn't be. So your
2 architecture and your archaeology -- I was down in Makena. We
3 see walls going through heiau and fishing shrines and this is
4 just kind of happening. And it's kind of, I think,
5 symptomatic of the time. So I'm going to place importance on
6 that as well.

7 Conditions of zoning, discussions about CC&R
8 weaknesses in the DEIS, vague language for the land trust.

9 MEMBER FREDERICKSON: Excuse me, Stan.

10 MR. SOLAMILLO: Go ahead.

11 MEMBER FREDERICKSON: You know, on the zoning?

12 MR. SOLAMILLO: Yes.

13 MEMBER FREDERICKSON: Corp counsel brought that up.

14 I don't know what the other commission members feel about it,

15 but I think it was -- that's an -- I think I'm in favor of

16 attaching some sort of requirement that the zoning -- or not

17 the zoning, the CC&R's be placed into the zoning. I think

18 that's what --

19 MR. HOPPER: No, no. The only people that can

20 decide on that is the council. I'm basically telling you what

21 I have seen happen in previous projects.

22 MEMBER FREDERICKSON: But we could support that.

23 MEMBER PYLE: Recommend it.

24 MEMBER FREDERICKSON: Or recommend it, yeah.

25 MR. HOPPER: You would be saying that you would

1 support those being made into law by, you know, the council
2 adopting them as conditions. So, yeah, it would, I think,
3 generally help council -- And I can't, certainly, speak for
4 them, but if it does come to them --

5 MEMBER FREDERICKSON: Well, they can choose. We can
6 say as a commission --

7 MR. HOPPER: Right. But if the developer is on
8 board with those conditions, then that makes it a lot easier
9 for council to adopt. And they oftentimes ask the developer,
10 would it be easier --

11 MEMBER PYLE: But we're ahead of ourselves here.
12 This is a land use thing, not a County thing. So this is a
13 land use application, land use change application. And if
14 this is approved, then the next steps are to come to the
15 council. And my guess is this would visit us again.

16 MR. SOLAMILLO: Correct.

17 MR. HOPPER: Although, the EIS would -- The council
18 would have to use this EIS as their EIS. They only have to do
19 one EIS.

20 MEMBER PYLE: But they could add --

21 MR. HOPPER: They could ask for additional
22 information, but they would -- This EIS would be something
23 that they would have -- They couldn't require -- Well, by the
24 state law, they couldn't require a new EIS to be drafted.
25 That being said --

1 MEMBER PYLE: No, but they can still require the
2 law.

3 MR. HOPPER: They could request additional
4 information be provided because they could, you know, simply
5 decide to deny the zoning if they don't get the additional
6 information because they didn't get adequate information.

7 If you wanted to note that, certainly, but, yeah, it
8 would only be council's call as to what conditions they would
9 place on it and whether they would even want to place
10 conditions.

11 MR. SOLAMILLO: Okay. I think in reference -- The
12 way I had used it was conditions in zoning, CC&R structure
13 have weaknesses in the DEIS, there is no clarity as to the
14 various requirements and to whom among the various private
15 groups is responsible for what, whether it's the CC&R's,
16 homeowners association, land trust. That's how I had used the
17 conditions of zoning.

18 Cross-jurisdiction and cross-management issues that
19 were not being addressed adequately. The language about the
20 land trust is very vague. It's not a government body, but
21 it's making government decisions. What power does the land
22 trust to enforce? How do you enforce any of what is proposed?

23 MEMBER FREDERICKSON: And what repercussions -- you
24 know, if somebody does violate it, what happens to them?

25 MEMBER PYLE: You get evicted.

1 MEMBER FREDERICKSON: You have to give up two days
2 of your annual vacation.

3 MEMBER PYLE: Two days of picking up rocks.

4 CHAIR KALALAU: And then you cannot come back for
5 the next for the part-time residents.

6 MEMBER MOIKEHA: No fishing.

7 MR. SOLAMILLO: And then, let's see, there was no
8 evidence for any plan approvals except the data recovery plan.

9 MEMBER FREDERICKSON: Yeah. The 1994 letter --
10 State Historic Preservation Division letter indicates
11 revisions are needed before the plan -- the inventory survey
12 report is final.

13 MR. SOLAMILLO: Okay.

14 MEMBER FREDERICKSON: And that's not -- I didn't see
15 any letter in there to that, that effect.

16 MR. SOLAMILLO: All right. And then down to minutia
17 like how are archaeological sites to be preserved, common
18 areas, the individual lots, things like that.

19 You will get the final copy. It will probably be --
20 It will signed by the director, given the short time span, but
21 you'll get that in the next packet of correspondence.

22 MEMBER MARQUEZ: Maybe I missed it, but there's a
23 piece in the educational program in regards to not -- in
24 addition to educating future homeowners, we also need to
25 educate our Molokai people.

1 MR. SOLAMILLO: I have that. That was at the front
2 end.

3 MEMBER MARQUEZ: Okay. Then I missed it.

4 MR. SOLAMILLO: No. I didn't read it to you.

5 MEMBER PYLE: There you go.

6 MEMBER MARQUEZ: I had to --

7 MR. SOLAMILLO: So education. Homeowner education
8 and people, nothing for local people living on Lanai -- or,
9 excuse me, those living on Molokai should also be educated.

10 Okay. What you got?

11 MEMBER MARQUEZ: Mahalo.

12 MR. SOLAMILLO: We've got to close this up.

13 CHAIR KALALAU: We've got to put this into a motion.

14 MEMBER PYLE: I know. And I have to go. I am ten
15 minutes past.

16 MR. SOLAMILLO: Okay. Is that -- We've got a little
17 bit of business still. The reason why Lanai popped out of my
18 mouth is that we've got a trip scheduled for the next meeting,
19 which is March 6th. Step Hop Maui has been really putting
20 together a great program, but it was all predicated out of
21 leaving from Ma'alaea. And now we've got to leave from
22 Lahaina. So that's going to throw something of a glitch. And
23 we're going to try and -- I'll get in touch with them after I
24 get out of council this afternoon and see if we can revise the
25 itinerary. But, in essence, you get off the boat, you're in a

1 big van and we're going to take you sightseeing. Then we'll
2 have lunch, then we'll have the meeting and then we'll come
3 back.

4 MEMBER WATANABE: Stan, do you think you should
5 maybe preorder lunch? Because Blue Ginger is like packed.

6 MR. SOLAMILLO: Yeah, we'll have to.

7 MEMBER WATANABE: That would probably be easier.

8 MR. SOLAMILLO: Okay.

9 MS. McPHERSON: And do a pickup.

10 MEMBER PYLE: Are we probably likely to carpool from
11 here to Lahaina, if that's where we have to park?

12 MR. SOLAMILLO: That would be a good idea, probably.

13 MEMBER FREDERICKSON: So how would we park over
14 here?

15 MR. SOLAMILLO: How do we park over here?

16 MEMBER PYLE: Park in front of the County Building
17 with your little thing.

18 MEMBER WATANABE: With your little sticker thing.

19 MEMBER FREDERICKSON: That's going to be good for
20 the whole day. It better.

21 MEMBER WATANABE: It's not a sticker, but --

22 MR. SOLAMILLO: Susie, do you have anything to add?

23 SECRETARY: If we're going to preorder lunch,
24 everyone has to pay their own because everybody gets per diem.

25 MEMBER MARQUEZ: So for my segment, to be able to

1 meet at 7:00-ish -- Is it 7:00-ish? 7:00 a.m. ferry.

2 MR. SOLAMILLO: We're taking the 9:15. Is that --

3 MEMBER WATANABE: 9:15 is the next boat.

4 MEMBER FREDERICKSON: So what time are we coming
5 back?

6 MEMBER PYLE: 4:30.

7 MR. SOLAMILLO: 4:30. That's doesn't give us much
8 time. I would prefer the 6:45.

9 MEMBER MARQUEZ: Right. So what I'm saying is,
10 then, I'll be an overnighter here to be in time for the ferry
11 and an overnighter here to be in time to go home.

12 MEMBER PYLE: Fine.

13 MEMBER WATANABE: The 6:45 boat leaves at 6:45, you
14 get in 7:30. And then you can still make it back at 4:30.
15 That's plenty time, actually. And it's a better time, in
16 fact, because, you know, 9:15 is full of tourists.

17 MEMBER FREDERICKSON: It's choked, yeah.

18 MEMBER PYLE: We'll come back at 4:30. Later than
19 that is way too late.

20 MEMBER WATANABE: What's wrong with 6:45? It's
21 easier.

22 MEMBER MARQUEZ: There's nothing wrong.

23 MEMBER FREDERICKSON: So what time would we leave --
24 Well, we'll figure that out.

25 MR. SOLAMILLO: An hour ahead, at least. And try to

1 get to the ferry at least 30 minutes before they leave; right?

2 MEMBER WATANABE: As long as you're there at 6:30.

3 Okay? 'Cause they don't depart 'til -- You can't get on the

4 boat until 6:30, anyway.

5 CHAIR KALALAU: And leave at 6:45.

6 MEMBER WATANABE: And they leave 6:45 on the nose.

7 Where do you guys park in lanai?

8 MEMBER FREDERICKSON: Inexpensive parking.

9 MR. SOLAMILLO: I try and get there earlier enough

10 to get the free lot. There's a free lot behind Front Street.

11 You know where they sell the black pearl jewelry?

12 MEMBER PYLE: We can all carpool, so at least we

13 have one car.

14 MR. SOLAMILLO: And I can take three people.

15 MEMBER FREDERICKSON: Could we do that? Can we park

16 on the street in Lahaina and leave our card?

17 UNIDENTIFIED SPEAKER: What about Ma'alaea?

18 MEMBER WATANABE: No. They don't have boat out of

19 Ma'alaea on Thursdays.

20 MEMBER MOIKEHA: So 6:30.

21 MEMBER WATANABE: Is anybody going with their own

22 car?

23 CHAIR KALALAU: I might.

24 MEMBER PYLE: See you guys. Have fun.

25 MR. SOLAMILLO: I know. We have to have champagne

1 for Dorothy.

2 CHAIR KALALAU: Okay.

3 MR. SOLAMILLO: Thank you, Dorothy.

4 MEMBER PYLE: You're welcome.

5 MEMBER WATANABE: So how many cars are going?

6 Because I could work it with my aunt. She lives right there

7 on -- right behind the wharf through Luakini Street.

8 MEMBER FREDERICKSON: Yeah, yeah.

9 MEMBER WATANABE: My auntie has a big property
10 there.

11 MEMBER FREDERICKSON: Oh, free parking.

12 MEMBER WATANABE: Parking and they just walk,
13 actually.

14 MEMBER FREDERICKSON: Yeah, that's --

15 MEMBER WATANABE: But Susie can let me know if you
16 guys planning to take your own car.

17 MEMBER FREDERICKSON: Where are you going from?

18 MEMBER WATANABE: I'm going to be on Lanai already.

19 MEMBER FREDERICKSON: Oh, that's right.

20 MEMBER WATANABE: But I think I'm going to come back
21 that day. But if anybody is going to take their car, then I

22 can let her know. There's -- She has her house right there?

23 MEMBER FREDERICKSON: What's the address on Luakini?

24 MEMBER WATANABE: You know when you're going on

25 Prison Road?

1 MEMBER FREDERICKSON: Yeah, yeah. I know where
2 Luakini is.

3 MEMBER WATANABE: You make that first left turn on
4 Luakini. Her house is right there on the right. It's a very
5 old house with a large --

6 MEMBER FREDERICKSON: Right across from the prison.

7 MEMBER WATANABE: Right on the side.

8 CHAIR KALALAU: The corner lot.

9 MEMBER WATANABE: Yeah, it's the corner lot. Yeah.
10 Yes. And it's a big property. There's an old house and big
11 property there. As long as I let her know and you guys put a
12 note on your dashboard, she'll -- it will be okay with her.

13 MEMBER FREDERICKSON: What is your cell number?

14 MEMBER WATANABE: Okay. 559-0173.

15 MR. SOLAMILLO: Who wants to go with me so I know
16 who is going?

17 MEMBER WHELCHER: I've seen you drive.

18 MEMBER WATANABE: Just say our prayers.

19 MR. SOLAMILLO: I'm tame.

20 MEMBER FREDERICKSON: I may want to. It depends. I
21 may want to also go to Nani's aunt.

22 MEMBER WATANABE: We can call and let you know.

23 MR. SOLAMILLO: Okay. My cell is 250-3273.

24 MEMBER WHELCHER: Say again.

25 MR. SOLAMILLO: 250-3273. And at least call me

1 eight hours ahead.

2 MEMBER MARQUEZ: Forget it.

3 CHAIR KALALAU: 24 hours. 16 hours.

4 MEMBER WATANABE: You want me to get -- I'm going to
5 be on Lanai tomorrow. You want me to get menu and send it to
6 you so people can preorder from Blue Ginger?

7 CHAIR KALALAU: Okay, Stan. We have anything else
8 on the agenda for anybody?

9 MR. HOPPER: Make a motion.

10 CHAIR KALALAU: Do we have to make a motion for you
11 to --

12 MR. SOLAMILLO: Yeah. Do we have quorum?

13 CHAIR KALALAU: Yeah.

14 MR. SOLAMILLO: Let's do it. Someone needs to make
15 a motion. I'm sorry, I forgot. Thank you, Mr. Harper.

16 CHAIR KALALAU: Okay. Commissioners, will someone
17 make a motion to --

18 MEMBER FREDERICKSON: I move that we, let's see,
19 accept the conditions that have been discussed, that we
20 discussed in the meeting --

21 MR. SOLAMILLO: Comments.

22 MEMBER FREDERICKSON: -- and our comments, and have
23 those forwarded to -- Is it the --

24 MR. SOLAMILLO: Molokai Properties.

25 MEMBER FREDERICKSON: Molokai Properties, Limited.

1 MEMBER MARQUEZ: Second. I second.

2 CHAIR KALALAU: Okay. It's been moved and seconded.

3 Discussion?

4 No discussion. All in favor say aye.

5 (Chorus of ayes.)

6 CHAIR KALALAU: All opposed?

7 (Silence.)

8 CHAIR KALALAU: Motion carried.

9 MEMBER FREDERICKSON: Oh, before we go, do we want
10 to do a letter as well? What do you folks feel?

11 MR. SOLAMILLO: The comments go out in letter form.

12 MEMBER FREDERICKSON: No, but a letter -- I'm
13 thinking of a letter addressing the need to take the
14 additional time to get the DEIS so it's a better document.

15 MEMBER MARQUEZ: Is that moot at this point? They
16 said no already.

17 MS. McPHERSON: No.

18 MEMBER MARQUEZ: No? Am I not reading this right?

19 MEMBER FREDERICKSON: In this "Maui News" posting on
20 the 15th, it sure sounds like a no, but as a commission do we
21 want to make a comment about that?

22 MS. McPHERSON: Well, if I may, Nancy McPherson,
23 staff planner. You may suggest that they take their time in
24 responding to comments received on this draft before they
25 issue their proposed Final EIS. That they take more time or

1 as much time as possible. You could make that suggestion.

2 They -- You may ask again that they extend the comment period,

3 but (pause) --

4 MEMBER MARQUEZ: So, to my understanding, the
5 original date was the 15th and the extension is tomorrow. Is
6 that right so far?

7 MS. McPHERSON: No. The original end was the 22nd.

8 MEMBER MARQUEZ: What's the 15th date I just read,
9 then? What was that?

10 MS. McPHERSON: I don't know.

11 MEMBER FREDERICKSON: That was the posting.

12 CHAIR KALALAU: The posting of the meeting. I
13 mean --

14 MS. McPHERSON: It was published in the January 8th
15 Environmental Review. No, Environmental Notice of OEQC. And
16 that's legally when the 45-day comment period starts.

17 MEMBER MARQUEZ: Okay. I stand corrected.

18 CHAIR KALALAU: You've got a comment?

19 MR. VANDERBILT: Yeah, just real quick. As I said,
20 since this is going to go -- You get different letters. We
21 just started our comment letter off saying that we were very
22 disappointed and clear up some things so that when people were
23 reading the comments, they could put things in perspective.
24 So the first three or four paragraphs of our letter just are
25 saying how disappointed we are and so people won't think that,

1 God, you could have maybe done a better job on your questions.

2 We just didn't have the time, so --

3 CHAIR KALALAU: Okay. So Eric.

4 MEMBER FREDERICKSON: So on the letter that's going

5 to go out with our comments and recommendations, I -- you

6 know, as a commission member, I'm not satisfied with the way

7 that this Draft Environmental Impact Statement -- the process

8 near -- you know, where we are now, how we have arrived at

9 this point. There are a lot of issues in the document that

10 need to be addressed and I -- you know, I, again, feel like

11 it's a rush job. Regardless of what happened that got us to

12 this point, MPL -- this posting February 15th, 2008, I -- you

13 know, as a developer, it seems that they're done being what

14 they consider cooperative, being cooperative. And as a

15 commission member, that's disturbing.

16 CHAIR KALALAU: So in our letter that we're sending

17 them --

18 MR. SOLAMILLO: I'll include that language as part

19 of the preamble.

20 MEMBER FREDERICKSON: Okay. Then it's there for

21 whoever.

22 MR. SOLAMILLO: It's in the top paragraph.

23 MEMBER FREDERICKSON: Right.

24 MR. SOLAMILLO: It'll be in paragraph one, your

25 disappointment or the disappointment of the commission, then

1 we'll go into her lead, which mentioned that, you know, we're
2 giving these comments plus.

3 MEMBER FREDERICKSON: Under duress, too.

4 MR. SOLAMILLO: Yeah. And that will go out
5 tomorrow.

6 MEMBER MOIKEHA: Make a motion that we adjourned.

7 MS. McPHERSON: Second.

8 CHAIR KALALAU: It's been moved and seconded that we
9 adjourn this meeting. All in favor say aye.

10 (Chorus of ayes.)

11 CHAIR KALALAU: All opposed?

12 (Silence.)

13 CHAIR KALALAU: I just want to thank everybody for
14 coming and being real patient. We want to thank our reporter
15 for being patient with us. Thank you, everybody.

16 (The proceedings were adjourned at 12:31 p.m.)

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CERTIFICATE

STATE OF HAWAII)
) SS.
CITY AND COUNTY OF MAUI)

I, Sandra J. Gran, Certified Shorthand Reporter for the State of Hawaii, hereby certify that the proceedings were taken down by me in machine shorthand and was thereafter reduced to typewritten form under my supervision; that the foregoing represents to the best of my ability, a true and correct transcript of the proceedings had in the foregoing matter.

I further certify that I am not attorney for any of the parties hereto, nor in any way concerned with the cause.

DATED this 11th day of March, 2008, in Maui, Hawaii.

Sandra J. Gran
Hawaii CSR 424
Notary Public for Hawaii
My Commission Expires: 5/14/08