

**HANA ADVISORY COMMITTEE TO THE
MAUI PLANNING COMMISSION
SITE VISIT and PUBLIC MEETING OF MARCH 17, 2015**

** 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, 2200 Main St., Suite 315, Wailuku, Maui, Hawai'i. ***

A. CALL TO ORDER

The site visit of the Hana Advisory Committee (Committee) was called to order by Vice-Chairperson, Ward Mardfin, at approximately 2:17 p.m., Tuesday, March 17, 2015, at the driveway entrance to 4356 Hana Highway, Hana, Island of Maui.

A quorum of the Committee was present: Ward Mardfin, Vice-Chairperson; Ed Cashman; Ian Ballantyne; Scott Crawford.

B. PUBLIC TESTIMONY

There was no public testimony given at this time.

C. DISSOLVE TEMPORARY INVESTIGATIVE GROUP *

It was moved by Committee Member Cashman, seconded by Committee Member Crawford, then unanimously

VOTED: *to dissolve the temporary investigative group.*

D. SITE VISIT OF A PORTION OF TMK No. (2) 1-3-004:001.

Meeting will be recessed after the site visit and will reconvene at 4:00 p.m. at the Old Hana School Cafeteria, 5091 Uakea Road, Hana, Island of Maui.

At this time, the site visit was conducted with Mr. Tom Hoeffken escorting the Committee around the proposed site.

The site visit concluded at approximately 3:40 p.m.

PUBLIC MEETING:

The Hana Advisory Committee recessed meeting of March 9, 2015 was reconvened on Tuesday, March 17, 2015, by Vice-Chairperson, Ward Mardfin, at approximately 4:09 p.m., at the Old Hana School Cafeteria, 5091 Uakea Road, Hana, Island of Maui.

Mr. Mardfin: This is Ward Mardfin, I am the Vice-Chair of the Hana Advisory Committee to the Maui Planning Commission. In the absence of Clayton Carvalho, our Chairman, I am convening -- reconvening this meeting or continuing this meeting. This meeting was begun on Monday, March 9, and at the end of it, we recessed, but did not adjourn. We, at 2 p.m., on the 17th of March, we resumed our meeting at the site visit at TMK: 1-3-004:001, which is property owned by Tom Hoeffken, and we did a site visit. We then recessed there and are reconvening at it's now 4:10, and we're reconvening at the Old Hana School Cafeteria. And present are, as Committee Members, are: Ed Cashman; myself, Ward Mardfin; Ian Ballantyne; Scott Crawford; John Blumer-Buell; and our Corp. Counsel, Jennifer Oana; and Sybil Lopez; Tom Hoeffken is here, the applicant; and we have Clayton Yoshida, from the Department of Planning; and Carolyn Takayama-Corden, who I know very well but I can never remember her last name, and I apologize, and her husband, who is also here.

So we have Unfinished Business, action to be taken after the public hearing. We had, at the site visit, we dissolved the temporary investigative group and made it a group, and we had a quorum, so we had the full site visit. We also have, walking in here, Dawn Lono, as a member of the public and a future member of this Committee.

Mr. Mardfin read the following agenda item into the record:

E. UNFINISHED BUSINESS (Action to be taken after public hearing.)

- 1. MR. WAYNE I. ARAKAKI, of WAYNE I. ARAKAKI ENGINEERING, LLC, on behalf of MR. THOMAS HOEFFKEN, requesting a State Land Use Commission Special Use Permit for the mining and resource extraction of rock to be processed as aggregate for roadway maintenance on approximately 12 acres of land located next to Kawaipapa Stream in the State Agricultural District, TMK: 1-3-004: 001 (por.), Hana, Island of Maui. (SUP2 2014/0002) (S. Lopez) (Committee Members: Please bring your documents.)**

Mr. Mardfin: And so that's the order of business. Mr. Blumer-Buell.

Mr. John Blumer-Buell: Thank you, Chair. I just wanted to check with Corporation Counsel, I handed out some information, suggestions, and proposed findings of fact, seven pages, and all the Committee -- I talked with Corporation Counsel before I handed it out, and she said go ahead, she has a copy, there's a copy for Clayton, which I gave to our recording secretary, so this is just a point of order. I just want to be sure that becomes part of the record regardless of whether we go up or down, and so forth, so I just want to raise

the issue of putting this into the record, and I would request the opportunity to speak just for a few minutes, when it's appropriate. Thank you.

Mr. Mardfin: Carolyn, if -- don't -- isn't a record -- if there's any material distributed at a meeting, isn't that kept with the record? So did you hear that, John?

Mr. Blumer-Buell: ...(inaudible - not speaking into the microphone)... I didn't hear you.

Mr. Mardfin: I asked Carolyn if when papers are distributed at the meeting if they're automatically made a part of the record and she said it was, so she said that it was.

Mr. Blumer-Buell: Thank you ...(inaudible - not speaking into the microphone)...

Mr. Mardfin: I'm a little hard of hearing myself so -- so, yes. You asked if it was a part of the record, it is a part of the record.

Mr. Blumer-Buell: Thank you.

Mr. Mardfin: Would you like to continue and make a statement?

Mr. Blumer-Buell: Thank you, Chair. I'm just going to go over the numbers, and, you know, I was interested to see what the law was regarding a number of these issues that were before us, and so number one has to do with the fact that this is an after-the-fact application. There's a whole narrative on that. There's two sections that are applicable in the state law, both enforcement and penalty for violation. Any questions regarding that, I would refer to the -- our Corporation Counsel. Number two, this land upon which the proposed use is sought is not suited for the uses permitted within the district. The proposed mining operation is contrary to the legal intent of HRS 205-41. The -- under that is a declaration of policy, which is 205-41; this is actually what 205 is all about and what, you know, what we're trying to do in conserving and protecting agricultural lands. Number three is the final archaeological report from Haun & Associates, and the letter from State Historic Preservation Division, dated March 31, 2014. And the letter from SHPD states, in part, "We note that archaeological monitoring is neither recommended or not recommended. This will have to be addressed at a later time, ideally, following data recovery results." The time to address these issues is now, not at a later time. The State of Hawaii Historic Preservation Division needs to make a visit to consider all the issues in the context of the proposed mining and resources extraction, it's not the report and the letter from SHPD do not consider the big context. Number four, important noise issues of noise pollution have not been addressed in the Planning Department report, and I say the proposed use would, in the report, under analysis, page 6, it says, "The proposed use would not adversely effect the surrounding properties." And I say there's no evidence to

support that statement in the report. The proposed industrial project is located in a residential area. And I follow that with the noise pollution laws, and the applications for permits for noise pollution, so if someone is going to make a motion to approve with conditions, or whatever, I would say that all the things I've talked about should be considered as conditions. The one thing under number four says, "The applicant stated the state would allow operation for 2,080 hours per year." I think I got that correct from the applicant. That is five hours a day, per week, for 52 weeks a year. In my opinion, that is unreasonable and unacceptable for a quiet residential neighborhood, a neighborhood that includes a dialysis treatment center. So that could be mitigated by requiring the applicant to get a noise permit. Number five are questions that have to do with the three county -- three county contracts that Tom's Backhoe has and just, you know, what the implications are of the bidding and the contracts if the mining operation was not legal at the time.

And then, finally, I cite three things from Chapter 205, and these are part of the conditions. The proposed -- and I say the proposed use is contrary to the objectives sought to be accomplished by Chapter 205, 205A, HRS, and the rules of the land commission. I say the proposed use would effectively -- would adversely effect surrounding properties. And, three, the land upon which the proposed use, and I apologize, I spelled the wrong use as sought, is suited for agriculture.

So I thank you for your consideration. The, you know, the thing, you know, it comes -- this happens with many applications we've seen, and as we get -- some people say, well, you know, the noise doesn't bother me, or I like the applicant, that sort of thing, and, you know, my point is just that we're really supposed to be looking at the laws here, and, you know, thinking of the entire community, and if people want to approve something, they have really a responsibility to mitigate the problems. So mahalo.

Mr. Mardfin: Thank you very much, John.

Mr. Blumer-Buell: You're welcome.

Mr. Mardfin: Scott. Mr. Crawford.

Mr. Scott Crawford: Well, I just wanted to followup with that and see if we can get a little bit more clarity on a couple of the questions that John raised. As far as -- and thank you, John, for doing this research and bringing these issues.

Mr. Mardfin: Scott, may I interrupt you one minute?

Mr. Crawford: What's that?

Mr. Mardfin: May I interrupt you for one minute? What I wanted to say is, procedurally, we don't have a motion on the floor. What we're in -- we had testimony by the applicant, we had some questioning by -- we had the public testimony, we closed public testimony. We were in the matter of discussion, and it's in this nature that John proceeded with discussion. Now, Scott, you're proceeding with discussion, and Sybil wants to say something.

Ms. Sybil Lopez: So can I request that the those that went on the site visit to do a quick report for those that did not so at least that they know what you guys went there, what did you guys see, what were your -- so for those that was not able to attend the site.

Mr. Mardfin: I understand that. My inclination is not to do that at this time, but to do that when specific points are brought up. This was not an investigation group, it was a full site visit by the entire Committee, even though some people were absent, and so I think if we gave a summary of what we saw and did, as an open thing, it would in the nature of an investigative committee and I don't think that's what we're supposed to do. Okay. Now, Mr. Crawford, would you please continue, and thank you for letting me interrupt.

Mr. Crawford: Thank you, Mr. Chair. So regarding the question of whether this is an after-the-fact application, I'd like to see if we can get some clarity both from the applicant and from Corporation Counsel. The claim that has been made is that there was a permit that was given for the scale of operation that was taking place prior to this application being submitted, and the mining and extraction that was done there was being done legally. So John is asserting that that is not the case, so I'd like to try to get some clarity about exactly what permit you were operating under previously, and, you know, either from the applicant or from Corporation Counsel, exactly what permit were you operating under previously that made this a legal mining operation and makes it not an after-the-fact application now.

Mr. Thomas Hoeffken: When we started this, yes, we had complied with the county rules and regulations. We did get a permit to grub the areas we worked under, we gave them a -- the first year was \$56,000 bond, and we do have permits to run the crusher, and just like you see crushers at any job site when you go on the other side of the island, there's plenty of them on this island, as long as you're within a certain range of -- away from the public, they're legal.

Mr. Crawford: So what specific permit were you operating it? Is it a permit for extraction, for mining and extraction, as long as it's under a certain scale, then you only need a county permit as opposed to a Land Use Commission permit?

Mr. Hoeffken: Right. As long as we don't -- we're allowed to do -- at first, we were allowed to do a few acres, we cut it down to like a half-acre at a time, to open up an area and level

it so we can, you know, make it usable instead of, as it is now, totally unusable, and we do have -- we did have -- we've had a permit all this time.

Mr. Mardfin: Thank you.

Mr. Crawford: Can I ask either the department or Corporation Counsel, from your, you know, perspective on this, is that an accurate statement that he was -- that his operation has been operating legally prior to this application?

Mr. Mardfin: Clayton? Putting the Department of Planning on the hot seat.

Mr. Clayton Yoshida: Thank you, Mr. Vice-Chair. I guess based on what we heard at the prior meeting, we would say that, yeah, it probably was -- is after-the-fact, but we don't think it's a blatant -- blatant action and that the applicant was seeking this permit in trying to come into compliance with state land use law.

Mr. Mardfin: Thank you. Sybil, do you want to say something?

Ms. Lopez: Yes. Can I add to that? So the grading permit that Mr. Hoeffken did, so he got a crushing permit from the state, he received a grading permit from the county, and the grading permit includes a plot plan, grading plan, he needed to go through an erosion control plan, doing soil stabilization, and that permit also include a drainage plan and report. The drainage plan and report provides all the hydraulic -- hydrologic and hydraulic calculations, engineer soils report, engineering slope hazard report, and along with that, with all the BMPs, also with that -- for the grubbing permit as well, and that was with the county, and with DSA, they recommend for him then to come to see the Planning Department for the land use commission special use permit. Under the permit - hold on. Hold on because my paper fell so I have to reorganize myself. So under the resolution, one, relating to special use in the state agriculture and rural district, as part as P, with definition of guidelines one to one, resource P for resource extraction that it is permissible under the special use permit for the mining of minerals and other natural resources, including the exploration for and the removal and processing of natural accumulations of sand, rock, soil, gravel, and other natural resources. And under industrial, the ag use, the following examples of special uses that may be appropriate in the state agricultural and rural districts are as an industrial use for what the applicant came in for as resource and mining extraction. So under that, with the grading permit from the county, with the resource extraction with the SUP2, then he would come into full compliance with all the regulations.

Mr. Mardfin: So as the staff planner on this project, your opinion is that he is doing the reasonable sorts of things to become -- to legally use his property in this manner?

Ms. Lopez: Yes.

Mr. Mardfin: Thank you very much. Does anybody else have any comments as part of this general discussion? Mr. Crawford.

Mr. Crawford: No more on that particular item. Thank you, Mr. Vice-Chair. I would like to just raise a question regarding the question of the agricultural viability, whether this property is suited for uses permitted in the district, this is a very important question because it's one of the five criteria that -- and I would say, without, you know, being an expert on this myself, having had a chance to -- and, actually, let me just backup one second and say that I'm glad that although, you know, I was willing to support this last week when we met, I'm glad that we actually had the opportunity to do the site visit so that all of could really see it for ourselves and be able to know, you know, have it really a clear picture from actually seeing it for ourselves to make our decision, so I'm glad that we took the week, you know, to do the site visit and then come back and consider it again. Having gone on the site visit, I think that, you know, I could say that, from my experience, this is certainly not quality agricultural land, it's not -- it's possible to say, yes, we could grow some things there, but it's certainly, all the walking around we did, I was on rock and papa the whole time, I didn't see any real top soil that was easily arable, and I would say that if you wanted to really do agricultural on this land, you'd actually have to bring top soil in, and doing that would be easier after the land has been, basically, the surface has been mined and made level, it would actually be easier to come in after the mining operation and do agriculture than it would to do prior to the mining operation, so I think it's probably not very viable to go agriculture there period, but I don't see that the mining operation is actually negatively impacting the ability to do agriculture 'cause there's just no top soil there in the area where the mining is going on. So that's, you know, in terms of saying is it suited for agriculture, maybe, but it's certainly not highly desirable agricultural land. So that's just my comment on that based on the site visit.

Mr. Mardfin: Mr. Blumer-Buell.

Mr. Blumer-Buell: Thank you, Chair, and thanks, Scott. This not to be argumentative but all just to bring up some of the things that came up in the last -- our last meeting. The Planning Department report repeatedly refers to the agricultural use, one, which I made that point at the last meeting, secondly, the rock formation in that area, which is confirmed in several places is a`a, and we talked about that being the ideal type of soil structure for papayas. It really is. I mean a`a has amazing drainage and, you know, things will grow in it without a lot of soil. Finally, the final archaeological report that the -- that was given to us at the last meeting refers to the archaeological sites and the agricultural uses of those sites extensively, so this is also a historic, you know, historic consideration. One of the things I would like to know that came up when they were talking about the pits is I was

really curious if these pits were massei pits, and massei pits were a Polynesian form of kind of survival food, taking ulu, putting them in pits, covering it, and it ferments. It's used -- it's still used all over the South Pacific. So I think that's -- you know, we're not talking about an area of practical masse use, but I think agricultural land, historically, it's very interesting. Sam Ka'ai and I had a long talk about all the massei pits that he knew of in Kipahulu at one time. So it's a very important feature that needs to be preserved. Thank you.

Mr. Mardfin: Mr. Cashman.

Mr. Ed Cashman: I had the chance to go visit that site. First of all, I think the applicant made an honest effort in trying to get the proper permits. Even if we give him that or we give what Clayton says was after-the-fact, to me he made the effort. Federal, county, state, they're going to not deal with you if you don't have the proper permits, and, obviously, he did business with them. The second thing is when I look at this site, if you go try grow something there, the only thing you going be successful is growing mosquitoes because it's rocks. I mean it's not what I call rocks, it's boulders. I mean it was impressive to see how he could take huge boulders and bring it down to little gravel, you know. So with that said, I make a motion to recommend to the Maui Planning Commission to approve the special use permit with the standard conditions that the county put forth.

Mr. Mardfin: Is there a second? Seconded by Ian. Motion made by Ed Cashman, seconded by Ian Ballantyne. Discussion? Ian. Mr. Ballantyne.

Mr. Ballantyne: I would like, there's no mention in the county of the noise restrictions, and we've heard from the applicant during the site visit that he's not adverse to having restrictions, and it would seem, when we read John's point 4, that that would be applicable, and I would like to suggest that the site itself, not just the crushing plant, but the operations are limited to 7:30 to 4:30, 5 days a week.

Mr. Mardfin: Is that a motion to add a condition 7 to the recommended --

Mr. Ballantyne: Yes, it is.

Mr. Mardfin: Conditions?

Mr. Ballantyne: Yes.

Mr. Mardfin: Is there a second to that motion to amend? Mr. Cashman second it. So would you repeat the motion just so it's clear in my mind?

Mr. Ballantyne: That the complete site operations are limited to 7:30 in the morning to 4:30 p.m. in the afternoon, Monday through Friday.

Mr. Mardfin: So this would preclude things like crushing rock --

Mr. Ballantyne: Yeah. I mean certainly --

Mr. Mardfin: Moving trucks back and forth, carrying loads of all sorts?

Mr. Ballantyne: Yes. They would totally -- the gates open at 7:30, and the gates close at 4:30, and the machinery -- no machinery is operating between those hours.

Mr. Mardfin: Thank you. Is there discussion on that motion? Mr. Blumer-Buell?

Mr. Blumer-Buell: I'll leave this up to Ian and others, but I would suggest as part of, you know, friendly motion that the applicant should apply for a noise permit from the state, you know, very specific noise and site specific permit. You know, what I've said in my statement is I think -- I mean this is a residential area, and the amount of hours that they're proposing are -- I just don't think are considerate of the neighbors. I think the permit -- the permit process just for the noise would allow the neighbors to have a input and Tom could, you know, I think Tom has shown he's willing to work with the community, that he could work with the community to make sure that nobody's really being disturbed, but that's just a suggestion to Ed, and that he should get a noise permit from the state. That's all.

Mr. Mardfin: As, Ian, as the maker of the motion to amend, do you want to accept John's suggestion or would you like to leave the amendment the way you have it?

Mr. Ballantyne: I'm okay with leaving the motion the way I proposed it.

Mr. Mardfin: Thank you. Is there anymore discussion on the amendment? A vote on the amendment.

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

It has been moved by Committee Member Ballantyne, seconded by Committee Member Cashman, then unanimously

VOTED: to amend the motion to include Condition No. 7 that the complete site operations are limited to 7:30 in the morning to 4:30 p.m. in the afternoon, Monday through Friday.

Mr. Mardfin: It is one, two, three, four, five - unanimous.

Ms. Lopez: Sorry. Could you repeat the amendment? I didn't hear what the -- what was on the floor?

Mr. Mardfin: The amendment is to add a condition 6 --

Ms. Lopez: Seven. Seven, right?

Mr. Mardfin: Seven. Sorry. I can't county. Not very good for a person that used to teach math. Seven, that the applicant -- Ed, would you restate it? You have it better than I.

Mr. Ballantyne: Yeah. Sure. The amendment is that complete site operations are limited to 7:30 in the morning start to a 4:30 p.m. in the afternoon finish, Monday through Friday. That is no -- the gates close at 4:30 and doesn't open until 7:30 in the morning.

Ms. Lopez: Thank you.

Mr. Mardfin: The intent is not just on crushing, per se, but on --

Ms. Lopez: With the vehicles going in and out as well.

Mr. Mardfin: Vehicles and everything else.

Ms. Lopez: Okay.

Mr. Mardfin: And that passed unanimously. We are on the main motion to, I'm paraphrasing Ed a little bit, but he's recommending that we take his conclusions of law, the recommendation by the planner to grant a State Land Use Commission special use permit with six standard and one extra condition. Is there any discussion on the main motion as amended?

Mr. Crawford: At the previous meeting, we also had a suggestion of a condition regarding the agricultural sites -- I mean the archaeological sites, which I don't recall exactly what the details of that were, but is that something we want to bring up as an amendment as an additional condition?

Mr. Mardfin: Sybil?

Ms. Lopez: Yes, I had actually two conditions, so one you addressed with no. 7 with the noise, and the applicant was willing to adjust the hours of operation, as what you

requested, and the 8th one would be that the applicant shall retain an archaeological monitor to be on site in the event that any historic properties, include concentration of artifacts, human skeleton remains, subsurface cultural deposits, or structural remnants over 50 years of age are identified during those activities. All work in the vicinity of the find must cease. The find must be protected from additional disturbance, and the DLNR, State Historic Preservation Division, the Maui Island Section, shall be contacted immediately, per request from the last week's meeting made by the Aha Moku Council, 'cause that's what I wrote.

Mr. Mardfin: They can't make motions.

Ms. Lopez: No. It was a recommendation to you guys that you guys were in discussion about, and that was the other condition that I added. Did I -- sorry, just clarifying.

Mr. Crawford: And we -- no. Yes, that was it, and that was what we did in the motion to approve this application last week, that condition was also included as an amendment in the motion that failed at that time, but we did include it. Now you provided more detail. I just want to ask: Does the applicant have any objection to that amendment? Are you agreeable to that?

Mr. Tom Hoeffken: ...(inaudible - not speaking into the microphone)...

Mr. Crawford: No. We're talking about archaeological --

Mr. Mardfin: Yeah, I'll get to that. Mr. Blumer-Buell?

Mr. Blumer-Buell: I appreciate the suggestion -- suggested amendment or added amendment by our planner. The State Historic Preservation counsel, in their letter dated March 31, 2014, talked about a site preservation plan, you know, and I think that, in the long run, that's what we're -- what is needed for the place, it's not just to -- not just somebody onsite or on call, but to actually have a site preservation plan. It is mentioned in the SHPD letter. And they also called for -- they called for a site preservation, including data recovery results, and I think that that -- there were three sites, as my recollection, were data recovery and results were called for by SHPD, so I think that's a good suggestion and I think a -- just a long-term site preservation plan would be a good idea. That's all.

Mr. Mardfin: Sybil.

Ms. Lopez: So the State Historic Preservation, the archeological inventory survey was actually done for the whole 72.8-acre parcel, but the proposed area that we're here today is for the 12-acre, so that 12-acre proposed area is not part of all of these sites but,

however, we can entertain that, but especially for this specific permit itself, it's not within that 12 acres that is being proposed.

Mr. Mardfin: Yes, I'm going to take a moment to speak on that too because I spent many hours going over the archaeological report. None, zero, none of the archaeological sites that were found occur in this 12-acre area. It's pretty -- a lot of it is pretty much scraped over already; anything that could have been there prior to that has been pretty much scraped over. The problem with the condition as you read it is he would have to have an archaeological person onsite, that is very expensive, and if he's only doing it within the 12 acres, there's precious little that could be protected. Mr. Crawford, you wanted to say something.

Mr. Crawford: Well, two things. First, to note that the archaeological survey was done prior to any of the mining operations, so when you say it's all scraped over, I don't want to leave the impression that, you know --

Mr. Mardfin: Correct.

Mr. Crawford: That there was damage done to sites that could have been there. The survey was done prior to any of the applicant's activity on the site and no sites were found within this 12-acre area issue.

Mr. Mardfin: That's correct. I apologize if I mislead.

Mr. Crawford: And also, well, I had the same concern. I mean it's -- what does having someone onsite really mean, like is that when you're opening up a new area or any time that you're operating? That is very expensive. And the idea here is to try to make this more affordable, you know, we need to balance the interest of making sure that we're protecting the resources, but not putting such a cumbersome burden that it's increasing the price of this aggregate, which is part of the value that we find to the benefit of the community in an unnecessary way. So, you know, I'm wondering if the way that this amendment is suggested by the department is really the most efficient way to go about it, if having to have somebody onsite there really makes sense considering what was said about the fact that not --

Mr. Mardfin: Mr. Blumer-Buell.

Mr. Blumer-Buell: Thank you, Chair. I do not think that -- I mean I understand how expensive it can be to have an archaeologist onsite. That is a big, big expense. Now, I just want to let the applicant know that I think we all appreciate the archaeological work that was done back starting in 2008, I mean that is good work, and it gives me some confidence

that they're aware of the significance of that. Now, this is why I just would like to discuss a site preservation plan. This is just keeping all these sites in mind all the time, and I'm not saying before he can get a permit, but just to keep, you know, kind of an updated plan. I mean and I'll just give an example. I brought up the idea of the pits being massei pits. If in fact we get somebody like Sam Ka'ai or some other expert in Hawaiian culture to look at these pits, they could be very significant. So we'd want to preserve those. I mean if they're massei pits, I mean I think that's -- it's very significant, tells a lot about the property, and I have a great article on massei pits somewhere in my files, I'll try to get it to people. I mean it's really an important -- it's really Polynesian survival. It's still done all over Polynesia. So I'm just saying I don't think it's too much of an expense beyond site archaeologist, but I do think, you know, to be thinking about the site preservation plan and part of that is just so that we have a chance to better understand it, and with the technology that's available and the Hawaiian resources that are becoming more available, these could be much more significant than we understand at this point. Thank you.

Mr. Mardfin: Mr. Ballantyne.

Mr. Ballantyne: Yeah, I mean, I'm sorry, I do have a problem with this, we're talking a 12-acre site that's been cleared of any archaeological relevance, and it shouldn't part of this discussion. We're discussing the 12 acres and whether they should be subject to this permit or not, and, you know, I'll vote against any amendments of this sort.

Mr. Mardfin: I'm just going to read from the Historic Preservation Division letter: The archaeological report located 26 sites. And the full paragraph from which John was reading begins with: "Twenty-two sites were adequately documented and no further work or preservation is recommended. Three sites are recommended for mitigation through data recovery," and we tried to find two of them, and we did find one for sure, we didn't go to the furthest one up. I'm not reading now. But back to reading: "Three sites are recommended for mitigation through data recovery. Alternatively, the site could be preserved in accordance with a site preservation plan." So Historic Preservation is saying either mitigation through data recovery or a site preservation plan. Then, that's 25 of the 26, then it goes on to say, "Representative sections of the remaining site 4964 railroad grade are recommended for preservation, particularly at the southern end which is in good condition. We concur with these recommendations. We note that archaeological monitoring is neither recommended nor not recommended; this will have to be addressed at a later time, ideally following data recovery results." Do I hear a motion to add a condition regarding archaeological monitoring of the 12-acre site? Hearing no such motion to amend -- yes?

Mr. Blumer-Buell: And this motion is not a bureaucratic imposition on the applicant, this is just a statement that we want the applicant and people that may work for him be aware of the sensitive situation and to be monitoring, you know, if you find something new, you find

a grave, then it's your kuleana to, at that point, I think to bring in an archaeologist. So that's all, it's not a --

Mr. Mardfin: Are you making a --

Mr. Blumer-Buell: That's a motion.

Mr. Mardfin: Motion to what?

Mr. Blumer-Buell: That the applicant agrees to, and with his employees, to monitor the site as they work and keep an eye out for further archaeological sites.

Mr. Mardfin: Is there a second? Motion to amend dies for lack of a second. Is there further -- would the applicant like to say something?

Mr. Tom Hoeffken: I've been digging ...(inaudible - not speaking into the microphone)... I have dug up burials, like on Kaanapali Beach and up in, not Keanae, up in Kula, towards Ulupalakua, and we have found sites, and when that happens, we stop. We call, at that -- in the old days, we didn't have all the laws and regulations we have today, but we had stopped and we'd call a kahuna and they'd come and gather the bones, and take care of them. We, believe me, I believe in bones probably more than anybody because I've seen a lot of crazy stuff happen over here, so we do honor that and we do not like to destroy anything that's pertinent because you just don't do that, and I feel, on this property, I was surprised they found so many sites, and I think they're the highlight of the land, but we have no intention of destroying anything that's ancient and pertinent. That's all.

Mr. Mardfin: Thank you very much. Mr. Crawford.

Mr. Crawford: I would just like to say, on the record, as not a recommendation of the Committee necessarily as a whole, but as a Member, just to encourage the applicant to follow through on the letter to either, you know, to either do the mitigation through data recovery or develop a site plan, not specifically in relation to the mining operation, but more so the entire property, the affordable housing development because some of those are the area that could be affected by that, so particularly as you move forward with the future projects on the other parcels of the land that could impact it, just, you know, continue to be diligent as you have been to take care of those sites in accordance with the law.

Mr. Mardfin: Anybody else? I just want to point out to the Committee, recommendation no. 6, it's one of their standard recommendations, and recommendation no. 6 says, "That the applicant shall develop the property in substantial compliance with the representations made to the Planning Commission," and I would add in the context of this, "to the Hana

Advisory to the Maui Planning Commission,” “in obtaining the special use permit. Failure to develop the property as represented may result in revocation of the permit.” So he’s basically promised us that he’s going to be a good steward of the land, and we don’t need to add an eighth condition. Is there anymore -- the main motion is to grant the state -- recommend to the Maui Planning Commission that they grant the State Land Use Commission special use permit to the applicant with the 6 standard recommendations and the 1 additional recommendation that we approved earlier. Any more discussion? All those in favor? Mr. Blumer-Buell? I do that too by the way.

Mr. Blumer-Buell: I was going to ask for a drum roll, that’s all. No. I just wanted to say to the applicant and everybody that’s here that, you know, this is an important Committee and I try, you know, I always try -- I take it seriously and try to do research into this and feel that Hana is -- I’ve been a big advocate of Hana planning commission and that all SMA permits should come to this Committee. Now, the last thing I want to say is if it wasn’t for this Committee, over since Velma Santos proposed this in 1987 or ‘88, this would be a very different community than we have today. So I just want to ask everybody to -- I mean I’m glad everybody’s taking it seriously and this Committee’s been part of keeping the community on a track where it wants to go. So that’s all. Mahalo.

Mr. Mardfin: Is there any further discussion on the main motion as amended?

Mr. Crawford: I would just like to say I appreciate the research that Mr. Blumer-Buell does bring to us, even if I don’t always agree with his conclusions, I very much appreciate the time and effort he puts into making sure that we’re well informed.

Mr. Mardfin: I do also, as Vice-Chair, and as a Member. Any further discussion? We are voting on the main motion as amended.

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

It has been moved by Committee Member Cashman, seconded by Committee Member Ballantyne, then

VOTED: to recommend to the Maui Planning Commission approval of the State Land Use Commission special use permit with the conditions as amended.

(Assenting: I. Ballantyne; E. Cashman; S. Crawford; W. Mardfin)
(Dissenting: J. Blumer-Buell)
(Excused: C. Carvalho, Jr.; A. Hoopai-Waikoloa)

Mr. Mardfin: With a vote of four, it is a majority, we have a quorum, it is a sufficient number of votes to pass a motion; this motion is passed as recommended. We're recommending this to the Maui Planning Commission. Is there anymore discussion? Sybil?

Ms. Lopez: Thank you.

Mr. Mardfin: Thank you. I think you the trust of this Committee and I assume that you will make us proud that we voted this way. Thank you. Any further business before this Committee? Clayton Yoshida.

Mr. Yoshida: Yeah, thank you, Mr. Vice-Chair. We did the resolutions at the last meeting, but the resolutions, again, but again we wish to thank Ian Ballantyne and Ed Cashman, you know, it's been a real pleasure to have them on the Committee, and I think we'll see them in the future maybe over there, and then we'll see Dawn Lono over here.

Mr. Mardfin: Clayton, we're lucky we live in this community. We get to see them all the time. We're very fortunate.

F. ADJOURNMENT

Mr. Crawford: I move to adjourn this meeting.

Mr. Ballantyne: Second.

Mr. Mardfin: Moved and seconded to adjourn this very long meeting.

It has been moved by Committee Member Crawford, seconded by Committee Member Ballantyne, then unanimously

VOTED: to adjourn the meeting at 4:59 p.m.

Respectfully submitted by,

SUZETTE L. ESMERALDA
Secretary to Boards & Commissions

RECORD OF ATTENDANCE

Present

Ward Mardfin, Vice-Chairperson
Ian Ballantyne
John Blumer-Buell
Ed Cashman
Scott Crawford

Excused

Clayton Carvalho, Jr., Chairperson
Anjoleen Hoopai-Waikoloa

Others

Clayton Yoshida, Planning Program Administrator
Sybil Lopez, Staff Planner
Jennifer Oana, Deputy Corporation Counsel