

**MOLOKAI PLANNING COMMISSION  
REGULAR MEETING  
MAY 25, 2011**

*\*\* All documents, including written testimony, that was submitted for or at this meeting are filed in the minutes file and are available for public viewing at the Maui County Department of Planning, 250 S. High St., Wailuku, Maui, and at the Planning Commission Office at the Mitchell Pauole Center, Kaunakakai, Molokai. \*\**

**A. CALL TO ORDER**

The regular meeting of the Molokai Planning Commission was called to order by Chair Mikiala Pescaia at 12:10 p.m., Wednesday, May 25, 2011, at the Mitchell Pauole Center Conference Room, Kaunakakai, Molokai.

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

Ms. Mikiala Pescaia gave a Hawaiian translation introduction.

Ms. Pescaia: Welcome to the May 25<sup>th</sup> Molokai Planning Commission. My name is Mikiala Pescaia. I'll serve as your Chair. This is John Sprinzel, our Vice-Chair. And joining me today are Commissioners Lori Buchanan, Debra Kelly, and Zhantell Dudoit. On my left here we have Corp. Counsel, Michael Hopper. Welcome back. We have Suzie Esmeralda, our Secretary to Boards and Commission who will be recording our meeting. And joining us on my far right is our Molokai Planner, Nancy McPherson. And from Maui, we have Clayton Yoshida, Planning Program Administrator; and Joe Alueta, our Administrative Planning Officer. So, welcome. Welcome. Aloha.

Let's begin. We'll call this meeting to order, and our first item on our agenda, we open public testimony on any planning or land use issue.

**B. PUBLIC TESTIMONY ON ANY PLANNING OR LAND USE ISSUE**

Ms. Pescaia: This is an opportunity for our community members who may be here on their lunch break and would like to offer some testimony on an agenda item, or something that they would like us to visit on a future agenda, you may provide testimony now. If you can wait until your agenda item comes up, we would prefer that, but if you'd like to give it, you are more than welcome. When you do offer your testimony, please be sure to state your name for the record, please.

Mr. Halona Kaopuiki: Aloha, Commissioners. My name is Halona Kaopuiki, born and raised on Molokai for generations. I'm supporting Tri-L's plan. Darryl Leer and Tri-L is very sensitive to the lands. I reviewed their plan. You know the policies and – you know, they get'em by their balls, you know, the rules of Tri-L to again, take care of the lands. The pit, it was already going on from the '40s or '50s with AC&D and PC Trucking Company. And in the project area, I went down there and go niele the place. They far away from any

cultural sites there. And if you guys talking about cultural sites, Tri-L is just right in the middle. They smack in the middle of no interference of cultural sites. During PC time, probably AC&D Trucking Company, probably, they went destroy our site. They was half side down on the west side of the pits far away from their project area. The burial sites is far away from the project area. There's a burial site on top of the hill up Puu Waiele. That's far away from the whole nine yards of the sites. I believe again that Tri-L and Darryl Leer again, is very sensitive to the lands. And I have a total confidence in the sentimental value of their project. I truly know that they won't destroy anything. If anything disturbed, it was disturbed and desecrated years ago. And again, I support the project whereas again, I look at this palapala, he going be taking care a lot of stuffs. He cannot do this. He no can – they really choke'em with regulations down there. So I believe again, he's gonna be okay. He's gonna take care the place. No rubbish there. You know, the sentimental value in his heart is all good. Plus, he providing jobs for us, the Molokai community. That's it.

Ms. Pescaia: Commissioners, you have any questions for the testifier? Commissioner Buchanan?

Ms. Buchanan: Aloha, Halona. Thank you for your testimony. Would you have any concerns the mined cinder that is proposing to excavate? Would you have a concern that a portion of that—I don't know because it's undetermined—would be sold off-island?

Mr. Kaopuiki: It was sold – the cinder was sold long time ago before probably our time, yeah? It was sold during our tutu time. So I cannot understand or I see no problem about that.

Ms. Buchanan: Okay. I think that was what I was reading in here because we still gotta have the person come up and testify as far as the cost, yeah? But I think in the documents, the cost for the cinders going be kinda high. So I don't know if Molokai people can afford the cinders. We did the government agencies, but I don't know personal kind because it's double the cost of the rocks. So I was just wondering if you was concerned about that. No?

Mr. Kaopuiki: I'm not concerned about that, no. As long as it's the right jobs, and I know that they going get dakine, you know, akamai kind rates. And it's gonna be one ohana thing down there. I pretty sure of that.

Ms. Buchanan: One more question, Halona. I noticed in the agreement between Tri-L and the Ranch, on the road maintenance, it says, "At the discretion of Tri-L." So I don't know if they using the same road that the canoe racers use twice a year. I'm assuming maybe, maybe not. Maybe they coming from the old Coral Road. But if they have to traverse over

that road that is used by the public, would you wanna see some type of other maintenance provided other than just saying at their discretion, road maintenance?

Mr. Kaopuiki: I pretty sure, consistently, they would take care the road because the Coral Road, the bugga like cement already. And with the cinder and the mud mixing together with the soil, the bugga going be solid. Going be like this.

Ms. Buchanan: Okay. Because I never make that determination from this if they was using the road that come from Weiser's place over, which is the Coral Road that you take to Kaupoa, or they coming down the main highway from Maunaloa.

Mr. Kaopuiki: That's one good question you gotta ask--

Ms. Buchanan: Yeah, go ask--

Mr. Kaopuiki: If they using the one from Maunaloa, that would be -- I don't know. Yeah, I don't know if they using Weiser's road. But the maintenance of the road, that is inside here. And I believe they would do their best to maintain the roads.

Ms. Buchanan: Okay, thank you.

Mr. Kaopuiki: That's all?

Ms. Buchanan: Yeah.

Mr. Kaopuiki: Oh, thanks, ah.

Ms. Pescaia: Mahalo. Is there anyone else wishing to offer testimony at this time? Seeing none, public testimony is closed. We will move on to C, Public Hearing. The actual hearing will begin now on this agenda item.

## **C. PUBLIC HEARING**

- 1. MR. DARRYL LEER of TRI-L CONSTRUCTION requesting a State Land Use Commission Special Use Permit to extract cinder from a 7-acre site located in the State Agricultural District off Main Coral Road at TMK: 5-1-002: portion of 004, Kaluakoi, Island of Molokai. (SUP2 2010/000 ) (N. McPherson)**

**Activities include dust mitigation and road grading and restoration. The cinders will be transported approximately 10 miles to the company's existing Manawainui Quarry processing site.**

Ms. Pescaia read the agenda item into the record.

Ms. Pescaia: Planner McPherson?

Ms. Buchanan: Chair, I have a disclosure to make before we start this item.

Ms. Pescaia: Okay.

Ms. Buchanan: I'd like to disclose that in my capacity as the coordinator for the Molokai Invasive Species Committee that we have been working on the properties owned by Grace Pacific of which Tri-Isle is operating. And we've been working doing evasive species type of work. And I just wanna disclose that that's all it is. It's at no cost to any target species on Molokai, any agency or community person. So there are zero funds that are involved in any of that work.

Ms. Pescaia: Do you feel that you need to recuse yourself?

Ms. Buchanan: . . . (inaudible) . . .

Ms. Pescaia: No? Okay. So—

Ms. McPherson: Commissioner Kelly?

Ms. Debra Kelly: Sorry, I also have to disclose, too, that I coordinated the junk car removals from Molokai. And Tri-L was one that volunteered their trucks and drivers to assist me to do that. And there is going to be some payments involved, but I only coordinate, but I needed to disclose that too.

Mr. Michael Hopper: Unless you have a financial interest, direct or indirect, and that's the County Code of Ethics that believe that it would be basically, improper for you to vote, and that is your call, or you can get a Board of Ethics' opinion. Then you normally would have to vote – you do have five Members present, so we would need five Members to even continue with the hearing. It appears that those issues have been disclosed. It does sound like there's any financial interest, direct or indirect, that would impair your impartiality or judgement. Also, if you happen to have facts of this area that you know, I would recommend that you base your decision on this permit on the facts that you get from this hearing either through public testimony or through questioning with the planner and not your own side knowledge. So those are the key issues I think. But if you feel that there's no conflict that would impair your ability to make an impartial judgement about this permit, then you would not need to recuse yourself from voting, but I think disclosure is always in the best interest. So I think that's a good idea.

Ms. Pescaia: Anyone else?

Ms. McPherson: It's a small island.

Ms. Pescaia: Alright, I appreciate everyone's openness and transparency for our community's benefit, and we can now proceed.

Ms. McPherson: Thank you, Chair Pescaia. Nancy McPherson, staff planner. Before you today is the application by Tri-L Construction to obtain a State Land Use Commission special use permit for extraction of cinder of approximately, 1.3 acres within a seven-acre site, which is land in the State and County agricultural at TMK: 2- 5-1-002: 004, a portion. Actually it's an ahupuaa of Kaluakoi, Island of Molokai. And Darryl Leer is here. He is the president of Tri-L Construction and he is the applicant. I'm going to just briefly do an introduction, and I'm hoping you all have had a chance to go through the report and the exhibits. And Darryl will make a short presentation, and be able to answer your questions.

The application was filed on April 1<sup>st</sup> 2010. And the area – to come under the special use permit, which is a special use permit done by the Molokai Planning Commission because the area is less than 15 acres. If it was larger than 15 acres, it would be going to the State Land Use Commission. But because it's less than 15 acres, it's seven acres, it's come before you for a decision.

They are requesting an excavation of 15,150 cubic yards of red cinder. And I would actually request that you strike the word, "initial" from that sentence, red cinder from a 1.3-acre area. I misunderstood an aspect of the project, and this application is only to cover 1.3 acres, 15,150 cubic yards of cinder to be excavated.

Ms. Buchanan: Chair, can I clear up something right now?

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

Ms. McPherson: 150 cubic yards.

Ms. Pescaia: Go ahead.

Ms. Buchanan: Nancy, so this application is only for that?

Ms. McPherson: Yes.

Ms. Buchanan: It does not cover the seven acres, an additional two years of ongoing work that's stated in the application?

Ms. McPherson: That's correct. Yeah, I was corrected by the applicant after the draft report was submitted that this is not phase one of a bigger project. This is just for the— They need the seven acres because you have to pile the cinder up. You have to have a loading and staging area. You have to have room to move the vehicles around. And then the area that is actually gonna be excavated is 1.3 acres. And it's basically, a remnant cinder pile of the original mining operation. So it's been sitting there, and they never like finished scooping it all out kind of like. So there will be no processing or batching on the premises. They are only going to be mining it, loading it unto the trucks, and removing it to the Tri-L facility at Manawainui where it will then be processed.

I'm not going to read through all the regulations because they're all listed in your staff report. The County Planning Commission may permit certain unusual and reasonable uses within agricultural and rural districts other than those for which the district is classified.

Standards for reviewing a Land Use Commission special use permit are found under Title 15 of Business, Economic Development, and Tourism. So this is a Land Use Commission rules. And the Molokai Planning Commission actually has its own special use permit rules. So there are additional criteria within those rules also.

There are evaluation guidelines to determine an unusual and reasonable use. The use shall not be contrary to the objectives sought to be accomplished by Chapters 205 and 205A, HRS, as amended, and the rules of the State Land Use Commission.

The desired use would not adversely affect surrounding property. The use would not unreasonably burden public agencies to provide roads and streets, sewers, water, drainage, and school improvements, and police and fire protection.

The unusual conditions, trends and needs have arisen since the district boundaries and rules were established. And there is a number of aspects to be considered in evaluating those conditions, trends and needs.

E, the land upon which the proposed use is sought is unsuited for the uses permitted within the district.

Then under your special use permit rules, you have additional performance guidelines, and I have those listed here on page 4. These performance guidelines have actually been incorporated into the recommended conditions of approval for the project. But what I do when I do my analysis is I go – I use all of these guidelines and criteria in my analysis. And what I did in the staff report is I tried to set that out sort of systematically for you to help you keep track of it all.

So the County Planning Commission may impose such protective conditions as it deems necessary in the issuance of a special use permit. The County Planning Commission shall establish, among other conditions, a reasonable time limit suited to establishing the particular use, and if appropriate, a time limit for the duration of the particular use, which shall be a condition of the special permit. If the permitted use is not substantially established to the satisfaction of the County Planning Commission within the specified time, it may revoke the permit. The County Planning Commission, with the concurrence of the Commission, may extend the time limit if it deems that circumstances warrant the granting of the extension.

Procedurally, we had adequate public notice. There was a notice mailed to adjacent properties by the applicant with a map, a description of the application, and a location map. There was a notice of hearing on the application published in the *Mauai News* and the *Molokai Dispatch*, by the Planning Department. And the subject application does not involve an action that triggers compliance with Chapter 343.

And what I would like to do now is not read through the entire description of the property, but what I could do is – the portion of that – this special use permit is not in the SMA. I have identified the different agricultural land categories: ALISH is unclassified, ALUM is grazing, LSB overall productivity rating is D.

Ms. Pescaia: Planner McPherson?

Ms. McPherson: Yes?

Ms. Pescaia: I think the Commissioners agree that we've gone through the material so you don't need to go through it. Is there anything else that you need to add beyond what's already in here?

Ms. McPherson: No, not at this time. And what I can do is I can answer any questions and then defer to the applicant.

Ms. Pescaia: Perfect. Commissioners, do you have any questions for Planner McPherson?

Ms. Buchanan: I do have questions for staff. Under description of the project, page 7, is there any changes in that portion of the – that paragraph mainly because it's not extracted in phases anymore? It says, "The first phase will remove approximately 1.3 acres and take two to three weeks to complete." Is that still what we looking at?

Ms. McPherson: Well, what we should do is actually – yeah, you're correct. We should strike, "first phase," and just say, "the project."

Ms. Buchanan: We're on page 7, description of the project. And I guess you would have to also strike, "The phasing will be dependent upon market conditions and quantity needed."

Ms. McPherson: Correct. Or what I could do is amend to say, "The cinder is proposed to be extracted as follows." Strike, "although the first phase." "The applicant will remove approximately 1.3 acres and take two to three weeks to complete." Well, it is requested that the total seven-acre project area be granted approval for operations, yes.

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

Ms. McPherson: Well, operations is not excavation. Operations is moving the trucks around, and piling it up, and all of that.

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

Ms. McPherson: My understanding is the request is for two years, yes, for the special use permit. If the Commission wills it, it can change that to one year.

Ms. Pescaia: So you saying the window for them to complete the work is two years. When they do initiate the project, it will take between two and three weeks. They conduct this three-week long activity at any point within a two-year period. Is that what you're saying?

Ms. McPherson: Okay. Well, maybe we should have the applicant come up and answer some of these questions.

Ms. Buchanan: I have one more question for staff that is not related to the applicant. On page – the page 4, the applicable regulations from page 2, 3, and 4, page 5, is this part of the Planning Department conditions of the approval? I mean – or it's just suggestions?

Ms. McPherson: Well, what we do is we state all of the applicable regulations at the beginning of the report. We don't quote all the NPDES permit requirements and all that kind of stuff for other permits. But we do like to quote all of the language that you should be keeping in mind as you review this application. And as far as the performance guidelines, Section 12-3-7, as I stated before, those have been incorporated into the conditions of approval, both standard and project-specific conditions. So I went through and did an analysis of all of these.

In this case what happens is the Land Use Commission has deferred authority to the Molokai Planning Commission for areas less than 15 acres. So you are administering the State Land Use, Chapter 205, and Chapter 205A on behalf of the State Land Use

Commission. And you do have your own rules that you can follow also. You are the only Planning Commission that has their own special use permit rules, actually.

I apologize for muddling the project description and I would like to defer to the applicant now, if I may.

Ms. Pescaia: They pick the most eloquent person to come up to the microphone.

Mr. Darryl Leer: Okay, where do you want to start? Just ask questions would be the best so—

Ms. Pescaia: Can you restate for us, the project, exactly what you intend to be doing, and make sure that we've got it accurately described here?

Mr. Leer: It is the cinder pit. Basically, it's always been known for me as the cinder pit on the west end. We do intend to take cinder out of the pit. We're only going to be excavating the areas that have already been excavated, okay? We'll be staging on the bottom floor, and we will haul the cinder out to our processing plant in Manawainui, process the cinder there, make it available for Molokai and others. So we are kinda limited on the amount of material we're taking out. In reality, that's not very much material, okay?

Ms. Pescaia: Hold on, real quick. Can you state your name for the record? Sorry.

Mr. Leer: Oh, I forgot. Darryl Leer with Tri-L Construction. Okay. I did make a slight map here so it'll be a little easier for some of you to look at. . . . (inaudible) . . . something in the photo, okay? It looks like seashore, but it's not. There is a couple pictures that I'm passing down, aerial shots, that you can kinda see a little more of the area. The area that's marked on our grading plan is the area that's circled in the pictures or located in the photos. All the area has been excavated prior so that there is no chance of us getting into anything that we shouldn't be into. We've had Halona and some other – basically, Halona, also the County archaeologist on site.

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

Mr. Leer: Yeah, the State archaeologist on site, and reviewed the site to make sure that like I said, would be far away from anything, okay?

We'll be using existing roads going into the pit and the existing roads going out. Your question about the maintaining of the road, the Ranch could not put anything in their document because that's a State road going out to Maunaloa, okay? So they have no control over the maintenance other than donating their own maintenance to the road.

And this probably brings up the issue about the maintenance on the road. Basically, we're gonna be not maintaining the road, but before we start the road, because the road had some very rough areas, we will be using some of the cinder from the pit to fill some of these areas, grade, and possibly, even roll and compact. And if we can get a meter from the Ranch, we'll even do some watering, okay? The Ranch has said that they would give us a meter upon applying.

So the road, we will grade prior to our starting. And if we finish, we'll grade it prior – you know, after we finish the road, we will grade it one more time. This will be the portion that runs from the gate going to cinder pit, which is locked to Maunaloa Town, okay? It is not gonna be the portion from the cinder pit, which I don't know where the area is. It's where the Coral Road comes out, okay? From there going down to Hale O Lono, we will not be grading that portion or be on that portion of the road, okay?

On page 7, the 1.3 acres is within a seven-acre area which we needed the seven acres to make sure that we were staying in our area that we need to be. The phases – the first phase is to excavate that 1.3. We figure it'll take about two years to do or sell that much – that little – that amount of cinder, okay? After that point, we'll do a review, and then probably be back in front of you to see if we can do any more, or if it's just to the point we can't do anything more in that area, okay?

It is not gonna take three weeks to complete. I figure this is gonna be once a quarter over the next two years, okay? So maybe once a quarter, we'll go up. We'll mine some cinder, haul it back to our plant, and batch it. In reality, it's probably more like once every six months, but I don't wanna be – you know, I wanna make sure that everybody understands that it may take once a quarter. I don't know. It just depends on our work schedule and abilities to take care of this.

Okay, at that point, I think I've answered some of the questions. If there's any more, you'll have to just ask.

Ms. Zhantell Dudoit: Okay, so I just wanna understand the business specifics so that it's easier for me to grasp this. The 15,000 cubic yards that you have over here, it doesn't seem like a lot, and the 1.3 acres that you anticipate excavating from one quarter every six months over a period of two years, how come it's gonna take that long for such a small amount of cubic feet?

Mr. Leer: Because diesel cost money and I don't have any right now. We gotta put the cost – my estimate on this cost is that the cinder will probably – by the time I get it market on Molokai, it's gonna cost me around \$38, okay? We're gonna try to hold Molokai cinder to \$35, and maybe subsidize from any off-island sales we might happen to have. The cost to get it there – our profit on it is probably less than ten dollars a yard, okay? So my cost

to get it to market is gonna be like \$29, okay? And that's considerable cost when you start adding it up. And I just can't do – I can't go out there all at once and do all this once. I just don't have that much capital to do something like that. So that's why we have to have it over a couple years to be able to do it as we can afford to do it. Does that make sense or–?

Ms. Dudoit: Oh, no, that . . . (inaudible) . . .

Mr. Leer: Okay.

Ms. Dudoit: So you are getting – you're leasing the property from Molokai Properties?

Mr. Leer: That's correct.

Ms. Dudoit: Okay, so you pay the lease for the property, and whatever happens on there as long as you're within–?

Mr. Leer: Within the guidelines of all the State, County, and Federal regulations.

Ms. Dudoit: Belongs to you?

Mr. Leer: Right. Well, it does not belong to me. It's just–

Ms. Dudoit: Well, I mean the profits of off whatever you sell, whatever he's saying–

Mr. Leer: Well, the Ranch gets a royalty off the cinder that we sell. They don't charge me a lease that I have to pay the taxes on the property.

Ms. Dudoit: Okay. Okay. Thank you.

Ms. Buchanan: Okay, if Commissioner Dudoit is – then I have a question, Darryl. Yeah, I not one real math whiz, but I was trying to figure out – I was trying to quantify in my brain that 15,150 cubic yards, and I was trying to convert that into tons, trying to convert the tons into how much tons a truck is, and then I tried to figure out how many truckloads, and I was trying to think in one big, broad picture. And I kinda came out with like 22,000 tons with 17 tons per truck. It comes out about 1,300 loads. So I was thinking this is like over a thousand truck loads of cinder. I could be really, really wrong, but forgive me. And so when we say, 15,000 cubic yards is not that much, actually, a thousand truckloads is a lot, okay? And I think that's why he doing it over the time period. I mean, why would you wanna take up space at your quarry if you never had to. So that being said, I also then tried to figure out how would you make money off of this. And I came out to you would have to sell it for \$40, okay, which I was pretty close. So saying that, because we do

represent the State Land Use Commission in 15 acres or less, and because that is a State road, I do have an issue on the maintenance of that road, because if your truck going over two years, a thousand times up and down that road, my concern is come September when we have 2,000 people traversing over that road to the canoe race, what the condition? Am I gonna be driving in powdered dirt, which I do, occasionally, as I frequent that place every year? So I would have an issue which I would have to condition this project to take care of especially, at the times when I know we going have – utilize that State road the most, which going be September, October. So if you can do that mitigation.

And then the second thing would be the timing of the maintenance of that road over two years. I don't know if you take that thousand trucks and divide'em into every six months. You know, that's basically, 500 trips. Then you can begin to see in my brain what I'm concerned about. And so maybe we can work out one happy medium as to the maintenance of that road because I did see in your agreement with Molokai Properties, it says, "at your discretion," period.

Mr. Leer: Right. Well, the reason we put that in is because they have no control over the State road. They can't say that I have to maintain a State road, okay? It's kinda – they didn't wanna get into that area, okay? So that's why it was not – it was kinda taken out because that was gone over several times with them, yeah.

Ms. Buchanan: Okay. At the time this Commission also reviewed on behalf of the State Land Use Commission, the establishment of the other quarry on Molokai, we did make a condition to that permitting, which I think was Goodfellows at the time that they had to widen that road even though it wasn't their road. They had to widen the road, and they had to maintain that road. And to date, they have mowed and maintained that road. The State has not done it. It's been Goodfellows. So I think it's reasonable and fair to ask Tri-L to do the same. So the portion only up to the quarry, and that's just all your kuleana. Beyond that is actually where it gets really bad, but that's not – maybe we twist your arm since you already there to fix the– But that's one of my main concerns.

I'm glad to see that it wasn't a blanket special permit to include all of the seven acres. So I'm happy with that. And then it said that you would be seeking – it didn't say that you had to get an NPDES permit. Are you currently applying for a review ?

Mr. Leer: Basically, we have the – the engineer is waiting because it's such an additional cost, okay? I'm gonna wait till I get through this step before we actually pull the trigger because if you say no today, we're gonna walk away, and I'm not gonna deal with it anymore.

Ms. Buchanan: Yeah, well, they could exempt you as well.

Mr. Leer: What's that?

Ms. Buchanan: They could give you an exemption.

Mr. Leer: Oh, there's no doubt. There's gonna be— And I already have it in my estimate of the number that I gave you, the \$38, it's in there, okay, for an estimate.

Just a question on the – the Goodfellow road is a paved road and only needs mowing.

Ms. Buchanan: Yeah, lucky them, yeah?

Mr. Leer: Yeah, so they have a lot better head start on us. And it's pretty short. That section is only like less than a quarter – probably not even a quarter mile. The road that we're looking at is probably – I'm not sure. It's quite long. And I agree, it is quite treacherous for vehicles in places. I don't wanna hang myself, but I do wanna – you know, we want to help on the road, but I can't say that I can put – you know, I'm not gonna restore the road. I can't make it like new. It's not gonna stay that way. The cost will probably drive us to the point of it's not a viable project here, okay? All I'm gonna say is basically that we will grade it, dump cinder in some of the potholes for our own trucks because they're expensive to repair, too, and the road will be very hard on them. And we already know that they're not gonna be making very many trips a day because speed on the road is gonna pretty much hinder them. So we will attempt to do that. And we will do, in good faith, as much as we can justify, okay? I just can't guarantee, you know. And if we're not working down there, and we have a big rain, and it washes stuff all out, you know, for me to mobilize up and go do the repair on the road, I just can't. I can't go there. I'm sorry. I wished I could.

Ms. Buchanan: Okay.

Mr. Leer: If I could, I'd work for free, but it just don't work out that way.

Ms. Buchanan: I know. We all work for free. So if there was a condition on this permit that stated something like in the first week of September that you would make maintenance at that time, that you report that date of that maintenance to our Planning staff person here, which is Nancy, so she could just verify that that maintenance was done.

And then on Item – on her page 4 of this document, there's a no. 6. And it says, "The special use will be subject to periodic inspections by the Planning Department or other Federal, State, County agencies for compliance with the terms and conditions of the special use permit." Do you have any issue with that statement?

Mr. Leer: Not – not really, no.

Ms. Buchanan: Okay. Okay, that's all I have for now.

Mr. Sprinzel: Does anybody know whether the road was damaged when . . . (inaudible) . . . about 20 years ago was using that road for bringing all the fill down to the barges in the harbor there? They must've had lots and lots of trucks.

Mr. Leer: They never really used that road. They used basically, the Coral Road. And from the Coral Road down to Hale O Lono was the main used roads at that time. So nobody really traveled that road.

Mr. Sprinzel: So you're not using any of the roads they used?

Mr. Leer: No. Well, excuse me. I – I – we're using the road from the point that you get into the cinder pit to the cinder pit. That's the only portion of that road that we're using. And that road is already locked off and it's controlled by the Ranch.

Mr. Sprinzel: Was that road damaged back then?

Mr. Leer: Well, I'm sure they did maintenance on it back then, but that's not part of the public access road.

Mr. Sprinzel: Okay.

Ms. Pescaia: Question.

Ms. Buchanan: We – I'm sorry, we're not supposed be discussing off the record, but we're trying to figure out a condition to put on the project as far as the road maintenance is concerned because it is for two years. And we would be happy with if they maintained it maybe twice a year, but at what times. We know September would be one time because that's – the heavy use. And we're just trying to think of the next time because the applicant has to be agreeable to the terms.

Ms. Pescaia: But I also think it depends on when they're extracting, because if he's gonna be extracting – right, far ahead of – you know, if he's pulling in July, and you're gonna have August – you know, or in June, and there's gonna be a– You know what I mean? Like five months of normal–

Ms. Buchanan: That has nothing to do with the conditions of the project. He would have to comply with our conditions. So if we told him in the first week of September you have to do road maintenance, then that's when they have to do'em, and they can plan accordingly.

Ms. Pescaia: But I guess my concern is him having to conduct maintenance beyond his impact on the road. Like mitigating his impact– He should be taking care of what– If he damage the road, he fix the road. Are we asking him to go above and beyond and also fix the normal wear and tear of the road? So to me, it should be kinda timed to when they use the road. Either – obviously, he’s gonna wanna touch it up a bit before he starts working because he has to malama his trucks. And then it would be courteous to go right after that and go back in – I mean, it’s in his best interest to do it right because he knows what he did or didn’t do to the road, and leave it immediately after back to the public when he’s not using it for the next five months.

The other thing is the County also I know throws a little bit of money towards maintaining the road before – yes, they have paid people to go out and maintain the road before the canoe races, before the hauling begins. They come out and they throw a little bit of money, a little bit of money, but to just make it so that it’s safe. I’m not saying they make it all fabulous, but there is a little bit of– Sure.

Mr. Hopper: Just to also note that if the road’s maintained by the Department of Transportation or they have authority over the road, you would probably wanna consider that in any condition because if the Department doesn’t want the maintenance done that certain way, or doesn’t want that maintenance, you’d put the applicant in a position where they’d have to come in and get that condition amended before they could – you know, because they’d be in noncompliance with their permit. We have that problem sometimes with other things like SMA permits and stuff from the County which says, you know, traffic improvements have to be done, but it’s the State Department of Transportation that also needs to approve those improvements usually for more major repairs than this. But I think maybe you could word a condition a certain way maybe subject to approval of the State Department of Transportation, or with the permission of the State, or something like that. But that would be the only concern because if the State tells them no, or something, you can’t maintain it, I don’t know why they wouldn’t, but sometimes the State might, then they’d be in a position where it’s impossible for them to comply with that condition because some other party would have authority over that. So just to note that if, indeed, this is a State road that that could be an issue as well.

Mr. Leer: That was Molokai Ranch’s stance. They can’t really mandate a State road. That’s the whole issue, but Nancy – I’m gonna turn it over to her for just a second. We did check with the State on the road. They have no real issues, okay? So they don’t wanna deal with it either, okay? The best we could probably hope for, and I know my secretary and everybody’s gonna kick me for this, but we could probably donate cinder to – in – you know, when we’re down there maybe the last six months of the year. In other words, from July to December, whichever it happens, we could probably dump some loads – cinder along the road or on the road, but, you know, for us to actually, you know, mobilize out

exactly September 1<sup>st</sup>, that's difficult. So we may not be able to do it, and then we'd be breaking our word, which we don't wanna do if we can keep from it so—

Ms. McPherson: Thank you. Staff Planner, Nancy McPherson. If you look at Exhibit 19, 20, and 21, that's the letter from the State Department of Transportation. They are saying that if they are oversized and overweight equipment or loads, they have to get a permit from State DOT. And they should also coordinate with State DOT, Maui District Office, to keep the State highway clean of products or debris hauled or tracked from the subject project site. Then the Maui Office in Exhibit 20 stated that they must set up a scale to weigh all trucks as they leave the site. And that they have to do regular inspections of the condition of the highway to take appropriate action when there is spillage, cinder spillage on the highway. Although, it sounds like cinder spillage might be a good thing especially, if the trucks run over it after that. And then there's a letter 21, Exhibit 21—a response from the applicant, actually, their consultant. And so they are basically stating that they will have — they do have a scale. They will be weighing. And they will work with DOT Maui to coordinate activities which will keep the State highway clean, but it doesn't talk about maintaining or improving the State highway. And that is a good question for State DOT, overall. Maybe that could be addressed during the community plan update, that sort of thing, because we really need them to address that issue in the long term. I would hate to see the burden of that, though, put on this applicant for this project. So thank you. And also, our Chair is correct that there needs to be a nexus between the direct impacts from their activities and whatever condition we are creating to ask them to mitigate.

Mr. Leer: So there you have it. Lots of red tape and issues. That's why the best we can say is basically, we'll maintain it before we go in. We'll maintain it after we finish up, okay? Other than that, I can't really promise anything. I wish I could, but I just can't.

Ms. Buchanan: Okay, then, we just going be vague 'cause I don't even think it's a State highway to begin with. It's an ongoing issue for many years that we've been involved with because of the canoe race. And I know very well they already have a scale and they already have an agreement to do this. But some wording would be very vague as to them maintaining that goal because if off the top of my head you do 1,200 truckloads, your truck is traversing twice that, which is, you know — yeah. So that's trucks going up and down that road over 2,000 times. There's bound to be impacts. And I can base that on the truckloads that was going up and down the Molokai Forestry Road during the biomass years. And we saw what happened to that road because of the trucks traversing over the Forestry Road. So there has to be some maintenance. And that can — because we stated that is a concern, we'll put in a broad condition to that project, and also, with the Item 6 stipulation that the Planning Department can come in. So if I go down there, and I go, "My God, I'm driving in powered dirt," I'm gonna call Darryl, and I'm gonna say, hey, you gotta, you know, get a meter from the Ranch. And in fact, that would be a great idea because you need water down there. And I know they have a pipe line because they turn it on when they

want to. So you going have to get one meter from them for water. And you're gonna have to water down that road. And a condition going be gotta be in September, either the first or second week of September. And that's just how going be because otherwise, depending if – we acting as the State Land Use Commission. I cannot allow that kind of heavy use to go on on one road because it's not gonna be safe conditions for the 2,000 people that going be down there on the last week of September so–

Mr. Sprinzel: Could we say something to the effect that you'll leave it no less than you found it?

Ms. Dudoit: I was actually gonna say the same thing. I mean, I would hope – and I think I already know this because this is common sense, but you're a business man aside from the ethical obvious reasoning. Your trucks are safe if you maintain the road. And that's – I mean, I just think that's just kinda common sense. So I mean, to say that we have to impose on September 1<sup>st</sup>, to me is harsh because they not the only person – that's the most heaviest time of traffic. And if you ask me, the canoe people should be responsible for maintaining the road on September 1<sup>st</sup>, and give us some kickback from the canoe race, but that's beside the point. But I think that if you agree to a condition stating that you maintain the road when it needs to be maintained, when you've traveled on it, and obvious kinds of, you know, wear and tear that goes on from your use of that road, I would hope that in best practices, not just as a business person, but as a Molokai resident with all these wonderful Molokai people working for you, you like them be safe. And that's just – I mean, the condition should be that common sense to me. It shouldn't say just one time of the year because that's when everybody travels on it, but that's just my feeling.

Ms. Pescaia: Mahalo. Any Commissioners have any questions directly for the applicant? Seeing none, I'm going to open public testimony. If there's anyone out of this beautiful crowd who would like to offer some manao, thoughts, questions, comments, shed some light on any part of this project, please help yourself.

Mr. Clifford . . . : Hello, my name is Clifford . . . (inaudible) . . . I work for Tri-L and I feel get Hawaiians on the crew, yeah, so we going automatic malama our aina. And I hate to say it, but sometimes we no listen to him all the time. If the road is beat up enough where we flying in and out of our seats, we turn around and we fix it ourselves. So by having water and all that would greatly improve the condition of the road. Thank you.

Ms. Pescaia: Anyone have any questions for him? Thank you. Anyone else? Okay, seeing none. Commissioners, do we need further discussion, clarification? I think she's gonna propose the–

Mr. Sprinzel: I would like to see something on the lines that Zhantell and I said that you undertake to leave the road in the condition you found it caused by your activity. I think that

would certainly satisfy me. And I do understand. I mean, you guys have lived here all your lives, so you're not gonna screw up the road.

Ms. McPherson: If there are no more questions for the applicant or myself on the project, and if you're ready, I can – if you're not ready, I can read the recommendation, the Department's recommendation, if that's your will. And then you can talk about conditions. You should've gotten that as a second document, yes. Okay.

This is the Department's recommendation. We have to make conclusions of law for this project so we applied the standards for reviewing a Land Use Commission special use permit to allow unusual and reasonable uses within the ag district. These guidelines are used to determine what is considered to be an unusual and reasonable use. Use 1, the use shall not be contrary to the objectives sought to be accomplished by HRS Chapter 205, 205A, and Section 15-15-95, Hawaii Administrative Rules.

Our conclusion is that the proposed use is not contrary to the objectives such that the important ag lands as defined in HRS 205-42, incorporate those lands which can sustain high yields, contribute to the State's economic base, and have future capabilities of producing farming income. The land on which the cinder pit is located has been determined–

Ms. Kelly: Chair?

Ms. McPherson: Yes? You don't me to read all of these?

Ms. Kelly: No, thank you.

Ms. McPherson: Well, we have made these conclusions, 1, 2, 3, 4, and 5. Basically, that it's not ideally suited for ag use. And therefore, this would be considered an unusual and reasonable use for this particular area of ag land. If it was prime ag land, it might be looked at differently.

Our recommendation, we recommend approval of the State Land Use Commission special use permit subject to the following conditions. I can read through all of these conditions or I can ask you if you'd like to waive that.

Ms. Pescaia: We shall waive that.

Ms. McPherson: And if Mike's okay with that, then– We are recommending that it's good– Oh, go ahead, Mike.

Mr. Hopper: Yeah, there's never a requirement to read these orally as long as it's in the report, it's part of the record, and adopted here, there's not an oral requirement that I know of that you need to read all of the conditions.

Ms. McPherson: Okay. Well, you know, there's been certain traditions in the Planning Department over the years. We're trying to let go of those.

June 30, 2013 is when we are recommending it be valid until. There are some – two project specific conditions. And this may be where you like to add any possible conditions. That the applicant shall submit a final best management practices plan describing – you know, preventing any runoff from having an adverse effect on adjacent and downstream properties, impacts of dust, etc. The applicant feels that there won't be very much dust generated from the actual mining because it tends to not be a dusty product. But it's possible there will be a little bit of dust. And so what I'm hearing– I heard a lot of new things today, actually. But what I'm hearing is that they will be trying to get some water down there either with a water truck or through a meter. So they will have water on hand to deal – mitigate any dust impacts. But we're still asking that they submit a best management practices plan describing how they're gonna do all of that.

And Condition 14 says that upon completion of the proposed use or the expiration of the State Land Use Commission special use permit, the applicant shall return the land to a state of acceptability deemed by the County of Maui Department of Public Works. I believe this condition has been applied to other projects that's similar in nature in the County. So the idea is that Public Works can go out there and inspect, maybe Steve Arce or somebody, when they're all pau and say, okay, this looks good, this looks stable. And it actually looks pretty stable to me right now, after going out there twice. So if they're gonna return it basically to a similar condition as when they started minus the cinder that they've extracted, they'll be in good shape.

And then we recommend that you adopt this report, as amended, and recommendation prepared for this meeting as your findings of fact, conclusions of law, and decision and order.

Ms. Pescaia: Thank you. I'll entertain a motion. Or is there any need for further discussion? Okay. You wanna add in the extra condition in your motion?

Ms. Kelly: Okay, I'd like to make the motion to concur with the recommendations with the conditions.

Ms. McPherson: Approve.

Ms. Kelly: Approve.

Ms. McPherson: Actually approving with conditions.

Ms. Kelly: With conditions.

Ms. Buchanan: I second the motion for discussion.

Ms. Pescaia: Okay, so a motion by Commissioner Kelly, second by Commissioner Buchanan. Discussion.

Ms. McPherson: Can I ask for some clarification? Is that with conditions that you haven't amended yet or that you have amended?

Ms. Pescaia: That is correct.

Ms. McPherson: So then you're gonna amend your motion. Okay.

Ms. Buchanan: Okay, we in discussion. Okay, that everything that was submitted to us plus, amending project specific Condition No. 13 under BMPs. And 13 says, "That the applicant shall submit a final Best Management Practices (BMP) Plan describing measures to prevent grading and/or runoff generated," and road maintenance. So some place in there, we need to add the road maintenance because that's mitigation, and water, the use of water. Instead of saying that they need to get water from MPL, they can truck the water in. I don't know care how they get it there, but that that be part of the BMP for road maintenance. And so all we're asking for 13 is that this is added. So, if you can do that, Nancy.

And then at the end, after 14, project specific Condition No. 15, that Tri-L will provide maintenance for the dirt access road to the quarry when conditions warrant improvement. How's that for broad and vague?

Ms. McPherson: Can you state that, please?

Ms. Buchanan: Sure, that Tri-L will provide maintenance for the dirt access road to the quarry when conditions warrant improvement. And then in item – project specific Condition No. 17, you can take right out of this document on page 4, Item No. 6, that the special use will be subject to periodic inspections by the Planning Department or other Federal, State, or County agency for compliance with the terms and conditions of this special use permit. Yeah, that would be no. 16, project specific Condition No. 16.

Ms. McPherson: That's actually condition 10.

Ms. Buchanan: Oh, it is? Okay, good.

Ms. McPherson: It's already there.

Ms. Buchanan: Oh, okay, very good. So we only have no. 15.

Ms. McPherson: Yes.

Ms. Buchanan: And that's it.

Ms. Dudoit: And I just wanted to make clarification that I would assume no. 15 falls under no. 4 where it says that, "The successor and permitted assigns shall exercise reasonable due care as to third parties with respect to all areas affected," which I would suspect includes the road.

Ms. McPherson: I think this has to do with liability insurance, and that is sort of legal language that I hope I fixed correctly. Mike, James Giroux at our last meeting talked about fixing the language in this. And I think I did it correctly, but I don't – I think this is kind of a separate condition. I don't know that we could kind of subsume road maintenance under this condition because this mainly for liability insurance. That's my understanding.

Ms. Dudoit: Okay, so maybe Corporation Counsel can answer this, but whether or not it's a liability insurance or general maintenance, the fact of the matter is this is a condition by which they have to operate. So it would make more sense and more weight that they're maintaining it for liability purposes than just 'cause we said so. So, I mean, I just think it's one and the–

I guess I'm having difficulty with this because I sit from one place where I know a little bit about mining, and construction, and paving, and all this kinda stuff. And for years, we've had one company operating and monopolizing this industry. We pay almost \$200 a ton for asphalt on this island to our people. So the fact that another company with all this Molokai boys over here that is born and raised are gonna be a part of an innovative new idea to boost up the company and secure jobs, and secure that we have competitive rates on cinder, on dirt, on whatever it is, I just having one hard time making it so difficult for them to comply with conditions that it cost money, and you like 'em specifically say maintain the road. I feel like they deserve some integrity and dignity to know that they need, whether by liability for insurance or common sense practices, to maintain the road because that's for their own safety. And, you know, so I think the conditions speak for themselves. I mean, unless we have something really specific that we think that's going cause a lot of problems, I would like to see more businesses like this succeed on Molokai without so much difficulty because the red tape and permitting already is such a big hassle.

Mr. Sprinzel: Tri-L has already agreed to all of this. It's only this last little bit we're talking about, Item 15, is that right?

Mr. Leer: That's right.

Ms. McPherson: You need to use the mike, please.

Mr. Leer: The road is a tough issue. We wanna maintain it, but, you know, the cost for us to spend more – you know, we could spend two, three weeks up there on that road or more just getting it up to a decent standard right now. And water is an issue. Water's not getting any cheaper on the island. There's another issue I have. I mean, water is getting really expensive and it's hard to get, okay? So we're gonna be limited to the amount of water that we can get up there, and the cost of it's gonna be I'm pretty sure astronomical. It is even where we're operating now. I don't know how to say – the only thing that I've said and I've stated to our crew and everything is when we start, we're gonna basically take pictures of the road. And when we finish, it'll be in as good or as better condition when we leave each time, okay? And that's why we hopefully hold this to maybe twice a year. We really don't wanna do it four times, but, you know, right now, it may take four times to do what we wanna do so– And I've stated that to my crew. And like he said sometimes, they don't always listen to me, but usually when I get out and start stomping my feet and throwing things, they start paying attention. So they're here. And you can state that in front of them, yeah? That's what we intend on doing. It'll be in as good a condition as when we start, when we leave. I can't guarantee we're gonna make it like a new road, because it's not. It's terrible, okay? In fact, we already stated that we're gonna end up spending three, four days on the road just to be able to start hauling because of the conditions of the road. But we are limited on our materials to fix the road, okay? We're gonna have cinder available, which, of course, we're gonna pay for. And we'll also have some water available to fix the worst parts, okay? I – you know, how else can I – how else can you state it? I agree with Lori that she needs – she wants some kind of a condition to hold us to. And I agree with her. It would be nice to do that, but with the road in so bad a shape, how can you hold us to a condition that's already terrible? If that's the condition you want, we can give you that. The road's terrible. We can leave it terrible.

Mr. Sprinzel: All we're asking, really, is that you're gonna have the road suitable for your use, and we want it left like that.

Mr. Leer: Affirmative.

Mr. Sprinzel: That's really all we want. I don't think – well, even Lori, I think wants more than that.

Mr. Leer: Okay, well, that is our intent, okay? And they're all – most of them are here, anyway, not all of them. Most of them are here, and they'll agree to that, too, yeah? Alright. There you have it.

Mr. Sprinzel: You can blame the ones who aren't here, then.

Mr. Leer: So if you have a complaint, take it to them. Okay.

Ms. Pescaia: So do we need that Condition 15 in there, or can we just say that based on the representations made by the applicant in the proceedings? Again, the question is, putting it in writing in the overlap with the State side of it, and putting it with him trying to be in compliance with our permit and up against other regulations.

Ms. Kelly: I, for one, don't have a problem with it. And all we're doing is specifying that the road will be maintained. It's nothing more than that. So, yes, I do agree to having no. 15 in there. It's not to – you know, a new road or anything, just in good condition. So I would amend my motion to include our discussion to add no. 15.

Ms. Dudoit: Can I ask Corporation Counsel a question? Because there's only five of us, if I disagree with the inclusion of that special condition, the motion doesn't pass automatic, right? Which means we need to make a new motion.

Ms. Pescaia: Which means we entertain a new motion or–

Mr. Hopper: To clarify the procedure here, it seems there was an original motion made, seconded. That's before the Body. There's a motion to amend that Condition 15, second it, and we're discussing that. If that doesn't get enough votes, then you're left with your original motion which was approval of – with Conditions 1 through 14. That's my understanding of what happened. So if you didn't vote, you would need five votes, that's correct, then the amendment wouldn't pass. And so you'd be free to amend, add other conditions, amend current conditions, other things, but that particular condition wouldn't be added.

Ms. Dudoit: Okay, then maybe I have a question for Mr. Leer. I want this whole process to pass for you. I do. I don't know wanna tie – even though we saying Condition 15 is just a clarification, that clarification holds with it, financial burden. I wanna know if you're able to comply with that financial burden, whatever that may be, if we included a Condition 15 to specifically that you needed to do improvements on the road. Well, it's already in no. 4, so what I'm asking is if it holds you, if it feels that it holds you to a financial obligation that would hamper or put more burden on your total project as a whole. I don't have a problem voting for this if this is going through and that's your ultimate. I don't want you to be stuck in a situation where you went spend all this money for come this far already and then that puts a burden on you, financially.

Mr. Leer: I think the wording has me kinda uptight where it says, "Provide maintenance for the dirt access road when conditions warrant." I think that's the issue because that could

be any time. You know, conditions warrant after the storm that you go out and maintain it. Well, we haven't been out there since, you know, last year September. So why – you know, this is basically putting us under the gun to maintain this road when we're not using it. What I would like to say is that Tri-L maintain the road in as is or better condition during their operations, okay?

Ms. Dudoit: Or pretty much how the no. 4 says, "as affected by your use," right?

Mr. Leer: Yes, that's what I would like to see. That's where I can say, okay, I am responsible. We will maintain the road.

Ms. Dudoit: And you don't have a problem with that?

Mr. Leer: No, I don't.

Ms. Dudoit: Okay.

Mr. Leer: I just can't go with the warrant – you know, when conditions warrant. That's pretty vague. It is vague, but it also ties us to a condition that we may not be there.

Ms. Buchanan: Chair, we still in discussion?

Ms. Pescaia: Yes.

Ms. Buchanan: Okay. Let me clarify something. We have – we need five votes to pass this. This Commissioner will not – I will not vote in the affirmative on only going on what Item 4 is, which is usually the indemnity clause of no. 4. It's a general indemnity clause that we see time and time again for all projects. And I think with the traversing of over 2,000 vehicles over a dirt road that is frequented by the public, warrants a project specific condition. That is my findings of fact and conclusion. So just that stating again that we do need five affirmative votes otherwise we will defer until such time we have more people on the Commission.

Ms. Pescaia: Okay, so what if we just try and work on no. 15 and get to a place where it makes everybody happy? 'Cause he not opposed to maintaining the road, but it needs to just – I agree with the – if maintaining the road immediately following his usage to mitigate whatever impacts his operation has on the road. Because no make sense for him to haul – like he hauling his equipment. He fixing the road. Then he going operate. When he's done, before he leaves his – takes his equipment out of there, they fix the road on their way out. It doesn't make sense for them to haul back machinery at another point in time when he's not even – you know, three months later, he's not even operating to come back to fix the road when at that point, it's at a stage that you cannot tell what was immediately his

impact or what is just mother nature and other community use. So it makes sense to tie – his kuleana or his responsibility should be to what he – whatever damage or whatever – I mean, his impact on that road. I don't know.

Mr. Sprinzel: Nancy, can you read where we are at the moment with 15?

Ms. McPherson: I have– Well, I guess if we're leaving out the amendment that Commissioner Buchanan made earlier to project specific Condition 13, which included maintain the section of the road that is impacted, and has road maintenance in there for best management practices, so if 13 is as, then I have for 15 at this point, "Tri-L will provide maintenance for the dirt access road to the quarry to maintain in an as is or better condition during operations."

Mr. Sprinzel: Are you happy with that wording?

Ms. McPherson: Okay, "Tri-L or applicant will provide maintenance for the dirt access road to the quarry to a level that maintains an as is or better condition during times of operation."

Mr. Sprinzel: Okay. I'm happy with that if you are. Mind you, if you were an off-island company, you'd have a lot harder problem with us, I'm sure.

Ms. Pescaia: Okay, sorry. Corp. Counsel and I are trying to figure out if we had a motion for 15, if we seconded that motion, because I think it was proposed, but I don't think there was a second.

Ms. McPherson: I don't think it was seconded.

Ms. Pescaia: Right? We just started kind of proposing it and then–

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

Ms. Pescaia: Yeah, okay. That's what I thought. We just making sure that procedurally, we don't have hanging motions out there. Okay. Okay, he says we're fine. Sorry, proceed. Where we at?

Ms. McPherson: Okay. So we have to go back to the other one then, because– Wait. We're saying now that the Commissioner's amendment was not seconded.

Ms. Pescaia: As far as I know, 15 was not – 15 was proposed, but not seconded.

Ms. McPherson: Is anybody gonna second it?

Ms. Pescaia: So if we changing the wording, then we can re-propose it and second it or not.

Ms. Kelly: So read to us again what you have. Is this to be added to 15?

Ms. McPherson: What I have from your discussion so far as far as a new condition, Condition 15, okay, this is not changing the language in no. 13 at all, 15, "The applicant will provide maintenance for the dirt access road to the quarry to maintain it in an as is or better condition during times of operations." "And immediately after," we could add that, you know.

Ms. Kelly: So we're just kinda discussing over here, too, to leave out "better."

Ms. McPherson: Okay. Would as is be based on when they started or when they did the improvements before they started operations?

Ms. Kelly: Before the start of operations, but they're going to be improving it – yeah, they're gonna improve it to their standards so they can start. They just cannot leave it worse than what they found it. Okay, can she read it again so we all clear?

Ms. McPherson: Okay. Condition 15, "The applicant will provide maintenance for the dirt access road to the quarry to maintain it in an as is condition during times of operations, " or I think we talked about an as is at start of operations condition, but I don't know if you wanted that in there. Okay, so, "an as is condition during times of operations."

Ms. Dudoit: It seems like it's missing a word or something. I mean, as is as of when?

Ms. McPherson: Okay. Well, we're a team here, so you guys help me out. Okay, "The applicant will provide maintenance for the dirt access road to the quarry to maintain it in an as is condition during times of operations." If you wanna change that wording–

Mr. Leer: Oh, yeah, would be during times – would it be during times of operations? At the beginning and at the end of operations?

Mr. Sprinzel: During times of operations covers it.

Ms. Buchanan: Chair, discussion. You know the reason – the reason this application is called a special use permit is because the use is inconsistent with the zoning, okay? That's the bottom line. So this is not let's make a deal time, okay? This is a special use permit. Special use permits have several conditions because the use that is being applied for is inconsistent with the zoning, period. So now you trying to conform an unpermissible use into something, and that's why you need a special – you need special permission to do this.

As part of this special permission, you come up with project specific conditions. I don't think anybody has made a challenge that the assumption of more than 2,000 large vehicles traversing that road is not gonna have an impact. The purpose of this Board, this Commission, is to mitigate impacts for the best possible outcome. That's our job. Our job is to comply with the Molokai Community Plan which is our bible. So basics is getting down to basics, okay?

And we are common sense people here. We love all the bruddahs that work for Tri-L. We not here to make sure that they not going work. We like them work. The more jobs they get, the better. Tri-L and Darryl has been a gem to me and other prospects of jobs, even to other Commissioners here where they're always helpful, yeah? They always helping everybody. So our – all we saying is we gotta dot our i's and dot our t's because in this matter we represent the State of Hawaii. We not only representing the Molokai Planning Commission. We actually representing the State Land Use Commission. So in that process, which is a quasi-judicial process, we have to dot all our i's and cross all our t's. And that's why if we like get anal, I can get anal. But I tried to be as broad and as vague as I could with just holding the feet to the fire long enough to make sure that what happened at HC&D way back in whenever, 1970s, where they left Hale O Lono in one wreck, and they never come back to mitigate and clean up their mess that that not going happen in all the projects. So the same oversight that I provide on this Board is I try to keep the integrity of this Board. I try to scrutinize all projects on Molokai with the same scrutiny. And although we want to help companies that are local, we are held to a higher standard because we may find ourselves involved in a quasi-judicial practice at sometime. And that's all I like say.

So if we going be pussyfooting around among words when he know he gotta fix the road, we know he going fix the road, I no see what the issue is because it's common sense. So I don't care how that is said as long as it is an Item 15, and it's not put into some place else that is even more broad and more vague because that's our responsibility.

Ms. Pescaia: Okay, Corp. Counsel has a suggestion.

Mr. Hopper: I can try. It's a bit long, but because we've had all this discussion, I think this maybe encompasses it, as represented the applicant can maintain the dirt access road to the quarry in the same condition as it was at the time the use is commenced and shall restore the road to the same condition as it was at the time the project is – as it was at the time the project was commenced when the use is concluded. It's longer, but I think that's what everybody said.

Ms. McPherson: Yeah, I have a draft one here, if you want to hear it.

Ms. Pescaia: No, we going take his.

Ms. McPherson: It isn't as good as his.

Mr. Sprinzel: The lawyer's just done a draft for us.

Ms. McPherson: That's why – yeah, he went to law school.

Ms. Pescaia: We wanna make use of it. Okay.

Ms. Dudoit: I just like say one more thing. Just to make sure she know and everybody know, I have the utmost respect for Commissioner Buchanan. She's one of the hardest working, most intelligent people I know but, Corporation Counsel, for my clarity, okay, because I don't know wanna make this mistake again, if I am in error, when we looking at the project and this special use conditional permit that we looking at, we're specifically talking about the seven acres of land and usage on that seven acres. Am I correct? Which does not include the road to the area that we granting the special use permit. And I say that because I wanna make it clear that if this was a State highway with pavement, we wouldn't even be talking about them maintaining the dirt road. So I like be clear on that so that I no sound like one idiot if I continuing on with this conservation but–

Mr. Hopper: The only thing is that if the use on that area is gonna have an impact somewhere else that you know of, you can put in a condition to basically, what they say, mitigate that impact, which is basically, honestly, a fancy word for saying they fix whatever damage they cause, or they fix the impacts that they have on the road. You can't have them do more than that, but you can make them do that. And so that's why the words, "in same condition" or something like that I think can be effective. But even if it affects something off site, you could say if permitting that use is going to impact that, there can be an argument that you can require that mitigation, if you like. It's not required, but as Commissioner Buchanan said, I think, since you're allowing the agricultural use in that area that's not normally allowed, there might be more traffic. So, yeah, that is permitted. It's not mandatory. You don't have, but I think this would be a legally defensible condition. And it's similar to other conditions that I've seen on district boundary amendments or County special use permits, things like that.

Ms. Dudoit: No, but, so your plain and simple answer is, the special conditional use permit that we are approving is for the seven acres of land and the usage within that seven acres or the 1.3 of– I just wanna be clear on that. I know that we can include because it doesn't affect, but the statement was made that we are just like held accountable for the usage on that property. And if everything I'm reading from staff has to do with use or conditional use on a very specific portion of land.

Mr. Hopper: Yes. You can only permit the use – I mean, that road – you're not permitting the use of that road. The State has to already allow the public or whomever maintains that

road would have to allow them to cross that. We couldn't allow that, but if what they're doing will impact some other public facility, in this case, then you could require – I mean, there are things, for example, called traffic impact fees that are very common on projects, and deal with the traffic impacts the projects will have. So this is actually one of the more common types of conditions that you'll see on projects.

Ms. Dudoit: I just wanted to make that point so that we have on record that the State is accountable for that road and hasn't done their responsibility for years, and years, and years. And so we kinda just let them go and make everybody else responsibility for it. So I just wanted to have that discussion so that we know. If it was a State highway where we going back and forth on 'em, the guys would be out there mowing the land, and maintaining the pavement and asphalt, and all that kinda stuff, and potholes. But since it's not, they just leave it like that. So that's why we in this kinda discussion right now, just for the record.

Mr. Hopper: And if the State allows – will also have to give permission for this work to be done, if it's considered a State highway. So that's, I think, important to note.

Ms. McPherson: Right, and if I may add? For determining what is considered to be an unusual and reasonable use, the guidelines from Section 15-15-9.5 clearly states the desired use – you have to make a finding that the desired use would not adversely affect surrounding property and that the use would not unreasonably burden public agencies to provide roads and streets, sewer, water, drainage, and school improvements, and police and fire protection. So that's where that condition is totally in line with. In order to for you to make that finding and that conclusion, you can condition a project so that you feel that it is not unreasonably burdening public agencies.

Ms. Kelly: Okay, so I will make the motion to include the verbiage for no. 15 that Corp. Counsel mentioned.

Mr. Sprinzel: Second.

Ms. Pescaia: Motion by Commissioner Kelly, second by Commissioner Sprinzel? Discussion? Okay. Okay, so now we're voting just on adding this condition, amending the conditions.

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

*It was moved by Ms. Kelly, seconded by Mr. Sprinzel, then unanimously*

**VOTED: To include the verbiage for Condition No. 15 as stated by Corporation Counsel.**

Ms. Pescaia: Okay, motion carried. Okay. Do we need any further discussion on the larger motion? If not, I will call for the vote on the larger on the larger motion of approving the special use permit with the amended condition.

Ms. McPherson: Conditions as amended, yes.

Ms. Pescaia: Okay. Everybody clear? Okay.

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

*It was moved by Ms. Kelly, seconded by Mr. Sprinzel, then unanimously*

**VOTED: To approve the special use permit with the conditions, as amended.**

Ms. Pescaia: Motion carried.

Ms. McPherson: Mahalo, Commissioners.

Ms. Pescaia: Yes, thank you. Thank you for your participation and for making this a lively discussion. And we love it. We love to serve. We are going to take a brief five-minute break and look for another Commissioner because we're gonna lose quorum. Hopefully, we can track somebody down in the meantime, okay? Because we still have on our agenda all of Joe's proposals, which is actually a hearing.

(A recess was then taken at 1:45 p.m. and the meeting reconvened at 2:15 p.m. at which time Mr. Nathaniel Bacon joined the meeting. Mr. Sprinzel left the meeting at 1:45 p.m. and returned at 2:15 p.m.)

Ms. Pescaia: Okay, I am calling this meeting back to order hoping that our next presenter either brought ice cream for everybody or he going hurry up and be ready to present. Or you want us to give you a few minutes? Anybody object to that? Okay, so let me get to D, then, Communications, the next thing on the item – on the agenda.

#### **D. COMMUNICATIONS**

- 1. May 10, 2011 memo from Joshua Stone, Chair of the Maui County Charter Commission to Boards and Commissions requesting submittal of proposed charter amendments and/ or recommendations by June 30, 2011.**

Mr. Clayton Yoshida: Madame Chair, Members of the Commission, we just wanted to make you aware of a memo from Joshua Stone, Chair of the Maui County Charter Commission asking for any proposed charter amendments and/or recommendations to be submitted to the Charter Commission by June 30<sup>th</sup>. They're using a three-prong attack. They're asking all the departments if they have any proposals. They're asking all the boards and commissions if they have any proposals. And they're going out into the community next month to have different regional meetings to ask the community if they have any charter amendment proposals. So they wanna try to get all this public input in by June 30<sup>th</sup>. We did circulate a copy of the charter to all of you in your orientation binder. It is also found on the County website. But if the Members have any specific amendments or recommendations to the charter. This is done – the Charter Commission convenes once every ten years to review the charter. So I don't know if you want to do it today or we can take a look at it maybe at your next meeting on June 8<sup>th</sup>, but just wanted to make you aware of that.

Ms. Pescaia: Commissioners, you have any suggestions for him right now?

Ms. Buchanan: Off the top of my head, I can think of one to the Charter Commission, which was because this Board sometimes we have like we're having right now, the issue of filling vacancies, we wanted outgoing Members to serve in an interim capacity until such time that we did get new Members on, but right now, that is not in the charter. So it's a suggestion for the Charter to amend that to allow outgoing Members to serve in an interim capacity until we find suitable replacements.

Ms. Pescaia: Clayton, do we make a list of these suggestions, and we put it in a letter, and we submit it like I submit a letter to Mr. Stone? Or do we kinda just give it to you, and you're gonna take the ideas on our behalf?

Mr. Yoshida: Well, like with your comments on EAs and so forth, if there's a consensus from the Commission as to what it wants to recommend to the Charter Commission. I mean, you can propose amendments as individuals as members of the public like anybody else can, but you're also – they're also soliciting comments from boards and commissions. We can take down those comments and then run it past the Chair. And they could sign the letter on behalf of the Commission, if the Commission authorizes them to do so.

Ms. Pescaia: Okay, sounds good. Anybody else? And how about the clause about like if you no show up for so many meetings and you go MIA that we can somehow – that's not charter? That's our rules? Alright. That's on our agenda, too. Okay. Anything else pressing? If not, we'll put it on the next agenda, and you can guys can go home and think about it, and we'll harness some more ideas at the next meeting.

Mr. Yoshida: Okay, we can do that. So you all have a copy of the charter or can access a copy the charter?

Ms. Pescaia: Yes.

Mr. Yoshida: Okay. I guess the next item is the Chairperson's Report.

## **E. CHAIRPERSON'S REPORT**

### **1. Status of the Commission's Subcommittee on Rule Changes Report**

- a. Rules of Practice and Procedure**
- b. Special Management Rules**
- c. Rules Regarding Special Uses in the State Agricultural and Rural Districts**
- d. Shoreline Area Rules**

Mr. Yoshida: I think we just wanted to see that it kinda – well, I mean, the Chairperson can give her report.

Ms. Pescaia: My report, okay. So back in March we started looking at the proposed rule changes. I don't know if you folks all have copies of those draft changes. If you haven't looked at them yet, especially, our new Commissioners, because I think we got them before you got here? Did you guys receive these? You did? Okay. So we're supposed to kind of decide on them.

Mr. Yoshida: Well, we could report that the Department is still reviewing the drafts. But we'll be doing that this week and next week. So we should have some comments – or hopefully, we'll have some comments available by the next meeting.

Ms. Pescaia: Okay, awesome. Anybody else have anything to say about these?

Ms. Buchanan: I have a suggestion.

Ms. Pescaia: Okay.

Ms. Buchanan: That this Commission set aside time and we ask ex-officio Chair Chaikin and Commissioner Kalipi to join us in a type of a workshop session where we can collectively review because we did it at their last meeting and it was very rushed. And it was like just outgoing what they had to do. So I would like to invite them back, and for us to spend an hour or so going over that again. So I want that as an agenda item.

Ms. Pescaia: I did ask Mr. Chaikin about that. And he said, "I went over all the meaty stuff and all the other stuff is just housekeeping." I said, "Can you do it again because we have new Commissioners now? He said, "Huhhh." That's what he said. So I hope you can translate that sound into words. That was the sound. So I'm sure we can peer pressure him into doing it. Okay.

Mr. Yoshida: So I believe Mr. Alueta is about ready to provide the report on Item C-2, Public Hearing C-2.

- 2. MR. WILLIAM SPENCE, Planning Director proposing the following bills relating to the Maui County Code concerning Industrial Districts: (J. Alueta)**
  - a. A Proposed Bill Amending Chapter 19.24 of the Maui County Code relating to Light Industrial Districts**

Mr. Joseph Alueta: Good afternoon, Commissioners. Okay, so we – as you know there's two ways you can amend Title 19. And one of them is through resolution from the County Council. The other method is by internally, we amend a draft bill. And today we have a draft bill here to basically, amend Title 19.24, as well as 19.26, which are your industrial zoning areas, as well as adding a new M-3 zoning category.

If you recall about a year and a half ago, Riki Hokama – or I guess it was two years ago, Riki Hokama introduced a resolution that would have eliminated stacking from the zoning categories from both the industrial as well as the apartment areas. And what I mean by stacking is, in industrial areas, in particular for industrial areas, what it does is as it says in M-1 and M-2, it allows for any use that's in a lower category. So it allows for all the uses that were allowed in the B-1, B-2, B-3 to be allowed also in the M-1 or the M-2 district. And then the M-2 district, it allows for anything to be allowed in the – everything below, including the M-1. So it's kind of like folds those uses in there.

The problem that we found was is that there's a lot of existing nonconforming – or it would create a lot of existing nonconforming uses well beyond what would be manageable for the County at this time. It also acts as a sort of a mixed use district where you have a bunch of different uses. The downside to that is that because you do not have a pure or protected industrial zoned area, you tend to get more higher value uses such as restaurants, or retail outlets, or bars that can pay more per square foot than say a construction outfit such as you saw today, or a baseyard operation.

And in talking with a lot of industrial baseyard area people, they need, realistically, about 15 cents to 20 cents a square foot of land to lease to be able to store their heavy

equipment. But when someone's willing to pay you \$1.50 or a dollar for square footage or warehouse, that storage, you can't compete against that. And so a lot of what's been happening and has been happening here on Molokai as well as Maui and Lanai is that the heavy industrial equipment operators or the construction industry, people who need that storage, go to marginal agricultural lands. And then you find yourself processing State special use permits, County special use permits for what is essentially a quasi-urban use within the agricultural lands. You know, five, ten years – after it's established for five, ten years, then they're in for a community plan amendment and a district boundary amendment to change that agricultural land to a heavy industrial land to the zoning. And you kind of have this vicious cycle. And a lot of times, this zoning and changes may or may not be – is not consistent with what the community plan wants. And that's why they have to do a community plan amendments. So it's basically, the planning – there's no planning involved. It's where can I get cheap marginal agricultural lands? And then, you know, I give you a nice story about why I need this, and then you get the special use permit. Once they get the special use permit, they're kind of in – the foot's in the door.

This bill basically is, one, we're trying to clean up, as we have been going through all of Title 19. As you know, we've been, section by section, trying to clean up some of the conflicts with other sections of the code, make it easier to understand so that – and use tables and formats, but in the three packages, I also introduce what we call the M-3 category which is pure industrial. And this is what we had told that we would do, and that is, this creates a restricted industrial area, and it protects the pure industrial uses. All the uses in the M-2 district that were considered to be special use permits under – as part of our streamlining, we moved into the M-3 as being an allowed permitted use.

Secondly, the restriction within the M-3 district limits so you cannot have – it doesn't have that – one, that stacking provision. So it does not allow for all of these other uses below it to be put within the M-3 district. It also limits retail and office space. It allows for it as an accessory to an existing operation. So if a baseyard operator, or a concrete operator, or whatever, batch plant, they obviously needs to have office space. It limits it to a thousand square feet or I believe it's 10% of warehouse space, but not to exceed a thousand square feet. This prohibits – so obviously, it prohibits retail operators from moving in there, restaurants from moving in that area. It's strictly for – it's intended for and strictly for big industrial type warehousing and storage.

The thing that you need to keep in mind when you review the M-3 bill is I tried to put in uses that I felt were industrial uses that were listed within the M-1 and M-2 district. I caught some of them. If you think of or see a use within one of the districts that you feel should be in the M-3, or should be allowed, it can be allowed in M-1, M-2 and 3, it needs to be specifically listed in the M-3 district to be an allowed use because again, I do not have that stacking provision that allows the lowercase areas.

Another key component of the bills is that in the M-1 district, there's that conflict between the preamble. If you read the preamble, it basically prohibits or talks about dwelling units, okay? Well – and it lists all of the uses alphabetically, okay? However, at the very end, apartments is added.

Ms. Buchanan: This is in the M-1?

Mr. Alueta: This is in the M-1. So if you look at that, it's kind of a – and it's always been an oddball situation. When you read the use, but you read the preamble and the purpose and intent of the M-1 district, it didn't make sense with it. And I'm not gonna get into how it was added or why, but it was added. And so the Department in its interpretation is if somebody comes in with an apartment, we've allowed it. If you try to do single family in the M-1 district, you're not allowed, okay? So one of our methodologies to try to clean up that appearance of a conflict is to not allow apartment districts as an outright allowed use, but it can be used as an accessory use meaning it can be above or below the first floor of an industrial use. So you could still have it, but you cannot have an apartment as an outright permitted use or standalone use.

Another thing – and again, getting back to creating nonconformities, there are several apartment buildings as well as single family homes built within the M-1 and M-2 districts on Maui. Iao Parkside is one of them and there have been several. We – our proposal, if you look at it, is to deal with these nonconformities by saying you can rebuild it. If it burns down, as long as you had a building permit, you can rebuild your apartment or your single family house. Right now, apartments are allowed so that's not a problem. But single family residences are not allowed. And so if they are in the industrial areas, they're considered an existing nonconforming use. You can repair and maintain under a nonconforming use, but if it burns down, you cannot rebuild it.

This provision that we've added at the end of the chapters for those do twofold. One, it helps alleviate or allays some of the fears for the existing apartment structures that have already been built and stand alone within the industrial area by saying, look, we're not outlawing you. We're saying if you're there, you'll be able to rebuild with – I mean, as long as you've got a building permit, if it burns down or something, you're gonna be able to rebuild to whatever your building permit called for in the size and scale.

What it also does is it alleviates the current problem where you have existing single family houses within wide swaths of Lower Main and some areas' older homes that could never – if they burned down, they could never be rebuilt, which may be a good thing. However, it also creates – in this current environment, it has created a financial nightmare for refinancing. There have been – there are several homes that during the big mortgage boom, nobody really cared what it was. They were an existing nonconforming. Banks were willing to lend. Insurance companies and banks required insurance on all these homes.

These people now come in to re-fi. The banks say, we can't re-fi you because you're a nonconforming use. If you burnt down, we wouldn't— And the insurance company goes, you know, what's the point of having fire insurance on a house that you can't rebuild? So it's kind of an interesting catch-22 that some of these— This amendment would sort of help alleviate, but not all, because some of them may not have building permits. But if you have a building permit, it will alleviate for those – a lot of those homes at the same time.

So I'm not sure how it's listed on the agenda real quick, but I can go down –

Ms. Buchanan: Okay, we not understanding the building permit part. So my house burns down. I wanna rebuild. I gotta get a building permit. My apartment building falls down in an earthquake. I gotta get a building permit to rebuild, right?

Mr. Alueta: Yes.

Ms. Buchanan: And so I going to the Planning Department to get a building permit, but they not going issue because I not a permissible use in the M-1 anymore. So you not setting them up to fail that way?

Mr. Alueta: No. What the provision does is if you were granted a building permit, a legal building permit to build within the M-1 district when it was legal to build, okay, or you got a building permit and you may have been – who knows? You could've been in the business or single family zoning area, or your house was built prior to zoning, which is what many in the areas were built. And the County or during the community plan process designated areas that were for industrial, and they blanketed zoned a lot of these areas as industrial, because they didn't see it as a taking because in reality, it was an upzoning from single family. But for those who didn't wanna convert to an industrial type use, this was their home and they were stuck in a catch-22 because they had a home in an industrial area, and if they burned, then it couldn't be built under the current law. This provision that we're putting in would allow them to be rebuilt provided that they had a building permit. So if our records show that you had a building permit, or you could prove that you were legally established, built, you would be able to rebuild to that use. So that's where it sort of helps.

It's not gonna help everyone because, one, some people may not have built with legal building permits. But for the vast majority, I think it will— It's a step in the right direction for those who wanna maintain their single family dwelling within the industrial areas. But it also – like I say, it sorts of alleviates the fear of those who have an apartment use within the M-1 district that were not just coming in and saying – creating that nonconforming use, creating this anxiety that if it burns down, I won't be able to rebuild because we wanna put that provision in. So that's the goal of it, and again, tries to make the industrial district what it's supposed to be. It's an industrial district, and normally, dwelling units are not compatible based on – and you create – you can create social conflict between the guy who's got –

legally got a welding and machine shop next door to your apartment complex. And so we're trying to create the lines and say, hey, you can still do it, but we're not encouraging it.

I can quickly go down – I mean, that's kinda – I just gave you what is a brief summary of all three of the bills, but I wanna go into each one. I'll start with the M-1 district. And I'm working from Exhibit 1 of the memo report. So I'll probably make a few corrections here. Again, on – as you can see, we put everything in a table format like we've been doing having notes and exceptions. We're still keeping stacking in there, so B-1, B-2, B-3s are allowed. We are – we would allow dwelling units above and below the second floor, which is the provision that we adopted when we did the business districts also.

We also did a – in our special uses – I mean, we left that reserved. I believe I misspelled "reserve." So that will be corrected. Also, another correction for M-1 is on development standards, there should be a minimum – it has "minimum" – and I guess, the "um" – somehow the typing of the keys of the "um" did not get added on there. If you look under – on the – in regards to "minimum yard setback," on the "Notes and Exceptions," I just didn't put the "um" for some reason.

And then on the – at the very – on page 7, if you look at page 7, we have Section 19.24.070, which is the "Permits issued prior to the enactment of this ordinance," that's the one with regards to being able to allow these uses if they were constructed with a legal building permit. And then we're also adding, "Production facility, multimedia," which is a new definition because we're adding that use to the M-1 district. There's a movement to try and encourage or at least make it clear that new multimedia – I guess they're trying to attract some movies, television productions, studios here to Maui County. And that's pretty much all I have for M-1, if you have any questions on it.

Ms. Pescaia: Question?

Ms. Buchanan: Did the Planning Department do an assessment in Lower Main or the areas that are currently zoned M-1, and about how many people would be maybe affected by the change?

Mr. Alueta: No. We didn't do – like I said, how many people we think that – just . . . (inaudible) . . . information from our zoning maps and knowing the area, we know that there's quite a single family houses built within those areas. As far as apartments, we do know of several apartments that are – that have been built all along Lower Main as well as Iao Parkside, which is probably the largest. You also have some of the Puuone Towers areas, again, also of Lower Main. Most of the apartments that are in the industrial area are mostly located in the Wailuku-Kahului area. You also have – I think Kahului Ikena which is – not Kahului Ikena, but the one near Safeway in Kahului, there's an affordable housing

project. But I believe they were exempted under Act 201, or E, or something. They got an exemption from the State for affordable housing. So I don't think it would be impacted anyway. But, yeah, we did do an analysis. I do have the zoning maps. I do have a zoning – a map showing where the industrial areas are on Molokai as well as for Maui and Lanai.

The comments – and then the comments as far as for Maui, Maui opted – Maui Planning Commission, if you care to know, they opted to keep apartments in the industrial area because there are some future projects that are being proposed within the industrial area for apartments. And they wanted to – they didn't feel that having them as an accessory was good enough. They wanted to make sure that it would stay the same. On Lanai, they felt – they wanted to see if – they felt mortuaries and harbor facilities should be added into the M-1 district because they have – Lanai, they have harbor facilities within the M-1 district. And then also mortuaries is listed like as a special use in the B-business district. So they wanted to see – put it in as an allowed use in the industrial area which the Department is supportive of.

Ms. Buchanan: I just asking because it seemed that the people who would be most affected by the provision changes would be the poor people who have historically lived in Wailuku Town or any other – you know. I can think of a few now in Happy Valley and around there that probably never have one building permit way back when. Some of the really older–

Mr. Alueta: Right. Happy Valley is in the MRA, so it's an allowed use. So there's no industrial in that area. The Lower Main area, they would – a lot of those apartments that actually still would qualify because a lot of the Lower Main ones, they have a use – an allowed use in the front, meaning the gas station or retail store, and then they have like a ten-unit or a five-unit apartment in the back, which is what – we don't have a problem with because it's sort of like an accessory to an allowed use on the property. And so we didn't see that as an issue.

For Molokai, this is your map. The map I'm passing around is just a draft of our– So we have – the dark purple is M-1 and light purple is – the pinkish more is the M-2. You mostly – I believe you only have M-1 on the island. But you're here in Kaunakakai Town. And then you have the industrial area out where the quarry, I guess, or the batching plant is outside of Kaunakakai Town. And then I believe you have the Swenson property up on the hill, yeah. And then I think Maunaloa Town actually has some industrial.

Ms. Kelly: . . . (inaudible) . . .

Mr. Alueta: The one Commissioner Kelly is pointing to, she's pointing to the one down by Kaunakakai Harbor, below Kaunakakai Harbor area.

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

Mr. Alueta: Okay. Okay, so if you wanna – okay, so are there any – if we can take one bill a time, that would be probably the cleanest. So are there any other questions with regards to the M-1 district?

Ms. Buchanan: So for reference, the B-1, B-2, or B-3 districts, you have that some place? No? It's not in our paraphernalia?

Mr. Alueta: No, you've already reviewed it and it's currently – the amendments that we did do to those bills are sitting up at Council right now.

Ms. Buchanan: Okay, I only asked because I forgot. So, you know, it's all of that stacked, plus now, the animal kennels, the carpet cleaning plants, blah, blah, blah. Okay. So that's the only stacking plus those listed have to be in here, right? The 30 items or so? Thirty-two items?

Mr. Alueta: Correct. That's the whole thing with this, it allows for all of those uses that were listed in the M-1 – B-1, B-2, B-3, and it allows them also within the M-1 district as well as the M-2 district. So – I'm sorry, yeah, M-2 district also.

Ms. Buchanan: I think what we trying to figure out now is okay, so all these things on these pages, all this allowable uses–

Mr. Alueta: Are currently allowed.

Ms. Buchanan: Are currently allowed in Maunaloa Town, across Rawlins' Service Station, in Hoolehua.

Unidentified Speaker: Coffees.

Ms. Buchanan: Is that Coffees of Hawaii?

Unidentified Speaker: Is that Coffees?

Mr. Alueta: Probably.

Ms. Buchanan: That gotta be Coffees of Hawaii.

Unidentified Speaker: Yes, I think that's Coffees.

Ms. Buchanan: And Maunaloa and behind the Hawaiian Eye Center. Okay. So what happens to the landfill? What is the zoning at the landfill?

Mr. Alueta: It's either ag or public/quasi-public. It's ag, yeah, with a special use permit, probably.

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

Mr. Alueta: I'm not positive on – they're always ag? Okay.

Ms. Pescaia: Anybody have any more questions? I would entertain a motion to accept– No? You like do the whole thing one time?

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

Ms. Pescaia: Oh, public – sorry, we are holding a public hearing. Why, you guys, you guys are so quiet so I forgot you were here. I'd like to open up public testimony on this current bill relating to the M-1 district. Seeing none, I'll close public testimony. You want a motion and approval individually, right?

Mr. Alueta: Yeah, that would be cleaner.

Ms. Pescaia: Okay, so going, Mr. Sprinzel.

Mr. Sprinzel: I motion to approve the amendments to M-1.

Ms. Pescaia: I have a motion by Commissioner Sprinzel and a second by Commissioner Bacon. Discussion? Commissioner Buchanan?

Ms. Buchanan: No, I no think I going be voting in the affirmative on this right now unless the last provision was "except on the Island of Molokai." I had a chance to look at this, but at the time I didn't know the areas that were gonna be affected. So I no feel that I ready to vote in favor of all the uses for Molokai. It's okay for Maui right now, but I don't know if I – I would be comfortable with all these uses being in the areas they are on Molokai right now, which would be Kaunakakai Town behind the Hawaiian Eye Center, rabbit poultry slaughter, you know, you name it, commercial laundry, electrical appliance stuff, get all kind stuff that I don't know if I would wanna see right–

Mr. Sprinzel: But, Lori, doesn't have it to come in front of the Board, the Commission anyway if anybody wants to do–?

Ms. Buchanan: Yeah, but I don't know. I guess I think I need more time.

Mr. Alueta: Just for the record again, all of the uses that are listed on the table are existing uses allowed. All I did was put it into a table. The only new use that's being added is the

– the new uses that are being added to the M-1 district are production facility, multimedia; utility facilities, minor; and education, specialized, which you’ve already added to a lot of the business districts, but we wanted to make clear that it was gonna – it’s allowed in these.

Ms. Pescaia: Any further discussion or questions, anybody? We will have further discussion, or if not, I’m gonna call for a vote.

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

*It was moved by Mr. Sprinzel, seconded by Mr. Bacon, then unanimously*

**VOTED: To approve the amendments to M-1.**

Ms. Pescaia: I have no opposition, which then the motion carried. Okay, motion carried. Okay, next item: M-2.

**b. A Proposed Bill Amending Chapter 19.26 of the Maui County Code relating to Heavy Industrial Districts**

Mr. Alueta: Okay. Thank you, Madam Chair. The next one is the M-2 district which is the heavy industrial district. Again, I’ll be working from the Exhibit 1 as far as changes. The Department’s edits again would be on the title, it should actually say “M-2 Heavy,” instead of “Light.” So that should be a typo correction. We also have – the “um” is also again missing from my “minimum” on the table. And then a – also, the Development Standards, I don’t know how it got missed, not put in, but there should’ve been another column in there that says, “Uses that are allowed within the setback.” And if you look at your M-1 Bill, you can see that table is there, uses allowed in the setback. That basically just states that if there is a setback, because if you look at the current standards for the M-2 district, there is no setback, meaning it’s a zero setback, unless it is adjacent to another zoning category. Okay? And then it would take that one. But we do allow for uses such as, you know, signs. You know, your standard mailboxes should be within – are allowed within the building – within the lot setback. So – and we’ve done that consistently with all the other districts, so it would be just the same uses such as trash enclosures and . . . (inaudible) . . .

As far as – again, we put that on Section 19.26.070, “Permits issued prior to the enactment of the ordinance.” That again is to again allow for if it was an existing nonconforming use there, we’d at least allow them to rebuild. At the Maui Planning Commission, the Director recommended that we were gonna put in “utility facilities, major,” within the M-2 district, as well as “materials recovery, and recovery facilities.” Basically, he wanted to put in a recycling processing facility such as an . . . (inaudible) . . . metals or anything like that, which we already allow in the M-2 industrial as – you know.

Ms. Buchanan: I have a question for staff. Joe, in your document over here, show me where the changes are because you said for the M-2–

Mr. Alueta: On Exhibit 1.

Ms. Buchanan: Right. Okay, Exhibit 1. Okay.

Mr. Alueta: So where it says “M-2,” it says “Light.” It should be “Heavy.”

Ms. Buchanan: Right, right. But everything is existing. What is the changes in M-2?

Mr. Alueta: What’s being added would be “materials recovery, recycling and recovery facility.”

Ms. Buchanan: Where is that?

Mr. Alueta: That’s being written in. That was recommended by the Director, as well as “utilities facilities, major.”

Ms. Buchanan: So nothing on this document is new? That’s what I asking: where’s the new added? So utilities–

Mr. Alueta: No, I pretty much tried to look to see if I copied anything over. The only thing I did was under special uses, because under the old code, it was very weird in the sense that–

Ms. Buchanan: Where is the special uses? You no more page numbers. That’s why I’m confused.

Mr. Alueta: Yeah, under the – on the third page in, right, where everything is crossed out after all the tables–

Ms. Buchanan: 19.26.040 on line 18? That’s how I can find ‘em.

Mr. Alueta: 19.26.020, okay? And then you see all of the uses that are allowed in the table format, okay? When you get to at the very end, the back side, I’m crossing out all the old code, okay? On the third page on line 33, on line 33, the way the old code had it written was all of the following uses are declared special uses and special permits shall be obtained from the Commission with the approval of the County Council. So that–

Ms. Buchanan: I don’t know where you stay, Joe. Oh, it’s crossed out?

Mr. Alueta: Yeah, so that's how the old code was written. And what I did – again, I tried to clean up the code so that every chapter has the same standard, meaning, what the purpose of the intent of the chapter, what are your allowed uses, what items are considered special uses or accessory uses, what are considered special uses, and what are your development standards. And so this is – under the allowed uses, they have this provision that says all of the following are special uses. Well, I felt that needs to be in a separate section, so I put that in a separate section under special uses. That clears it up that these are uses that are allowed under a special use permit. Furthermore, it clears it up that under – special use permits are approved by the Commission. They don't go to Council. Okay? Only conditional permits. So all those uses that were listed as a special use under the old code, it's just listed there again. It's just put in a table format and they're just separated out.

The development standards, they should be exactly the same. The only exception is that we put a maximum height with regards to vent pipes, as well as chimneys because right now, there is no height limit. If you read the code right now, you can have any height of a chimney or a smokestack.

Ms. Buchanan: Unless you get one variance.

Mr. Alueta: Correct. So we put in– Oh, no, no, in the M-2 district, there is no limit. There was no limit. You build your smokestack as part of your mill. In the M-2 district, there was no limit on smokestacks. It only limited the structure. So this puts a limit on it. Now, this may change because I sent it out for comments to see whether or not – I didn't want to create any nonconforming uses. This height I believe covers – should cover HC&S as well as Maui Electric. So–

Ms. Buchanan: Under special uses, you have letter g., crematories. So you said in M-1, mortuaries was an allowed use, but not crematories?

Mr. Alueta: Mortuaries are. Correct. Crematories are also listed as a special use in the B-2 district. If you look under the B-2 district, crematories are listed as a special use and mortuaries are too. Wait. I got that backwards. Mortuaries are listed as a special use. So therefore, mortuaries are being allowed as an allowed use in the M-1 district. Crematories are listed as a special use in the M-2 district. They'll continue to be a special use in the M-2 district, but when we get to the M-3 district, I'll allow them as an allowed use. So all of these uses that are listed as special uses in M-2, in the M-3 zoning category, we're gonna allow them as an outright permitted use.

Ms. Buchanan: Okay, but – oh, that's confusing because in the M-1 district, we just said it was fine. You get stacking in the M-1, which is the B-2, B-1, B-2, B-3 of which mortuaries is an allowed–

Mr. Alueta: Mortuaries, but not crematoriums.

Ms. Buchanan: Okay, with a special use permit. But now in M-1, the thing going be allowed. But how can you have one mortuary and then have one – you need to find one separate place then, for your crematory? You not going have – like my apartment building is an accessory use to my gas station so– It kind of go hand-in-hand: one mortuary and crematory. You cannot– Unless you going have to go and place the burden on them, which you didn't wanna place. Now, you going have – they going have to fend and find M-3 designated areas in order to run their mortuary and crematory.

Mr. Alueta: That's how they currently are. They're currently a special use in M-2.

Ms. Buchanan: In M-2, but they going be an allowed use in M-3.

Mr. Alueta: Correct.

Ms. Buchanan: So now we still back to the problem that Maui County is trying to fight now, which is people just jumping to heavy industrial use areas because of its allowed use. I don't know. Maybe that's just me, but most mortuaries you go to have one crematory and vice versa. But you separating the two now. So I can do business. I can have one mortuary some place, but I cannot have one crematory.

Mr. Alueta: Yeah, most funeral homes and mortuaries don't have a crematory. Crematoriums are quite rare. There's only one on Maui that I know of, and that's a special use permit in–

Unidentified Speaker: Nakamura's.

Mr. Alueta: I'm not sure if they have a crematorium.

Unidentified Speaker: I don't know. I don't know.

Mr. Alueta: Okay, okay, so– Okay, okay, but a lot of them – but again, the way it's structured right now, right, it's a special use permit. Right now, they're allowed a special use permit which have – you find a district in which you don't need to get a special use permit. You're an allowed use. So mortuaries right now are an allowed use in M-1. They're a special use in the B, in the business district, so therefore, they should be allowed in the M-1 district because of the use. In the M – but crematoriums are separate or different. Have a higher – because of the burning, are considered to be a special use permit in the M-2 district. And therefore, we're allowing them in the M-3 district.

Ms. Buchanan: The only reason why I picking on this is because often, I get my community tell me, "Why don't you have a crematory here? Why is it so expensive? Why do we have to go to Honolulu?" Blah, blah, blah. That's because we don't have any areas zoned on Molokai for crematory. End of subject. There is no zoning that allows for crematories. Yeah, so when I went to research this, I found out never have zoning, yeah, to allow for crematories.

Mr. Alueta: Maui doesn't have any place that's allowed without a special use permit either.

Ms. Buchanan: But that puts a big financial burden on this community because you don't have any zoning that can accommodate stuff like that which should be in a category of itself, I think.

Mr. Alueta: Hence the reason we're trying to streamline the County code, bring down the uses, and move the uses that can be in an allowed district.

Ms. Dudoit: And then just because of our experience on previous matters, I am assuming that when you changed around the special uses or you left it the same that it was consistent with the fire code. Because I do know that fire codes vary and specifics vary depending on what kind of industrial zoning.

Mr. Alueta: The fire code applies regardless of the zoning, so it doesn't make a difference.

Ms. Dudoit: It does make a difference because the fire code specifics is different from a B-2 to an M-2 zone. So I just wanted to know when you revising these things to make it a special use or a permitted use, if those are changed that those are consistent with the current Maui County Fire Code.

Mr. Alueta: Correct. Yeah. Because what happens is in an urban area, the fire flow requirements are higher than they would be in a rural area. So most of the urban areas are gonna meet the most restrictive fire flow requirements. The only difference is, is that depending on the intensity of the use, they may need to upgrade some of those fire system improvements regardless of what the zoning is. So if somebody goes in and they do a more intensive use such as a gas station or a propane gas filling, they may be required to put in a sprinkler system. It all depends on what the line is. And that's pretty much all I have on the M-2.

Ms. Pescaia: Where is M-2 on Molokai?

Mr. Alueta: According to this map and the revisions that Mr. Yoshida did was that you have M-2 down right below across the Chevron Station, I guess, and then you have also the MECO power plant was put into M-2.

Ms. Pescaia: So a special use permit, you could build one crematory out by the electric company in the flood zone, just so you know. Can, can.

Mr. Alueta: If you do it adjacent to MECO power plant, you could sell the power back to them.

Ms. Buchanan: You know what is sad is there should be a threshold of the number of times of use, because Molokai's population is so small that you would hardly have any use compared to one big area like Maui. So if there was a use like once or twice a month, that is not an impact as one or two hundred times a month so—

Ms. Pescaia: Okay, Commissioners, any more questions about this? See, we past three o'clock, you guys. This is the first time. Breaking my record. Okay. We did take a break. Any more questions, clarifications? I will open public testimony. Seeing none, testimony is closed. I will call for a motion.

Mr. Sprinzel: So proposed.

Ms. Pescaia: A motion to accept or oppose the so proposed? Okay, accept. I have a motion by Commissioner Sprinzel to accept the proposed bill for an ordinance related to M-2. I have a second by Commissioner Bacon. Discussion?

Ms. Buchanan: Joe, do we have a timeframe when we have to make a decision on this? If we don't make a decision today, what happens?

Mr. Alueta: I come back. I come back.

Ms. Pescaia: Any further discussion, questions?

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

*It was moved by Mr. Sprinzel, seconded by Mr. Bacon, then*

**VOTED: To accept the proposed bill for an ordinance related to M-2.**

*(Assenting: J. Sprinzel, N. Bacon, D. Kelly, Z. Dudoit, M. Pescaia)*

*(Dissenting: L. Buchanan)*

*(Excused: R. Davis)*

*(Absent: D. Williams)*

Ms. Pescaia: Motion carried. Any opposition? One. Okay, thank you.

**c. A Proposed Bill Creating an M-3 Industrial District in the Maui County Code.**

Mr. Alueta: Thank you. Moving on to the M-3 district, Commission, again, this is a new district, a new zoning category, I should say. And the title is going to be again, "M-3 Restricted." So you can write in the word, "Restricted Industrial District."

Comments from Lanai with regards to it was to add – again, add moratoriums and crematoriums to the M-3 as well as harbor facilities to that, to the M-3. We already have recycling processing facilities, which is being – in there.

The development standards are very similar to the M-2 district with the height going up to 199. And then because this is a new district, there are no – remember, this is just zoning development standards. There are no lands zoned M-3. And the Department does not propose to zone any lands to M-3. This would be something as an option for the Commission and the Council when someone comes in for a request for change in zoning. This is also an option for the community plan process during the process in which you may feel that certain areas of our island should be restricted to a more – restricted industrial areas. Areas that come in mind have been like the consolidated baseyards out on Mokulele Highway where the Council put on restrictions limiting – eliminating retail as a use out there when they put in M-1 and M-2 industrial out there. So already the Council has recognized that industrial districts are being overrun by higher-end retail, and they did not want to see that again happen, but they didn't have a zoning category. So what they've been left with is doing what they call, conditional zoning, on a heavy– They did the same thing with – I'm sorry, off of Waiko Road with consolidated baseyards on Waiko Road. And again, on Mokulele Highway, we had Earl Stoner's industrial district where we put the zoning restrictions on it to kinda minimize the impact of retail moving into that area. But again, we're not zoning anything. We'll leave it up to the community plan to come up with if they wanna implement or have this specifically limit some areas of the island to M-3.

Ms. Dudoit: So right now, all the things listed in the M-3 on this list of uses is all in what–M-2?

Mr. Alueta: Are currently listed as special uses in M-2, and then any other use that was in M-1 or M-2 that we feel should also be allowed in M-3. So if you see something that's not there and you feel that you wanna put it in there– In the case of Lanai, they felt that harbor facilities, as well as mortuaries and crematoriums should be also put in there. And again, this doesn't have, again, that stacking provision. It doesn't say any use allowed in M-1, M-2, because in the M-1 and 2, you're allowed business districts. So we didn't wanna fold all of those uses in there.

Ms. Dudoit: So the major difference, I mean, if you were to – if eventually, the community plan adopted the M-3 zone, you would not be permitted to have retail use? Retail would

not-? I just looking because in the case of like say, the heavy equipment storage servicing and sales, and asphalt manufacturing, I mean, that's big business that for retail. You know, like asphalt and gravel, stones.

Mr. Alueta: Yeah, that's an industrial. You're talking like store retail. You're still allowed to have an office or a display area of up to – on development standards, it allows for – yeah, up to a thousand square feet. So in the scenario that has been talked out with several different people, it's like – the example I give is my architect. He had a stone business, a cabinet business. So he had a baseyard out at Earl Stoner's place where he did all of his storage of his granite, counter tops, as well as manufacturing, cutting, and grinding of his – you know, it's a big industrial area. And then he had in town, he had his display room, which is maybe about 500, 600 square feet where he displayed finished products of samples of what people could get of the tile. And then upstairs, he had an office where he did all his drafting. And he felt that he needed a place where he could consolidate his businesses instead of having two, or three, in some cases, three separate locations. For some people, they wanna have a big – you know, when they wanna take someone out to look at granite, they gotta go out to the baseyard and walk through an acre of yard where you have granite stacked up. And then you have to take it – get it – I mean, and so this whole district is intended for those type of people who they need to have an office, a small office, but they need to have a big back yard that has all of their equipment, all of the raw materials, if they're making something, and then they have like, you know, their standard warehousing, and then have their administrative offices all in one location. But you don't wanna have where, you know, you got – my example is Brigit and Bernard's, this nice Swiss Restaurant in the middle of the industrial area. I mean, it doesn't fit. It doesn't make any sense. And those people are always gonna outbid your industrial areas.

Ms. Buchanan: That's kinda Soho-ish, yeah, though?

Mr. Alueta: Soho-ish?

Ms. Buchanan: Yeah. You know, like, ritzy with industrial.

Mr. Alueta: Yeah. And that's kinda of what – and again, there's nothing wrong with it, but you can't have all of your industrial areas be the M-1 and M-2. You need – as I talk to – my example is you need a place for the ugly people. Not all of the industrial areas shouldn't look like Carmel. And I think that's – everybody's trying to upscale at the Carmel look whereas you really need to have this back yard where you got your BFI, and you got your storage of trash cans, and recycle bins, and, you know, asphalt batching plants, you know, away from that areas.

Ms. Buchanan: What about petroleum and gas, that type of hazardous materials? This would be the ideal place for you to store those hazardous type of materials.

Mr. Alueta: And that's why it's listed in there. And that's why energy systems, power plants, substations are listed as M-3. It's also listed: boiler steel works, bricks. Any questions?

Ms. Pescaia: Public testimony, I'm gonna open public testimony. Anyone has any comments to share? Seeing none. Oh, wait. Somebody walked in. No, no, not for us. Okay, testimony now closed. Commissioners?

Ms. Buchanan: I'd like to move that this item be deferred because I myself, I need more time to think about it.

Ms. Pescaia: Okay, I have a motion by Commissioner Buchanan to defer. Do I have a second? Seeing none, motion fails. I will entertain another motion.

Ms. Dudoit: I move to accept.

Ms. Pescaia: I have a motion to accept the proposed amendments to the M-3 industrial district. Second by Commissioner Bacon. Discussion?

Ms. Buchanan: Joe, you know in often when we do this type of provisional changes, in a lot of our things, we've gone ahead and voted to pass this because Maui County, it's a need for Maui County, but sometimes it doesn't fit on Molokai. And we've stuck in that "except on Molokai." And then we say "except on Molokai," we kind of have our own thoughts about the provisions of that law. So that's just one reminder that that's one option that we have, and it's often that we use it. It's not the fallback safety net, but if somebody tomorrow wants to walk into Planning Department and go, I have ten acres, and I wanna have it go M-3, you would consider that process now, right? And everything in here would be an allowable use. If it's not in the SMA, nobody would have on Molokai would have a thing to say about it. Is that kinda correct?

Mr. Alueta: No, you'd have to get the zoning. You'd have to—

Ms. Buchanan: I mean, if I could change my zoning, because Diane Swenson went and changed her zoning in that intersection up to Kualapuu, so in changing her zoning, she was able to sell her lot for a million dollars more than with the prior zoning. So now that my zoning is worth more if I can change my zoning, as long as it's not in a special management area on Molokai, I wouldn't really have nothing to say about what would be moving in there that would be on this list now, yeah? No?

Mr. Alueta: Well, not really.

Ms. Buchanan: Explosives manufacture or storage; fertilizer manufacturing; fish canneries; energy systems; and so on; furnace; cook oven; boilers, I wouldn't have anything to say about that, right, as long as it wasn't in the SMA, if I had the M-3 zoning?

Mr. Hopper: The first step is to get the zoning changed. And to get the zoning changed, you do have to have a public hearing on Molokai before the Commission. The Commission doesn't have the final say, but it does have to make the recommendation to Council. But the public hearing would be here in order to get the change to that zoning category. Joe, are these uses permitted in any of the districts right now?

Mr. Alueta: They're allowed only as a special use permit in the M-2, but they're not allowed as an outright permitted use in any zoning category.

Mr. Hopper: That'd be the difference. You would need to get a – have a legislative act rather than just get a special use permit in order to establish the zoning. But once the zoning's established, any of the uses could be – are outright permitted uses. So the Commission would have to look at it when it's changed to that zoning, but after that, the Commission wouldn't look if the zoning – you know, if they wanted to switch from one use to the other or whenever they would choose their use. So whenever – if someone has a zoning, the list of all permitted uses is stuff they can do without anyone else's approval. They need a building permit, in some cases, but without any Planning Department approval. The special uses, they would need to go to the Planning Commission and get a special use permit from, and the accessory uses are the things that they would need to have a permitted use established, and then do the accessory use.

Ms. Pescaia: Where are the current M-3 districts on Molokai?

Mr. Alueta: There are none.

Ms. Pescaia: None. I mean – or, I take that back. I mean, obviously, because we didn't even start. Where would the potential – like where would we consider zoning–?

Ms. Buchanan: Would be any place I would want to petition for me to change my M-3 zoning. So I going buy me property. I'll buy Diane's place. I going come in for M-3 zoning. I going tell you I going build one mortuary and one crematory. And then after I get my zoning changed, I going change my mind, and I going open me one ammonia, bleaching powder and chlorine manufacturing plant.

Mr. Alueta: And you would go out of business – you'd be out of business within the first month. But if–

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

Mr. Alueta: No, because–

Ms. Pescaia: Would we consider only upgrading existing M-2 areas into an M-3, or would you – would this allow – like, would people be considering taking something else like a – I don't know, ag or something else, and taking it to an M-3?

Mr. Alueta: If you designated it on your community plan that you wanted to have an industrial – a restricted industrial area or some type like that, I'm not sure whether or not we would – we may consider if you are community planned heavy industrial, that would be – that correlate with it, but I'm not sure positively right now that would be the case.

Secondly, I don't think – the way we look at it is that M-3 industrial is not necessarily an up-zone for many of the landowners. It's a downgrade because you do not have the B-1, B-2, and B-3 uses in the M-3 district. Therefore your market, as any real estate agent will tell you, has shrunken down to very small. It's more likely that when someone comes in to preserve the industrial nature of it, Council or the Commission may recommend that this area be zoned as restricted industrial because we do not want to have retail uses popping up there. We want this more to be a purely industrial area so that our trucking areas or whatever companies have some areas that they can be allowed without having to get special use permits, without having to compete against, you know, the kayak rental, or some retail operations.

Mr. Sprinzel: Crematorium.

Mr. Alueta: Or – well, that would be – a crematorium would be an allowed use so that would be good.

Mr. Hopper: Just to note also, a lot of times, the Council, when it changes a zoning, will condition the zoning and decide to limit the uses that are permitted. So the Council could say you're getting this zoning, but you can't do A, B, C, D, and E. I don't recommend that because it's not a very good approach, in my opinion, but it's legal to do that. So someone could only use some of the uses on the list. They wouldn't be able to just shift from every single use. So, yes, I think that's something to note.

Mr. Alueta: Right. And that example that Mike, Mr. Hopper, gave is what's been going on with the Council trying to create more of an industrial-type zoning district. And two examples that I'm aware of is where they've tried to eliminate or limit the amount of retail that could potential go into some of the newly zoned industrial lands.

Mr. Hopper: And you could, in fact, on your recommendation say that there's some of these uses you don't wanna see on Molokai at all and say, we don't want this, this, this, and this, or whatever.

Ms. Dudoit: And then it would be at that point that of the process where we would include and say such things as Molokai's exempt or – because right now, the only thing you're

asking us to approve is to entertain the idea that this can be introduced as a possible alternative to what we have. And then the process by which this turns into an actual zoning category is lengthy and would include us again at some point for specifics?

Mr. Hopper: Yeah, this is just to establish the category that can be used anywhere whenever a landowner here would want to change it to that category. They'd take advantage of those uses. They would need to have a public hearing before this Commission. This Commission would not have the final decision-making powers. That would be the Council. Right now, though, you could recommend that once this zoning is established that you don't think some of the uses are appropriate for Molokai, and so you could say as is done occasionally, that this use, even if it's in M-3, it should not be allowed on Molokai. You could say, "except on Molokai," or something like that. That could be a bit odd because usually that would be something that you would reserve for already existing zoning here. Since this isn't existing yet, and someone would have to establish it to begin with, you would have another look at it, like you said. So that's a little different, but you can do that as part of your recommendations to Council.

Ms. Buchanan: Where can I build a nuclear plant?

Mr. Alueta: I believe there is a provision within the Maui County Code that restricts nuclear power facilities in Maui County in the County code right now. However, I'm not sure if that authority is legitimate since I believe nuclear facilities' siting is determined by the Department of Energy. I think they have the sole— But also, if you remember the Iniki or the hurricane, there's the State one also, but that didn't stop them from backing a nuclear power sub into Nawiliwili Bay and plugging in Kauai after the hurricane. So we don't like nuclear power until we actually really need it.

Ms. Pescaia: Any further discussion?

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

*It was moved by Ms. Dudoit, seconded by Mr. Bacon, then*

**VOTED: To accept the proposed amendments to the M-3 industrial district.**

**(Assenting: Z. Dudoit, N. Bacon, J. Sprinzel, D. Kelly)**

**(Dissenting: L. Buchanan, M. Pescaia)**

**(Excused: R. Davis)**

**(Absent: D. Williams)**

Ms. Pescaia: Motion fails. Any other motions?

Mr. Sprinzel: Same motion with "except on Molokai."

Ms. Pescaia: Okay, so is the motion you support the proposed amendments – yeah, to – we support the creation of M-3 and all that comes with it on every other part of the County except on Molokai, to not be implemented on Molokai? Is that what you're saying? You wanna be exempt from this?

Mr. Sprinzel: Yes.

Ms. Pescaia: Okay, so that's the motion. I have a second by Commissioner Buchanan. Discussion? My question is, if not, then would you somehow be able to put this back into the other – be a special use under the M-2?

Mr. Alueta: It still is listed as special uses in the M-2.

Ms. Pescaia: So you do have a way for people if they wanted to. It would just keep the process as it is and not have it be automatic, right? That's what we're–?

Mr. Alueta: Just making a note to the Commission or to the Council that should anybody ever decide to try to do a change in zoning that, you know, you couldn't do a change in zoning to M-3 on Molokai. That's fine.

Ms. Pescaia: Okay. So that's the motion. Any further discussion?

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

Ms. Buchanan: No, but you could with a special use permit. Thank you. So we not telling them they cannot. They just have to get a special use permit.

Ms. Pescaia: Right. We're trying to keep the process the same in the M-2 zone. And it saves them the trouble to change the zoning, right? Okay. Any further discussion?

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

*It was moved by Mr. Sprinzel, seconded by Ms. Buchanan, then*

**VOTED:**     ***To support the creation of M-3 and all that comes with it on every other part of the County except on Molokai, to not be implemented on Molokai.***

*(Assenting: J. Sprinzel, L. Buchanan, N. Bacon, D. Kelly, M. Pescaia)*  
*(Dissenting: Z. Dudoit)*  
*(Excused: R. Davis)*  
*(Absent: D. Williams)*

Ms. Pescaia: Motion carried.

Mr. Alueta: Thank you very much.

Ms. Pescaia: Thank you, Commissioners. Thank you, Joe. Continue on with our agenda, we have completed everything up to F, Director's Report.

## **F. DIRECTOR'S REPORT**

- 1. Pending Molokai Applications**
- 2. Closed Molokai Applications**

Mr. Yoshida: Thank you, Madam Chair. We've circulated our list of pending and closed Molokai applications. If there are any questions?

Ms. Pescaia: Seeing none.

- 3. Discussions with Maui Electric Company on liability for power pole installations on private property. (N. McPherson)**

Mr. Yoshida: Okay, the next item is the Maui Electric liability for power pole installations on private property.

Ms. McPherson: Okay. Nancy McPherson, staff planner. I did speak with Onorio Ramos today from Maui Electric. And he said that what MECO needs in order to have a MECO representative come over here to a Molokai Planning Commission meeting, which is what was the conclusion after the last meeting where you were requesting either a letter or a MECO representative to come, they would need a letter from the Molokai Planning Commission requesting that one of their representatives come over and speak at one of your meetings. So if you guys wanna do that, that's not a biggie. I mean, you can just make a motion to have staff draft a letter on your behalf, and then the Chair can sign it requesting that a MECO representative attend a future Molokai Planning Commission meeting to discuss liability and kuleana as far as inadvertent discoveries, and protection of historic properties, etc.

Ms. Kelly: Our request earlier, was it – it wasn't in writing to MECO?

Ms. McPherson: No. This was triggered by the Acoba power pole project, and before that, the Goodman power pole project. And what happened was that Iris Peelua who was a consultant on Maui helping out Mrs. Acoba had been in dialogue with MECO, as well as myself. And I managed to get some information from Onorio's supervisor over the telephone, but I could not get anything in writing. And the Commission did not request that a formal letter be written requesting whatever you guys wanted from MECO. And that's what they want before they'll – because the people who have to – the ones who need to talk to you about this are the supervisor types, you know, the higher ups. And they don't normally come over here. They have planners who come over and supervise the projects for the power pole installations. Onorio did – he's a designer. And he did tell me that it's up to the owner who's requesting the connection whether or not it's under-grounded or an overhead line extension. MECO doesn't tell them which way to go. But the under-grounding is more expensive. And I also said, well, that also requires more excavation. So that's kind of where we are right now.

Ms. Kelly: So can we draft a letter requesting them to send a representative?

Ms. McPherson: And, Mike, do they have to vote on that, or can they just – consensus?

Mr. Hopper: Yeah, I'm not sure why the Planning Department couldn't send a letter and do that, and that would be okay. But, yeah, if they need it from the Commission, then they can say by consensus, we'll send a letter requesting that. I mean–

Ms. Buchanan: Okay, I second the motion.

Mr. Hopper: I mean, requesting their presence at a meeting or a written response or something, but, yeah, that's fine.

Ms. McPherson: So you want their presence at a meeting and/or a written response. Okay. Just presence?

Ms. Pescaia: Yeah, I think we need to pick somebody's brain.

Ms. McPherson: You want them to stand up and face the music.

Ms. Pescaia: Well, I mean, if you can articulate all of our concerns, and just send them a letter, and have somebody respond to the letter. We just want the information whether they're gonna send it to us or they do in better in person and explaining it.

Ms. McPherson: Okay.

Mr. Sprinzel: Because if we're gonna get every single landowner who wants to put up a house and needs a pole comes here for an SMA or whatever, and we check the distance and all this stuff, we'd want him here to talk about it.

Ms. McPherson: I think the point is that the – everything that has to do with a house, or an addition, or any kind of project in the SMA is supposed to come in under the SMA assessment. But unfortunately, sometimes these things get piece-mealed. And if you read the MECO comment letters, a lot of times they say, we highly encourage the owner or applicant to contact us and request service, you know. And it's kind of tied to building permit stage. So the problem is that when this comes in for SHPD review, and for SMA, they sometimes leave these things out that are actually triggered at building permit stage. So it's a sequencing issue. That's where the problem is, is for SMA, we want everything that you actually need to do in order to build your house including, water meter installation, power, you know, utility connection, any grading, any fill, any driveway, any walls. And people just leave that stuff out, and they don't need it until they have to get their building permit.

Mr. Sprinzel: And the guy who did it in our street did all that, and they still put the pole up three doors higher, three houses further up. So they still make mistakes.

Ms. McPherson: Right. Well, I think MECO doesn't quite – is beginning to understand the SMA process, but doesn't quite totally get it yet, maybe.

Ms. Pescaia: Okay, so what we're doing is the Department is going to write a letter to request the presence of a MECO representative at our next meeting or at our–

Ms. McPherson: Right. And if you'd like it to be coming, this request to be coming directly from you, it might have more weight. I mean, Mike has a point. The Department could make the request, too, but if you would like that to come directly from you, then the Chair can sign the letter on your behalf. And I don't have to bring it back to you.

Mr. Hopper: Well, if they're specifying what they need to come – since it's a letter from the Commission, and if it's a letter from the Commission, then I guess you should probably do that. They have no obligation that I know of to come here. I mean, you can request their presence, definitely. And if they need a certain thing like a written letter or something, if they're telling you they need X, Y, and Z, because this is not the first time you've contacted them, I guess the Commission has to do it that way. And if the Commission's okay with doing that, answer their request, then it can. But, you know, it should be clarified what they need from the Commission to come here and answer . . . (inaudible) . . .

Ms. Dudoit: And is there another existing problem or a reason why it's so difficult to get them to come? I mean, is there a liability problem? Is there—? I don't know. Why is it such a difficult task for them since you've been having conversations?

Ms. McPherson: Well, the person who comes over is not gonna be a person who usually comes over to Molokai. It's a person from Maui who sits in an office and does their thing for MECO management and a supervisor. And so they're not the people who – you know, they're not a planner. They're not a crew person. They're not supervising a job. So it's a special trip and they have to spend the money to send that person over where otherwise they wouldn't, you know.

Ms. Dudoit: Well, how about you include in the letter that we pay the highest electric rates in the State, and that all of our people use electricity from them so they should come?

Ms. McPherson: Would everyone like me to put that in the letter?

Ms. Dudoit: Yeah. How about responsibility to your clients or the newspaper article?

Ms. McPherson: Okay, I will draft a letter and we'll have the Chair sign it. Do we need to vote or—?

Ms. Pescaia: It's just consensus.

Ms. McPherson: Consensus, okay. Okay, and then that would be a formal request and then they'll have to either formally say we can, cannot, or can. Okay, thank you.

#### **4. June 8 Meeting Agenda Items**

Mr. Yoshida: As far as agenda items for the June 8<sup>th</sup> meeting, we have the Kirk Greenman SMX; the – any input you have on charter amendments, proposed charter amendments or recommendations; and I guess, Malia Akutagawa is prepared to do workshop no. 3 on water issues, which has been postponed. Either she was busy or you were busy. So that's all we have.

#### **5. June 29 Public Hearing on Council Resolution No. 11-24 regarding Short-Term Rental Homes**

Mr. Yoshida: And then on – the June 22<sup>nd</sup> meeting got moved to June 29<sup>th</sup> because of the HSAC Conference. So on June 29<sup>th</sup>, we're having the public hearing on the Council Resolution 11-24 regarding short-term rental homes.

## 6. Status of Molokai Planning Commission Vacancy

Mr. Yoshida: And the status of the Molokai Planning Commission vacancy is it's still a vacancy as the Mayor's nominee, Mr. Oliver DeGray Vanderbilt, withdrew his nomination yesterday and yesterday's Council meeting. So we're back to square one on that with the Mayor – he has to submit another name to the Council.

And on the Don Williams' situation, I'm not sure if Don responded to the Mayor's letter to get back to him by May 20<sup>th</sup>, if he wants to be on this Commission, or is able to serve on this Commission or not. So at this point, we still have one vacancy for the Mayor to fill.

Regarding the HSAC Conference, we can send up to two Members. You have to decide among yourselves who wants to go, and let us know by the end of the week.

Ms. Buchanan: Okay, I tried to see this online, and I couldn't. So just so you know that link that was provided wasn't working, so I tried.

Mr. Yoshida: Well, if you let us know which two then we can register the two.

Ms. Pescaia: You guys covering registration or travel?

Mr. Yoshida: Travel.

Ms. Pescaia: Everything?

Mr. Yoshida: Airfare, car rental, hotel for one night, registration, and mobile tours. No golfing.

Ms. Pescaia: Oh, no. You go, you going for work. Okay. Is here any Commissioners who would like to express interest in attending?

Ms. Buchanan: It's been a thing that always the Chair and the Vice-Chair has purview to go in these hard economic times. So for the past several years, it's always been the Chair and the Vice-Chair. Unless they decline, then it's kinda up for grabs. If not, you two guys are it.

Ms. Pescaia: I'm in the middle of Summer Institute Program. I not going. I cannot go.

Mr. Sprinzel: Is it the 22<sup>nd</sup> and the 23<sup>rd</sup>?

Mr. Yoshida: The 22<sup>nd</sup> and 23<sup>rd</sup>.

Mr. Sprinzel: Yeah, I could go. Lori should go. She's--

Ms. Pescaia: Well, I just like be fair and ask if who else would be interested in going. Anybody else either willing and able to go? Okay.

Ms. Buchanan: And you notice they went cut 'em down. It used to be three days. Now, it's only one day overnight.

Ms. Pescaia: This is not the same as the HCPO Conference, right?

Mr. Yoshida: Well, it's a two-day conference.

Ms. Pescaia: No, but is it the same as the HCPO Conference?

Mr. Yoshida: No, that's--

Ms. Pescaia: This is a different conference, right?

Mr. Yoshida: That's -- well, I think they just -- well, Kauai Planning is hosting the HCPO Conference in September. And we have to look at their registration information.

Ms. Pescaia: I save myself for that one. Okay. Do you need to us like officially tell you who it is, or we can talk about it again like after this and tell you?

Mr. Yoshida: Well, I think we'd like to know by the end of the week who's going, but you folks decide amongst yourselves.

Ms. Pescaia: Okay. I just checking if -- so like, it has to be an official conversation or if we can have it off--?

Mr. Yoshida: Yeah.

Ms. Pescaia: Okay, off. Okay. Anything else?

Mr. Yoshida: And that's all we have.

**G. NEXT MEETING DATE: JUNE 8, 2011**

Ms. Pescaia: Okay, next meeting: June 8<sup>th</sup>. Meeting adjourned. Mahalo for your time.

**H. ADJOURNMENT**

There being no further business to come before the Commission, the meeting adjourned at 3:45 p.m.

Respectfully submitted by,

SUZETTE L. ESMERALDA  
Secretary to Boards and Commissions

### **RECORD OF ATTENDANCE**

#### **Present**

Mikiala Pescaia, Chairperson  
John Sprinzel, Vice-Chairperson  
Debra Kelly  
Lori Buchanan  
Zhantell Dudoit  
Nathaniel Bacon (1:45 p.m. - 3:45 p.m.)

#### **Excused (E)/Absent (A)**

Ron Davis (E)  
Don Williams (A)

#### **Others**

Clayton Yoshida, Planning Program Administrator  
Joseph Alueta, Administrative Planning Officer  
Nancy McPherson, Staff Planner  
James Giroux, Deputy Corporation Counsel