

**MOLOKAI PLANNING COMMISSION  
REGULAR MEETING  
JULY 24, 2013**

*\*\* 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 Paule Center, Kaunakakai, Molokai. \*\**

**A. CALL TO ORDER**

The regular meeting of the Molokai Planning Commission was called to order by Chair John Sprinzel at 12:00 p.m., Wednesday, July 24, 2013, at the Mitchell Paule Center Conference Room, Kaunakakai, Molokai.

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

Chair John Sprinzel: Ladies and Gentlemen, it's still good morning, although it's nearly noon, we have quorum, and I call the meeting to order. First thing is public testimony on any planning or land use issue. For those who can't stay when the item comes up, now is your opportunity.

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

Ms. Barbara Haliniak: Okay, I might be the only one on the public testimony so I'll take the rest of the afternoon. Nah, just joking. My name -- let me see, it's good morning, good afternoon. My name is Barbara Haliniak. I'm a small business owner on Molokai. I serve -- my clients consist of a lot of different businesses on Molokai. There's about 14 businesses here that I take care of, bookkeeping and payroll. Friendly Market is not one of my clients. I'm going to testify in support of Friendly Market's application for a warehouse.

Okay, the reason why I came today, which I'd like to thank the Commission for allowing my testimony, is back in 2006, 2009, when I was the president of the Molokai Chamber of Commerce, Young Brothers, and this has to do with the Friendly Market application for a new warehouse, Young Brothers proposed to change its barge schedule from Mondays and Thursday, to Wednesdays and Thursday, so it was a back to back barge schedule that they proposed. And if this proposal of schedule change took effect, Molokai businesses would have had a difficult time and to meet the demands of the consumer because of the lack of the storage space on the island, the whole island. I mean we've gone through so many different application with Young Brothers, one of them is lack of storage on Molokai. The change, this change would also have posed a threat to consumers because consumers would find empty store shelves. So if the barge came in Wednesday and Thursday, you really don't have too much time from Wednesday, Thursday. I mean it was chaotic. Okay, so through our efforts to bring this problem to Young Brothers'

administration, citing the back-to-back barges would create a hardship for the community, Young Brothers agreed not to do any schedule change at that time. However, it doesn't prevent them from coming back and saying, hey, we're going to do back-to-back barge schedule because of either lack of small barges, or maintenance service, or whatever the case may be. They can always come back and say, hey, we're going to -- we're only going to send one barge to Molokai. And if that happens, it'll really put a hardship on this island. And again, it's because businesses on island do not have storage space.

So -- and all the time that we've been talking to Young Brothers, they've been telling us that Molokai's freight is being subsidized by other revenue on their books, okay. So we're not making money for them and so we're being subsidized. Now, it may come to a point where they're going to say we're not going to subsidize your freight so we're only going to do once a week barge, and that's really spooky.

Okay, we know that Friendly Market has limited storage space because if you park in their parking lot, you see the goods outside, you know, on deck, okay, and that's so they can have accessibility to that during the day; however, I'm sure they're cramming everything back at night when they close up. And even with their tight storage, Friendly Market has accommodated the Molokai Island Foundation, which I am president of, by storing 960 five-pound bag rice each December so that we could distribute it to 960 families here on Molokai. So the lack of storage affects a lot of, you know, not only their needs but other people's community needs too. And I hope that my testimony will add value to Friendly Market's application to construct a new warehouse, not only for Friendly Market's benefit, but also the community should there be a threat of shipping schedule changes or a shipping strike. Thank you. Any questions?

Chair Sprinzel: Thank you, Barbara. I appreciate your input. Is there anybody else at this stage? Aunty Judy.

Ms. Judy Caparida: Aloha, Commissioners. All the new ones onboard now, aloha. I've not been here for a while, but that doesn't mean I don't keep up with what's going on in our community. I'm a community kupuna that is concerned on everything that happens on the island of Molokai. And I'm here to support our Friendly Market because we need more room. Our community is growing. It's common sense that we need a space to put our food. I've taking up classes on health, taking care of foods, and all the needs of the island of Molokai. Foods are very, very dangerous when you don't take care of it in a proper way. You can't put it in the sun for long periods of time. And this community, we have the biggest market is our Friendly Market, our second is Misaki's. Those are the things that hold the whole island together. So I feel that we should have some kind of concern on passing a place of safety for our community and its foods for the island. That's all I'm here for, guys, and I just wanted to know what was going on, and I'm so happy to see all of you. Is there any questions?

Chair Sprinzel: Judy, just state your name. We all know who you are but the recording doesn't.

Ms. Caparida: Oh, my name is Judy Caparida, and I am a very concerned kupuna of Molokai.

Chair Sprinzel: Thank you, Judy.

Ms. Caparida: Anything?

Chair Sprinzel: I think we'll have the rest of the testimony when the individual items come up. So is there somebody else who wants to make public testimony?

Ms. Cora Schnackenberg: Aloha. My name is Cora Schnackenberg. I am here as a community member. I am in support of Friendly Market's extending of their warehouse. Regardless of the extension, just in general, I do have one concern for our whole community as a whole and that is as far as the sustainability on Molokai, the land that sits on all the businesses are at sea level, our roads and all of that, and I think in the future, we need to visit that. But I am in support of Friendly Market's warehouse extension. Thank you.

Chair Sprinzel: Thank you very much. There being no further public testimony, it is now closed. Item C, approval of the minutes of March 13 and April 10. I'm sure you've all read them. Can we propose --

**C. APPROVAL OF MINUTES OF THE MARCH 13, 2013 and APRIL 10, 2013 MEETINGS**

Mr. Michael Jennings: Motion.

Chair Sprinzel: Motion for both. Thank you. The microphone.

Mr. Jennings: I'll make that motion, John.

Chair Sprinzel: Thank you.

Mr. Ron Davis: And I'll second that motion.

Chair Sprinzel: Second. All in favor -- oh, any discussion? No.

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

***It has been moved by Commissioner Jennings, seconded by Commissioner Davis, then unanimously***

***VOTED: to approve the minutes as circulated.***

Chair Sprinzel: Carried unanimously. The minutes are approved. Thank you. Right, here we come to the hub of the matter and I'm very grateful to see all the Commissioners here today. Excellent. Excellent.

*Chair Sprinzel read the following agenda item into the record:*

#### **D. COMMUNICATIONS**

- 1. MR. LUIGI MANERA on behalf of FRIENDLY PROPERTIES, LLC submitting a June 18, 2013 Appeal for Reconsideration of the Planning Department's denial of the Country Town Business District application of the design plan for a proposed 7,544 square foot ( sq.ft.) warehouse and loading dock with office for Friendly Market on an approximately 19,182 square foot parcel and parking located at 98 Alohi Street, TMK: 5-3-002: 124, Kaunakakai, Island of Molokai. (CTB 2012/0009) (B. Sticka)**

*The Commission may take action to approve, approve with modifications, or deny the reconsideration pursuant to the provisions of Section 19.15.060.D of the Maui County Code.*

Chair Sprinzel: Before we go to Ben, the reason Luigi is appealing is because the director and the -- the Urban Design Review Board, and the Planning Department's Director cannot vary anything that's in our town plan conditions, the same as it was with the roof on Paddlers', but we can consider what they have to say and we can change it. It's our prerogative to say, "No. We don't have to go by that. This is Molokai. We decide." Okay, Ben.

Mr. Ben Sticka: Good afternoon, Chairman and Members of the Molokai Planning Commission. The first three items on your agenda are as follows: The first item is an appeal, as the Chair has indicated, for a reconsideration of the Planning Department's denial of the country town business district application before you; the second item is a county special use permit; and finally, the third item is a special management area minor permit.

The state land use of the subject property is urban, the Molokai Community Plan is business commercial, and the county zoning is country town business.

The proposed project is for a 7,544 square-foot warehouse and loading dock with office. The warehouse loading dock and office will allow additional dry goods storage for the existing Friendly Market Grocery Store. The warehouse will be open from 7 a.m. to 5 p.m., Monday through Saturday. The number of employees will be on an as-needed basis and will vary between one and ten, depending on the daily workload. And before I get into the facts and details about all the applications, we're going to have Luigi Manera, with Architectural Drafting Services, do a presentation and after that, we'll get into the project. Thank you.

Chair Sprinzel: Thank you, Ben, and welcome, Luigi.

Mr. Luigi Manera: Thank you, Chairman. Thank you all of you for coming today. What I want to start is we started this application back in April 2010. It's been three years this project has been going on. And the first application was to grant two feet easement on Alohi and Kamoi Streets to the County of Maui. It was approved in December of 2010.

At the Planning Commission, and this was at the Planning Commission meeting, I believe was April 13, 2011, the SMA exemption was approved. At this time, the planner was Nancy McPherson. In August 2011, we applied for an SMA minor for the construction of the 7,500 square-foot building warehouse and loading dock with an office and 13 parking spaces, and one handicap. In April 2012, the Molokai Planner was Livit Callentine. In August 2012, we were informed of their requirement to submit a county special use permit because the warehouse was considered a nonconforming use in the business country town. In September 2012, we applied for the special use permit. Attending the meeting was Jeffrey Dack, Livit Callentine to discuss the Friendly Market warehouse special use country town business application. In January, Benjamin Sticka became the new Molokai Planner and began to review all previous submissions. In April 2013, we submitted the business country town Urban Design Review Board application. We were told that siding material to be either stucco or lumber type of material, T-111, but the steel building, the steel siding was -- is not allowed. On May 7, 2013, we presented the project to the Urban Design Review Board, and on June 3, the Urban Design Review Board provided its comment to the Director of Planning. On June 13, we submitted the revised drawing, which was the original we submitted back in 2010 with metal siding instead of stucco. And June 17, the department made a determination that the project was not in conformance with the business country town guideline. On June 24, we submitted a letter of appeal to the Molokai Planning Commission and the Director of Planning. And today, that's why we are over here asking if you can consider it, the revision from concrete stucco building versus having a metal siding, and the reason why we're doing that is the cost, obviously, because if we stick to the original building, and the budget we have was around \$460,000, when we price with the

concrete stucco type of building, the price became 1.1 million, and that's a huge gap, and the owner of Friendly Market, they're actually considering not to proceed with the project. And I hope you guys know Molokai better than the people on Maui and make a better decision than this. I appreciate it. And if you have any question, I'll be glad to answer.

Ms. Zhantell Dudoit: Luigi, what is the price difference between the two different, just estimated price difference between the two materials?

Mr. Manera: The material of the building?

Ms. Dudoit: Yeah.

Mr. Manera: 600,000

Chair Sprinzel: Any other questions from Commissioners to Luigi? Is there any public testimony? Thank you.

Ms. Lori Buchanan: Good afternoon. For the record, my name is Lori Buchanan, a Molokai resident. Hi, everybody. I would like to testify in support of Friendly Market's application. I briefly reviewed the Urban Design Review comments and it was based on I think the look, the stucco, they didn't want a paste-on, height and mass, shade enough for pedestrians, and I forget the third one. But it seemed that those very minor, not really minor, but those somewhat minor conditions would be cost prohibitive to the applicant. So I think their justified in their asking to repeal the design review board. I think there's a lot of finding of facts and conclusions that can be made as to -- and I think because the applicant is here and hears the concerns made by the urban review board, that they can try and incorporate those changes without one hefty sum of money, and the orientation is the stickler, if I'm not -- if I remember correctly, the orientation to a primary road, and said it was a requirement, and so my question is: Is it a requirement or is it a suggestion? If it's a requirement, that's something you gotta look into. If it's a suggestion, then that's open for discussion. And what would be considered a primary entrance road. Okay. Thank you.

Chair Sprinzel: Thank you, Lori. Mrs. Feeter.

Ms. Frances Feeter: Good afternoon, I'm Frances Feeter. I am a new appointee on the Urban Design Review Board and my first meeting was when the Friendly Market project was presented. My feeling is that most of these boards look at the regulations without looking at the conditions of the community as they are presented, and they go down and have a checklist, does it meet this, does it meet this, does it meet this, and they make recommendations based on the best possible building that could be built, and I had the feeling they did not really realize what the Molokai community was like and what they needed. I agree we need the warehouse. We need that storage capacity in case of

disasters. It's a cost-effective thing for Jeff to be able to buy in quantity and to store things. So I would really highly recommend it and hope the board allows them to build it in the economic manner that he wants to do it. Thank you.

Chair Sprinzel: Thank you, Francey. Next?

Mr. Bill Feeter: Aloha, Molokai community and Planning Commission. A yes vote is mandatory. It's essential that we have a place to store food in cases of emergency. That's just one thing. I see this as a coalition between government, individual business, and individuals. And as individuals, we all need this project. So I urge you to support this as a Molokai project. Thank you very much.

Chair Sprinzel: Can you just state your name, Bill?

Mr. Feeter: Bill as in Feeter. Thank you.

Chair Sprinzel: Thank you. Anyone else?

Ms. Stacy Crivello: Aloha. My name is Stacy Crivello. I'm just here. You know, as Council Member, you wear your hat 24 hours so they say, but, you know, I cannot remove the fact that I'm from this community, first of all. You know, if our Planning Department or our planner is looking for your recommendation, it is my hope that you will support the applicant. We benefit. The Molokai community benefits, and there are suggestions, and if there are requirements, I'm sure that those requirements can be met. And I am finding that too often our business people who have been here for generations have to put up with many challenges. They employ our Molokai families. They also contribute to the tax base in more ways than one. It's time for us to turn around and see how we can make it much easier, and I don't believe that the family from Friendly Market would want to build anything that would be of hindrance to the landscape of Kaunakakai and what they have to offer for our island. So I humbly ask for your support to support the application for this building to become a reality. Thank you.

Chair Sprinzel: Thank you very much. Is there anybody else with input? There being none, public testimony is now closed. Commissioners, I just wanted to say that I read that Urban Design Review Board report, every word of it, and like Francey, I was on that board for some years, they have no idea that there's no traffic on that road, there's hardly any pedestrians on that road, and they have no idea what buildings surround that, so they're trying, A, to follow the rules, and, B, to make a perfect world in a wonderful, beautiful Kaunakakai, which we all support that it isn't always possible. That's my comment anyway. Anybody else?

Ms. Dudoit: I have a question for Corporation Counsel. So it says that Commission may approve, approve with modifications, or deny. My question is: Because we're overturning a decision or reconsidering a decision that has already been made, do we need to apply specific reasoning within our policies and procedures tied to the approval or denial of this application?

Ms. Richelle Thomson: That's a good question. What you would be doing on item no. 1 is looking at the revised drawings that were submitted June 13 and making the determination that they either do or do not maintain the design integrity of the district. And so that's a kind of a case-by-case determination. But if you find that they do maintain the design integrity of the district, then you could approve the reconsideration, and you could do that with conditions if you find that there needs to be additional conditions, or without conditions. If you find that it does not meet the design integrity, then you would uphold the director's decision.

Chair Sprinzel: Clear? Good. Next?

Ms. Dudoit: So we don't have to attach those findings to our decision though? We can talk about it, discuss it, and ultimately just make a decision?

Ms. Thomson: My suggestion would be that you do make a determination on whether or not the revised drawings meet the design integrity of the district, you know, so you could phrase a motion in those terms too that, you know, you find -- you make a motion that they do or do not meet the design integrity of the district.

Ms. Dudoit: Okay. Then I guess I have a question for you. You don't want to answer my question? Oh. Okay.

Mr. Sticka: Go ahead.

Ms. Dudoit: There were just two questions that I have so that we can make that determination whether the new plan design meets the requirements. The first is, there is no kind of definition as to what specifically defines a primary road.

Mr. Sticka: That would have to be something I'd have to look into and I can get you the answer before we're done here.

Ms. Dudoit: Okay. And then the second question I had is: When the urban review -- so I'm a little bit familiar to the going green energy efficient type conformities that are being made in designs for homes and businesses, so I'm assuming that the idea of using this stucco siding as opposed to the metal that we're using is because of these energy efficient and, you know, conformities that you have within the policies of the urban review board.

My question is: Does the urban review board specifically designate different types of material for specific purposes or is it just buildings in general? Because if you have refrigeration, you have condensation, you have anything that going be wet, storage -- the heat in Kaunakakai Town, those kinds of things, a lot of industrial like places or a lot of places where they have storage facilities use these metal buildings because it's easier to cool and it's just easier to maintain, especially for like food storage when you're dealing with different temperatures. So I just wondering if the urban review board is just denying that type of material based on -- or is it based on a specific type of business or use for that facility as opposed to just where the building is located.

Mr. Sticka: Well, and thank you for the question. Specifically, you know, to answer your question, the reason for the denial is based upon the fact that the country town design guidelines, Section 3.6, Wall Finish, states the following acceptable materials: The horizontal or vertical board siding, stucco, and board battens. And the unacceptable materials include the following: Fake veneers, metal. So for that reason alone is the denial for that. When you're talking about anything as far as energy efficiency and things like that, you know, a lot of those are, you know, dependent upon the particular use. For example, if you look at Exhibit No. 1 in the packet, from the UDRB, recommendations and comments, for example, for this project specifically, they spoke directly about looking at LED, looking at possibly using photovoltaic panels, water and energy source, so those are just comments that they, those are not requirements so, you know, as projects come through, they understand that, you know, for obviously for a facility that has to refrigerate and keep food cool, you know, the focus is to just recommend or, I'm sorry, to make comments to encourage, you know, energy efficiency.

Chair Sprinzel: But they don't do refrigeration in this unit. Am I right?

Mr. Sticka: That is correct, from what I understand from -- I understand that it's just simply a dry storage.

Ms. Dudoit: Okay, so then my last question would be, when we're reading through our documentation and we have your department's letter denying Friendly Market's request initially, it states there a whole bunch of recommendations, and then a whole bunch of comments, so as I read through them, I'm thinking, okay, the recommendations must be things that you want them to fix about their design or their proposed plan; the comments are things that you would like them to include. I mean what is the difference between --

Mr. Sticka: You're exactly correct.

Ms. Dudoit: Okay.

Mr. Sticka: Yeah.

Ms. Dudoit: So then, my question would be, if these are policies that they have to abide by and these are things that are directly not in sync with the Urban Design Review Board or the department's recommendation for something that is permissible, why are they recommendations and not requirements? Because you can recommend anything you want to somebody, it doesn't mean they have to do it. But if you require somebody to do it in order to get something, then that, you know, that would be a whole different story.

Mr. Sticka: And again, maybe Clayton can help me articulate this a little bit better, but it's my understanding that the UDRB, the Urban Design Review Board, is a recommending body that recommends to the Commission, therefore, they're recommending specific, you know, changes to the building and, therefore, they're not actual requirements that say a commission would actually, you know, impose upon the final product or the final determination.

Mr. Yoshida: Yes, I think in this particular case, the applicant was coming in for an SMA minor permit because the valuation was thought to be less than half-a-million dollars, so typically, we would not have -- if it were an SMA use permit or a major permit, then the board will be commenting on the country town design issues and the SMA design issues, like they did for the Blessed Damien Church, which was an SMA major permit. In this particular case, the board was commenting on the country design issues because based on the valuation that they originally submitted, it could be considered as a minor permit. So they were recommending to the director relative to the country town design. They knew that eventually this would go to the planning commission and the planning commission could incorporate some of their comments also for either the county special use permit or the SMA minor permit.

Chair Sprinzel: Are any other Commissioners wanting to make a statement or a question or -- 'cause what I think we're doing is we're going to take action to approve the latest modifications, which we haven't heard yet because that's the next item, but we're turning down the Urban Design Review Board's definite refusal because of the country town design, so can we have a proposal?

Ms. Dudoit: Yes. I'd like to -- so we're taking everything one at a time, right? So in the matter reconsideration for the Planning Department's denial of country town and business district application for the design proposed for the 7,544 square-foot warehouse and loading dock with the Friendly Market Center, I'd like to approve the reconsideration.

Chair Sprinzel: So do we have a seconder? Clayton has a comment.

Mr. Yoshida: Yeah. I think the Commission has to make a conclusion that the design plan of a metal building meets -- maintains the design integrity of the B-CT country town business district in Kaunakakai, and then they can say they're approving the design. They're granting the appeal. Because that's what the finding has to be relative to 19.15.060D, found as conclusions of law no. 1 in the staff -- on page 2 of the staff report.

Chair Sprinzel: So can we ask --

Ms. Dudoit: Okay, instead of amending it, I'm going to withdraw my first motion and then I'd like to make another one.

Chair Sprinzel: Okay.

Ms. Dudoit: 'Cause this is what I was trying to ask you in the beginning.

Chair Sprinzel: I know but it's complicated.

Ms. Dudoit: So I just have to generalize it and say -- I will say that I'd like to ask that the -- approve the design and make a -- no. I'm approving the reconsideration based on the fact it -- the design is --

Ms. Thomson: Maybe I could suggest some language because I think I know where you're going with it. Perhaps the motion could be something along the lines of the June 13, 2013 revised drawings submitted by the applicant are found by the Commission to maintain a design integrity of the B-CT district and, therefore, you are approving the reconsideration. Is that what you were getting at?

Ms. Dudoit: Okay. Okay.

Ms. Thomson: Does that sound good? And --

Ms. Dudoit: Shucks. I sorry. I don't mean to make this difficult, but since we -- can I just say yes to that and then when we go into discussion, I'll tell what my little --

Chair Sprinzel: Suzie, do you think you got that recorded? Yes. A seconder?

Mr. Jennings: I'll second.

Chair Sprinzel: Alright. Thank you.

Mr. Jennings: I'll second.

Chair Sprinzel: Thank you. Discussion?

Ms. Dudoit: Okay, the only challenge that I have with that particular motion as it stands is that we base or I'm basing my approval on the information that has been provided to us, so as far as the information that has been provided to us in our packet and by the statements that have been made, that is why I wanna approve the new design that was submitted. I've asked the Planning Director a couple questions that he could not answer at this time, and I don't think it's fair to defer this any longer, but I just wanted to make clear that I basing my approval on whatever was afforded to us and I think, from 2010 until now, that's more than enough time for the urban design board or the Planning Department to provide us with information that we need in order to oppose what we're talking about.

Chair Sprinzel: Well, from reading it, the Urban Design Review Board spent much more time on what plants to plant along the edge of the road that no one travels and in what is a heavily business district. I don't think there were very many details other than this country town design that were discussed. Any other comments? May we have a vote then in favor of the motion?

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

***It has been moved by Commissioner Dudoit, seconded by Commissioner Jennings, then unanimously***

***VOTED: that the June 13, 2013 revised drawings submitted by the applicant are found by the Commission to maintain a design integrity of the B-CT district and, therefore, the Commission is approving the reconsideration.***

Chair Sprinzel: Carried unanimously. Thank you much. Now, we have to go something else. Ben, you'll have to tell us --

**E. PUBLIC HEARING (Action to be taken after public hearing.)**

- 1. MR. JEFFREY EGUSA of FRIENDLY PROPERTIES, LLC requesting a County Special Use Permit in order to build and operate a 7,544 square foot warehouse and loading dock with office for Friendly Market on an approximately 19,182 square foot parcel in the B-CT Country Town Business District at 98 Alohi Street, TMK: 5-3-002: 124, Kaunakakai, Island of Molokai. (CUP 2012/0001) (B. Sticka)**

Mr. Sticka: The second part of item no. 1 on your agenda is the county special use permit. Pursuant to Chapter 19.15.030, letter "F," the Country Town Business Districts, a county special use permit is required before you since a warehouse is not a permitted use by right.

The proposed project is in conformance with the goals, objectives, and policies of the Hawaii State Plan as it will provide additional opportunities for employment and economic growth. The proposed project is consistent with the state urban district designation pursuant to the rules of the State Land Use Commission as set forth in Chapter 205, Hawaii Revised Statutes. The proposed project is in keeping with the Countywide Policy Plan, Goals, Objectives, and Policies, specifically, letter "F," "Strengthen the local economy." The proposed project is in keeping with the following goals, objectives, and policies of the Molokai Community Plan, specifically, land use, economic activity, and infrastructure, as indicated in your staff report. The proposed project is consistent with the types of activities permitted in the B-CT, business country town zoning designation. The proposed project is consistent with the goals and objectives of Chapter 205A, Hawaii Revised Statute. Additionally, the Department of Land and Natural Resources, State Historic Preservation Division, has reviewed the application and indicates that no historic properties will be affected by the proposed project.

Regarding water, the off-site water improvements for the subject property are currently in place. The proposed project is not expected to have an adverse effect on the current water supplies.

Regarding sewers, there are no anticipated impacts since off-site water system improvements exist within the immediate area.

Regarding drainage, the preliminary drainage report indicates that the proposed drainage plan is to maintain the existing drainage pattern of the off-site runoff.

Regarding roadways, curbs, gutters, and sidewalks, the proposed warehouse and loading dock is not expected to have an adverse effect on the existing roadway systems.

Regarding the electrical, telephone, and cable, the installation of the power and phone will be coordinated with MECO and Hawaiian Telcom.

Regarding parks, the proposed action is not expected to significantly impact or have a significant impact upon the existing recreational facilities as it is a business use.

Regarding the schools, the project is, again, a business use and will not have an adverse impact on the existing facilities.

Regarding the public services, the proposed action is not anticipated to have an increase in the population as it, again, it is a business use and will not extend the service limits for the existing police and fire services.

There's also no anticipated long-term environmental impacts since best management practices will be incorporated into the project in accordance with federal, state, and county standards.

As of July 3, 2013, the Planning Department has not received any letters in support or opposition of the proposed project.

At this time, I turn it back to the Chair for the public hearing portion or discussion. Thank you.

- a. Public Hearing**
- b. Action**

Chair Sprinzel: Thank you, Ben. Is there anybody from the public who wants to make a statement? There being none, public testimony and discussion is now closed. I'm very puzzled, Ben, about this warehouses aren't allowed. If you walk around that area, there's just nothing but warehouses. I mean there's Ace, there's the other across the road, there's -- I mean it's just a mass of warehouses. But then after ten years in this occupation, I'm still puzzled. Commissioners?

Mr. Ron Davis: I move to approve the application for the SMA.

Chair Sprinzel: And seconded?

Ms. Dudoit: Second.

Chair Sprinzel: All in favor -- oh, discussion?

Ms. Thomson: Was the motion to include the Planning Department's standard conditions and recommendation? Did you want to hear the Planning Department before you move to approve or is that approval without conditions? That would that clarification.

Mr. Sticka: Let me just state this for record. The application complies with the applicable standards for a county special use permit as found in Title 19.510.070, Special use permits, Maui County Code, and listed in the accompanying department report this project subject to the seven conditions of approval, as indicated in your report.

The department recommends that the Commission adopt the department's memorandum to the Commission, dated July 24, 2013, regarding the request for approval with the conditions in order to operate the 7,544 square-foot warehouse prepared for the July 24, 2013 meeting as findings of fact, conclusions of law, and decision and order, and authorize the Director of Planning to transmit said written decision and order on behalf of the Planning Commission. Thank you.

Chair Sprinzel: So I guess that's a yes.

Ms. Sherry Tancayo: Yeah, I got a question. On the -- we're talking the recommendations and the comments, yeah? Is that we're talking about? Approving them? Because there was an answer letter, of course I can't find mine, and they did address some of the recommendations that they were going over, so I just want to make sure that we're not saying that, oh, they gotta do all this 'cause they've already gone through it and redone the front and added windows, and they've done some of it, and then they address why they didn't do other portions of that.

Chair Sprinzel: Have we decided which -- whether the conditions are acceptable, the ones that are listed?

Ms. Tancayo: Maybe Luigi can -- maybe bring up Luigi again and he can talk about their -- I thought it was in here but I must have left it out when I was reading it last night because we had the seven recommendations and the six comments, and then they did -- you guys did submit an answer to it, correct?

Chair Sprinzel: Come up. Come up.

Ms. Tancayo: Okay. 'Cause I was reading that they did -- they were talking about one of the landscapes or something whether it impeded the parking inside or the maneuverability of the trucks and they were in -- so some of the recommendations they were talking about.

Mr. Yoshida: I think the application before you is whether the warehouse can be approved as a special use in the BC-T country town district.

Chair Sprinzel: Yes. All these little details aren't part of this one. They're part of the next one I think.

Mr. Yoshida: The next one is the SMA minor permit application.

Chair Sprinzel: All we're doing now is the special use permit. So we have a proposal, we have a seconder. Are we going to vote? Zhantell?

Ms. Dudoit: Huh?

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

***It has been moved by Commissioner Davis, seconded by Commissioner Dudoit, then unanimously***

***VOTED: to approve the department's recommendation with conditions.***

Chair Sprinzel: Fine. Unanimous. Now we come to the third item, which is the SMA minor permit. We have so many bits of paper here. It's like being back at school.

## **F. COMMUNICATIONS**

### **1. SPECIAL MANAGEMENT AREA MINOR PERMIT**

- a. **MR. JEFFREY EGUSA of FRIENDLY PROPERTIES, LLC requesting a Special Management Area Minor in order to build a 7,544 square foot warehouse and loading dock with office and related improvements for Friendly Market on an approximately 19,182 square foot parcel in the B-CT Country Town Business District at 98 Alohi Street, TMK: 5-3-002: 124, Kaunakakai, Island of Molokai. (SMX 2012/0045) (Valuation: \$400,000) (B. Sticka)**

*The Commission may take action on this request.*

Mr. Sticka: Okay, the next item, the third part of the first item on your agenda is the special management area minor permit. Standards for reviewing an SMA application are found under HRS 205A-26, and Sections 12-302-10 and 11 of Chapter 302, SMA rules of the Commission, as amended. In addition, the proposed action is also subject to Maui County Code, as amended, Title 19, Zoning, Section 19.15, Country Town Business District zoning regulations. If you have any other questions at this time, I'm here, or the application as well. Thank you.

Chair Sprinzel: Okay, now you can ask about -- oh, do we have public testimony first, please? There being none, public testimony is closed. Do you have questions, Zhantell? No? Yes? No? Okay, do we want a proposal or motion?

Ms. Dudoit: I'd like to move to approve the special management area minor permit for the Friendly Market project of the warehouse and loading dock.

Chair Sprinzel: Second?

Ms. Thomson: Is that with the standard conditions as recommended?

Ms. Dudoit: Yes.

Mr. Davis: I second.

Chair Sprinzel: Any discussion? Okay, we'll have a vote.

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

***It has been moved by Commissioner Dudoit, seconded by Commissioner Davis, then unanimously***

***VOTED: to approve the special management area minor permit, with conditions, for the Friendly Market warehouse and loading dock.***

Chair Sprinzel: Carried unanimously. Thank you. You have all three. Thank you, Luigi. Thank you, Commissioners. Now we go on to the next item.

*Chair Sprinzel read the following agenda item into the record:*

## **2. SPECIAL MANAGEMENT AREA EXEMPTION**

**MR. WILLIAM SPENCE, Planning Director, requesting concurrence from the Molokai Planning Commission pursuant to their Special Management Area Rules, as amended, that a Special Management Area (SMA) exemption can be issued for the following:**

- a. MR. LUIGI MANERA on behalf of WEST MOLOKAI RESORT submitting a Special Management Area (SMA) Assessment application for the installation of fourteen (14) solar panels to be located on seven (7) existing water boiler systems at 255 Kepuhi Place, TMK: 5-1-003: 006, Maunaloa, Island of Molokai. (SMX 2013/0112) (Valuation: \$15,000) (B. Sticka)**

*The Commission may take action on this request to concur or not concur with the SMA exemption determination.*

Mr. Sticka: The second item on your agenda is a request for an SMA assessment for the installation of 14 solar panels to be located on 7 existing water boiler systems. The

existing water boiler enclosures are 4 feet-by-10 feet in size and located adjacent to the existing condominium buildings. The water boilers are used to heat water for the individual condominium units. No ground disturbance is anticipated as the solar panels will be located on top of the existing water boiler enclosures. It should also be noted that the Kepuhi Beach Resort AOA has approved the proposed solar panels as well. Standards for reviewing an SMA application are found under HRS 205A-26, and Sections 12-302-10- and 11 of Chapter 302, SMA rules of the Commission, as amended. In addition, the proposed action is also subject to Maui County Code, as amended, Title 19, Zoning, Section 19.02, Urban District zoning regulations. The state land use district is urban, the community plan is hotel, and county zoning is H-1 hotel.

Pursuant to the aforementioned findings of fact and determination, the department recommends concurrence with the finding that the subject application is eligible for an SMA exemption. The consultant, Luigi Manera, is available for questions or I am as well. Thank you.

Chair Sprinzel: Is there any public testimony on this matter? Yes?

Ms. Schnackenberg: I'm asking for clarity on this.

Chair Sprinzel: Name, please.

Ms. Schnackenberg: Oh, I'm sorry. Cora Schnackenberg. My question is, maybe someone could clarify this for me, this boiler, I'm assuming it is for a potential restaurant service, I'm not sure if it's for -- to put it on a resident that lives in the resort or it's for resort purpose. If someone could bring clarify.

Chair Sprinzel: Luigi, I think if you could or --

Unidentified Speaker: Okay, in answer to that question, it has nothing to do with a restaurant. It's all residential buildings that it's going to be going in, and it's not going to be on the buildings itself, it'll be going on the boiler structure that we have between the buildings that's already existing.

Chair Sprinzel: Thank you.

Unidentified Speaker: You're welcome.

Chair Sprinzel: Does that answer your question, madam? Good. There being no more public testimony, public testimony is now closed. Commissioners? No comments? Can I have a motion?

Ms. Swenson: I move the we approve their request for the solar hot water heaters.

Chair Sprinzel: Secunder. Thank you. Any discussion? No.

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

***It has been moved by Commissioner Swenson, seconded by Commissioner Dudoit, then unanimously***

***VOTED: to approve the request for the installation of the solar panels.***

Chair Sprinzel: Unanimous. Thank you very much. Thank you, Luigi. Okay, next.

*Chair Sprinzel read the following agenda item into the record:*

3. **MR. DARRYL LEER, President on behalf of TRI-L CONSTRUCTION, INC. requesting a 20-year time extension on the State Land Use Commission Special Use Permit to operate the Waiele Cinder Extraction Operation on 1.3 acres of land in the State Agricultural District at Puu O Waieli, TMK: 5-1-002: portion of 004, Kaluakoi, Island of Molokai. (SUP2 2010/0006) (B. Sticka)**

***The Commission may take action on this request.***

Mr. Sticka: The third item on your agenda is for an application for a time extension of a state land use commission special use permit, which was submitted on April 25 of 2013. At its regularly scheduled meeting of May 25, 2011, the Molokai Planning Commission conducted a public hearing on the above-referenced item. The Commission then voted to grant approval of the state land use commission special use permit application for the Waiele cinder extraction operation. The application was conditioned to expire on June 30 of 2013 subject to further extension by the Commission upon a timely request for extension filed at least 45 days prior to its expiration. The applicant submitted a request for a time extension on April 25, 2013, which is 67 days prior to the expiration of the state land use commission special use permit. The applicant indicates that Tri-L Construction has suspended the mobilization of the project to extract the cinder pending approval of the subject time extension. The applicant also indicates that they have been working for several years to get the project underway, therefore, no cinder has been extracted from the subject site.

Pursuant to the foregoing, the Maui Planning Department recommends approval of the time extension for the state land use commission special use permit with a modification to condition no. 1, and the addition of condition no. 17 to reflect an extended expiration date

as follows: So just to point out in your packet and your report the difference between conditions no. 1 and 2 -- I'm sorry, no. 1 and no. 17 are based upon the expiration of the permit and existing lease on the subject property. Exhibit 16C, in your packet, indicates that the lease expires 7 years from December 1 of 2008, therefore, condition no. 17 requires the applicant to demonstrate that the lease has been executed and will then allow the applicant to continue operation until December 1 of 2020, which is reflected again in condition no. 1.

The applicant Darryl Leer is available for questions and I am as well. Thank you.

Chair Sprinzel: I'm confused. A 20-year time extension expires in 2020. That can't add up.

Mr. Yoshida: I guess, Mr. Chairman, we're tying the duration to the license agreement, so it's less than 20 years.

Chair Sprinzel: It's just, in which case, we should have written that into the proposal, shouldn't we? Okay.

Mr. Yoshida: That was the applicant's original request for 20 years but they don't -- the license agreement ...(inaudible)...

Chair Sprinzel: We're giving them 7.

Mr. Yoshida: Yeah.

Chair Sprinzel: Any public testimony on this matter? There being none, public testimony is now closed. Okay, Lori?

Ms. Lori Buchanan: Good afternoon. My name is Lori Buchanan. Can you please clarify for me again, for the public, on condition no. 1? So actually, if the applicant is asking for a time extension, in actuality, he has -- what is the extension period?

Mr. Yoshida: Well, the applicant was asking for a 20-year time extension.

Ms. Buchanan: From when?

Mr. Yoshida: From now. But we are tying the time period to the license agreement that they have with Molokai Properties, which if they exercise they're extension clause, will take it to December 1, 2010.

Ms. Buchanan: Was that part of the original agreement for this permit?

Mr. Yoshida: Yes. The license agreement, dated October 31, 2008.

Ms. Buchanan: I think I just was wondering why the license agreement would be tied into the land use permit for a time extension.

Mr. Yoshida: Typically, I think on the state special use permits, they give an initial time period in which to comply with the conditions, and then they can apply for a time extension and the Commission can give longer periods of time, like I think the Commission just approved the time extension for the quarry operations for Goodfellow Brothers earlier this year and that was for 20 years, the quarry and to operate their rock crushing and various other types of activities that they have out there at Palaau.

Ms. Buchanan: So just so I clear, the relevance is that the applicant is asking to extend the time period to be concurrent with the license agreement?

Mr. Yoshida: The applicant was asking for a 20-year time extension. The department says they only have authorization from the landowner, according to the license agreement, till December 1, 2020 to exercise their -- that extension clause so they don't --

Ms. Buchanan: Okay.

Mr. Yoshida: They don't have permission from the landowner, right now, beyond that.

Ms. Buchanan: Okay. Thank you.

Chair Sprinzel: And I'm assuming they have 7 years in which they can work out an extension to their license, yes?

Ms. Buchanan: Okay. So, in general, I'm always nervous to give applicants who are coming in for a special use permit, no matter what they are, because, number one, that means they're either nonconforming or have a reason to have a special use; the second thing is really long periods of time, the matter of oversight for that project is always a concern. And besides the compliance report that Tri-L has to submit for this application, I don't see any condition, and I was part of the first condition back in 2011 where we didn't have, other than the compliance report, a way to know whether they was having any adverse impacts, and this Commission sits as the authority for the state land use commission on all projects with 15 acres or less, so there's nobody but you that is going to provide this oversight for projects under special use permits. Having that authority, I think it's more so important for this Commission to realize they're obligation to the community for long-term special use permits under the state. The other reason for concern is you can sit and say we don't have any complaints, but remember that the project site is in a remote location that is not accessible to the public. So actually, if you don't know

what's going on, nobody else would. And so a condition to ensure that oversight remains with this Commission, if you do extend the application for 10 years or 20 years, I think would be advantageous for you to do.

What I would like to state on the record that I have a great working relationship in my 40-hour week job with Mr. Leer and Tri-L Construction. They've been very helpful to this community. They have been, on a voluntary basis, to address invasive species issues on Molokai with -- in reference to their working conditions, and we're very thankful for that and appreciative of their willingness to do that on a voluntary basis.

In this packet, I wanted to talk about a condition that was put on in 2011 that I would hope that his Commission would consider amending, and it was item 15, under Conclusions of Law, Recommendations. Is it under there? Let me see.

Chair Sprinzel: Do you have a page number?

Ms. Buchanan: Page number -- Exhibit B. That was the original, yeah? It's dated July 19, 2011 because all the same recommendations are existing and all they asking you to do is to extend the time of this permit. So on that older document of July 19, 2011, which is marked "Exhibit B," under Standard Conditions, under no. 7, oh no, not no. 7, sorry, but 6 and 7 is important. Project Specific Conditions No. 15, page 3 of the document dated July 19, 2011.

Chair Spinzel: Got it. Thank you.

Ms. Buchanan: Okay. We there? Alright. The original reads, "As represented, the applicant shall 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 was commenced when use is concluded." Because we asking for a longer specific time frame, and again oversight is my concern of the project, at the time I advocated for them to maintain, help to maintain that road because I believe we quantified that 15,000 cubic yards resulted in, I think, 100-and-some-odd semi truck loads of cinder going up and down that dirt road that is accessed by the public. And historically, we know that between the county and Department of Highways and state and the ranch, pretty much nobody -- it's a hands-off, like it's not our job to improve that road. I don't think there's any clear lines of oversight for the maintenance of that road, and that's been historical. It does impact the Molokai to -- canoe Molokai-Oahu race every year having for them to come out of their pocket and pay for road improvements, and a recent meeting said they cannot do that anymore. So the ranch is not doing it, county's not doing it, state's not doing it, and here we're adding on another use on the road. So with that in mind, I would like the Commission to consider amending no. 15 to say something like: As represented, the applicant shall, as needed, maintain the dirt access road to the quarry in a condition to

ensure safe ingress and egress to the project site. I think that it's reasonable, it leaves it open for some interpretation and we're not being no specific as to giving the applicant a burden to which he has to comply, but it does send a message in a condition to the applicant that your use of this road is impacting use for the general public and that you should be able to help and maintain that road, especially if you have the equipment 'cause while we love Darryl and we know he going be here for a while, you never know who's going to be running Tri-L from day one to day two, and I think the condition, at this point, would be appropriate. Thank you very much.

Chair Sprinzel: Lori --

Ms. Buchanan: Okay.

Chair Sprinzel: Is this not a road that both the quarry and Tri-L use? I mean isn't that the road they use?

Ms. Buchanan: Everybody uses the road from Maunaloa to the dirt road to access the cinder project site as well as Hale O Lono Harbor.

Chair Sprinzel: So it's in their interest, both companies, to at least keep the potholes --

Ms. Buchanan: I think it's in the community's interest to see that that road is maintained in a safe condition, and that is open to interpretation.

Chair Sprinzel: Could we hear from the applicant when you're done, Lori, because it's big ... (inaudible) ...

Ms. Buchanan: Commissioner Dudoit has posted a question so let me try and --

Chair Sprinzel: Sure.

Ms. Buchanan: So on no. 15, it's just a suggestion because you're going to cross out some of that words, is: "As represented, the applicant shall, as needed, maintain the dirt access road to the quarry, or project site, in a condition," and this is where you have to insert wording, "to ensure safe ingress and egress to the project site," so that's only to the project site, that's not all the way down to Hale O Lono, okay, it's only to the project site, "for the general public." Okay.

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

Ms. Buchanan: No. No. And strike everything else out. Everything else is struck out. Okay, Commissioner has one more question.

Ms. Dudoit: I have one more question on -- just because I know that you are somewhat of a professional in the environmental realm. My concern is, as I read through the conditions that we gave in 2011, and then also just looking at all the other documentation, when we give activities like this or projects like this a 20-year or an extended time period for the use, is that any mandate by any specific environmental EPA or any kind of land use requirement that sends out monitoring or checks at any given time? 'Cause I'm thinking that digging, after 20 years, right, is going to cause a change in the environmental structure of the pit, of the area, and all those kind of things, not say that it's a bad thing and they may be practicing best management, but in your expertise and in your expert opinion on environment, is that something that you're familiar with or is it something that you would suggest or?

Ms. Buchanan: Okay, well, the short answer is the applicant is -- has already stated, for the record, that they removing 15,000 cubic yards, I assume, annually. The back of this is their compliant records with the Department of Health and other agencies that have oversight of their project and so they have to jump through those hoops, and that's how come I said that this Commission should retain some condition rights to inspect the property on a common sense kind of issue because you, at some point, may want -- it may near stream, you know, flows whether they're intermittent or not, and while the application says it does not -- 205 does not come into play with this, it certainly does. We all know that non-point source pollution does impact Chapter 205. So, you know, that's something if this Commission wants to followup on is really how many cubic yards are coming out and, at some point in time, how big of a whole you going end up with in 20 years. So that's how come I said I always suggest that the time is cut down and oversight is needed for reevaluation 'cause it is a special use permit, which means it's currently not permitted, so you can retain that oversight. And then Commissioner Swenson?

Ms. Swenson: Maybe I overlooked it somewhere, but who owns this road?

Ms. Buchanan: That is a good question, Diane.

Ms. Swenson: I mean because I think that who owns the road has something to say about who's going to maintain it and who can pass over it and if they even have permission to use the road.

Ms. Buchanan: I think that's questionable, and we've gone through this in review with the Oahu Canoe Racing Association when we've had the transportation companies come in, the big buses that haul 56 people, and they need the road improved; historically, the Molokai Ranch was taking care of the road and saw it as their obligation, but there are multiple agreements that are either current or not current. No real conveyed. I think memorandums of agreement that exist between the state and the county and the ranch. So, you know, that's a good question for maybe our representatives to followup on. But in

the meantime, I would say the application for use of that road outweighs the current use especially because it's heavy equipment, and so with that perspective, it would be good to err on the side of caution, and I think the applicant would be open to that.

Chair Sprinzel: Lori, item 10 says that the special permit will be subject to periodic inspections by the department or other federal, state, or county agencies for the compliance with the terms and conditions.

Ms. Buchanan: That's good.

Chair Sprinzel: So it's already there.

Ms. Buchanan: Yeah. And the understanding, of course, for the applicant is that that request for inspection would be made in a reasonable time in order for them to be able to comply with the request.

Chair Sprinzel: And the other thing I would just like to repeat, you know, which I said when we had the quarry thing, the reason we have these exceptions is because the planning system doesn't want to make that whole area whatever it is, whether it's industrial or -- that's why we have these 7 years, 20 years, whatever, there's no -- there's nothing stopping it, the whole thing being changed, it's just that there's no desire to change it.

Ms. Buchanan: And I think that's why this Commission advocated to prioritize this community's plan amendment to not be the last one to be completed but actually to put us ahead of the game for our community plan amendment and the reason is, right now, without that amendment for this community, you basically making arbitrary piecemeal type of planning, which is not smart, and we know that, and so I think that this Commission should make that extra push and our director -- deputy is sitting there that we really need to move on with our community plan amendment in order to address the larger vision issue to direct smart growth.

Chair Sprinzel: I've only been here 20 years so I'm not expecting it to be done anytime soon. Commissioners, any further questions? Darryl, would you like to say something? No.

Mr. Darryl Leer: ...(inaudible)... Darryl Leer, Tri-L Construction. Again, the road is a can of worms. We have issues with the roads ourselves but we cannot run the roads, and I got one of our trucker personnel back there, she can vouch for us, that basically if we run the trucks over rough roads, we can't afford the repair costs, okay. So we've already graded the road once. Of course, the weather came along and kind of washed out some of it, but some of it was a lot better than it originally was. We can't guarantee anything because we're at the mercy of just what she looked into as far as the people that is supposed to be

taking care of the roads, okay. We also have a liability issue out there. When we grade the road, if anything happens, we have a huge liability, and I'm sure some of you business people know what that is, okay. So we just do the best we can. We can't promise anything, but we will do what we can do to make possible. We haven't even used the road yet. We graded it several months ago and we haven't even used it yet because we haven't had time. We are a small business. We have a limited amount of people; limited amount of resources to do this project that the county wants cinder for their ballfields, everybody's wanting cinder, and we're trying to get it done but, like I said, I really don't want to tie -- the reason for the 20-year extension was because our permit's running out. We've gotta get a new extension, okay. We also, in two years, our lease with the ranch runs out, okay, and we have that issue to deal with.

Right now, we're going over all the issues, environmental, with Molokai Ranch because Molokai Ranch is scared to death, you know, of any kind of environmental issues, okay. They're trying to make sure that they have every "i" and "t" and everything crossed and dotted, okay. So right now we're dealing with those issues. Even with our quarry, the landowner -- we've had three inspections, environmental inspections this year at our quarry, okay, to ensure that we're following the procedures, making sure everything's done right, okay. Because they are very - I don't know what to say - scared, they do not want to have any issues either, and it's their property and they want to care of it, okay.

So I can't promise to change anything here. I really don't want to put anything on the road because I can't legally say that I can do anything on the road, okay, because it belongs to state, okay.

Chair Sprinzel: Is there anybody else uses this regularly apart from you and the quarry?

Mr. Leer: The community. You guys -- you gotta understand this is a long road and it's --

Chair Sprinzel: Sure. Sure.

Mr. Leer: It really would be tough to fix completely, okay. It would be a very expensive project.

Chair Sprinzel: I must say I'm not in favor of changing item 15 because I thought it puts too much strain on the small proportion of it that you use when it's a public domain and public use. But that's my opinion. Commissioners, anybody else? I guess we should have public testimony. Aunty Ruth. ...(inaudible)...

Ms. Judy Caparida: Aloha. My name is Judy Caparida, and I'm for our community. Anyway, I want to say that we should get all those that is responsible for the road to be a part of it, you know, not just one person, but all three. If there's three of them, the ranch,

the state, him, he's using the road. Get them - all three. If they gotta do it once a year, take turn, whatever. But they can do it because, you know, the community is the ones that goes down there and they are open to the community. So if you making money, then, bruddah, then you going have to dish it out to do your part. That is just common sense. You don't expect to get everything for free. In our life, that what's it is. We gotta do our part so everything can work together. So I would see the state, I would see the ranch about it, because why? We need the road, and that road over there, no matter how you take care of it, because it is always going to be a runoff, and it's up the road. So I think that's the way we gotta do to make it work. Thank you. You get anything to tell me? What, bruddah, make common sense, right? Alright.

Ms. Schnackenberg: Hi. I'm Cora Schnackenberg, for the record. I think Ms. Swenson brought a big concern, and as much as I feel for a small business and want it to be successful on the island, I feel that it needs to be identified and clarified as who is responsible. Someone getting hurt, as a community member, it's not the right time to then decide who is responsible. I think we need to be proactive in this. And I think deferring the request at, you know, at a reasonable time period to find out who is responsible so this small business man will not bear the burden of have to get all the roads repaired. Anyway, that is my mana`o. Thank you.

Ms. Buchanan: If the Chair would entertain me coming back again, for the record, Lori Buchanan, I think in my suggestion amend 15 was really to clean it up, and the alternative wording is really more conducive to be beneficial to Tri-L as oppose to being onerous and the reason is, if you read it as it is on no. 15, and at the time we did this, it bothered me, and it still does, because it says, "The applicant shall maintain the dirt access road to the quarry in the same condition as it was at the time the use is commenced," well, the use hasn't commenced yet, "and shall restore the road to the same condition as it was at the time that the project was commenced when the use was established." That eludes to having a baseline documentation of what is the current condition of the road prior to the use. It would elude to me, as a person that works in the environment, that that would include photo monitoring, otherwise, how would this Commission know what is the condition of the road before commencing and how would I know that it's been stored? That's I think historical issues with the Department of Land and Natural Resources, Hale O Lono is a good example of that. Somebody in Oahu signed off on the condition goes back as restored and we know it wasn't. So this current language is really not great language, and I think just cleaning it up to be more broad and open to interpretation is the much better and it would it actually be helpful to Tri-L. Yes, Commissioner Swenson?

Ms. Swenson: Yeah, you know what? I don't quite understand how we can put a condition that someone has got to maintain something on someone else's property if they don't have an agreement or the authority from the property owner to do it. I'm -- that sort of escapes me.

Ms. Buchanan: And it's problematic and that can be applied to hundreds of current uses, thousands maybe, on Molokai, but the bottom line is there is an application for a use that does not currently exist in an area, and as a result of a use of an application. whether it's a water use permit for a well to make a pond or whatever the use is, there's the impact, and as a result that the reasonable thing to do for the applicant is to plan for that reaction, and as long as it's reasonable and not onerous, like we saw in the first application where the result was a hefty \$600,000 hike in cost for a business, so in that way when it's reasonable and kinda common sense, then I think it's okay until the fact where you can iron out all those difficulties.

Chair Sprinzel: Lori, I do think that this is a much, this item 15, is a much larger problem than just this putting a condition in and making Darryl responsible for the road. I think that part is not really part of what we're trying to discuss today. That's something that really should be looked into by authority.

Ms. Buchanan: Okay now, what if I was to go out there and pave that road today? It would be cherry, like H-1, H-3 freeway. And then I would be, as this condition would suggest, the applicant would have to restore that condition of the road to the great condition it's in now paved, which would probably be worth hundred of thousands of dollars more. Commissioner Swenson.

Ms. Swenson: Lori, wouldn't he have to have an agreement with the owner of the road? I mean we can't --

Ms. Buchanan: I don't think it's part of this Commission's authority to go and --

Ms. Swenson: But it's not our authority --

Ms. Buchanan: ...(inaudible)... his agreement with the landowner.

Ms. Swenson: But it's not -- it's not within our authority, right, as far as I'm concerned, to put conditions on someone's land that we don't own or have control over.

Ms. Buchanan: Chapter 343 allows for those type of environmental impacts and anyone can argue the point, and under Chapter 205A, you have that authority to interpret those possible cumulative adverse impacts and decide on that. And if at anytime, Corp. Counsel can correct me or not correct me because I'm not a lawyer. So I think it's in your purview, in other words, to make that reasonable decision. Okay, thank you.

Chair Sprinzel: Thank you. Is there anymore public testimony? There being none, public testimony is now closed. Commissioners?

Ms. Tancayo: I have a question for counsel. To me, as I read this, "As represented, the applicant shall maintain the dirt access road to the quarry," so where is that defined? Is that the gate that goes from the main road to the quarry? 'Cause, to me, that would be the dirt road access to the quarry, not all this road we're talking about that goes to Hale O Lono.

Ms. Thomson: I'm not familiar with the project site but the way that I would interpret that would be the portion of the road that the applicant is using to get from I guess the public -- the main public highway across whatever access road this is to the entrance of the project site.

Ms. Tancayo: That is pretty vague. You understand what I'm saying? Because the public right-of-way is to Hale O Lono so is that considered the public road? And then the way this reads to me is that it's the quarry road access, which the public does not have ...(inaudible)...

Chair Sprinzel: How do you read it, Darryl? Which bit of road -- I mean, hey, it's your business, it's your application, it's your trucks going over that.

Mr. Leer: ...(inaudible)...

Chair Sprinzel: Sorry, mate.

Mr. Leer: Okay, you caught me. I read it as from the state road to the quarry, which is just a short piece of road that's on private land and does really not have any effect on any state owned property, okay. That's the way I actually read it, okay.

Chair Sprinzel: And that's the way we're asking you, in the existing thing --

Mr. Leer: And the state road ends -- where does -- the state road go all the way to Hale O Lono? Huh? It starts at the arena and how far down does it go though?

Ms. Dudoit: It goes all the way to the harbor.

Mr. Leer: All the way to the harbor. Okay. That is the state road, okay. That is public access. And in this really statement, as I read it, the only real portion that I'm responsible for is from the point where, yeah, the point where we leave that state road and go into the actual pit.

Chair Sprinzel: And you're happy with this statement that it will be left the way it was when you found it?

Mr. Leer: Of course. This is fine. As long as -- if they do pave the road, okay, that would be great for us because if they pave the road, then the state will be taking care of the road, okay.

Chair Sprinzel: Yeah. Yeah.

Mr. Leer: Currently, the state does not take care of the road. Currently, we maintain small amounts of it to ensure that our trucks are taken cared of because the state does not maintain it, okay.

Chair Sprinzel: So it doesn't -- the state doesn't even maintain the roads in the heights...(inaudible)...

Mr. Leer: Yes. I agree with that. But, basically, that's my interpretation of the statement.

Chair Sprinzel: It would be mine as well. Thank you very much. Commissioners?

Ms. Dudoit: Yeah, can -- I just wanted to clarify 'cause I'm very familiar with this road access. In 1996, a group of us, including Uncle Billy and I, traveled to lobby for community access. Prior to 1996, the road was maintained and managed by Molokai Ranch and there was no free-flow access. You needed to get permission. The roads were maintained in that access. After 1996, actually January of 1997, there was a legislative memorandum of agreement between the State Harbors Division, DLNR, and Molokai Properties to open up access of that road. The problem stepped in when you go down -- so the actual problem with the landownership and responsibility isn't the road, it's the fact that when you reach to the bottom of the road, the property separates into half Molokai Ranch of the harbor and half State DLNR. They could not -- DLNR didn't have the money to renovate the harbor to the condition that was permissible for public use, therefore, they didn't want to take the responsibility of saying that it was a state managed road because that would mean that the liability for anybody getting hurt or whatever now that it was public access would lie upon the state. So us waiting to make a determination based on who owns the land and who's responsible I think is not a wise decision because it's been almost, what, 10, 20 -- years since that happened and there is no light in sight because it is too much of a liability to fix that harbor for anybody to claim the road that gives access to that property, which just so happen is right pass the project site.

I also wanted to say that as it is written, as the project specifications is written in the condition no. 15, if we left it the way it is, I just wanted to make clear, and I know Lori did this already, but if you tell somebody that they have to maintain the dirt access road to the condition it is currently in when they come in, I can tell you that Darryl will not be able to drive his trucks down there in the current condition that it is in right now and if he do, it will

cause a liability and a hazard for his workers and for everything that they doing. So that doesn't seem to jive.

The second thing is in the current condition, it says that he shall restore the road to the same condition as it was at the time the project was commenced until it's -- right, and, yeah, so all those things, I think what Lori was suggesting makes more sense because when you tell -- so what was represented is as represented, the applicant shall, as needed, maintain the dirt access road to the quarry in a condition to ensure safe egress and -- to the project site, ingress and egress from the project site. So that simply means that exactly what he said, from the state road to the quarry, that's what he maintaining. It's as needed as defined by him to cause safe travel for his workers. It's not inclusive of the public access that is -- designation to the area. And clearly defines that he is not responsible for restoring anything or for leaving it in a particular condition. It just simply says that he going ensure safe travel for his people in the site and in the amount of distance that he's using for the use.

Chair Sprinzel: Commissioners, does anybody object to that change in 15 'cause that makes a lot of sense to me? Does Darryl agree with that?

Mr. Leer: ...(inaudible)...

Ms. Dudoit: The change would read, "As represented, the applicant shall, as needed, maintain the dirt access road to the quarry in a condition to ensure safe ingress and egress to the project site." So we could say from the beginning of the state access --

Mr. Leer: ...(inaudible)...

Ms. Dudoit: Yeah.

Chair Sprinzel: You have to --

Ms. Dudoit: Right.

Chair Sprinzel: You have to talk to the microphone, otherwise, it doesn't get recorded. Sorry.

Mr. Leer: Okay, basically, no. 15 let's us out of dealing with the state road totally all together, okay. And the only thing it'll deal with is the access from the time we need the state road, now the state road being at the point of the gate from Molokai Ranch to the actual quarry site, okay. That's all this entails, okay. So by leaving it either as it is, I mean nobody travels that road except us, okay, from the point we leave the state road, which is Molokai Ranch's gate, till we get to the quarry, that belongs to Molokai Ranch, okay, and

that nobody travels. The only people be traveling that would be Tri-L Construction itself, okay.

Chair Sprinzel: So you'll have --

Mr. Leer: As far as the road from when you leave the rodeo grounds going down, that belongs to the state and that is a state issue to deal with, okay.

Chair Sprinzel: That was the point I was trying to make right in the start is that the road you use, and the quarry people use, is very limited.

Mr. Leer: Right. Correct.

Chair Sprinzel: And they're happy, and you're happy.

Mr. Leer: I'm happy with that statement the way it is.

Chair Sprinzel: Good. Thank you. Okay, Commissioners, we're ready.

Ms. Dudoit: Sorry. Now I confused. Now I'm confused because --

Chair Sprinzel: Join me.

Ms. Dudoit: My concern for taking care of the road was from the cattle guard where the arena is - what would you refer to that as? The beginning of the state -- would be the beginning of the state road or the end?

Mr. Leer: That's the beginning.

Ms. Dudoit: Okay. So that was my concern, from the beginning of the state road to the quarry site, to the project site. That's what I read this condition to take care of because that's where the trucks going travel and there are community members that use that road every day, I one of 'em.

Chair Sprinzel: But we can't make him maintain the road that everyone else is using.

Ms. Dudoit: You see, I think the, and you can correct me, Corporation Counsel, if I wrong, we are not deciding on whether or not whose land it is and we're deciding on a use, and the maintenance of this road directly is impacted by the use, it's not who owns the property or who has title to it, it's a use that you're asking for someplace where that use is not normally permitted, therefore, the conditions that we set for it is directly in connection to the usage that is being done, not who has the title of the property.

Ms. Thomson: If I can respond to that. The condition, you know, as it's written or as you might want to modify it, and it goes to the state land use commission special use permit evaluation guidelines, it's on page 3, just a few pages earlier than that condition you're looking at: The desired use would not adversely effect surrounding property and the use would not reasonably burden public agencies to provide roads and streets, etcetera. So, you know, what the condition reads currently, you know, as the applicant has submitted, you know, he is going to maintain the section of road impacted by his project, is the way that I read that condition to currently obligate him and his project.

Ms. Dudoit: Okay, so that would mean that you cannot -- you cannot say that it's only going to be on non-state property and only the private road, I mean 'cause the larger use of the trucks going down is on the state road.

Ms. Thomson: I would feel a little uncomfortable broadening it by specifying that he has to maintain the state highway without the state's input on that.

Ms. Dudoit: Okay, then let me ask you legal advice on this. So then, the application, we would have to deny it based on what you just said because his project, if he doesn't maintain the road, would call for the state to maintain that road in order -- for liability purposes, so that means that this intended project would cause a strain or it would cause an effect on a public agency or on a government agency. It would cost the state money.

Ms. Thomson: That -- you know, I can't comment on that because it's a little bit too speculative, but, you know, I think that the condition, as written, you know obligates the applicant to remediate any issues caused by his project to the road that he uses for the work. So if his trucks are on that access road right now, the condition obligates him to repair it.

Ms. Dudoit: Right now, the current --

Chair Sprinzel: We can talk about this for the next seven hours and we'll never come to any conclusion.

Ms. Dudoit: Well, I had a suggestion. I mean --

Chair Sprinzel: You have a position but I mean there --

Ms. Dudoit: No, I have a suggestion.

Chair Sprinzel: Oh, a suggestion. Okay.

Ms. Dudoit: That maybe we should take a site visit to Hale O Lono Road so that you guys can see what we're talking about because it's not as simple as this discussion.

Chair Sprinzel: Well, why don't we have a motion and vote on it, and that will decide, wouldn't it?

Ms. Swenson: Can we defer this until we have some input from the State Highway Department and Molokai Ranch?

Chair Sprinzel: We could, but isn't there a time limit on this ...(inaudible)... said there were 56 days or something like that at the start? And from our experience, asking people at those departments could take a long, long time.

Ms. Dudoit: Planning Department, is there a clause in there that says that if we're going through this process, that there can be an extension on the deadline?

Mr. Sticka: I'd have to defer that question to either Clayton or Corp. Counsel. I don't know the answer to that.

Mr. Yoshida: Again, the question was?

Ms. Dudoit: We're concerned about him exceeding his deadline for an extension, and we don't want to have him to have to redo the whole thing again so we're asking -- I'm asking if there is some kind of a leeway because we're -- this is on the table and we're discussing it, can we extend the deadline for this approval of his extension?

Mr. Yoshida: I don't believe there is any stated deadline like there is for taking actions on SMA exception concurrences.

Mr. Leer: Basically, what this boils down to is I cannot deal with the state issues on that road. As Lori said, it's a can of worms. Nobody's willing to take -- nobody will give permission; nobody will do anything, okay. This is where it lands, okay. This is going to be way beyond my lifetime, probably, by the time somebody straightens all that out. We are looking to do the cinder over the next year, two years here; after that, who knows. It may not even be feasible to deal with that. We're also MSHA regulation under the pit now, okay, so that has to follow all MSHA federal guidelines and rules, okay, for grading and etcetera. We also are at the mercy of Molokai Ranch whether we get a new lease or not, okay. A lot of things depend on this. If we drag this into this, it's going to delay it, run it out, for who knows how many years and we may just give up, okay. This is the point it's getting to be, okay.

We have maintained the road, okay, and we haven't even run on it yet, okay. Before we go out there, you can ask one of my guys there, we're going to have to re-maintain the road, okay, just to go back out. If it gets into the state issues, this is not going to happen probably, okay. It's just getting to that point. We've already invested an ungodly amount of money into this just to get this far, okay. It's too bad we haven't been able to get in there and get our job done, and at least get some out, but it's to that point, okay, ladies and gentlemen. I'm sorry, but if we drag the state in and I have to deal with the state, except on a local basis, there's no sense in me dealing with this project at all. It'll take forever.

Ms. Swenson: Darryl, you said that you might only run it another year or two, so do you need 20 years?

Mr. Leer: I would like to run it more than that but we are under the ranch, we're at the scrutiny of the ranch, but I have already checked, if the ranch cans us, they will have to go get a new, a whole new start over again, okay, which they will have to come back to the Planning Commission, so anybody other than Tri-L tries to take cinder out of the pit, they will have to come back through this. This is a permit for Tri-L Construction, not Molokai Ranch, not Goodfellow, not Dredging, not anybody else.

Chair Sprinzel: Darryl, would you consider just asking for three years?

Mr. Leer: No. We'd like to have -- if we can get the ranch to sign off, which I don't know, I'm hoping they will, they have no other option. If they do, they're going to have to go through this process on their own, okay. Hopefully, they'll renew it for another seven years. I don't see -- my vision is about seven, seven, seven, seven, okay. Twenty years is just so that we don't have to go back between and take up all your time, and hassle Ben's time, everybody's time on this; plus us having to deal with the issues every time it comes up. So we put in twenty years because that was the standard and that's what Goodfellow used on their quarry, okay.

Chair Sprinzel: But it's seven at the moment is the application.

Mr. Leer: No. We have not -- actually, we have what? I think two more years. We had two more or three more years on our lease, something like that, yeah? We have three more years on our lease with the ranch, okay. In the next three years, we hope to get maybe a ten-year lease or a -- you know, it's up to the mercy of the ranch, okay, but like I said, this permit basically is for Tri-L Construction, nobody is going to be able to do this other than come back with ...(inaudible)... and have to go back through all this process, which then you guys can clarify at that time and deal with the state and maybe the state will grade the road and pave it - who knows, okay.

Chair Sprinzel But I'm still not sure whether we're considering 7 years or 20 years ...(inaudible)...

Mr. Leer: Well, 20 years for this, okay. If it goes away in 7 years, it goes away. And you don't have to deal with it again, right?

Chair Sprinzel: Well, Commissioners, I do need some sort of a motion that we can vote either up or own so we can end this thing.

Ms. Dudoit: Actually, Chair, can I ask Darryl a question?

Chair Sprinzel: Sure.

Ms. Dudoit: Mr. Leer, so just enlighten me a little bit because I'm sort of confused and I just going to be straight up with you 'cause I expect you to do the same with me. When you ask for a 20-year extension, just from everything you just said right now, it seems to me that with the not knowing whether you're going to be able to renew your lease, the constant worry that the state will someday step in and hamper your progress or make restrictions on the word or whatever, how was this business venture going to be beneficial to you and when you worked in the costs, I'm assuming that it had to have included maintenance of the road. I mean --

Mr. Leer: Yes. Like I said, we've already maintained the road that you're talking about, okay, but if we get into legalities on that road, it'll have to go away because we cannot be held responsible to maintain that road. In other words, we're maintaining the road out of the goodness of our heart, okay, and because we need to run our trucks over it, so we have to maintain it for those trucks also, okay. As you said, the cost, if our trucks are doing one mile an hour hauling a load out, and it takes us five hours to haul a load out of there, we can't justify the project. We have to maintain the road good enough so that the trucks can travel at 15 to 20 miles an hour, okay. That's the only speed they're going to be able to travel because we gotta go up hills. Yeah, Cliff? Yeah. And that's about the back speed we're going to be able to get out of that whole thing. But we have to travel at one because the road is so rough, it isn't going to make a feasible project to deal with, okay, and then the cinder goes away and who knows where -- if Molokai will ever get any cinder again.

Ms. Dudoit: So the whole success of your project basically lies in the idea that you cannot be tied to the maintenance of the road that you use, you're going to be using everyday to make your income?

Mr. Leer: Well, look at the cost if I'm legally tied to maintain that road. If I'm legally tied, then I gotta take care of it when we're not using it, okay. I can't take care of it. We plan on going in, hopefully, once a year, sometime around fall, we'll try to coincide it with the canoe

club thing so we can grade the road and make sure it's graded before they come hauling their canoes, but our plan is to go in once a year, take some cinder out, enough that we can use for Molokai or whatever needs that we need. We're not going to be running the road everyday and all day, you know, all day long everyday. That's just not -- it's not feasible to do that either, okay. It's just a location where we can get cinder legally, okay, take out, and bring back, and crush, and use for stuff, okay. If we have to get tied into a legal battle on this road, that we're responsible to maintain it, my insurance company probably won't even go with it, okay. This is what I mean by it'll come to an end. Right now, we're maintaining the road at least once a year, which is better than what's getting done now, okay, but we can't guarantee to maintain the road.

Ms. Dudoit: Thank you. Planning Department, you remember when we did the -- when we the -- somebody came in for an after-the-fact permit and the person that bought the house was responsible for it even though the structure was illegally built from the person who sold it? What do you call that? 'Cause the county made it very clear that if you obtained the property, you obtained it with all of its - what do you call - like the structure that was illegal, so if it was cited as illegal --

Chair Sprinzel: That was the shrimp farm, wasn't it?

Ms. Dudoit: I forget. But there was term that the county used and I'm wondering if it would apply to this -- to this subject. I mean because the Commission cannot be giving a fee to somebody who bought a piece of property for a structure that was illegally built before they actually bought it and the county demand that we give them a fee because they inherited this problem, but not apply it to a subject like this. Different property owners, different --

Mr. Leer: I need -- can I clarify one thing?

Ms. Dudoit: Sure.

Mr. Leer: Okay. The lease in here is till 2020, not 20 years, okay, until 2020. This is what we're asking for on this, not 20 more years, until 2020, okay. That's only what? Seven years away, okay. Seven years to the lease that's why we're all looking at -- I'm looking at seven, seven, seven. In 20 years, in 2020, we'll probably be back in front of you if we're still doing it, okay. At that time, something else will be straightened out, hopefully, on the road, okay. So just for clarification, until 2020.

Ms. Tancayo: Okay, I'm just making a comment because -- because of my background, I've dealt a lot with highways and big trucks and all that but we don't charge ...(inaudible)... make them pay for the damn highways when they do the damage. Trucks do damage the highway, period. No matter if it's a state highway that's paved out there or not. If this is a state highway, we cannot tell this guy he's gotta maintain the state highway. The worse

part of the road is before the cattle grate, the second cattle grate is the worse part of the road, always is, that's before his turnoff. I travel that road a lot too. So, you know, if he's -- his trucks can't go over it as it is now so he's going to make that part of the road better because that's the worse part of the road, then you have the ...(inaudible)... so, basically, he's taking the best part of the road -- the worse part of the road out and I don't see a problem with it that we can fix because it's a state road. That's like telling you you have to close your construction site because you're coming out on the state road, which is going to damage the concrete because our highways are not meant for any kind of heavy loads -- trucks at all, so every truck on Molokai should be out of there. If we want to use this, that's how it is. These roads are not made for any kind of heavy trucks at all, semi trucks, Makoa Trucking, anybody, everybody should be out of here. I'm sorry, but this is ridiculous. Sorry.

Chair Sprinzel: I'd still like a motion.

Ms. Dudoit: I'd like to move to defer this matter until we can do a site visit and get further information on clarity. And I just making the motion so we can discuss this and get somewhere.

Chair Sprinzel: Nobody seconded it so --

Mr. Leer: I have a question. Site visit concerning what? The pit, the cinder pit, and the cinder pit road?

Chair Sprinzel: Don't worry about it ...(inaudible)...

Mr. Leer: The site visit for the state highway road ...(inaudible)...

Chair Sprinzel: Don't worry about it ...(inaudible)... can I have another motion, please?

Ms. Tancayo: I want to make a motion to grant this permit as it's written --

Ms. Dudoit: We already have a motion on the floor.

Chair Sprinzel: No. You have -- we didn't get a seconder.

Ms. Dudoit: Okay, so then, on the record, you have to say that the motion dies 'cause we didn't --

Chair Sprinzel: I did. I said there wasn't a seconder. I'm sorry, Zhantell. Okay, we have a motion to accept. Is there a seconder for that? We have a seconder. All in favor, please raise your right hand. Oh no, discussion. Sure.

Ms. Dudoit: Okay, I'm confused as how with all these obvious on the record remarks about nobody knows who has responsibility, liability, who owns the land, who's doing this, and who's doing what, how can we even make a decision on this? How can we even legally make a decision on permitted usage on one piece of property and access road to the property that we don't even know who has the authority to give them that permitted -- I mean maybe it's as simple as the applicant sitting down with Molokai Ranch and demanding that there is a specific wording in their contract that says who's going to maintain the property and then coming before us. But I cannot see how we making one responsible decision when all of us right here, for the last half-an-hour, have been talking about the fact that nobody knows who has legal rights to what and legal responsibilities.

Chair Sprinzel: Is there any other Commissioner who wants to make a comment?

Ms. Swenson: Well, I -- even if we grant him the seven years, if he can't get his renewal with Molokai Ranch, he's -- he's done anyway and --

Chair Sprinzel: Absolutely. That's why I suggested to him to just have it as long as the end of the lease, which we could go along with.

Ms. Dudoit: Okay, so let's go on the liability issue. I'm a Maunaloa resident, I travel down that road after Darryl starts his project, and then my car crashes because get one ditch in the road. Who do I come after, Molokai Ranch? Darryl? For the usage. Or the state? Because I'm --

Chair Sprinzel: Can you prove who damaged the road?

Ms. Dudoit: Can you prove who owns it or who has liability 'cause somebody going be liable?

Chair Sprinzel: Well, it's not our problem is it?

Ms. Dudoit: It is our problem if we permitting a usage that causes wear and tear on a road or on access where the general community is given the right to use. So I'm just saying that I want Darryl to do his project. There is nothing wrong with his ultimate project down at the quarry. That's a given. I want all his workers to be safe. I'm saying, as a Commission, how can we legally make a decision like this knowing that we're going to potentially put liability on the State of Hawaii, and not even caring about Molokai Ranch, but the State of Hawaii, potentially, and us being the authority for the state land use and giving them this authority without even having a state representative here.

Ms. Thomson: Just to the issue of liability, that's one of the reasons that one of the standard conditions is insurance, so you do have an insurance requirement that's attached to this permission, you could look at increasing it if you feel that it's not enough, but that's part of what's addressed by the insurance requirement.

Chair Sprinzel: Can we have a vote, please?

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

***It has been moved by Commissioner Tancayo, seconded by Commissioner Swenson, then***

***VOTED: to grant this permit as it's written.***

***(Assenting: B. Buchanan; R. Davis; M. Jennings; D. Rogers;  
D. Swenson; S. Tancayo)***

***(Dissenting: Z. Dudoit)***

***(Excused: J. Kalanihuia)***

Chair Sprinzel: The motion has carried.

Ms. Buchanan: Chairperson, point of order. Could you restate the motion for the public ...(inaudible)...

Ms. Tancayo: Okay, I wanted to carry the motion as it's written -- as it's written from the start, so that includes 15 that he's maintaining the road from his access point from the state road to his quarry, so it's pretty much carried as it says in the paperwork that he brought.

Ms. Buchanan: And I'm sure that that was very clear to the Commissioners that that was what they were voting for, so there are no changes, my understanding, there's no changes. It's just based on the merits that are currently represented in the document. Right? You're just voting to approve the extension as written?

Chair Sprinzel: Chairperson's Report. At the start of the year, I said that the two people with the best attendance record would go --

Ms. Dudoit: Sorry. Point of order. I don't think that you read the motion right because how this stands right now, Darryl clarified that it was to the year 2020. On our -- if you're reading this --

Chair Sprinzel: I brought that up at the start of the meeting. I said you're asking 20 years --

Ms. Dudoit: I know, Chair. But what I'm saying is that you just said that we're approving it as it is written, and as it is written it says for a 20-year time extension.

Chair Sprinzel: I didn't say anything and the proposers did, but Clayton explained. I asked at the start of the meeting are you asking for 20 years or what, and Clayton explained that they had to go seven years in line with the license 'cause he only has a seven-year license.

Ms. Dudoit: Chair, no, we're agreeing. I'm just saying that, on the record, Mrs. Buchanan is asking us to, and she's correct, if Sherry says that she's going to approve it as it is written on here, this says that we are giving him a 20-year time extension. He has clarified that he only needs seven.

Chair Sprinzel: And Clayton actually said it was seven. We can do it again if you'd like?

Ms. Dudoit: I'm just saying, for the record, I think Sherry just needs to amend it because we just read it as it was written and it was a oversight.

Chair Sprinzel: Would you do that, Sherry, please? No, the motion's been passed. We can't amend it. But everybody understood it to be seven years and just before our vote, Darryl said it was seven years, to 2020, and the motion was in agreement with that.

Ms. Tancayo: Would it be better if I amended it and made it seven years?

Chair Sprinzel: You can't. It's been passed.

Ms. Tancayo: Okay. That's what I understood.

Chair Sprinzel: What, that it was seven years?

Ms. Tancayo: Yeah, from -- that's what I understood is from him is when he said seven years.

Chair Sprinzel: Did any of the Commissioners think it was not seven years?

Ms. Tancayo: Did anybody think it was 20? I apologize for the misunderstanding because even he stated it was 2020, so if I made a mistake on that part, I apologize.

Ms. Dudoit: No. It wasn't a mistake. It's just the way it was recorded on there. We're just clarifying because it was stated as it's approved as the department's written and it's written 20 years, so just need to reread the motion and clarify.

Mr. Yoshida: Yeah, I believe it was to approve as recommended by the department, and Ben had read the recommendation, condition no. 1 says, "Special use permit shall be valid until December 1, 2020, subject to further extension by the Molokai Planning Commission." And incorporating an additional condition requesting that the applicant provide a copy of the executed time extension of the license agreement by December 1, 2015 or the permit becomes null and void at that time.

Chair Sprinzel: Okay, Director's Report, please, Clayton.

#### **H. DIRECTOR'S REPORT**

- 1. Agenda Items for the August 14, 2013 meeting**
- 2. Pending Molokai Applications**
- 3. Closed Molokai Applications**

Mr. Yoshida: Thank you, Mr. Chair. Very quickly, our next meeting is three weeks from today, August 14. We have two items, two solid items right now; one is the council resolution no. 13-66, regarding zoning protests, it's amendment to Title 19 so it has to go through all three planning commissions, and the second item is the draft comments on the draft environmental assessment for the Chopra Hale project in Manila Camp, so we have -- the applicant has provided the CDs, if you can pickup a CD before you leave, and then the applicant will provide hard copies so, at the time of the meeting, we can all refer to the same document. If there are any questions on pending or closed Molokai applications.

Ms. Buchanan: Chair, can the public comment on the open and closed projects?

Chair Sprinzel: Sure.

Ms. Buchanan: So Clayton just stated that the Chopra Hale did do an environmental assessment, if you're not familiar with the project, it is a 16-unit apartment building complex to be built in Manila Camp on a very small parcel of land, and you're going to find that you're going to run into the same issues where you're developing and probably infrastructure had been caught up to the development, and so I want you to be aware of that, besides I did not see in the environmental assessment a cultural impact study. I had to go back and reread that. But on the open and pending projects, there are a few things that to be on your horizon to be looking out for, and beside the Chopra Hale project, would be a wall construction in Molokai for the one resident, I'm not familiar with it yet, but the construction of a wall in a prior flood area would be concerning, a poly invisible deer fence on Kaunakaki, on page 3 of 4, for deer fencing in a special management area, you may run into the same issues you have with the current project in Kaunakakai that had fencing for birds, and then - hang on one second, too many pages - I wasn't sure but maybe I can, by

e-mail, ask what the project for the Dunbar subdivision, which is the Board of Variances and Appeals, I think, what the MCC section was, and then just so this Commission is aware that about a week ago, I showed at the Commission on Water Working Resources on Oahu to testify in opposition to two well permits in West Molokai. Both were for water allocation uses for wells to be dug along the Kaluakoi shoreline, and access water was going to be ag uses as well as the establishment of aqua culture and a pond. So those -- I don't know if deputy can help this Commission in obtaining that types of information because, otherwise, we don't know about them, and I really feel, if I hadn't been there to testify in opposition, the water allocation would have been approved and then we would have had multiple adverse impacts from those allocations. So if somebody -- if the Commission can correct staff to connect with the Commission on Water Working Resources and Board of Land and Natural Resources to apprise us of any type of -- these types of applications in the future, thank you very much.

Chair Sprinzel: Thank you, Lori. There being no further business, I'm adjourning the meeting.

**F NEXT MEETING DATE: August 14, 2013**

**J. ADJOURNMENT**

There being no further business brought before the Commission, the meeting was adjourned at 2:08 p.m.

Respectfully submitted by,

SUZETTE L. ESMERALDA  
Secretary to Boards and Commissions

**RECORD OF ATTENDANCE**

**Present**

John Sprinzel, Chairperson  
Michael Jennings, Vice-Chairperson  
Billy Buchanan  
Ron Davis  
Zhantell Dudoit  
Douglas Rogers

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Diane Swenson  
Sherry Tancayo

**Excused**

Janice Kalanihuia

**Others**

Clayton Yoshida, Planning Program Administrator  
Jeffrey Dack, Planning Staff  
Benjamin Sticka, Planning Staff, Molokai  
Richelle Thomson, Deputy Corporation Counsel