

# LAND USE COMMITTEE

Council of the County of Maui

## MINUTES

September 2, 2015

Council Chamber, 8<sup>th</sup> Floor

**CONVENE:** 1:34 p.m.

**PRESENT:** VOTING MEMBERS:

Councilmember Robert Carroll, Chair  
Councilmember Michael P. Victorino, Vice-Chair  
Councilmember Gladys C. Baisa  
Councilmember Elle Cochran  
Councilmember Don Couch  
Councilmember Don S. Guzman (in 1:45 p.m.)

**EXCUSED:** VOTING MEMBERS:

Councilmember Stacy Crivello

**STAFF:**

Carla Nakata, Legislative Attorney  
Raynette Yap, Committee Secretary  
Denise Fernandez, Council Aide, Lanai Council Office (via telephone conference bridge)  
Ella Alcon, Council Aide, Molokai Council Office (via telephone conference bridge)

**ADMIN.:**

Michele McLean, Deputy Director, Department of Planning  
Paul Fasi, Planner V, Department of Planning  
Scott Teruya, County Real Property Tax Administrator, Department of Finance  
Michael Hopper, Deputy Corporation Counsel, Department of the Corporation Counsel  
Jennifer Oana, Deputy Corporation Counsel, Department of the Corporation Counsel

*In the audience:*

Mark Walker, Deputy Director, Department of Finance

**OTHERS:**

Timothy Hehemann  
Jordan Hart, Chris Hart & Partners, Inc.  
Plus (2) Others

**PRESS:**

*Akaku Maui County Community Television, Inc.*

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CHAIR CARROLL: . . .(gavel). . . This Land Use Committee meeting of September 2, 2015 will come to order. I'm Councilmember Robert Carroll, Chair of the Land Use Committee.

**LAND USE COMMITTEE**  
**Council of the County of Maui**

**September 2, 2015**

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First of all, may I request if anybody has anything that makes noise, cell phone or otherwise, please turn it off or put it on the silent mode. With us this afternoon, we have the Vice-Chair of the Committee, Mr. Victorino.

VICE-CHAIR VICTORINO: Good afternoon, Chair.

CHAIR CARROLL: Good afternoon. We also have with us, Mr. Couch.

COUNCILMEMBER COUCH: Good afternoon, Chair.

CHAIR CARROLL: Ms. Cochran.

COUNCILMEMBER COCHRAN: Aloha, good afternoon, Chair.

CHAIR CARROLL: And Ms. Baisa.

COUNCILMEMBER BAISA: Good afternoon, Chair.

CHAIR CARROLL: Stacy Crivello will, and Don Guzman are excused. Executive Branch representatives, we have Michele McLean, Deputy Planning Director; Paul Fasi, Department of Planning; Scott Teruya, Department of Finance; Rowena Dagdag-Andaya, Deputy Director of Public Works. From the Department of Corporation Counsel, we have Michael Hopper, Deputy Corporation Counsel, and Jennifer Oana, Deputy Corporation Counsel. We have Jordan Hart, Chris Hart & Partners, Inc.; Committee Staff, Raynette Yap, Committee Secretary; Carla Nakata, our Legislative Attorney. Today we have a single item on our agenda, a request for a Conditional Permit for He-Man Landscaping, LLC to Operate a Landscaping Baseyard at 4260 Hine Way, Lahaina Maui, Hawaii. Assisting us this morning, we have on Molokai, are you there, Molokai?

MS. ALCON: Good afternoon, Chair. This is Ella Alcon on Molokai.

CHAIR CARROLL: Thank you. Lanai, are you with us this morning?

MS. FERNANDEZ: Good afternoon, Chair. This is Denise Fernandez on Lanai.

CHAIR CARROLL: Good afternoon. For individuals who will be testifying in the Chamber, please sign up at the desk located at the eighth floor lobby, just outside the Chamber door. If you will be testifying from the remote testimony sites, the location specified on the meeting agenda, please sign up with the Council Staff at that location. Testimony will be limited to items on the agenda today. Pursuant to the Rules of the Council, each testifier will be allowed to testify for up to three minutes per item. When testifying, please state your name and the name of any organization you are representing. Ms. Nakata? There are no testifiers in the Chamber. Lanai, do you have anybody waiting to give testimony?

MS. FERNANDEZ: There is no one waiting to testify on Lanai.

**LAND USE COMMITTEE  
Council of the County of Maui**

**September 2, 2015**

---

CHAIR CARROLL: Thank you. Molokai, do you have anybody waiting to give testimony?

MS. ALCON: There is no one here on Molokai waiting to testify.

CHAIR CARROLL: Anyone in the audience wish to give testimony? Seeing none, there's no objection, I will close public testimony.

COUNCILMEMBERS: No objections.

CHAIR CARROLL: Public testimony is now closed.

**ITEM NO. 13:           CONDITIONAL PERMIT FOR HE-MAN LANDSCAPING  
                          LLC TO OPERATE A LANDSCAPING BASEYARD AT 4260  
                          HINE WAY (LAHAINA) (CC 15-149)**

CHAIR CARROLL: . . .*(Clears throat)*. . . Excuse me. The Committee is in receipt of County Communication 15-149, from the Planning Director, transmitting a proposed bill entitled, A Bill for an Ordinance Granting He-Man Landscaping LLC a Conditional Permit for the Use of a Landscaping Baseyard within the County Agricultural District, for Property Situated at 4260 Hine Way, Lahaina, Maui, Hawaii. The purpose of the proposed bill is to grant a request from Timothy Hehemann of He-Man Landscaping, LLC for a five-year Conditional Permit to allow 2.074 acres, within the County Agricultural District at 4260 Hine Way, Lahaina, Maui, Hawaii to be used as a landscaping baseyard. The Committee may consider whether to recommend passage of the proposed bill on first reading, with or without revisions. The Committee may also consider the filing of County Communication 15-149 and other related actions. Members, first we will receive a presentation today on this application from Jordan Hart of Chris Hart & Partners, Inc., the applicant's consultant. You've been provided copies of the slides used in the presentation. Mr. Hart, when you are ready, please begin.

**. . .BEGIN PRESENTATION. . .**

*(PowerPoint Presentation)*

MR. HART: Thank you, Chair and Committee Members. My name is Jordan Hart of Chris Hart & Partners. I'm just going to briefly provide a presentation on the project. Again, this is a Conditional Use Permit for a landscaping baseyard in West Maui. A brief overview of the request, the applicant Tim Hehemann resides on the property, he's operated this use at the site for approximately 13 years. This request is for a continuation of the same use. The proposal includes no new development structures or grading. The services that are provided from the site include tree and landscape maintenance, irrigation, pest control and resort management. The commercial services that are operated from the site include office and storage. The applicant

**LAND USE COMMITTEE**  
**Council of the County of Maui**

**September 2, 2015**

---

currently has approximately 25 employees that provide services to West Maui from the baseyard and operating out of approximately 20 vehicles. The hours of operation are Monday through Friday, the operation consists of from approximately 7:30 a.m. to 8:00 a.m., employees arrive and load vehicles; and then later, at 3:00 p.m. to 4:00 p.m., the vehicles return and are unloaded. Off hours, approximately 20 service vehicles are stored on site. This is an overview of the project site, this is the Kapalua Airport, Honoapiilani Highway here, the project site here. A zoom-in, the project site. These are abutting neighbors. The applicant was able to obtain letters of support from all of the abutting neighbors within the subdivision where he resides. This is a further zoom-in of the project site. Vehicles are stored, this would have been an off-hours photograph. This is a storage area, administrative office is here, storage, the applicant's residence. This is a survey of the site. State land use map, the project is located in the State Ag District. This is a Maui Island Plan, directed growth map. The project is, project site is in the rural growth boundaries for the Maui Island Plan. It's community plan Ag in the West Maui Community Plan. It's zoned Ag. This is photos entering the project site. The project has a long driveway. These are photographs of the baseyard, administrative office, storage. These are employee vehicles while the service vehicles are left the baseyard, and this is as the vehicles are returning to the baseyard, and they're parked here where they'll remain until the next morning, or on the weekend, they'll stay in place. That concludes my presentation.

**. . .END PRESENTATION. . .**

CHAIR CARROLL: Thank you. Planning, do you have any opening comments? Ms. McLean?

MS. MCLEAN: Thank you, Chair. The only comments we wanted to offer are that the Planning Commission has already granted the State Special Use Permit. That approval was unanimous as well as their recommendation to the Council. And we support the request that's before you. Thank you.

CHAIR CARROLL: Corporation Counsel, do you have any opening comments?

MR. HOPPER: No, Mr. Chair.

CHAIR CARROLL: Thank you. Before the Chair opens the floor to the Members, I have several things I would like to bring up. It appears the entire parcel will be allowed to be used as a landscaping baseyard under the proposed bill. Is this what was intended by the landowner? To the Department, Mr. Fasi.

MR. FASI: Your question is whether this was the intention of the Planning Commission when they approved the State Special Use Permit? To allow this use? Yes, it was.

CHAIR CARROLL: Thank you. Mr. Teruya, could you please come down? Mr. Teruya, it's the Chair's understanding that the property has been used for the last 12 years as a landscaping baseyard, can you inform us what the real property tax rate was applied to the property during that period?

**LAND USE COMMITTEE**  
**Council of the County of Maui**

**September 2, 2015**

---

MR. TERUYA: Thank you, Chair, Members. Scott Teruya, Real Property Tax Administrator. I have some comments and some little differing records from a real property standpoint. When we're saying this Conditional Permit is being granted to the parcel, according to our records, in 2006, this parcel was condominiumized into two CPRs and CPR number one is the baseyard with the structures and it's also receiving Diversified Agriculture for some type of agriculture. And, CPR two is receiving a home exemption with an ohana. So, as far as our record, CPR one was classified as an apartment, which is long-term rentals, and the reason why we have it as Apartment is once you condominiumize, according to 3.48.305C, you can only fall into certain categories, and agriculture is not a category. So, CPR one has some issues from a tax standpoint, CPR number two has a home exemption, so it's not a problem for that one. So, my question would be, is this for the entire parcel or only for an HPR or not? The other part is whether or not Diversified Ag is still being used. That would be not consistent with what is being done. So it's receiving Agriculture use for half an acre on CPR one.

CHAIR CARROLL: Members --

VICE-CHAIR VICTORINO: Chair?

CHAIR CARROLL: --any questions for Finance?

VICE-CHAIR VICTORINO: Chair?

CHAIR CARROLL: Mr. Victorino?

VICE-CHAIR VICTORINO: Thank you. Couple of quick questions.

CHAIR CARROLL: Oh, excuse me.

VICE-CHAIR VICTORINO: I'm sorry?

CHAIR CARROLL: Mr. Guzman joined us --

VICE-CHAIR VICTORINO: Oh, okay.

CHAIR CARROLL: --well before the presentation and I did not recognize him. Welcome, Mr. Guzman.

COUNCILMEMBER GUZMAN: Thank you.

VICE-CHAIR VICTORINO: Yeah, we wouldn't want...would not want not to recognize him. He's too good looking, right?

CHAIR CARROLL: Alright, Mr. Victorino.

**LAND USE COMMITTEE**  
**Council of the County of Maui**

**September 2, 2015**

---

VICE-CHAIR VICTORINO: Alright, thank you. First of all, Ms. McLean, didn't we just work on the homeowner's side of this recently? For some reason, I thought this was brought to us somewhere along the line recently. No? Okay, must be my imagination but I remember this property distinctly being brought from some committee about it being changed. And the homeowners and the cottage, I'm getting old but I do recall this very distinctly, but anyhow, okay. With that being said, going back to you, Mr. Teruya, since nobody else remembers and it's just maybe a figment of my imagination. The baseyard has been listed as Diversified Ag all these years, that portion, or the entire lot?

MR. TERUYA: Chairman?

CHAIR CARROLL: Mr. Teruya?

MR. TERUYA: Remember, this is an agriculture use value --

VICE-CHAIR VICTORINO: Okay.

MR. TERUYA: --this is not a parcel that received dedication.

VICE-CHAIR VICTORINO: Okay.

MR. TERUYA: And that is what we mentioned to the Committee about, is the problem that we're having is for agriculture use, it doesn't identify what is being used and where.

VICE-CHAIR VICTORINO: Okay.

MR. TERUYA: Okay, so whether or not it used to be something, that's probably a better question for the applicant. Because according to the imagery, I don't see any diversified agriculture. And the storage, et cetera, would not be considered diversified ag.

VICE-CHAIR VICTORINO: Okay, but you were taxing it as an apartment?

MR. TERUYA: The classification --

VICE-CHAIR VICTORINO: Classification, excuse me.

MR. TERUYA: --was Apartment because when you condominiumize...

VICE-CHAIR VICTORINO: Yes.

MR. TERUYA: If you didn't condominiumize, it could've been Agriculture classification.

VICE-CHAIR VICTORINO: Yeah.

**LAND USE COMMITTEE**  
**Council of the County of Maui**

**September 2, 2015**

---

MR. TERUYA: But once you condominiumize, your Code says you can only fall into set certain categories. And, I, the applicant checked off Apartment.

VICE-CHAIR VICTORINO: Okay.

MR. TERUYA: In my opinion, if you condominiumize and this activity was going on, it should've been Commercial.

VICE-CHAIR VICTORINO: It should've been Commercial.

MR. TERUYA: Yeah.

VICE-CHAIR VICTORINO: And so, Commercial would've been a little bit more as far as a rate than Apartment?

MR. TERUYA: That, it may be slightly different.

VICE-CHAIR VICTORINO: Slightly different, yeah.

MR. TERUYA: But the point is, is we classify according to the use.

VICE-CHAIR VICTORINO: Right, okay.

MR. TERUYA: So if it's a commercial \_\_\_\_\_, it's almost like light industrial, that it would be Commercial, yeah.

VICE-CHAIR VICTORINO: Okay, so they've come in today try to maybe rectify the problem?

MR. TERUYA: I'm just here to point out the inconsistencies.

VICE-CHAIR VICTORINO: Yeah, okay, alright. And the final question I had is, you said, "CPR 2" and "CPR 1," so CPR 1 is the homeowners? No? Vice-versa, okay, excuse me. CPR 1 is the baseyard and CPR 2 is the homeowner's cottage area of the property itself?

MR. TERUYA: Correct.

VICE-CHAIR VICTORINO: So then there's, is this, when you do this, then do you have two distinct classifications on the tax bill itself?

MR. TERUYA: Well, each CPR will have its own assessment --

VICE-CHAIR VICTORINO: Right.

MR. TERUYA: --and bill.

VICE-CHAIR VICTORINO: And bill?

**LAND USE COMMITTEE**  
**Council of the County of Maui**

**September 2, 2015**

---

MR. TERUYA: Yeah.

VICE-CHAIR VICTORINO: So it has its own assessment and then its own classification as assessed, based upon the...

MR. TERUYA: Correct. So in this instance currently, CPR 1 is the baseyard, it's classified as Apartment, with the structures. And CPR 2 is the homeowner's residence and cottage, and he has filed a home exemption and is classified as Homeowner.

VICE-CHAIR VICTORINO: Okay. Okay. I'll let others ask questions, I have a few more, but I'll let others ask questions. And I would like the presenter, Mr. Hart, or if the owner is available, to explain why they went Apartment and, you know, what caused them to use that instead of some other classification at that point in time, if they're available, Mr. Chair?

CHAIR CARROLL: They will be available for the entire meeting.

VICE-CHAIR VICTORINO: Thank you.

CHAIR CARROLL: Any further questions for Mr. Teruya? Mr. Couch?

COUNCILMEMBER COUCH: Thank you, Mr. Chair. Mr. Teruya, you said that there's an inconsistency in that it's Apartment, is that by their choice or is that by your classification?

CHAIR CARROLL: Mr. Teruya?

MR. TERUYA: Chairman, in accordance with the Code, it is the owner's duty to attest what the use is. It was checked off as Apartment and the Department took it as such. Upon further review, I would say that it could be, because there was no Special Use Permit that we were aware of, now it's a Special Use Permit and we're reviewing it. It's a light industrial use, and therefore we would consider it as Commercial.

COUNCILMEMBER COUCH: So, then you don't need them to do anything to change that to Commercial? Okay. The other question I had was the Diversified Ag part, obviously there's no ag there. Would you then make the whole parcel the commercialized?

MR. TERUYA: What we would do is, we would probably reassess for the current assessment year, reassess, and classify, remove the Diversified Agriculture and the entire parcel will be valued as if a one-acre CPR. With the Conditional Use Permit of Commercial.

COUNCILMEMBER COUCH: Okay. I think that, Mr. Chair, that's all I have for Mr. Teruya.

CHAIR CARROLL: Any further questions for Mr. Teruya? If not, if the entire parcel is receiving Conditional Permit, would home exemption classification still apply? Mr. Teruya?



**LAND USE COMMITTEE**  
**Council of the County of Maui**

**September 2, 2015**

---

MR. TERUYA: Yeah, Chair, the current Code says that if an owner owns and occupies and files and is granted, the entire parcel, which would be CPR number two, would still receive the home exemption and the Homeowner classification. That would be no change.

CHAIR CARROLL: Thank you. Any further questions? Mr. Hopper?

MR. HOPPER: Thank you, Mr. Chair. I just wanted to note, the permit currently lists He-Man Landscaping, LLC as the recipient of the permit, it's not the actual property. It does not run with the land and it actually is non-transferrable without Council's approval. It authorizes the landscape business to operate on a particular tax map key. But the permit is for the landscaping company itself. That's different than what you do with zoning, which generally runs with the land. But I just wanted to note that, that the He-Man Landscaping, LLC is who the, who is authorized by the permit to actually operate, to actually do this use on the tax map key that's listed.

VICE-CHAIR VICTORINO: Chair?

CHAIR CARROLL: Mr. Victorino?

VICE-CHAIR VICTORINO: With that being said, and I go back to Mr. Teruya, then that tax map key encompasses just that half-acre lot because it was condominiumized? No? It is the entire lot, right?

MR. HOPPER: Yeah, the list is for 2.074 acres, it's Tax Map Key 4-3-010:028, it doesn't have any of the sub-numbers so.

VICE-CHAIR VICTORINO: So you're saying the whole two acres, or little over two acres, would then be, is what they're asking for the change for?

MR. HOPPER: Yes, Mr. Chair, the permit, if I can find the application, was for 2.074 acres and it went through the Planning Commission like that as well. So it's going to authorize the company and the company will be allowed to operate that use on the two-acre parcel.

VICE-CHAIR VICTORINO: So then, I guess I go back to Mr. Couch's question, you know, then does the two acres, or the one-acre portion, Mr. Teruya, is being used as a homeowner's, or whatever the portion is, does that still stay as the homeowner's, even though the application is saying the entire property can or will be used as a baseyard?

CHAIR CARROLL: Mr. Teruya?

MR. TERUYA: CPR 2 still will remain as Homeowner. It is...

VICE-CHAIR VICTORINO: No matter what?

**LAND USE COMMITTEE**  
**Council of the County of Maui**

**September 2, 2015**

---

MR. TERUYA: Yeah. And for CPR 1 it will still remain, for us, we would reclassify it as Commercial. Condominiums are based on their actual use, so the use is, used as, like that baseyard, it would be Commercial in our opinion.

VICE-CHAIR VICTORINO: And then that would be the part that would be taxed, based on Commercial rates and Commercial valuations?

MR. TERUYA: Correct.

VICE-CHAIR VICTORINO: Okay, thank you. Thank you, Chair, for that clarification.

CHAIR CARROLL: Mr. Couch?

COUNCILMEMBER COUCH: Yeah, thank you, Chair. To further clarify, I guess, even though the whole parcel can be a baseyard, if they start using the other portion as maybe some offices or whatever, the cottage offices. Then, that would make it Commercial? But as long as they're using it, because it has the CPR tax map key, it would make it Commercial if they started using for offices or baseyard, or parking?

MR. TERUYA: That's not correct.

COUNCILMEMBER COUCH: Okay.

MR. TERUYA: In the Code, it says if you own and occupy and you fill out an application for a home exemption, and you are granted it, it applies to the entire parcel. That's the current Code.

COUNCILMEMBER COUCH: The entire TMK which is this...

MR. TERUYA: But there are two separate CPRs.

COUNCILMEMBER COUCH: Right.

MR. TERUYA: So CPR 2, even if portion of it is used for commercial and it's granted a home exemption, the entire CPR is granted a Homeowner tax rate.

CHAIR CARROLL: Mr. Couch?

COUNCILMEMBER COUCH: Okay. That's interesting, and I was just going to ask Ms. McLean, as to, just out of curiosity, why was the whole parcel listed instead of the one CPR as the, for the application.

CHAIR CARROLL: Ms. McLean?

MS. MCLEAN: Thank you, Chair. Because we look at, we're looking at the land use entitlements. We're not looking at the ownership mechanism, which a CPR essentially is. And the entire parcel is zoned Agriculture, community plan Ag, State Ag. But what

**LAND USE COMMITTEE**  
**Council of the County of Maui**

**September 2, 2015**

---

we look at is what the applicant proposed and what's a condition of the State Special Use Permit that was already approved by the Planning Commission, and what is proposed as one of the conditions of this conditional permit, is that the applicant develop the property in substantial compliance with the representations made to the Planning Commission with the State Special Use Permit and to this Council for the Conditional Permit. So, if the representation made is that, you know, what you see in your Exhibit 7C, is approximately half the property, maybe a little bit, well approximately half the property being used for the baseyard, the other half being used for the owner's residence and the second dwelling. If they were to deviate far from that, then we would consider that a violation of both permits, and would pursue enforcement accordingly. It doesn't, you know, there's not a strict boundary description or acreage in here but the substantial compliance condition has proven to be effective enough with that kind of enforcement.

COUNCILMEMBER COUCH: Okay. Thank you, Chair.

CHAIR CARROLL: Any further questions for Mr. Teruya? Ms. Cochran?

COUNCILMEMBER COCHRAN: Thank you, Chair, and thank you, Mr. Teruya. So, you said that a proper classification would be Commercial? So, what's the, what kind of, will they have to be paying a difference in taxation --

CHAIR CARROLL: Mr. Teruya?

COUNCILMEMBER COCHRAN: --from past fees versus what this new category will be?

MR. TERUYA: I don't have the rates on me, but I believe Commercial might be slightly higher than Apartment, so there would be a difference, yes.

COUNCILMEMBER COCHRAN: And they would be in charge of paying back taxes? From the past years?

MR. TERUYA: Well, the taxes would be recalculated and billed out, yes.

COUNCILMEMBER COCHRAN: And charged appropriately for this upcoming assessment kind of thing? Oh, okay.

MR. TERUYA: For the current.

COUNCILMEMBER COCHRAN: Right, okay. And just a note, a side note, Chair, that this is in my district, and I have not heard any opposing comments in reference to this. I do as I'm coming to work every morning, like clockwork, the trucks are pulling out of this driveway onto the main highway and I've never seen it impede, you know, the flow of traffic. Or, they are larger type trucks and, you know, tree trimmers and chipper shredders and what have you, but as far as I encounter, I have not seen any negative impacts that way. I believe that the infrastructure within this subdivision is private, and I can tell there's some wear and tear on that road, but I have not heard from

**LAND USE COMMITTEE**  
**Council of the County of Maui**

**September 2, 2015**

---

people within, you know, screaming out about it, so, like other places like Hui F and places. So, it seems thus far that it seems to be not a problem and as it's been stated in the presentation, 12 years ongoing, and now, you know, so I'm feeling pretty comfortable about the renewal of this. So, thank you, Chair.

CHAIR CARROLL: Thank you, Ms. Cochran. Any further questions for Mr. Teruya? Seeing none, thank you, Mr. Teruya.

MR. TERUYA: Thank you, Chair.

CHAIR CARROLL: Alright, Corporation Counsel, it appears that Condition Number 6 relates to the State Special Use Permit, not the proposed Conditional Permit. Should Condition 6 be deleted from the proposed bill?

MR. HOPPER: Yes, Mr. Chair, that does not appear to be an appropriate condition, I think that was inadvertently included.

CHAIR CARROLL: Thank you.

COUNCILMEMBER COUCH: Excuse me, Mr. Chair, where is that? Please? Can you tell us where that is?

CHAIR CARROLL: Condition 6.

VICE-CHAIR VICTORINO: Page 10, is that on Page 10 of the...

MR. HOPPER: This would be on Page 2 of the ordinance itself.

VICE-CHAIR VICTORINO: Oh, Page 2 of the ordinance itself. Okay.

MR. HOPPER: Yeah, there's an ordinance. It's actually, if you have the same packet as I do, it's actually four pages into the packet, its right at the beginning. It's condition number 6, it refers to this State Land Use Commission Special Use Permit, it's essentially copying the condition from the State Special Use Permit, which this isn't, so it's not really an appropriate condition for the Conditional Permit.

VICE-CHAIR VICTORINO: Oh, okay. I got it.

CHAIR CARROLL: Does everybody have it? Mr. Couch?

COUNCILMEMBER COUCH: Yes, I do see that, thank you. Shouldn't it be more that the conditions of the State Land Use Commission, SUP shall be not this? Should that be the proper wording? Because we want those conditions.

CHAIR CARROLL: Mr. Hopper?

**LAND USE COMMITTEE**  
**Council of the County of Maui**

**September 2, 2015**

---

MR. HOPPER: Well, Mr. Chair, you wouldn't put in the Conditional Use Permit the method by which the, what the Planning Commission's permit would be enforced by. That would be something in the Special Use Permit that the Commission would have, but the Council doesn't have any jurisdiction over the State Special Use Permit. What the Council would be deciding on today would be the Conditional Use Permit. And you could talk about enforcement of the Conditional Use Permit but the Special Use Permit by State law, the Planning Commission has the authority to decide on those. And, frankly, even if that condition wasn't set forth there, the proper enforcement mechanism would be through, would be authorized by the Land Use Commission rules and the State law anyway, even if it wasn't there. But generally, you should not have statements about other permits being enforced as a violation of the Conditional Use Permit. That would just generally be very odd. If we wanted to talk about how this particular permit would be enforced, maybe we could think of language there. But, there's already enforcement language in the Code that would deal with a breach of a Conditional Use Permit condition. Which is, in both the 19.530.030 and this 19.40, this particular section, which I think talks about revoking this permit if there's a violation. But again, that's in the Code and applies to all of those permits regardless of whether there's a condition on them.

COUNCILMEMBER COUCH: Okay, and I guess, Condition Number 1 basically says you got to follow, it reiterates that you have to follow the SUP conditions. So that as long something's in there to point to the SUP conditions, I'm fine.

CHAIR CARROLL: Any further discussion on Condition 6? If not, the Chair would entertain a motion to delete Condition 6 from the proposed bill.

VICE-CHAIR VICTORINO: So moved.

COUNCILMEMBER COUCH: Second.

CHAIR CARROLL: Been moved by Mr. Guzman, seconded by Mr. Victorino.

VICE-CHAIR VICTORINO: No. It was moved by me and seconded by Mr. Couch.

CHAIR CARROLL: Moved by Mr. Victorino, seconded by --

VICE-CHAIR VICTORINO: Mr. Couch.

CHAIR CARROLL: --Mr. Couch. Discussion? Hearing none, all in favor of the motion, signify by saying "aye."

COUNCILMEMBERS: Aye

CHAIR CARROLL: Opposed? Motion carried. Six "ayes," no "noes," one excused.

**VOTE: AYES: Chair Carroll, Vice-Chair Victorino,  
Councilmembers Baisa, Cochran, Couch, and**

**LAND USE COMMITTEE**  
**Council of the County of Maui**

**September 2, 2015**

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**Guzman.**

**NOES:           None.**

**ABSTAIN:       None.**

**ABSENT:        None.**

**EXC.:           Councilmember Crivello.**

**MOTION CARRIED.**

**ACTION:        APPROVED AMENDMENT.**

CHAIR CARROLL: Members, the floor is open, and Mr. Victorino indicated that he would like to...do you still want to speak to the applicant?

VICE-CHAIR VICTORINO: No. At this time, it, you know, the Department, both Mr. Teruya and the Planning have clarified my questions as far as the two lots, as how they have been divided and how they will be taxed from this point forward, and the back taxing of it. So, I really don't have any more questions, I'm pretty clear, and Ms. Cochran, from the area also says that she sees no major problems, she hasn't heard an outcry from the neighbors, and I haven't heard anything from anybody out there either. So, and they've been doing this for a number of years, so I don't see a real problem, but I'll let the other Members ask their questions if they have any more. Thank you, Chair.

CHAIR CARROLL: The floor is open. Ms. Baisa?

COUNCILMEMBER BAISA: Thank you very much, Chair. Chair, I've reviewed the application and I've met with the applicant, and looked at the Planning Commission minutes and I am comfortable with what's before us. I don't have any more questions. Thank you.

CHAIR CARROLL: Thank you. Any further discussion? Mr. Couch?

COUNCILMEMBER COUCH: Thank you, Mr. Chair. And unfortunately, we don't have Water here. I noticed that Exhibit 14 is a letter from the Department of Water Supply, and it talks about pollution prevention, this project site overlies the Honokowai Aquifer. In order to protect ground and surface water sources we encourage best management practices designed to minimize infiltration and keep pollutants from contact with groundwater. And then it says please see the attached BMPs. I noticed that they had all those employee cars parked there, and I didn't see in the pictures anyway, that there was anything to protect from oil dripping off those vehicles in a parking lot. And it looked like it was on grass, a grassy area.

CHAIR CARROLL: Mr. Fasi or Ms. McLean, do you think you could answer the question?

**LAND USE COMMITTEE**  
**Council of the County of Maui**

**September 2, 2015**

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MS. MCLEAN: Well, following...thank you, Chair, yes. Following Exhibit 14 is the applicant's response to Exhibit 14. That's probably something better answered by the applicant of which of those BMPs they are implementing.

COUNCILMEMBER COUCH: Okay, yeah, Mr. Chair, if we can have either Mr. Hart or Mr. Hehemann.

CHAIR CARROLL: If there is no objection, I will call Mr. Hart to the podium.

COUNCILMEMBERS VOICED NO OBJECTIONS

CHAIR CARROLL: Mr. Hart? Please identify yourself at the podium.

MR. HART: Good afternoon, Chair. My name is Jordan Hart of Chris Hart & Partners.

CHAIR CARROLL: Mr. Couch?

COUNCILMEMBER COUCH: Yes, I noticed in the picture that you showed us of the overhead, that the, all the employee cars were parked in a grassy area, and I didn't, on the picture, on the overhead pictures we have in the application, it doesn't show any kind of something to prevent the engine oil and all of that dripping from cars. Is that something that you've discussed with the Department of Water Supply? Because that's something that we've run into, especially if we start getting into wellhead protection, and I don't know where this is in relation to that wellhead protection, but that is going to get even more dicey.

MR. HART: Sure, so the vehicle parking wasn't an issue that we specifically discussed with the Department of Water Supply. There's kind of a balance between, you know, pervious surface and impervious surface. And so, there's a significant amount of pavement existing on this site that could be used as parking area; however, the applicant didn't want to pave any more, and so that's kind of what's been happening is they've been using a grass parking lot. There hasn't been any significant issues with it so far, and Department of Water Supply didn't have any further comments in response to our letter.

COUNCILMEMBER COUCH: Okay, well I mean, especially with the wellhead protection stuff that's going on, coming through this Council, that might be a big issue coming up. So you might want to keep an eye on that.

MR. HART: Okay. The applicant...

COUNCILMEMBER COUCH: Because they mention that you're directly over the aquifer, so this is a prime example of what they're trying to do with wellhead protection.

MR. HART: Absolutely.

COUNCILMEMBER COUCH: Okay, thank you, Chair.

**LAND USE COMMITTEE**  
**Council of the County of Maui**

**September 2, 2015**

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CHAIR CARROLL: Any further discussion?

COUNCILMEMBER COCHRAN: Chair?

CHAIR CARROLL: Seeing none, the Chair will...I'm sorry, Ms. Cochran?

COUNCILMEMBER COCHRAN: No problem. And thank you, Mr. Hart, for being here. So, in reference to all the work trucks though that are parked, it looks like, on is that asphalt?

MR. HART: That's correct.

COUNCILMEMBER COCHRAN: Asphalt pavement. So, and everything's contained onsite? Or where does the runoff or any, you know...

MR. HART: It would be onsite.

COUNCILMEMBER COCHRAN: Contains on...

MR. HART: That's right.

COUNCILMEMBER COCHRAN: Okay. You know with all the heavy rains and what have you, and it is upslope, the property is, so.

MR. HART: That's correct.

COUNCILMEMBER COCHRAN: Okay. Alright. Very good. Thank you, Mr. Hart. Thank you, Chair.

CHAIR CARROLL: Thank you, Ms. Cochran. Any further questions for the applicant? If not, thank you. Any further discussion? If not, the Chair will give his recommendation.

COUNCILMEMBERS: Recommendation?

CHAIR CARROLL: The Chair will entertain a motion to recommend passage on first reading of the proposed bill entitled A Bill for an Ordinance Granting He-Man Landscaping LLC a Conditional Permit for the Use of Landscaping Baseyard within the County Agricultural District for Property Situated at 4260 Hine Way, Lahaina, Maui, Hawaii; incorporating any revisions to be made at today's meeting and nonsubstantive revisions, and to file County Communication 15-149.

VICE-CHAIR VICTORINO: Mr. Chair, I so moved.

COUNCILMEMBER COCHRAN: Chair, I second the motion.



**LAND USE COMMITTEE**  
**Council of the County of Maui**

**September 2, 2015**

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CHAIR CARROLL: It has been moved by Mr. Victorino, seconded by Ms. Cochran. Discussion? Mr. Couch?

COUNCILMEMBER COUCH: Thank you, Mr. Chair. And I am speaking in support of this; however, I do have some reservations on the wellhead protection, or the aquifer right there. So, I just would encourage that the applicant be very mindful as to what's going to happen with either runoff or drippings essentially, from any of the vehicles. Some of those looked a little bit older and to the point where they might be dripping. So, just ask that the applicant be very aware of that and mitigate that if at all possible. Thank you.

CHAIR CARROLL: Any further discussion to the motion on the floor?

VICE-CHAIR VICTORINO: Chair? Yeah, thank you, and I support, you know, and I know that this business has been there for a lot of years, they have a very good reputation. I think they have always been very mindful of the area that they're working in and the concerns. And so they have done some extra work as far as mitigation of runoff, and I've seen that. So I'm very comfortable in what they're doing. I think the only thing that I would ask them is that if they were to do any other improvements, that maybe an impervious surface for where the vehicles are parked may be added to it at that point in time. But that would be just a request more than something that...and wellhead protection is really basically, you know, the wellheads and the adjacent area for which the wellhead is drawing water out of. But, you know, the whole aquifer needs to be protected, I don't care where you are, whether you're in West Maui, South Maui or Central Maui, it doesn't make a difference, we need to protect them in every way possible. So, thank you, Mr. Chair.

CHAIR CARROLL: Any further discussion to the motion on the floor? Seeing none, all those in favor signify by saying "aye."

COUNCILMEMBERS: Aye.

CHAIR CARROLL: Opposed? Motion Carried. Six "ayes," one excused.

**VOTE: AYES: Chair Carroll, Vice-Chair Victorino, Councilmembers Baisa, Cochran, Couch, and Guzman.**

**NOES: None.**

**ABSTAIN: None.**

**ABSENT: None.**

**EXC.: Councilmember Crivello.**

**MOTION CARRIED.**

**LAND USE COMMITTEE**  
**Council of the County of Maui**

**September 2, 2015**

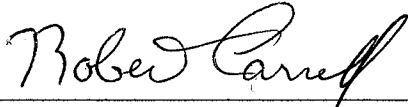
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**ACTION: FIRST READING of revised bill and FILING of communication.**

CHAIR CARROLL: This brings us to the conclusion of our meeting today. Thank you all, our audience for attending and those out there in television land and our Members. This meeting of September 2, 2015 stands adjourned. . . .(gavel) . . .

**ADJOURN:** 2:12 p.m.

APPROVED:



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ROBERT CARROLL, Chair  
Land Use Committee

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Transcribed by: Kisha Tam

**LAND USE COMMITTEE  
Council of the County of Maui**

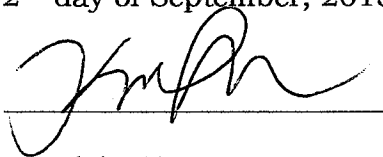
**September 2, 2015**

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CERTIFICATE

I, Kisha Tam, hereby certify that the foregoing represents to the best of my ability, a true and correct transcript of the proceedings. I further certify that I am not in any way concerned with the cause.

DATED the 22<sup>nd</sup> day of September, 2015, in Kahului, Hawaii

A handwritten signature in black ink, appearing to read 'Kisha Tam', is written over a horizontal line.

Kisha Tam