

**MAUI PLANNING COMMISSION
PORTION OF REGULAR MINUTES
ITEM B.1
MAY 24, 2022**

Ms. McLean: Chair, next on your agenda is just the one public hearing item scheduled for today, since the second one that's posted is being moved to a future agenda, is a request from Mr. David Gomes of Hawaiian Cement, Puunene, an amendment to a State Land Use Commission Special Permit and County Special Use Permit to increase the permit area by approximately 45.4 from 226.42 acres to 271.82 acres in the State and County Agricultural Districts in Puunene, at TMK: 3-08-004: portion of parcel 001. Paul Fasi is the project planner.

B. PUBLIC HEARINGS

- 1. MR. DAVID GOMES of HAWAIIAN CEMENT (PUUNENE) requesting an amendment to a State Land Use Commission Special Permit and County Special Use Permit to increase the permit area by approximately 45.4 acres, from 226.42 acres to 271.82 acres, in the State and County Agricultural Districts, Puunene, Island of Maui, TMK: (2) 3-8-004:001 (por.) (SP 92-380) (CUP 2006/0002) (P. Fasi)**

And before we get into that Chair, we need to make two corrections to the recommendation. After the commission takes action today, if it does approve the State Special Permit, it would go on to the State Land Use Commission, but the commission's action today would be to approve it, not to recommend approval. So, just a minor technicality there.

Also, the prior approval listed a condition that identified the expansion area, and that's what this recommendation did too that's Condition No. 7, but that shouldn't be a condition, that's part of the commission's action. So that Number 7, can be deleted and the prior condition that was the same would also be deleted.

And with that clarification, Mr. Fasi did you want to make some opening comments before the applicant gives their presentation.

Mr. Fasi: Thank you, I do not.

Ms. Pali: I'm sorry, Director. Which Number 7, because there isn't.

Ms. La Costa: Number 7, on your green...

Ms. Pali: Yeah, there's two. There's the original permit or the recommendation.

Ms. McLean: Yes.

Ms. Pali: Under recommendation, okay thank you.

Ms. McLean: On the State Special Permit.

Mr. Hopper: And condition, I think it would be the last on the 2014 permit.

Ms. Pali: Seven and eight.

Mr. Hopper: So, six is not existing, six?

Ms. McLean: Right.

Ms. Pali: So, Page 19.

Mr. Hopper: Yeah.

Ms. McLean: Yeah.

Ms. Pali: Thank you.

Ms. La Costa: And then Number 8 will now be Number 7. Okay, Mr. Fasi, you don't have any comments, then the applicant.

Mr. Hopper: It will be Number 6, wouldn't it be.

Ms. La Costa: This was eight.

Mr. Hopper: Yeah, and then Number 6 is going to be deleted as well.

Ms. McLean: Yes.

Mr. Hopper: Those are all kind of manini things, but as long as the recommendation's clear on the record, we can work the numbers out, yes.

Ms. La Costa: Thank you, Mr. Hopper. We have good legal counsel to keep us in line.

Ms. McLean: Okay, since Mr. Fasi didn't have a...any opening presentation, we have the applicant's representatives here. Good morning.

Ms. Karlynn Fukuda: Good morning. Good morning, Chair and Members of the Maui Planning Commission. My name is Karlynn Fukuda of Munekiyo Hiraga. I just wanted to make sure everyone can see the presentation besides those who are in the room with us. If the

commissioners online can also give confirmation that they can see our presentation? Okay, great, thank you Leilani.

So, we are before you today regarding the request to amend the State Special Permit and County Special Use Permits for the Hawaiian Cement Puunene quarry. Joining me today are Dave Gomes and Keoni DeRego of Hawaii Cement, who are the applicant and Chalyse Ah Chan-Bowlin from our office. Next slide, please.

Hawaiian Cement is requesting amendments to its existing State Special Permit and County Special Use Permit to include an approximately 45.4-acre area for rock quarrying purposes at its existing Puunene quarry facility. We will be providing a brief history on the Hawaiian Cement Puunene quarry shortly. Next slide, please.

Hawaiian Cement is currently permitted to operate a quarry and rock crushing operation at its Puunene facility. It currently leases the land from Alexander and Baldwin, or A & B. As you can see here, the facility includes a variety of uses on the site. But we note that the quarry provides an important resource for construction on the island. Rock from Puunene quarry has been used for the repaving of portions of Honoapiilani Highway from Maalaea to Lahainaluna Road, the expansion of Maui Veteran's Highway and repaving a portion of Hana Highway from Kaupakalua Road to Maliko Gulch just as some examples.

As I mentioned earlier, today's request is to amend the permitted area for quarrying purposes only. With the proposed additional acreage, . The applicant anticipates that it will extend the life of the quarry by approximately 14 years. Next slide please.

There were four tax map key or TMK parcels involved in the Puunene quarry. Some areas, as I'll show you in a bit, have been quarried and returned to the owner. The area for the proposed portion of the addition to the permits is located on a portion of TMK: (2) 3-8-004:001. Next slide please.

Here's a map with the various tax map key parcels that are included in the Puunene quarry site. As I mentioned previously, the subject of today's requests are an approximately 45.4-acre part of the larger TMK: (2) 3-8-004:001 near the top of the screen. Next slide please.

The land use designations for the 45.4-acre portion of land are State Land Use Commission Agricultural, Wailuku-Kahului Community Plan Agricultural and zoned by the County of Maui as Agricultural. The site is located outside of the Special Management Area and the Maui Island Plant Growth Boundary and protected areas. The surrounding land uses include former sugar cane lands and other neighboring industrial uses, such as the Pulehunui Heavy Industrial Park, Central Maui Baseyard, the Maui Raceway Park, and the Army National Guard facility. Next slide please.

I'd now like to go over a brief history of the State Special Permit for the Hawaiian Cement Puunene quarry. As I mentioned previously, the land for the Puunene quarry is designated as Agricultural by the State Land Use Commission. As such, a State Special Permit was received for the quarry. Looking at the chart on the screen, so we see that the original quarry area was permitted for 46 acres and the State Special Use Permit or SUP, was granted in 1992. Then in 1996, there was a first amendment to the SUP, which added an additional 60 acres for quarrying. And then in 2006, there was a second amendment to the SUP to add two additional areas of 24.476-acre area and 44.28-acre. And then in 2014, there was a third amendment to the SUP, which added two additional areas, a 41.968-Acre and 9.697-acre. It's noted that at the 2014 amendment the Land Use Commission also extended the life of the permit until July 21, 2032. Next slide please.

Next, I'd like to share the history of the County Special Use Permit. So, prior to 1998, rock quarry operations were permitted within county zoned Agricultural Districts with an approved State Special Use Permit. However, in 1998, the county's agricultural zoning ordinance was amended to require a County Special Use Permit if the quarry area exceeded 15 acres. Existing uses were able to continue under their valid SUPs until they expired, at which time a County Special Use Permit was required. So, in 2006, the first County Special Use Permit was approved for the Puunene quarry, and that approval was consistent with the second, if you recall the previous slide, State Special Use Permit second amendment, which included two areas of 24.476 acres and the 44.28-acre area. And then in 2014, again, the SUP was amended at the same time as the SUP to be consistent, and so, the two additional areas were added to the CUP of 41.968 acres and 9.697 acres, and the CUP was also extended to July 21, 2032. Next slide, please.

The application to amend the permitted quarry area included analysis on a variety of areas, including agricultural productivity. While the lands proposed for the quarry area are rated prime and other and have productivity ratings of A, B and E, we note that the area has not been used for active agricultural use for some time and is adjacent to other areas that are currently being...that are currently permitted for rock quarrying. The applicant has a requirement to comply with a landowner approved restoration plan, which includes backfilling Quarried areas with soil from the site. There are three areas where quarrying has been completed and the lands restored and returned to the landowner, which I'll show you in a bit. Next slide. Please.

This map provides a graphic to illustrate the various areas covered by the special permits and also indicates the areas that have already been quarried and noted by number one and those areas of the 45.957-acre, 60.00-acre area and the 24.478-acre area, those areas have been quarried and returned to the landowner. There is an area that is permitted for quarrying, but has not yet been quarried, as noted by number two on the on the map. And there's an area where quarrying, sorry, is currently occurring, as noted by item or number three, and the area that is the subject of today's requests, which is proposed for quarrying and is indicated by number four. I would also like to note that Hawaiian Cement's current lease area from A & B is indicated by the red border. Next slide, please.

With regards to archaeology and cultural resources, the applicant was required to complete an archaeological study of the existing quarry areas. As noted here, the State Historic Preservation Division, or SHPD, reviewed the archeological report and required an archaeological monitoring plan. Both the archaeological report and the monitoring plan were approved by SHPD in April 2020. The applicant also voluntarily prepared a cultural impact assessment report. The report included consultation with various cultural contacts, including the Office of Hawaiian Affairs, Central Maui Hawaiian Civic Club, Aha Moku O Maui, Maui Tomorrow, Maui Sierra Club and local cultural practitioners and those knowledgeable about the area.

A site visit was also conducted in August 2020, with representatives from the Aha Moku O Maui, Maui Tomorrow and the A & B Sugar Museum. Additionally, the CIA includes interviews that were conducted with Dr. Scott Fisher of the Conservation Hawaiian Islands Land Trust and Lucienne de Naie, Vice President of the Maui Tomorrow Foundation. And we note here on the Cultural Impact Assessment the findings on the third bullet point, you know, based on the historical research, the negative results of the archaeological studies and the responses to the consultation requests that it was reasonable to conclude that there is no evidence of traditional cultural practices relating to the gathering of or seeking access to resources or other customary activities in the proposed quarry expansion area, and that the CIA recommended that the provisions in the approved archaeological monitoring plan be followed, which the applicant will comply with. Next slide, please.

Regarding drainage, there was a drainage report prepared for the 45.4-acre site, which was submitted to the Department of Public Works for review. Comments were received and a revised report was submitted in November 2021. Subsequent approval from Department of Public Works on the revised report was received in January of 2020. Retention ponds will be constructed to capture any runoff from the proposed quarry areas and plans for soil erosion and sediment control will conform or will be in conformance with the applicable sections of the Maui...County of Maui's Best Management Practices Plan Standards. Next slide, please.

Regarding other infrastructure, the site does not have potable water to the site. There is an existing non-potable private well that provides water for dust control, wash down and other permissible uses. Potable water is provided on site through a private vendor. There is no existing county wastewater service in the area, and the proposed 45.4-acre site amendment is not anticipated to increase wastewater use for the site. Vehicle access to the Puunene quarry is currently provided through the existing Kamaaina Road intersection with the Maui Veterans Highway, which is a signalized intersection. Next slide, please.

Regarding biological resources, the applicant had a biological resources survey prepared for the proposed 45.4-acre site. The survey was completed in July 2021. There were no federally listed, endangered or threatened plant species found on or near the project area. No native animals were also found during the surveys. Next slide please.

The biological resources report concluded that the fauna were mostly non-native species and they were not of conservation concern. There were also recommendations for mitigation actions related to the potential for endangered species, which may traverse through the area. The applicant will comply with the recommendations included in the July 2021 report. Next slide please.

The staff report included the analysis completed relative to compliance with the Land Use Commission Hawaii Administrative Rules, Section 15-15-95. Please refer to Pages 9 and 10, and 17 in the staff report. Next slide, please.

We note that the current State Special Use Permit includes 17 conditions which the applicant is in compliance with. The conditions include both standard conditions, such as the submittal of proof of insurance and project specific conditions. Additionally, an annual report for update on compliance with conditions is included as one of the conditions. A copy of the 2020 State Special Permit Compliance Report was included in the staff report as Exhibit 13. We note that a 2021 Compliance Report was filed with the State Land Use Commission and the Planning Department in December of last year. Among the project specific conditions, we point out is the submittal of a detailed drainage plan to the Department of Public Works and State Department of Transportation, which the applicant is in compliance with. Submittal of a maintenance plan for the access road to the quarry site to the State Department of Transportation which has been completed. Submit all of the Archeological Inventory Survey to the State Historic Preservation Division and receipt of approval of the AIC from SHPD, which has been completed. And as I note here, the compliance report is included in the staff report. Next slide please.

The staff report also included a review of the County Special Use Permit criteria relative to the Maui County Code, Section 19.510.070. Please refer to Pages 10 through 18 of the staff report regarding this. Next slide please.

Similar to the State Special Use Permit, the County Special Use Permit includes both standard conditions as well as project specific conditions. A compliance report to demonstrate compliance with conditions of the County Special Use Permit is required prior to filing an amendment to the permit. A copy of the County Special Use Permit compliance report was included as Exhibit 17 in the staff report. Next slide please.

We note that the Planning Department circulated the application for the amendments to the State Special Permit and the County Special Use Permit to various governmental agencies. Comments were only received from the Department of Public Works. Those comments were addressed as I previously noted. There was also additional effort to follow up with the State Department of Agriculture and the State Office of Planning and Sustainable Land Use in October 2021 for comments on the requests. However, to date, we have not received comments from either agency. Next slide please.

To summarize, Hawaiian Cement is respectfully requesting approval of its amendments to its existing State Special Permit and County Special Use Permit to allow for the addition of the 45.4-acre area for quarrying purposes. The Puunene quarry provides a vital resource for...to support construction here on Maui. Next slide please.

This concludes our presentation and we are available to answer any questions you may have.

Ms. La Costa: Mahalo, Ms. Fukuda. May I please have you swear that you have told the truth.

Ms. Fukuda: Yes, I swear to have told the truth.

Ms. La Costa: Thank you so much. Sorry, I should have done that initially. Commissioners, do we have any clarifying questions for Ms. Fukuda? Could you please end your share screen? Thank you so much. Someone has their head down and their hand up, but I can't see their face. Oh, Commissioner Freitas, go ahead, please.

Mr. Freitas: Thank you, Chair. For the applicant, you know, this is Exhibit 4 and there's the key that has A, B, C, D and E. What does, what does that key...I think it might be a topography. What does E stand for?

Ms. Fukuda: Chair, if I may?

Ms. La Costa: Yes please.

Ms. Fukuda: Karlynn Fukuda, Munekiyo Hiraga. So, Commissioner Freitas, I want to just make sure that I am looking at the correct exhibit that you're looking at. It is listed as or it's labeled as Figure 8, Land Study Bureau Map, is that the correct one? Okay.

Mr. Freitas: Yes.

Ms. Fukuda: So, the ratings that you see here, the A,B,C,D, E, those are the Land Study Bureau of Productivity Ratings that were done by the University of Hawaii Land Study Bureau. So, for further explanation of that, I would turn to Page 13 of the staff report. And the second paragraph, talks about that graphic or that map as it references Exhibit 4 of the staff report, and Paul, if you have anything to add, please chime in, at least speak for the department on your report.

Mr. Freitas: So, easy understanding if it's green and darker green, that is saying that's, that's really prime for agriculture.

Ms. Fukuda: So, the—

Mr. Fasi: The ratings, if I could, the ratings are A through E. A being the highest, E being the lowest.

Mr. Hopper: Wait a minute, if we're gonna have another person comment, they would need to be sworn in and asked to be recognized by the Chairperson. Right now, the applicant is responding to the question, if the planner would like to be recognized he can ask the Chair to be recognized and go forward with that.

Ms. La Costa: Thank you, Mr. Hopper. Mr. Fasi, would you please introduce yourself, promise to tell the truth and then you can answer Commissioner Freitas' information. Thank you.

Mr. Fasi: Yes, Paul Fasi, I promise to tell the truth. The ratings are A through E. A being the best, E being the least productive.

Mr. Freitas: Okay. Question for the applicant. When you do quarry work are you digging down into the ground or are you cutting into a mountain? Because I think this is flat land. Sounds like you're going to go down. Is that correct?

Ms. Fukuda: Karlynn Fukuda, Munekiyo Hiraga. I have received confirmation from Dave Gomes that, yes, that is correct, that they do dig down into the land.

Mr. Freitas: Okay, you know, you did briefly talk in your presentation about drainage. Now in one of your maps. It actually says, I believe there is a gulch there, Polaloa Gulch. And how are you going to divert the water from not going if you're digging down?

Ms. Fukuda: Let me find the maybe the best—

Mr. Freitas: It's Exhibit 6, and it is right by this proposed area. You have Polaloa gulch. You're going to dig a big hole, a bigger hole that's already there.

Ms. Fukuda: So, if I may, Commissioner Freitas, I'll start, and then if Mr. Gomes or Mr. DeRego have anything to add, I'll be happy to bring them up. But my understanding is, is that as they quarry, they have requirements to bench from the site. So, it's not where they're going to just quarry up until the...to the gulch. They have to leave space in between the border and from where they're quarrying. Additionally, the retention ponds that would be developed for the new quarry area would be to channel the, you know, any drainage into those retention ponds as opposed to the gulch. But I don't know if you have anything else you want to add relative to staying away. No? Okay, okay.

Mr. Freitas: Can you, can you tell you me where in this report it shows this drainage plan 'cause you did share that you folks had one, but I tried to look, I can't find it.

Mr. Fasi: I don't believe that the, the actual drainage plan is included in the Department report. We could probably get a copy.

Ms. La Costa: Excuse me, Mr. Fasi, please. Mr. Fasi, will you please identify yourself so that the minutes are correct. Thank you.

Mr. Fasi: Sorry, my name is Paul Fasi. I'm the planner for the County of Maui. And to answer the question, no, the drainage report is not in the Department report. We could probably receive a copy from the, from the engineer or from the Department of Public Works.

Mr. Freitas: I think that would be helpful to have because you...this proposed area it right by a gulch which will need, I think, some special explanation on how you're going to divert any kind of water in a drainage system. Okay, thank you, Chair. That's all I have.

Mr. Hopper: Is it part of the application, Chair, sorry.

Ms. La Costa: Mr. Hopper, as I see it, and I'm not the expert here, on Page 15, the drainage, it shows existing conditions. In the second paragraph, it shows runoff from the southern half of the site, flows and carries on from there.

Mr. Hopper: Is the, is the report itself, though in the...as part of the application. Because there's this and then the application was also posted on your site. I was wanted to check on that.

Ms. La Costa: Perhaps Miss Cua can help us with that. Oh, excuse me, Mr. Fasi, go ahead, please.

Mr. Hopper: Or the applicant.

Mr. Fasi: Paul Fasi, County of Maui planner. No, the drainage report is not in the application or the report. The...I would say this, that the drainage report was extensively scrutinized between the engineer and the Department of Public Works. And that was one of the reasons why this particular application took so long because they're extensively reviewing the drainage report parameters.

Mr. Hopper: Well, just to note if, if the commission wants the drainage report, it can ask to have it submitted as part of the record. If it's not part of the record and it goes to the Land Use Commission and they want it, they will have to remand it back down to you to add that to the record. So, just, just to note, anything that's not in the record here when it goes to the Land Use Commission, if they want to see something they can't just say, we'll add it to the record. They will send it back down to the commission in order for the commission to add it to the record. So, I just wanted to note that for you for both this commission and the Land Use Commission, if it goes there. So, if it's somewhere in the record that you can get now, that would potentially be helpful if the commission wants to see it.

Ms. La Costa: Thank you, Mr. Hopper. Does the applicant, Ms. Fukuda, do you have your drainage report available so that we can see it or at least—

Ms. Fukuda: Yes, there is a copy...there was a copy of the drainage report included in the application document itself. It was Appendix F in the application document and we do have the engineer that prepared the drainage report available on call. So, if the commissioners would like to, we can contact him and ask him to call in to the BlueJeans meeting and he can answer questions relative to the drainage, if that's desired.

Mr. Hopper: So, the application is attached to your agenda and that will, correct me if I'm wrong, be going, the full application will be going to the Land Use Commission should you approve it. So, they'll have everything in there. So, to clarify the drainage report is in the application. So, it is part of your record before you. So, that's important to know. Thank you.

Ms. La Costa: Thank you, Mr. Hopper. Yes, would you please have your engineer hop on the call so that Commissioner Freitas can get his questions answered. Mahalo.

Ms. Fukuda: Okay.

Ms. La Costa: In the meantime, let me call on Commissioner Thayer.

Ms. Thayer: Thank you, Chair. I do have a related question, and I guess to clarify, so the drainage report that's in the application is dated from 2019. And I think I heard from Ms. Fukuda that there was a revised report dated January of 2022.

Ms. La Costa: Ms. Fukuda could you answer that please?

Ms. Fukuda: Yes, there was amendments to the drainage report that were submitted to the Department of Public Works based on their comments on that report. So, I don't have a copy of that revised report on hand right now, but that can be submitted to the Department as part of the record.

Ms. La Costa: Yeah, the Commission does have to read that to be able to make a determination. We don't have that handy. Commissioner Pali, did you have a question?

Ms. Pali: Well, I just was wondering why it was left out actually. I don't know why we were here today and having a partial application.

Ms. La Costa: Thank you. Ms. Fukuda, could you respond to that, please?

Ms. Fukuda: I'll double check and see. So, the revised report was submitted to the Department of Public Works in November and I'll have to confirm our records and see if the Planning Department received a copy of that as cc, because it was part of the comments that we received on the application. I don't have that confirmation with me right now. So, it may have been submitted to the Department when it was submitted to the Department of Public Works for their review and approval. I did get a copy of the approval letter or the memo from the Planning Department from the Department of Public Works. So, there was that transmittal that went from Public Works to Planning to approve the revised November 2021 drainage report.

Ms. La Costa: Mr. Fasi, if you're still on the call, could you please confirm or deny the receipt of the updated report? Thank you.

Mr. Fasi: Paul Fasi, Planning Department. I'm going to have to check the application report. It probably was included. That would be my guess. I can check or quick, but I did not include it. I normally don't include it because it's a highly technical document and unless you're an engineer, it's very difficult to understand. It's like reading a traffic report unless you're versed in the terminology and the, you know, the numbers, it's, it's a difficult, it's a difficult report to read and understand.

Ms. La Costa: Speaking for the Commission, I do believe that we would prefer to have it and muddle through it or ask questions versus not have it, because some of us can interpret those kinds of things. So, thank you, in the future, please include everything in the application so that we have everything before us and don't have to have delays like this. Mahalo. Commissioner Pali did you have a question.

Ms. Pali: Oh, no, I was just laughing because, yeah, I do. It's my favorite to read traffic reports, but I think just being a representation of the public and being gatekeepers, I'd rather have it and not understand it than not have it, and then not be...and still be responsible for what it says. So, thank you, I appreciate that, but I think I would prefer also to have it.

Ms. La Costa: Thank you. Commissioner Thayer.

Ms. Thayer: Thank you, Chair. As a follow up to that, so noting the Department of Public Works comment letter dated November 16, 2021. Some of the questions in there, I also had questions. So, I'm wondering if there was a response letter that was sent back to the department or if the revised report is the document that answered all of their questions?

Ms. La Costa: Can you tell me which exhibit you're referring to, please?

Ms. Thayer: Oh, it is Exhibit 8 of the staff report.

Ms. La Costa: Thank you. Is your engineer available Ms. Fukuda.

Ms. Fukuda: Yes, he needed about 10 minutes and then he'd be able to log in.

Ms. La Costa: Okay, thank you. Then we will suspend our additional questioning. Commissioner Freitas.

Mr. Freitas: Okay, thank you, Chair. Thanks for pointing out that Page 15. I went right to a drawing which, which isn't in here, but I have a question for Mr. Gomes and Mr. DeRego. In this drainage—

Ms. La Costa: Excuse me, just a moment. Mr. Freitas, if we are going to ask the applicants directly, I need them to step forward and be sworn in. So, if you have questions for the applicant?

Mr. Freitas: Yes, I do.

Ms. La Costa: ...to testify, thank you. Mr. Gomes, Mr. DeRego, would either of you like to represent Hawaiian Cement or both of you? Please introduce yourself and do you promise to be truthful.

Mr. Dave Gomes: Yes, my name is Dave Gomes. I'm the General Manager of Hawaiian Cement Maui and I promise to be truthful.

Ms. La Costa: Mahalo Mr. Gomes. Commissioner Freitas, go ahead please.

Mr. Freitas: Thank you, Chair. Mr. Gomes, it says runoff from the southern half of the site flows toward the gulch. Can you explain what runoff from the site entails or includes?

Mr. Gomes: If possible, so I don't get my words confused, I would prefer if, if Kirk Tanaka answers those questions when he's out there, because when we deal with the site, we're dealing with the entire 350 acres that we have not just what we're currently mining. And I think Kirk's better prepared to answer that question.

Mr. Freitas: Mr. Gomes, in this report, it says that normal rainwater from mauka is usually diverted into that gulch. But in this drainage report, it says runoff from the site and you work the site, you manage the site. You don't know what liquids is coming off of your job site. That's the part I'm talking about. I'm not talking about where it goes, how it goes. I'm asking what is coming off your site?

Mr. Gomes: Okay, there's nothing in our process that's coming off the site, so I misunderstood your question. If you're talking about rainwater that hits our site, our job is to control that, that, that runoff within our property boundaries.

Mr. Freitas: Okay, okay. Because it ends up going right into the gulch, as you read further. So, I was concerned about that. We have to wait for the engineer. Thank you, Mr. Gomes.

Mr. Gomes: Thank you.

Mr. Freitas: Chair.

Ms. La Costa: Thank you, Mr. Gomes. Thank you, Commissioner Freitas. Commissioners, are there any other questions that you have for either the applicant or Ms. Fukuda or Mr. Fasi? No. How close is our engineer, please?

Ms. Fukuda: Not sure. I can try and call him again and see how close he is to being able to log in.

Ms. La Costa: Okay, thank you.

Mr. Hopper: You got to do testimony.

Ms. La Costa: Yeah. We do have public testimony on this item. I don't know if there's anyone who has logged into the chat to see? There is no one. So, my question is about the drainage report. We may well need to see that and have it as part of our record before we can make any kind of decision on this today. But we will hear from the engineer as soon as he jumps on so that we can make that determination because if we don't have it in our record then it may get pushed back to the LUC and then it will come back to us again and there will be a lot of delay because of agendaing, so thank you.

Ms. Fukuda: Understood. Yeah, I'm not sure if an option will be, you know, if we can have a recess or a deferral so that I can run across the street and confirm whether or not we transmitted the revised drainage report to the Department or what the options may be.

Ms. La Costa: What we'll do right now is we'll take a recess and then we will confirm that. So, it is two minutes to 11:00. Let's meet back in in seven minutes and your engineer should be on and we should have those answers. Thank you, Ms. Fukuda.

Mr. Hopper: Paul Fasi...(inaudible)...

Ms. La Costa: Oh, excuse me, Mr. Fasi, I'm sorry, I didn't see you.

Mr. Fasi: Paul Fasi, Planner. Karlynn, in the application there is a preliminary drainage report, but it's not the final.

Ms. Fukuda: Correct. But I received, I have a copy, a hard copy, unfortunately, only of the transmittal from Public Works to the Department of Planning dated January 12th, 2022 regarding the revised preliminary drainage report dated November 2021, and it's where the state they have no further comments on the revised renderings report and returning it to you.

Ms. La Costa: What exhibit is that, please Ms. Fukuda.

Ms. Fukuda: It's unfortunately not included in the staff report. It is something that I pulled from our files that we received.

Ms. La Costa: Mahalo. Mr. Fasi.

Mr. Fasi: Thank you. What Karlynn's referring to is a letter from DPW, and it basically said that they've already reviewed the drainage report and they're basically asking why it was even sent to them. So, that's that letter from DPW.

Ms. La Costa: Well, we as the commission would like to see those things, even if Public Works doesn't want to see them so that we have the full picture. So, a suggestion has been made that we do a recess. Can you get a copy of that updated report to us?

Ms. Fukuda: Yes. Yep, can do.

Ms. La Costa: Okay, and what is our timeframe for that? Just so I know what we might want to do is defer this until after the next item being that we're agendaized is already and then that way you can be prepared and have everything that we need.

Ms. Fukuda: I believe, oh...so, I believe I can get that for you within 30 minutes or less.

Ms. La Costa: Okay, then let's do that. What we will do is at this juncture, we will recess this item until we have all the information that we need, and we will go on with the agenda. Before I do that, there is no public testimony, so I will be closing my public testimony at this time.

Mr. Hopper: Well, Chair, just one other suggestion.

Ms. La Costa: Yes sir.

Mr. Hopper: I don't know if there's any other questions that you have for their...them. If you're all done, that's fine. But if you've got any more or especially if there's any other documents you want into the record, you could do that now before your deferral until the end of the meeting. If not, that's fine. But I just thought we'd do that so that you don't come back and have to deal with that issue.

Ms. La Costa: Thank you. Thank you, Mr. Hopper. Commissioners, do you have any other documentation that you need? Seeing none, I think the drainage report probably will complete that for us. Mahalo nui, appreciate.

Ms. Fukuda: Thank you. We'll be back.

Ms. La Costa: Thank you, I appreciate that Ms. Fukuda.

The Matter was recessed in order for the applicant to get the drainage report to the Commission. Item will be taken up after Agenda Item C.1 is concluded.

A recess was called at approximately 12:20 p.m. after Agenda Item C.1 was concluded, and the meeting was reconvened at approximately 12:29 p.m.

The Commission then returned to Item B.1

B. PUBLIC HEARINGS

- 1. MR. DAVID GOMES of HAWAIIAN CEMENT (PUUNENE) requesting an amendment to a State Land Use Commission Special Permit and County Special Use Permit to increase the permit area by approximately 45.4 acres, from 226.42 acres to 271.82 acres, in the State and County Agricultural Districts, Puunene, Island of Maui, TMK: (2) 3-8-004:001 (por.) (SP 92-380) (CUP 2006/0002) (P. Fasi)**

Ms. La Costa: Good afternoon, I am reconvening the Maui Planning Commission, so during the break, you should have received the proposal for the new quarry site. Please check your emails and make sure that you have it Commissioners. Could I have a thumbs up for those who have received it. Thank you, Commissioner Pali, Thayer, Lindsey. Mr. Hipolito, thank you. Mahalo Mr. Freitas. And Mr. Greig, we're just waiting for your receipt. Thank you very much, Commissioner Greig. So, being that you have received this, I am going to do a short recess so that you all can review that.

Mr. Hopper: Chair?

Ms. La Costa: Yes, sir, Mr. Hopper.

Mr. Hopper: Just to check real quick. I think it was Commissioner Freitas who had asked, I just want to make sure that this is, these are all the documents that he and the Commission wanted to see.

Ms. La Costa: Thank you, Mr. Hopper. Mr. Freitas, have you had a chance to look and see if on the surface if this is what you needed? So, at this juncture, I'm going to do a ten-minute recess

so that the Commission has time to review what was emailed to them. It is now 12:30 and we will be back in session at 20 to 1:00. So, ten minutes for the Commissioners to review the report that we just received. Mahalo.

A recess was called at approximately 12:30 p.m., and the meeting was reconvened at approximately 12:42 p.m.

Ms. La Costa: I am reconvening the Maui Planning Commission meeting. So, all of the Commissioners have received the Munekiyo Hiraga proposed new quarry site that has to do with drainage and runoff. So, Commissioner Freitas as you were the one who posed the initial question, do you have further questions based upon what you have read? And the engineer is here for questions also.

Mr. Freitas: Would that be Mr. Tanaka.

Ms. La Costa: That's correct.

Mr. Freitas: Okay, Chair can I ask Mr. Tanaka just a couple of questions?

Ms. La Costa: Okay, Mr. Tanaka would you please introduce yourself and promise to tell the truth and then I will have Commissioner Freitas ask you questions.

Mr. Kirk Tanaka: First of all, I do, and hi everybody, my name is Kirk Tanaka with Tanaka Engineers. We're the civil consultants for Hawaiian Cement.

Ms. La Costa: And you promise to be truthful?

Mr. Tanaka: Yes, I do.

Ms. La Costa: Thank you. Commissioner Freitas go ahead please.

Mr. Tanaka: Thank you for coming on and answering a few questions. The pictures really helped make some sense of it. But I do have some questions. It does say that there's gonna be a berm being built along side the gulch or the stream diverting water further downslope into a basin. What is the, what is the makeup of that berm? What are you building that berm with?

Mr. Tanaka: Okay, I'm sorry first of all, we're not proposing to construct a berm. There is a existing berm along the, along the stream, and what that does is that diverts water. In most places it diverts water from getting directly into the stream from the fallow cane field in this area. And so, what happens is there...the water eventually gets into the stream further downstream I believe. When, when HC&S would cultivate this field, there were very good at diverting runoff and keeping runoff on their property. They fallowed a field...oh, excuse me, they plow the field parallel with

the contours and so that that really helps with the drainage with existing runoff from storms. So, they were very good stewards of the land. But now, since the fields are fallow, the existing diversions still exist, yeah. They haven't plowed it flat, nobody plowed it flat, so there are some diversion berms and there are still those plow, those plow lines that run parallel with the contour which tends to hold the runoff, but we're not proposing to build a berm, we're proposing to quarry on the side of, on the side of the gulch such that we're far enough away where we don't affect the flow, the flow within the gulch. I don't know, does that answer your question?

Mr. Freitas: Yes, thank you. The basin that the water is led to, is that existing or are you folks building that basin.

Mr. Tanaka: It's proposed to be built and because as you, as you probably know, there is no, there is no grading permit involved, yeah. This is all, this falls under the, under the U.S. Mines jurisdiction. So, what happens is, the general idea of the drainage within this quarry is that what they'll, they'll dig a small basin in the low corner of the, of the quarry so that the water can sheet flow into the low spot basically within the quarry. And it percolates or erodes, not erodes, I'm sorry, it percolates or evaporates, and doesn't affect anything around the area.

Mr. Freitas: In the report it also says, that sediment will be in the water going into the basin and that basin will help with the sediment not...because that basin feeds into the gulch if it goes over, and it says that good water will be going and the sediment will not go into the gulch how is that possible.

Mr. Tanaka: Okay, okay, no...the general concept is that when they quarry, when they quarry this 45 acres they basically digging a hole within the existing fallow cane field, mining the rock, okay, and as they mine the rock and as they go further down, that takes the, that takes the level of the quarry, the bottom level of the quarry further and further down, okay, which creates basically a hole in the ground, okay. Within this hole, at the low spot when it rains hard, the low spot will create this basin, and the water has no way of getting out of this, this basin, no way of getting water getting out of the hole. It will never, it will never, you will never get water that falls into the quarry site get into the gulch from the quarry site because there's no way for that water to get up. I mean, basically, basically the quarry is lower on the adjacent, on the adjacent north side of the gulch. And the water will not, any runoff that, that forms within the quarry site will not be able to get into the gulch. And what happens is, it's a drainage basin, so it's a basin that will ultimately desilt the water, and either the water will either percolate or evaporate.

Mr. Freitas: Okay, because in the report it says that the water goes back into the, it goes back into the gulch.

Mr. Tanaka: Not, not the water within the quarry. The water, the runoff, the existing runoff mauka of the quarry site will eventually, will somehow find its way into the, into the gulch 'cause that's what it does now. But in the quarrying operations, what we're proposing to do is, you know,

basically dig a hole in the ground, and put in a diversion swale on the upper part on the mauka side of this quarry, so that...to divert any water from, from flowing from a flowing from the fallow cane field into the quarry, but no, no runoff, no rain falling into the quarry will find its way into the gulch.

Mr. Freitas: Okay. I reread that paragraph and you explained three different drainage and I see it now. One was it leads in, but when you dig the hole down that's another one, and then the fallow lands is going in diversionary ditches that were already created long time ago. So, you've answered all my questions. I thank you Mr. Tanaka.

Mr. Tanaka: Okay, thank you, Commissioner Freitas. I'm available for any other questions if any other Commissioners have, have questions.

Ms. La Costa: Thank you, Mr. Tanaka. Commissioner Thayer.

Ms. Thayer: Thank you, Chair. Mr. Tanaka, I do have a follow up question from what you guys just discussed right now. The Department of Public Works comment letter has a question about the sediment that's collected in the retention basins and I want to make sure if I'm understanding what you said correctly is that like the basins are deep enough that whatever sediment settles in there is gonna just stay in there?

Mr. Tanaka: Yes. It...you'll get the sediment, you'll see the sediment when the storm runoff evaporates or percolates into the ground. So, it has no way of getting into the, directly into the gulch.

Ms. Thayer: Okay, and I do have another question on the report, but I don't know if it's you or someone else that would answer it and one of the paragraphs in the report says that, sorry...oh, when quarrying is completed, the exposed areas will be backfilled with soil and then replanted, and I'm curious about the replanting 'cause it sounds like it's all fallow land, so what would be replanted with?

Mr. Tanaka: Generally, generally it's stabilized, it's stabilized with grass. It might be, it might be...you might want to direct your question to the...to the applicant, but I mean, yeah, generally what it is, it's a whole 'cause after you quarry there's a big hole and my understanding is that the negotiation between the landowner and Hawaiian Cement is that they go ahead and backfill two feet of soil and stabilize the ground within this hole. Yeah, I'm not exactly sure, you know, what the current, what the current negotiation is between Hawaiian Cement and the new landowner.

Ms. Thayer: Okay, thank you. I can direct my question to them when it's time or we're doing questioning later Chair.

Ms. La Costa: Further questions Commissioner Thayer.

Ms. Thayer: Okay, I guess my question is now for the applicants then on...I kind of relate it to this, like what will the areas be replanted with and have agricultural operations resumed in the remediated areas that are not being quarried anymore. I'm just curious what happens in actuality once all these areas are done being quarried.

Ms. La Costa: Go ahead please.

Ms. Fukuda: Chair, Karlynn Fukuda, Munekiyo Hiraga. So, in speaking with the applicant, the area is back filled with the two feet of soil as Mr. Tanaka had noted. As far as replanting goes, you know, it's there's not a formal requirement from the landowner as far as I understand, in the agreement between Hawaiian Cement and A&B and the area is turned over to, you know, the landowner once quarrying is complete. So, you know, Hawaiian Cement doesn't have control over the lands once they are returned back to the to the landowner. So, at this point, I think to Commissioner Thayer's question about, you know, what whether there's actually any agriculture occurring in the area right now that has been remediated to Hawaiian Cement's knowledge there hasn't been, but they have returned, you know, those lands, those leased lands back to the landowner. So, they don't have control necessarily over what happens.

Ms. Thayer: Thank you. So, just to make sure I'm understanding correctly, like the old sites like the original 46 acres, the 60 acres, the 24 acres, since those are done being quarried, those have been turned back over the landowner is what you're saying, right?

Ms. Fukuda: That's correct.

Ms. Thayer: Okay, thank you.

Ms. La Costa: Commissioner Freitas.

Mr. Freitas: I'm not sure if this is for Mr. Tanaka or the applicant. In the report, it says that generally they go down 20 feet, but I only hear of two feet of backfill. Will there be something underneath the two feet, and what is that?

Mr. Tanaka: Do you want me to...Karlynn, do you want me to try to address this?

Ms. La Costa: Yes, please. Thank you, Mr. Tanaka.

Mr. Tanaka: Okay. Commissioner Freitas. My understanding is, and this is basically a quarry, so, what Hawaiian Cement does is they excavate rock out of the quarry, and take it out of the quarry to sell, yeah, for aggregate needs of Maui County. At the point at which...my understanding is at the point at which they hit...they've exhausted the good rock in the quarry, what they do is they leave...so, then they stop mining and at that point, they...then they overlay

the two feet of top soil onto the areas that mined, so basically as with all of the other existing quarry sites that have been quarried, there's a whole in the ground that's left. Does that answer your question?

Mr. Freitas: Yes. Mr. Tanaka, isn't it the rule that the land is brought back to the way before it was mined? And in that sense, I would say the level also should be brought back to the level of the ground. A grade should be brought back. So, they're going to just dig a hole and leave a big hole in the middle of the field?

Mr. Tanaka: That's what is, that's what is currently happening all over. Even, even at the, yeah, I mean, that's basically, that's basically what's left. They quarry the rock out, they sell it for the construction, they sell it to the contractors to build roads, build houses and the ground is left, yeah, as a quarry.

Mr. Freitas: So, Mr. Tanaka, you're saying that the other, the other acres that were mined and was done the same way with only two feet, you must have one real low point nearby.

Mr. Tanaka: You have you have an expanding, expanding area that is lower than the existing fallow cane fields, yes. And, and as far as that's concerned, I don't know of any ordinance or any requirement from the Bureau of Mines that requires that the ground be brought back to the existing grade. Yeah, I mean, in that case, no I don't, I don't believe that there is an existing ordinance that requires that.

Mr. Freitas: Okay.

Mr. Tanaka: As you may know, when they quarry in Hawaiian Cement's competitor, Ameron or HC&D, that land is used for a landfill. Yeah, the sanitary landfill is, is...the County use it as a landfill.

Mr. Freitas: Okay, thanks. One last question Chair for the Director.

Ms. La Costa: Go ahead please.

Mr. Freitas: Is she with us?

Ms. La Costa: Ms. Cua is, is taking her place today...Oh, there's the Director.

Mr. Freitas: In a application a few years ago near Olowalu and they did similar work, they were required to bring the land back to the original and there was some verbiage in there and was that a maybe, an amendment or a recommendation before approval that they had to do that is that why they had to and these guys don't have to follow that rule?

Ms. McLean: There have been projects in the past where whether it was a Department recommendation or Commission added that the property shall be restored to its prior condition at the conclusion of the project or the conclusion of the operation. I do know that in some cases with quarries, there are other uses of the area once the project is finished, so restoring the property to its prior condition isn't always the best thing to happen. It might be worth getting feedback from the operator like, for example, the quarrying that's near the landfill site is often used for landfill expansion. So, I don't know if there's any thoughts as to what might happen with the site when the operations conclude. But it would be worth finding out. Otherwise, a condition to restore the property to its prior condition that could be something that the commission adds.

Mr. Freitas: Could it, just throwing it out there, could it be a condition to restore it back to the way it was unless they have a plan moving forward after their, their time or after they're quarry. Is that possible?

Ms. McLean: Yep.

Mr. Freitas: Okay.

Ms. McLean: Yep.

Mr. Freitas: Thank you.

Ms. McLean: You're welcome.

Ms. La Costa: Commissioners, other questions or comments? Commissioner Thayer go ahead please.

Ms. Thayer: Thank you, Chair. Kinda speaking towards Commissioner Freitas' question in the application it said that this will, like this expansion would enable the quarry to operate for another 30 years, I believe. I'm curious what is the plans for after that point? Like what happens to all this area once it's all been, once the quarrying, once...yeah, once all the quarrying that can take place has taken place. What is the plan for after? And I'm thinking about this to one of the comment letters of testimony that was submitted called this a sustainable solution. So, I'm curious about the sustainability overtime beyond the 30 years.

Ms. La Costa: Ms. Fukuda.

Ms. Fukuda: Chair, Karlynn Fukuda. So, as I mentioned earlier, Hawaiian Cement leases this land A&B, so they don't actually own the property and they are, you know, required to return the property to A&B once they're done with the quarrying. So, at this point, you know, Hawaiian Cement has no future plans for the site. It would be up to the landowner to decide, you know

what, if any, uses they might have in the future. So, it would be, you know, I don't think Hawaiian Cement could commit the landowner to, you know, any type of future uses for the property.

Ms. La Costa: Thank you. Does that answer your question, Commissioner?

Ms. Thayer: Sure. Thank you.

Ms. La Costa: Thank you. Commissioner Pali.

Ms. Pali: Thank you. Thank you for that. I do hear you when you say, the, Hawaiian Cement could not commit any uses on behalf of the landowner, but I suspect that they're doing this for a living and they've already done several. What would be some examples that the landowner would have available to them for uses of that land? I did appreciate Kurt saying that the other company does their mining, and now we use that as a landfill. I think Commissioner Thayer's concern, as is mine, is that is there other uses for this land? Because what we I feel like we all might be feeling right now is if you're taking the structure out of this area, can buildings be built later? Can there be residential homes? Can there be other uses? Or do we render those lands unusable? And I think that's my biggest fear right now. So, without committing to what the land owner would do, do you have a professional on staff that can give us an answer in general what other uses would these kind of lands be able to be used for.

Ms. Fukuda: I think...thank you, Commissioner Pali, for that question. And I think one thing to understand is that the lands are designated agricultural, I mean, that's why we're before you today to get the Special Use Permit amendments. And so, any of those other types of uses would need to come before the Planning Commission and the Land Use Commission to get either a district boundary amendment or a—

Ms. Pali: I'm sorry to interrupt, but I think you're veering off. I think my...we know that, thank you. That's not my question.

Ms. Fukuda: Yeah.

Ms. Pali: Is there a list of other uses for this type of activity after the land returned back to landowner that's my specific question.

Ms. Fukuda: So, I don't know about a list necessarily, but I do know that, you know, as Mr. Tanaka shared, there is the landfill example that's currently being practiced. And I imagine that's not just on Maui, but, you know, throughout the state. I know that at one point there was maybe comments made about a new public safety facility in an area like the quarry. I don't know that that's actually come to fruition at all or where that stands, but it would seem that there could be other industrial uses like that that would need to seek approvals in order to actually happen.

Ms. Pali: Yes, we as an approving body, we are very aware of approvals. I just want to make sure we're not ruling out or there might be more information that we don't know of that maybe the land would be rendered unusable. We are very aware of agricultural uses and, and all that, but we're talking specifically about a property now that has been mined for rock and that has been removed from the area, which changes the dynamic of the landscape. So, thank you for that. I don't think I have any other questions, but I just wanted to tease that out. Thank you, Chair.

Ms. La Costa: Thank you, Commissioner Pali. Are there any other comments? Commissioner Lindsey.

Ms. Lindsey: I noticed in the report every tenish years they come back for an expansion, an expansion, an expansion. Is there anticipation of an additional expansion after...it's like the first one, after four years 46 acres, second one, 60 acres, ten years, 66 acres, eight years, this expansion will last...add 14 years, and then is there more after that or this site will be completely empty of whatever you are mining?

Ms. Fukuda: Let me see, I was just going to look for the figure that's in the report that might be best. So, if you take a look at Exhibit 7 in the staff report, you see the red outline and that shows the boundaries of Hawaiian Cement's lease area with A&B. So, to Commissioner Lindsey's question, yes, there would be future areas anticipated to come back before the Planning Commission for amendments, you know, to allow for the quarrying as well. The entire lease area, I want to say is about 350 acres? Oh, okay, I'm sorry, about 320 acres, and so, you can see from the Exhibit 7, the area across, and I hope I pronounce this right, Polaloa gulch is not been permitted yet, but it is within the quarry's or Hawaiian Cement's lease area with A&B. So, in future, it would be anticipated that there would be a request and, you know, the 14-year life, I mean, that's a best guesstimate based on the area that's being proposed for the quarry, but it also depends on demand. So, you know, if we have a recession come like 2008, and projects stop or don't move forward, the quarry may last longer. If for some reason you know, there is a ramp up in demand for base course materials, you know, it may be shorter than 14 years, but it's their best guesstimate, you know, on current demand on the area that they have available or that they're requesting, you know, for quarrying purposes.

Ms. Lindsey: I was kind of going over that historically, what happened on Maui through those time periods and the largest consumption was the building of Wailea area in time when those were all permitted and Wailea was built, they required most of the aggregate rock products that you guys have, which kind of accelerated the timeline, and then you could see it kind of slow down with more years, and then it went from ten years to eight years. Anyway, thank you for adding that on here. I think my main concern is that it's our finite resource that Maui has, and it can...once it's gone, it can never be replaced. Once it is a driveway, it is not going to become a rock again, you know. You know, we saw what happened to the sand mining that that happened in the past, and this is the other half of it. This is the rock and the Cement...the rock and the sand makes the Cement that everybody needs to build most of those things. And I just don't want to

go down that same road that the sand went down. But it is important for our economy. All of this, you know, expansion, fixing what we have, what we need, so just looking for that balance here. Thank you.

Ms. La Costa: Thank you, Commissioner Lindsey. Any further comments? Commissioner Pali.

Ms. Pali: Last one. Has Hawaiian Cement always mined here locally or have they ever brought in rock from outside sources?

Ms. Fukuda: I'll answer the first part of the question, and then, you know, I can defer to Dave Gomes as, as far as importing. But so, this Puunene quarry has existed for 30 years, as we noted from the permit. You may recall, I believe it was many of these...many members of this commission who reviewed the Pohakea quarry request. So, Hawaiian Cement has two quarries here on Maui. So, you know, at least for 30 years, they've, they've operated here and provided materials. But to your question on whether they've ever imported material from off island for their...sorry, for their, their customers, I don't...I'll defer to Dave Gomes.

Mr. Gomes: My name is Dave Gomes, General Manager, back again. For the 23 years that I've been here, we have not imported aggregate. This...we do have two quarries on island. This particular quarry, the aggregate source is such the quality is, is really designed for concrete and asphalt manufacturing. We do use it for base course and other applications as well. Our other quarry is more suited for that base environment. However, saying that, does that mean that we will never import aggregates in the future? We're seeing a demand in the construction industry, not so much in the Island of Maui or the County of Maui, more on Oahu and the types of concrete that they're asking for, that our local aggregates statewide is having a hard time meeting those needs. So, there may be some sand has been brought into the island, imported. Hawaiian Cement has not brought in sand, but the horizon is there. If I may, I just want to go back a little bit and kind of maybe clarify a little bit about the land, and is this going to be something that we're going to lose and not out there? The reason we have a requirement to put back two feet of soil back because that's traditionally in the area that we're in the burden above the rock, the dirt, the soil above the rock ranges anywhere from a foot to three to four foot. That's what sugarcane grew on for many and many hundreds of years, and the average was two feet. So, we're really removing that dirt, putting it on the side. We're not allowed to sell it, and then we're putting it right back in so it can be replanted. And whatever the designation was, A, B or E. So, it just goes right back to where it was. So, it would be a multi-layer agricultural use. But that's again A&B what they want to design and use it for. So...

Ms. Pali: Very helpful. Thank you so much.

Mr. Gomes: Thank you.

Ms. La Costa: Thank you, Mr. Gomes. Commissioner Lindsey.

Ms. Lindsey: A follow up on that question. So, the...one of the maps shows the quality of study. Are you saying that those...that property will go back to A and B grade and E grade that is in this specific area you're requesting a permit for?

Mr. Gomes: Commissioner, I'm not really qualified to answer that question. I can tell you that whatever the designation is and how they determine that for the most part, we because we might in certain areas at the time, whatever was, there would, would just go right back to where it was. So, I can make an assumption that if it was A, it would be A again, but...

Ms. Lindsey: You've answered a lot of my questions on your little speech there. Thank you.

Mr. Gomes: Thank you.

Ms. La Costa: Commissioners? Go ahead Commissioner Freitas.

Mr. Freitas: Thank you. I think my question is for Ms. Fukuda, on the applicant's side. We are right now working on designating areas that are high quality for agriculture and I believe that by looking at the proposed area more than half of the land area is of that, are of that quality, and are you folks aware that this is, this is gonna happen soon and maybe we should wait and see how that comes out before we decide on this project?

Ms. Fukuda: Chair, Karlynn Fukuda, Munekiyo Hiraga. So, Commissioner Freitas, I think you're referring to the important agricultural lands the IAL designation, is that correct?

Mr. Freitas: Yes.

Ms. Fukuda: So, yes, we are aware of that and actually A&B had already designated these lands as important agricultural lands. They had voluntarily gone through the process I don't know how many years ago, but they were the first ones to go through, through the process. So, as we noted in the application and you know, that's why we were following up with the State Department of Agriculture and Office of Planning and Sustainable Land Use on their comments regarding the use of these lands.

Mr. Freitas: Okay, I mean, if, if they're just going to have a big hole and put dirt in it, I think that the quality of that land will go down the tubes. So, kind of sad to hear that. Okay, thank you.

Ms. La Costa: Thank you, Commissioner. Anyone else? Okay, I do have a question. On the Analysis, Page 9, under Number 2, it says, the desired use would not adversely affect surrounding property. And then the analysis goes on to say the desired use is not anticipated to adversely affect surrounding property, which is currently used as part of the quarry operations and fallow agricultural lands owned by A&B. As previously noted, as part of its lease agreement with A&B,

Hawaiian Cement is required to restore lands to agricultural productivity following completion of quarrying areas. Hawaiian Cement is in compliance with this provision for areas where quarrying has been completed. So, I'd like to know what crops are growing on this agricultural land according to Number 2.

Ms. Fukuda: Thank you, Chair. As I think maybe, there was another commissioner who asked the question, maybe Commissioner Thayer about what's growing right now and in practical purposes there is, you know, the land again, Hawaiian Cement has returned the land to the landowner and so there is not necessarily a crop growing there as far as they're aware of, but again, they don't have control over the lands once they've been returned.

Ms. La Costa: But it says here that your lease says that you will return the lands to agricultural. It says right here in Number 2, and that's why I'm asking the question. You said previously that it's not your kuleana because it would be returned A&B, but specifically it says that part of the lease is that you are required to restore the lands to agricultural productivity. So, I want to know what Hawaiian Cement is doing for that aspect of the lease and under Condition Number 2.

Ms. Fukuda: So, according to the lease requirements, and you know, Dave if, Mr. Gomes has anything else to add to it, but the restoration plan that Hawaiian Cement is required to follow by the landowner is to provide the two feet of soil back filled onto the property, and that's the return of the of the property. So, in theory, you know, because there's now soil restored on the, on the area that has been quarried, the land could be used for agricultural purposes. But again, that's, you know, not a requirement that...I don't believe the A&B lease agreement requires Hawaiian Cement to do any planting to, you know, have any crops on there once they're done quarrying the property. But...okay, I've gotten confirmation that that's not a requirement.

Ms. La Costa: Okay, well then that's contradictory to what the analysis states because it says is required to restore lands to agriculture productivity. That doesn't say grass, it doesn't say two feet of top soil. So, in my interpretation, then there should be some crops or something done according to this analysis unless the analysis response was incorrect. Thank you. I beg your pardon, Mr. Fasi, I did not see you. Go ahead, please.

Mr. Fasi: Thank you. If you go to Exhibit 15, that is the reclamation plan that is required, Exhibit 15.

Ms. La Costa: Fifteen, thank you. So there appears to be a conflict in the documents because the analysis is different from what I just read and what has been reported here. So, I need some clarity on that, please as far as the lease, if you are supposed to restore it and if you are, then that needs to be done according to the analysis or if Exhibit 15 takes precedence over this, and perhaps that's in Mr. Hopper question.

Mr. Hopper: Whatever the actual answer is, you should have the staff report if it's not correct change to reflect that, but you need to have the correct facts on the record in the document stated before you.

Ms. La Costa: Thank you Mr. Hopper. So, having that response from Mr. Hopper, then I need to find out if the analysis quoting what the lease says that you need to restore it to agriculture productivity is in line with the two feet, and I understand you're supposed to put two feet back there, but that's not what Number 2 says on Page 9. So, I need some clarification, please, that whether or not Hawaiian Cement is going to return it pursuant to the lease or if the lease has been misstated on this. Thank you.

Ms. Fukuda: And Chair, you know, I don't think there was any intent to mislead, but I think in terms of agricultural productivity, it may be a matter of definition or, or how one defines what is agricultural productivity. But to your question, Hawaiian Cement would be required to follow the terms of the reclamation plan that's included as Exhibit 15, and so as such, it may be where the Planning Department would need to revise the analysis on Page 9 to maybe further clarify that the applicant is required to follow the reclamation plan approved by the landowner or potential agricultural use, or something that may be better suited in terms of providing clarity of what's allowed.

Ms. La Costa: Was the lease provided to the Planning Department or how did they, how did they get this interpretation, if you will, because it sounds like it's not what it actually says.

Ms. Fukuda: So, the approved restoration plan, which is here as Exhibit 15, was included as Appendix D in the application, and we did see that. I'm just again, I have this thing about things matching and things lining up, and no conflicts when it comes to passing and approving or disapproving applications. And this clearly is in conflict with what you were saying or your interpretation versus what is there. So, I guess my bottom line is, is the lease verbiage that you will turn it to agricultural productivity or is that an interpretation by the Planning Department that has to be restated so that this can be correct? Ms. Cua has a comment. Go ahead please.

Ms. Cua: I think maybe where part of the confusion, if you look on Page 16, where the drainage is discussed. I'm sure we...if you look at the paragraph on Page 16 labeled potential impacts and mitigative measures. On the one, two, fourth sentence down, so I think this might be where we got some of our information from, and I believe this came out of the application, when quarrying is completed on each increment, the exposed areas will be back filled with two feet of topsoil and replanted. So, I think we pulled that from the project application and probably how we could have drawn that conclusion under Page 9.

Ms. La Costa: So, Mr. Fasi, did you do the analysis of this and if so, from where did you get the conclusion.

Mr. Fasi: Yes, that is correct. The deputy...Ann Cua is correct in how I got that to that. It may be a wording misinterpretation, but as Dave Gomes said, you know replanting could be grass which is probably the closest to what it was originally. And as far as agricultural activity, I mean, you could have cattle or goats grazing in a pasture and that is considered agricultural activity, it doesn't necessarily have to be, have to be crops, it can be animal husbandry which is considered agricultural activity.

Ms. La Costa: Okay, so you did not review the lease with A&B and this is just a misinterpretation of what you thought?

Mr. Fasi: Yes ma'am.

Ms. La Costa: Is it? Okay. Yeah, I just like things to line up. Okay, so in the analysis does this have to be changed before it's moved forward, it has to be restated.

Mr. Hopper: Well, it should be factually correct certainly. If the lease agreement is not a document of record, then I don't know why you'd be referencing it. If there's a restoration plan that's part of the record, and on Page 16 that statement is correct, again, verify all this with the applicant please, and the application, but if it's correct that the areas will be backfilled with two feet of top soil and replanted. You could just change that in the analysis to say as previously noted, Hawaiian Cement is required to backfill in at least two feet and replant the area as following completion of quarrying areas. If that's required. Is that required? I would want that clarified.

Ms. La Costa: That is required, yes.

Mr. Hopper: Okay, so, you would probably want to state what they are actually going to do if that's what they're going to do and you want that on record, you know, depends on your analysis. This analysis was done by the Planning Department. They noted, this is part of will it adversely affects surrounding property? If you believe the fact they're going to be backfilling two feet and replanting the land is something that's going to show it doesn't adversely affect surrounding properties, then you can change that, that note in there, because what you'll be doing, is adopting the staff report and sending it on to the Land Use Commission, and they're going to look at that record as well, and they might have that question. So, if you want to change that language in there and say we're going to adopt it, but with this change, to the report, I think you can do that.

Ms. La Costa: Go ahead Ms. Cua.

Ms. Cua: I have a comment about Page 9, and, and I think...it may be wordsmithing, but you know, you have on Page 9 where it talks about that Hawaiian Cement is required to restore lands to agricultural productivity, which Paul mentioned could be, you know, that could be interpreted if they put the two feet of soil back and A&B decided to or, you know, together with Hawaiian Cement, whoever decided to put any cattle on there, that's agricultural productivity. So, the only

place that really talks about planting is when we get, when we reflected, when the Department reflected what is what was in the drainage report, which says the exposed areas will be backfilled with two feet of topsoil and replanted. So, I think, you know, I think Page 9 could, could still actually be correct if, if they're saying they're not, they're not planting by putting the two feet of soil, it could still lend itself to agricultural productivity, just maybe not crops. So, I think again, there's still that this item in the drainage report that talked about the replanting that's...got that from the drainage report, and I don't know the outcome of that.

Ms. La Costa: Thank you, Ms. Cua.

Mr. Hopper: If they're before you saying they're not going to restore it to agricultural productivity necessarily or that's not their responsibility, then I don't know if that should be in there, if that's just not something they're required to do. I think the applicant said we're not required to do that. And if that's correct, that's fine. I think that's an important fact for you to know. It sounds like they'll put it, they'll replant the area. If that's what they're going to do, then you could say they're going to replant the area. But that doesn't necessarily mean it's going to be...A, that they are going to be responsible for putting it back into agricultural productivity in any way. They're not going to have to put cattle on there, for example. So, you know, just to have that there, and you can certainly continue on the issue of what's going to happen with the land after the after the use is done. I think that is a relevant issue, something the Land Use Commission may also choose to to question them about.

Ms. La Costa: So, let me get some clarification then on that. Is there going to be and perhaps this is a Mr. Gomes question, is there going to be replanting or any kind of reparation, according to both the drainage report and to the analysis, Mr. Gomes? Thank you.

Mr. Gomes: Dave Gomes again. The answer is Hawaiian Cement going to replant crops? No, we're not in, we're not in that business. And for me to speak on behalf of the landowner is also not a position that I'm...I should take or willing to take. I don't know that. When I'm hearing the discussion, I guess in my mind, in its simplest form, I'm looking at semantics. Our job is to make sure that that land is given back so that they can, you know, that productivity that, that I hear is we need to make sure we put the soil that was there first so that it's able to be productive in whether whatever use that they decide to use before the station is shut down. We were always in whether...whatever use that they decide to use. Before the HC&S shutdown, we were always in working conjunction, so when we take over a piece of property from A&B there was nothing on it. The sugar cane was already harvested, moved out were fallow land. That's a two-year process typically that we would be in advance of and working with them. So, for clarity, we're not in the farming or agricultural business. We will remove the soil, take the rock, put the soil back where it was so that someone at some time can come in and do whatever the landowner practical use would be.

Ms. La Costa: And I wasn't professing that you come in and farm. I just wanted to be sure that you were going to be in line with what has been suggested on the drainage report. And I guess I'm just still kind of stuck on the lease agreement, and it seems to be in conflict. But if, if I am incorrect in that and it doesn't necessarily mean to plant things, it would be to put it back and then put grass seed or something like that. But if that's something you are not going to be doing, then we'll take then consideration, so, thank you.

Mr. Gomes: You're welcome.

Mr. Hopper: I mean, if you, if you think that, that, that, paragraph on Page 9, saying that they will restore lands to agricultural productivity, which you've just heard is not...they're not necessarily going to do that, but they're going to replant the area by replacing the...putting the two feet of soil on it, and as stated, then I think you can note that here and maybe have that, have that amended to, to clarify that, that they're not going to be putting it back into agricultural productivity, that they're going to be restoring it as stated, you know, before you. I think that that's significant for you to, you know, have that clear on the record. I think that that's important.

Ms. La Costa: Commissioner Pali, and then I'll get you Commissioner.

Ms. Pali: Thank you. I think I'm...if I can have Mr. Gomes back up. So, you're going to put the two feet of swale back, but are you going to also plant that grass or are you saying you're not going to plant that grass. I don't think I got clarity on that.

Mr. Gomes: As of right now, we don't have that as a condition on either our permit or our lease document with A&B.

Ms. Pali: I think your guy Kirk though may have in his representation to us might have mentioned that.

Mr. Gomes: Yes, and I think –

Ms. Pali: ...(inaudible)...mentioned in this, so I did just want to...we want to correct the record 'cause we wouldn't want to approve something that you're not planning to do. So, I just want to be very clear that no matter what presentations we've heard up until this moment, right now, you're not required to plant any kind of grass or anything after you put the two feet of soil back in. That just the only clarifying question I have.

Mr. Gomes: Yes, I...yes. And I think we're...what Kirk was representing is that, you know, we do have an obligation to stabilize that soil and a lot of your documents is, you know, planting grass, gravel or something else of that nature. So, that's maybe where that is.

Ms. Pali: But you're saying you could use any other means it doesn't have to be by planting grass?

Mr. Gomes: That's correct.

Ms. Pali: So, it's possible that you do still have to stabilize it with something you just haven't gotten there yet.

Mr. Gomes: When the...

Ms. Pali: You haven't made that decision.

Mr. Gomes: Because we're in the low area lands and we're not on a slope that's greater than what we put back and how we put it back is already stabilized.

Ms. Pali: Okay, so we do need to clean this up a little. Yeah, thank you.

Ms. La Costa: Mr. Tanaka, do you have anything to add to that?

Mr. Tanaka: Yes, thank you Madam Chair. Dave is...Mr. Gomes is right. Normally when you put back soil, you stabilize it in some, in some way. You don't, you don't, you don't just, you don't just throw soil on the ground, and you know, so soil erosion from, from storm runoff is not going to be a concern. But, but dust could be a concern. So, yeah, typically stabilization, if you're not going to build anything on it, it consists of grassing or graveling in it, you know, to, to take care of the, you know, the wind erosion component as a permanent stabilization means. And that's what we meant in the drainage report.

Ms. La Costa: Thank you. Commissioner Pali, does that answer your question?

Ms. Pali: Yeah, well just cleans 'cause now we've got to do some language changing on 16 since it says something a little different about planting grass. I just want to be...partner with you in cleaning this up. And then I just wonder Commissioners, do we want to know how they're going to stabilize it, I don't know. 'Cause if we want to know, that could be a good question or a condition. Chair, I think I'm done and I can turn it over to Commissioner Thayer if you would allow that.

Ms. La Costa: Commissioner Thayer, go ahead please.

Ms. Thayer: Thank you—

Ms. La Costa: Oh, excuse me, before that, Commissioner Freitas had his hand up before, so let me have him and then I'll come back to you. Commissioner Freitas.

Mr. Freitas: Thank you, Chair. Mr. Gomes, a question for you. How hard, how difficult, what would your challenges be if you were to fill up to the level that the grade that the land is now after quarry?

Mr. Gomes: Thank you, Commissioner. It would be impossible. We could not do that. We're extracting 20 to 27 feet of ground so we would not have anything to put back in its place.

Mr. Freitas: Okay. Unless something like the landfill is arranged down the road. Okay, thank you, Chair.

Ms. La Costa: Thank you. Commissioner Thayer.

Ms. Thayer: Thank you. Yeah, to kind of build upon what Commissioner Pali was just talking about. Is, yes, I think the dust, the bare grounds is a concern, one. And then I think two, what it is...if it is replanted to stabilize the dust, I think that is also something we should look at considering that we're in like super dry times and there is brush fires all the time. So, to plant something that's like fire prone I think would be a little bit dangerous to do. But to strike a balance between like making use of this resource that we have on island while not like cutting off our foot in the process to put it crudely. And I don't know if I have a question there, I'm still trying to formulate my thoughts around this whole thing, but I'll figure out a question. Thank you for the time.

Ms. La Costa: Thank you, Commissioner. So, I'm going to go out on a limb here and ask a question about the replanting that is stated in both Page 16 and 9 is replanting whether it is grass or any kind of foliage. Is that something that Hawaiian Cement would consider to be able to be in line with what is in the analysis and on Page 16.

Ms. Fukuda: Chair, if I may, could I have a short recess to discuss with the applicant?

Ms. La Costa: You may. It is 20 to 2:00 right now. How long do you think?

Ms. Fukuda: Five minutes.

Ms. La Costa: Five minutes. Okay, we'll see everyone here at quarter to 2:00.

Ms. Fukuda: Thank you.

Ms. La Costa: Mahalo.

A recess was called at approximately 1:41 p.m., and the meeting was reconvened at approximately 1:50 p.m.

Ms. La Costa: We will reconvene the Maui Planning Commission meeting of May 24th. Ms. Fukuda, go ahead please.

Ms. Fukuda: Thank you, Chair. Thank you for the recess. So, in speaking with the applicant, it would be difficult to agree to regrassing or replanting primarily because the applicant doesn't have water to irrigate at this point. You know, the water that they do have, they use for...it's a brackish well that they use and they use that for, you know, their dust control and washed down areas. So, it would...I mean, that's the short answer is it would be difficult for the applicant, if not impossible. So, but...

Ms. La Costa: Okay, so, if that is the case, then on Page 15, then...16, excuse me, then the sentence that has...the fourth sentence down, that has the exposed areas will be backfilled with two feet of topsoil and replanted, the "and replanted" should be stricken. Is that correct?

Ms. Fukuda: That would be correct. And I think in terms of stabilization, you know what the applicant could do is to, as Mr. Tanaka mentioned earlier, is to put gravel, you know, to help with dust control. But, you know, the, the concern too is then, you know, if you start putting the gravel on the dirt, then you know, does that affect the, the use of the of the dirt? So, but that's again, because water is a concern that the use of gravel to stabilize the soil is maybe a better option at this point.

Ms. La Costa: Okay, so we'll put, and...does, "and stabilized" work? And then the method of stabilization is up to the applicant? Okay, so we'll change that wording on there. My...the drainage report or excuse me, Exhibit 15, let me go back to that one. So, on the restoration page or plan, rather, under Exhibit C, we can tell that this is an older version, so Number 1...I'll wait till you get that. Exhibit 15 correct. Do you have that? Okay, so the objective says to reclaim for sugarcane cultivation, in all areas quarried under subject licensees. So, I'm thinking that that should be stricken from the exhibit?

Ms. Fukuda: So, it could be. This is an exhibit from the lease agreement. So, Hawaiian Cement, I guess, could discuss that with A & B to update this reclamation plan.

Ms. La Costa: Okay, so this is part of the lease agreement, okay. I was not aware that it was part of it. Commissioner Pali go ahead please.

Ms. Pali: Yeah, so since it is...understood it to be part of your lease agreement, and it sounds like the lease agreement itself is not part of the record, but there's a section that is. And so, I'm wondering if it's even helpful for us to have this. You might decide to just strike the entire exhibit. But what we're trying to do is make sure that we have an accurate record of what you're asking and what you're promising to do. So, when we decide to make a decision, we don't have a lot of

conflicting information. So, we need your direction as to what your real purpose was for including it. And at this point now that we're starting to clean up language, is it even helpful at this point?

Ms. Fukuda: So, the purpose of providing the reclamation plan was to be able to demonstrate what exactly Hawaiian Cement was required to do by the landowner once they were done with quarrying. So, whether or not it's helpful, you know, I leave that to the commission to decide as to whether or not. Yeah.

Ms. Pali: Chair, one more question, may I?

Ms. La Costa: Go ahead.

Ms. Pali: But because this is an agreement that it looks like was used a long time ago in other lands specifically that's what I meant by helpful because although there might be some things in this that you would still continue to use for different lands, it's...there is no sugar cane cultivation going on in this particular property, so that's where the confusion lies for us.

Ms. Fukuda: Okay.

Ms. Pali: So, to clarify, if this was specifically agreed for this location, I can see it being applicable. But because this was something that's been done on other properties, in other locations, with other needs and other uses, it confuses us when we're...we're not dealing with those lands, we're dealing with this one.

Ms. Fukuda: Right. So, to...and Dave, Mr. Gomes can clarify if I'm not correct, but I believe that this reclamation plan, Exhibit C, came from the original lease agreement that Hawaiian Cement had with A & B back in 1992. So, it covers that whole 320 plus acres that Hawaiian Cement has the lease agreement for. So...

Mr. Hopper: Chair?

Ms. La Costa: Yes.

Mr. Hopper: ...(inaudible)...comment. I think the most important thing is what's being represented to the commission as far as what they're going to do with the land, this particular land after they're done. And if this is the representation you have that before you, that this is what they're going to do. You know, you can look at that if it's adequate or not condition as appropriate, if needed. But I think that's the most important thing is is, you know, confirm with them this is what they are going to do after that time is up, so you know what's going to happen to this land after even if it's older, if it's still an obligation and that's what they're saying to you, this is what we're going to do, then you'll know what's physically going to happen with the land after, if it's not what they're going to do any more then they would need to update that and provide you a

representation as to what they're going to do after the, after the quarrying is done which I think is a relevant question for the special permit.

Ms. La Costa: Thank you. So, having heard Mr. Hopper's information, are you going to be following the reclamation plan as stated in Exhibit 15?

Ms. Fukuda: I believe so. The requirements that Hawaiian Cement has if I'm not mistaken is, you know, essentially the specifications and methodology that they need to follow. You know, the objective is not necessarily I think related to Hawaiian Cement because that's the landowner's objective not, you know, Hawaiian Cement's objective, so...

Ms. La Costa: But that's not what this says. Again, this is...this says that this is what Hawaiian Cement will do and I want to have confirmation that Hawaiian Cement is going to be following the reclamation plan as presented to us as Exhibit 15 with the exception of the part about the sugar cane cultivation which is perhaps from where the productivity came on the analysis. But just, I just need a yes or no, whether it's you or Mr. Gomes that can say yes or no, I need to know that you're going to either follow this reclamation plan that you presented or you're going to change it or you're going to delete it altogether.

Mr. Fasi: Chair?

Ms. Fukuda: The answer is yes, Commissioner or Chair, sorry.

Ms. La Costa: Okay. 'Cause you're going to get questions like this from the Land Use Commission, so we might as well put you over the grill before they do, so to speak.

Ms. La Costa: I'm gonna go back to Page 9 again, with the analysis. So, it appears that the lease agreement has been misstated in here or misinterpreted. So, perhaps from the very first sentence should be kept and the rest of it should be stricken up to the word, quarrying areas, on Number 4. So, as previously noted through completion of quarrying areas. And then the last sentence, Hawaiian Cement is in compliance with this provision for areas where quarrying has been completed. I want confirmation, please, that you have indeed put the two feet backfill in areas where it has been completed, I want confirmation please, that you have indeed put the two feet backfill in areas where it has been completed and if so, we leave this and if not, we have to discuss that.

Ms. Fukuda: Yes, we have confirmation from the applicant that the areas that have been completed and restored have been returned to the for the landowner with the two feet of backfill.

Ms. La Costa: Perfect. Okay, then we will leave that last sentence, but we will strike the middle sentence from the analysis, and I will let Ms. Cua confirm that that is acceptable. I've just been corrected, thankfully, so we will be deleting everything in that paragraph after A & B. Great minds.

Okay, Commissioners, any other questions, comments, additional conditions that you'd like to see on. As you can tell, all of us are concerned about the land here. I mean, that's one of our responsibilities that's where we're the planning commission is to make sure that our aina is taken care of. And when you say you're going to do something, you absolutely need to do it because we don't like it when people don't. So, having stated that, if there are no questions, Mr. Hopper, do you have any other comments, please?

Mr. Hopper: Just to assist with Staff if there's a motion, if there is a motion to approve at some point, we're, I think, going to be deleting existing Condition 6, as well as Condition...new proposed Condition 7 because I don't think that the expansion area, that's not normally something you put in a condition that's part of the application that's being represented. There's a map showing the area. You normally wouldn't have that in conditions, especially now 6 and 7 would look strange next to each other because are two different areas.

The other issue is that if it's for approval, just note that though this does have to go to the Land Use Commission, you're still approving it. You're not just recommending. So, we want to make clear on record if there is an approval that you're approving and adopting, you know, the staff report with as corrected, as well as deleting Conditions 6 and 7, and I guess renumbering those conditions as appropriate. And then, of course, if there's other conditions to add, you can look to add them, so sorry to be lengthy on that. I think this is essentially the same things, Michele said at the beginning of the meeting, but just wanted to restate them now since it's been a little while.

Ms. La Costa: Thank you, Mr. Hopper. I appreciate that. Ms. Cua.

Ms. Cua: Just one more addition. That Condition Number 8 that is shown on Page 19, that would become Condition Number 6. Okay.

Ms. La Costa: Comments, thoughts, input, output? Commissioner Pali go ahead.

Ms. Pali: Director Cua, what am supposed to...sit-in Director Cua, can you clarify because I need to see where all the other conditions are. On Page 17, it talks about the County Special Use Permit. It's going 1, 2, 3, ...(inaudible)...6, 7, 8 on top of 18, and then on 19, just out of the blue we just have 7 and 8, so can you help with that?

Ms. Cua: I can. So, on Page 17, well, yeah, all of Page 17, are conclusions of law. It first starts off with the State Land Use Commission Special Use Permit, and it talks...and it says, the project meets the standards for an unusual and reasonable use as follows, those are conclusions of law—

Ms. Pali: That's right.

Maui Planning Commission
Portion of Minutes – May 24, 2022
Item B.1
Page 37

Ms. Cua: --for the State Special Permit, and then on the bottom of Page 17, these are conclusions of law for the County Special Use Permit. So, these are not conditions. These are statements.

Ms. Pali: Okay, okay.

Ms. Cua: And then we get on to the recommendation, which is on Page 18 and 19.

Ms. Pali: Right.

Ms. Cua: So, the recommendation, first, we list the State Special Permit 92-380,

Ms. Pali: Okay.

Ms. Cua: Where we're saying the Planning Department is recommending that the Planning Commission approve the State Special Permit Boundary Amendment to increase the boundary by 45.4-acres. And then we're going...then we go down to the County Special Use Permit 2006-0002 where we're saying...we're recommending the Commission approve the following additional conditions for the County Special Use Permit, and I might need some help here, which exhibit is the original approval letter for the County Special Use Permit that had—

Ms. Pali: Okay, but Number 18 doesn't reference where you go to look for the original.

Ms. Cua: No, it does not.

Ms. Pali: So, I'm just saying it goes from like dot, dot and Number 7 and 8.

Ms. Cua: No, right, right.

Ms. Pali: So, like that's not helpful for me.

Ms. Cua: Okay, okay, I got it.

Ms. Pali: I'm not okay with that.

Ms. Cua: If you look at—

Ms. Pali: And it doesn't even say go here--

Ms. Cua: Right.

Ms. Pali: --for the first six.

Ms. Cua: So, if you look at the last page in the staff report, the last, the last letter in the staff report, there's a letter—

Ms. Pali: ...(inaudible)...

Ms. Cua: Yeah, I think that's the one.

Ms. Pali: June 18, 2014,

Ms. Cua: Right.

Ms. Pali: And it's got one two, three, four, five and six, so I found it.

Ms. Cua: Yeah, okay, so, that's the Condition Number 6 that we're saying, shouldn't be there because a condition shouldn't just make a statement about an area.

Ms. Pali: Oh, I'm not questioning what you're—

Ms. Cua: Okay.

Ms. Pali: I'm just like where are the first six, like I'm like where are the first six. We're talking about 7 and 8, but where are the first six. So, you've just help me find—

Ms. Cua: Oh, the first six.

Ms. Pali: --where the first six are.

Mr. Hopper: Yeah, so future staff report references it can be tough, but because normally you just have the conditions listed, right, and so, you didn't want to look like these are new conditions, but since you're Ramseyering here I think it would probably be good to have a list of the original conditions maybe here.

Ms. Pali: Well, especially if they're going to carry over.

Mr. Hopper: Yeah, well I mean, the State Land Use Commission condition has multiple condition...or permit has multiple conditions as well.

Ms. Pali: Right.

Mr. Hopper: There's no new conditions being added but there's...that information's provide I think in your report, but there's existing conditions on the state, state permit and the county permit, but

I think it's a really good point that in the future, the reports if you're amending should show the original conditions along with the amended ones that would make lots of sense.

Ms. Pali: So, now that I found them, can you now introduce the changes?

Ms. Cua: Absolutely. Okay, so—

Ms. Pali: So, you said, delete 6.

Ms. Cua: On Page 18, we were planning to...The report talks about adding Conditions 7 and 8, and we're saying cross out Condition 7.

Ms. Pali: Okay.

Ms. Cua: Because that is doing the same thing.

Ms. Pali: Duplicate.

Ms. Cua: That Condition 6 in the 2014 letter was doing.

Ms. Pali: Okay.

Ms. Cua: So, both of them should not be there.

Ms. Pali: Okay.

Ms. La Costa: But a different number.

Ms. Cua: Okay, but they still both should not be there. So, so that leaves you, that leaves us with a County Special Use Permit that has five conditions.

Ms. Pali: Got it.

Ms. Cua: Okay. So, condition Number 8 on Page 19 is now Number 6.

Ms. Pali: Got it. Thank you so much.

Ms. Cua: Are we good? Okay.

Ms. Pali: And Chair, I did find the acres under Page 18, SP 92-380, it does validate the acres there, so for me, I was okay with that.

Ms. La Costa: This shows 45 and this shows...(inaudible)...

Ms. Cua: That's a older area that's –

Mr. Hopper: ...(inaudible)...

Ms. Pali: Yeah.

Mr. Hopper: Which is another reason for confusion...(inaudible)...

Ms. Pali: Yeah.

Ms. Cua: Yeah. And Chair, if I could comment?

Ms. La Costa: Please.

Ms. Cua: Yes, I totally agree about the report that it would have been a lot easier and in the future we should list all the conditions and just, you know, reference which one we are deleting or adding, but definitely in the approval letter as you see in the last page, the June 14, 2014 letter we would include all the conditions so it would be a lot clear, but it was not clear in this report here, I agree.

Ms. Pali: So, if I may?

Ms. La Costa: Please.

Ms. Pali: I would like to encourage our staff planners to help a sister out, and I would like to encourage the applicants to please read this before you guys come up because we need your help too in catching these errors. You guys know these a lot better than us. Do you guys get a copy of what we're going to be reviewing at the time we meet with you?

Ms. Fukuda: Yes, the staff report is attached to the agenda when the agenda is distributed.

Ms. Pali: Okay. So, it would have been super helpful since this is your kuleana, like identifying all these missed, conflicting things. It's really helpful and I do want to put on record that Chair P Denise La Costa was super gracious and to physically going through all these things, but she didn't have to do that. We could have just postponed for whatever and let you guys clean it up and come back and it was very kind of her to allow this to happen today. So, thank you for that Chair.

Ms. La Costa: It's our duty to help the public and to hear these things. Otherwise it's going to be agendized down the road, so, that's why I made the exception, and I appreciate that you came back and did that for us. Commissioner Freitas, I see your hand up, please.

Mr. Freitas: Thank you. Chair. I know where we're moving, trying to play with words and try to make the puzzle fit. I just wanted to say that, you know, I kind of wanted to make a motion to defer all of this, and I can give the reasons why I'm not sure what the order is. But instead of going down all of this, I think they gotta, we gotta defer and they gotta come back with more information. I can share what my reasons are or do you want to make it as a motion?

Ms. La Costa: If I might please, let me call on Commissioner Thayer, she had her hand up and then I will come back to you for a motion. Thank you. Commissioner Thayer.

Ms. Thayer: Well, thank you, real fast, sorry I just wanted to speak to the improvements of the staff report and that about the exhibits it be super helpful if all the exhibits were referenced in the report itself, 'cause there's like there's Exhibit 1, Exhibit 6, Exhibit 9, but there's a lot more exhibits than what were actually referenced. And just for context, that would be super helpful when reviewing the report.

Ms. La Costa: Thank you. I concur. Anything? Commissioner Freitas, go ahead please.

Mr. Freitas: Thank you, Chair. I would like to have this deferred for two main reasons.

Ms. La Costa: Excuse me, before you do that, let's do that in discussion, so if you want to defer it please make that motion, let me have a second and then we can do it in discussion, okay, thank you. Go ahead make your motion please.

Mr. Freitas: I'd like to make a motion to defer this item until further information is provided.

Ms. La Costa: Thank you, do I have a second?

Ms. Lindsey: Second.

Ms. La Costa: Thank you Commissioner Lindsey. As the movant, please open discussion and go ahead.

Mr. Freitas: Thank you, Chair. Again, I have two reasons why. Number one, is the applicant not bringing back the land to the way that it is or even close to it. We're not even close to being 18 feet down, roughly. And the reason why that is a big issue for me, it's about values. Here's a, here's a business that is taking resources, yeah, and not pulling back, yeah. You're taking 80 percent, 100 percent, only put back 20 percent, you know. Our Hawaiian ancestors, they were real strong about understanding conservation and respecting things, and this is one example, and just because the other quarries didn't have that written in there that they need to put it back the way that it was or have a plan like we talked about the other quarry. They have a plan and there's no issues, they want to expand, good, you guys get one plan. This company, this applicant is not

even willing to figure a plan. So, what I'm trying to ask is let's defer until they can provide us with a plan to at least bring it to-- How the heck you going have a big hole right in Central Maui like that without even thinking to bring it back to at least grade?

The second is because of this land survey with the agriculture. You now have some A-grade in this proposed parcel, and that A grade by what I'm hearing, dig down 20 feet, put two feet back and you just ruined valuable agricultural land for produce so we can move forward, sustaining our island.

Those are the two reasons, the only two reasons why I feel if these two issues can be addressed, the one about the land survey is wait until the land survey is complete and maybe redo this around the A-B quality land. And for that reason, I think this should be deferred. Thank you.

Mr. Hopper: Chair?

Ms. La Costa: Thank you. Mr. Hopper.

Mr. Hopper: If there's other reasons, if other members have, if you do vote to defer, it would be helpful if other members had additional information or facts to bring forward that they could add that so that the applicant can provide them. I don't know if there will be other...others you want to defer, but if that happens, it's a good practice to let the applicant or the Department know what changes you would want to see before the next meeting or what additional information.

Ms. La Costa: Thank you, Mr. Hopper. Commissioners? Commissioner Lindsey.

Ms. Lindsey: I think in the future I would appreciate like sitting...when we get new information, 40 pages, I like to read it and then kind of go back to what I kind of didn't understand. And I don't feel like 20 minutes in the middle of our meeting that I felt like I prepared for was enough time to actually like, really absorb the information, not being, it not being part of my field, you know? So, in the future, I would request if we're getting any larger than three-page documents to defer that to another meeting instead of take a break. Read this while you eat your lunch and then come back and see what you say. And I think that part that you struck from the record, I do feel like that was kind of a...I appreciated the information and I kind of disagree that it should have been stricken because I felt like it kind of showed what, who they are, what their plan was, what their intentions were for the place, even if it didn't match up. And I feel like it was their kuleana to make it match up because for me, that was important information to understand their business and what relationship they had with the previous land owner to make that kind of decision.

Ms. La Costa: About which sentences are you speaking, because we had several that we've kicked along.

Ms. Lindsey: Yeah, well, the, the lease agreement.

Ms. La Costa: On Page 9.

Mr. Hopper: Just to note, the restoration plan is still a matter of record and it's what they're still committed to, correct.

Ms. La Costa: Correct.

Mr. Hopper: Just want to make sure. There were edits made to the staff report because those were incorrect, but I just want to note for the record, that, that—

Ms. Pali: Exhibit 15.

Mr. Hopper: Yeah, Exhibit 15, just to clarify for the commissioners, yeah, Exhibit 15, restoration plan that's still a matter of record and that's still what they have to do.

Ms. Lindsey: Okay.

Mr. Hopper: But the couple of changes were made because it was inconsistent with their obligations as I understood, just for clarification.

Ms. Lindsey: Thank you for that.

Ms. La Costa: I'm sorry, Mr. Hopper. And also, there was a presumption by the staff that the lease actually said something that it perhaps didn't, being that we don't have a copy of the lease we cannot confirm or deny whether or not that interpretation was correct which is why I kept asking the question. So, is that about what you're speaking?

Ms. Lindsey: Yes, it is.

Ms. La Costa: Okay.

Ms. Lindsey: It was kind of just following along virtually it was difficult for me to do. Page 9, and then there's Exhibit 9, and then it's, yeah...and then the numbers are out of order is kind of confusing, but if they cleaned it up and we came back with the cleaned-up information, even if our side needed to clean it up, because that would be helpful for me to just understand it, this is what it is, there's no confusion here.

Ms. La Costa: Thank you, I appreciate that because I think we're in concurrence that we're all kind of going back and forth and hard to keep it in line. Mr. Hopper.

Mr. Hopper: So, if it's deferred you could also have the revisions to the staff report in writing and review that, that's an option.

Ms. Lindsey: Yeah, that's kind of why I did a second is because it's messy and confusing and harder to understand now that we're piecing it together ourselves which isn't our job, our job is to read this, understand it, understand the facts and make a decision, not which is the facts, you know.

Ms. La Costa: Thank you so much. So, we have a motion and a second to defer. Any further discussion? Mr. Hipolito.

Mr. Hipolito: Thank you, Chair.

Ms. La Costa: And thank you for hanging in here.

Mr. Hipolito: Excuse me?

Ms. La Costa: Thank you for hanging in here with us.

Mr. Hipolito: Yes, I am. So, it has been quite confusing. Commissioner Pali was very pointed in what the applicant, our staff planner should prepare for future meetings. Sitting through this, Chair you did and I agree with Commissioner Pali, Vice-Chair Commissioner Pali, that your actions and patience lead us to some specific questions that the applicant committed to or did not commit to, but one of the things that Mr. Gomes pointed out, it will be basically impossible to refill that hole back to the original level of 20 feet, 27 feet depending how prime rock they can get to. And so, as I listened to and I hear this motion to defer for me to vote on it, I want to know specifically what we're asking the applicant to produce. And I don't think I've heard enough specific information for me to vote on it or to support it. And so, I need to hear exactly what we're asking them to produce because you've already, and we as a commission, by your leadership has already took out, took out some words and some verbiage to make it more clear so we can take action upon it. So, I wanted to mention that because the efforts that we spent over the last couple, two, three hours to refine and define, in working with the applicant, calling recesses, making firm decision on their part, they being honest, they can do what they can. They've already, I don't know, a closed couple, two TMKs, and giving it back to the ownership. Wasn't that adequate? What's on there now? Our decision today is to, you know, approve expansion or not approve the expansion. So, I just want to make notice that for me to vote on this deferral, I need more specific information on what we are asking the applicant to produce for us. Thank you.

Ms. La Costa: Thank you, Commissioner Hipolito. Commissioner Freitas, what specific information do you need, please to come to a conclusion?

Mr. Freitas: Yes, thank you, Chair. Number one, is to, I'm not saying they have to fill up and bring it to grade. I'm saying, have some kind of plan. When I say that, I use the other quarry as an example, and they work with the County and use it as a landfill. This applicant maybe needs to

be creative and speak to somebody, somewhere, somehow to figure it out. So, come with a plan and put it back. You took the resources, don't just put it like that 18 feet down and say, that's agriculture. It really damaged what the, what that land was before. And the second one, is to wait until the land survey, so that they can read draw up this expansion, so that they can avoid the A, B quality soil agriculture land that, that kind of encroached in this application. So, to me, it's just those two things.

Ms. La Costa: So, I need some clarification, please, from the applicant or from Ms. Fukuda. When Commissioner Freitas asked about a land survey. I don't recall hearing anything about a survey. Can you refresh me on that, please?

Ms. Fukuda: So, Karlynn Fukuda, Munekiyo Hiraga. I think what Mr....Commissioner Freitas is referring to is the important agricultural land designation. And when I, he had asked a question about that earlier and I had mentioned that these lands are already designated important agricultural lands. So, if that's not what he's referring to, because I know the county has just initiated the process to go through and start designating other lands. A & B had voluntarily, you know, gone through the process with the State Land Use Commission to designate their lands. And again, this is A & B land, so this land is already designated as AIL lands. But if, if it's not related to the AIL designation, then I would need further clarification.

Ms. La Costa: Commissioner Freitas, can you answer that question?

Mr. Freitas: Yes, Chair. It is exactly referring to that because the proposed area there are majority of it that is in the key area. So, the hope is that they could redraw or find another location. More, more, more than 70 percent of it is in the high-grade agricultural quality land for agriculture.

Ms. La Costa: Commissioner Pali.

Ms. Pali: I have a question for Corp. Counsel. I think I'm interpreting what I'm hearing wrong and I just want to measure it up to legal counsel. I'm not hearing words of deferral. I'm hearing words of these are what I'm looking for, and if not, then it sounds more denial. So, I'm just a little confused right now. Can you help clarify or is there, I guess we can just move forward with the deferral, but I don't know if there's...and then—

Mr. Hopper: The only potential misunderstanding or confusion, there's two different things. There's important agricultural land, and then there's the soil classification. The important agricultural land map, at least according to Exhibit 5, this entire expansion area is going to be an important agricultural lands. Lands that are already designated IAL. So, is it looks like about half the rest of the existing quarry site.

Ms. Pali: Right.

Mr. Hopper: The separate issue is the soil classification, and that's in Exhibit 4. It looks like in the expansion area, some is A, some is B, and some is E. So, if Commissioner Freitas is asking if there's a way that they could redraw the expansion to not affect A and B classified lands, I don't want to put words in his mouth, but that could be something he's asking for. As far as IAL if they expand to the, to the east it looks like there's really nothing. It's all in IAL, if they expand west, I don't know that situation, but if he's asking for, I don't want to put words in his mouth, but—

Ms. Pali: Right.

Mr. Hopper: --but the Exhibit 4, shows some of the land is in A and B classified soils which is different than the IAL. So, that might help inform his request if he has that additional information that he would want.

Ms. Pali: Right, but does all of that talk to you sound like--that would be under deferral, meaning that what we're voting on today and based off of the information that we're voting on today and these are new concepts and new ideas that are not in our application today. Does that sound like deferral on our current application?

Mr. Hopper: Well, if—

Ms. Pali: I can see him doing a motion to say, hey, these are my recommendations, I'll approve it if you change your zoning, I feel like we have room for that, but I'm not hearing that. So, I'm just, yeah, I just wanted to...but if we, we continue to go down, we can just tease this out.

Mr. Hopper: Yeah, I, I think that they--that not--I think it sounds like he's asking for mitigative measures to be taken—

Ms. Pali: Yes.

Mr. Hopper: --to avoid harm that would justify denial of the permit potentially.

Ms. Pali: Right, but is that under deferral?

Mr. Hopper: He's made a motion to—

Ms. Pali: Okay.

Mr. Hopper: --to request deferral.

Ms. Pali: Okay, I just wonder if he knew—

Mr. Hopper: --so that they can present mitigative measures that it sounds like he's asking them to provide.

Ms. Pali: Okay, okay, okay.

Mr. Hopper: And so, I think that's something you could ask for if, you know, I don't want to put, again, words in the commissioner's mouth.

Ms. Pali: Yeah.

Mr. Hopper: But if he wants to ask for potential comments or an alternative plan on doing this use around the A and B classified soils then so be it.

Ms. Pali: Absolutely.

Mr. Hopper: That's from what I heard, the best that I could interpret.

Ms. Pali: Okay, thank you. So, Chair, I would just like clarification on the motion. So, since I can't talk to the other commissioners hypothetically speaking, so I'd like clarification on the motion because I'm understanding that deferral is that I can't make a decision on what's in front of me because I need more information, and when I heard the reasons, it sounded like there's just a shift from what's being asked to shift to something different or new and I'm a little bit...because if it is...we do not...we want to deny this or approve this with conditions to shape it, I just think this format right now with deferral may not necessarily best fit Commissioner Freitas' what he's really intending so I'm just needing to know where we're at.

Ms. La Costa: Commissioner Freitas, did Commissioner Pali's comments resonant with you or would you like to clarify your motion to defer?

Mr. Freitas: You know, I'll just withdraw my motion.

Ms. La Costa: So, therefore, the second is withdrawn also. Thank you. Commissioner Pali.

Mr. Hopper: You've already started deliberation on a motion to defer, if you want to table that and look to do something different, you could or take a vote on the motion to defer. Again, well, after the motion's been stated before the body, generally you can't have someone just withdraw that motion at that point. You can table it, have someone motion to table it and take a different action or you can have somebody...or you can take a vote on the motion if you would like and continue to come up with a list of additional information. I heard a commissioner ask for additional time to review things that were submitted, those are reasons to defer, and other documents you could need or you could table it and someone could make a motion to table and then take a different action.

Ms. La Costa: Thank you. Commissioner Pali, you look like you're ready to...

Ms. Pali: Well, based off of that information, there could be very valid reasons to defer, I just wanted to make sure that we were supporting the intent of the original motion. So, if we...if there is no other motion, I think my discussion is that, I appreciate Commissioner Lindsey's point in that this presentation had a lot of holes between the reports and the lack of information and the conflicting information. It was very difficult, and it's hard to just make decisions without proper time to research it and get to know and understand, but I also hear Mr. Hipolito's position that well, we just took all the time to do it, so it's hard to sort of now throw all that work out of the window when we have just gone through that work. So, I support both of them, I also hear Commissioner Freitas, in saying that you know, they should be able to find a way potentially to commit to care for the land at minimum as represented in the original staff report.

I also want to point out that the reason why I was harping on Schedule C, some much Exhibit 15, because under Item 3, Methodology, Letter D, it talks about all costs of reclamation plan shall be bore by the licensee. This shall include the cost of installing irrigation. So, another conflicting piece when we were just told there was no access to water therefore, we can't put grass. And do I recognize that this was an agreement made in 1992, but we don't have the ability to determine what part of this is applicable for 2022 and what part is not, and so, I'm still not feeling very comfortable and for those reasons, I could potentially support the deferral but I just wanted to tease that out.

Mr. Hopper: I just wanted to make a correction. I think you could withdraw the motion if there's unanimous consent of the whole body. So, if you state, Commissioner Freitas if he wants to withdraw the motion, can bring that to the Chair. The Chair could say if there's no objections then motion be withdrawn, and then go that way. It just can't be withdrawn just by the motion, the person making the motion and the second. So, if you want to do that, you can. If you want to continue with discussion on the deferral, you can certainly do that or table it and take some other action.

Ms. La Costa: Thank you, Mr. Hopper.

Ms. McLean: Chair, could I comment please?

Ms. La Costa: Yes, please. Go ahead, Director.

Ms. McLean: Thank you. And I really appreciate all the time the commission is putting into this. The staff report is based on information that the applicant provides, and I don't think it's at all out of line for the commission to expect the applicant to adhere to what they represented to us in the application process. Typically, you would defer if you need more information. I don't know that you need more information. From what I'm hearing is you want the applicant to make good on

what they have represented. And so, to me, you could approve a permit with the conditions that the applicant indicated they would abide by or if they're indicating that they can't abide by them, then you could deny it. But deferring it, you would do if you need more information. And I didn't hear that there was a lot of missing information. I don't think you want to just push this decision to a future meeting because I don't know that any information is going to change. So, it's whether you want to obligate them to meet the terms that they represented to us, us collectively, the Department and the commission. Or if they're saying that those things aren't true, then I think you might have a basis to deny.

Ms. La Costa: Mahalo, Director. We have a motion for denial by Commissioner... I mean, deferral. Excuse me, I beg your pardon.

Mr. Hopper: Well, there's a request to... oh, sorry, Chair. There was a request to withdraw that motion, so I just wanted to clarify my advice. So, if you want to take up that request to withdraw the motion, you could ask if there's no objections, we'll withdraw the motion, and if someone has an objection then we can continue on, but that's up to... I wanted to allow that since the member did ask to withdraw his motion.

Ms. La Costa: Okay, thank you, Mr. Hopper. So, Mr. Freitas, are you still intending of withdrawing your offer of deferral for your motion?

Mr. Freitas: Yes, Chair.

Ms. La Costa: Thank you. That being the case, are there any objections to the withdrawal of Commissioner Freitas' motion and which has been seconded? Okay, seeing none, then we will consider that motion withdrawn. Thank you. Commissioners, is there anyone who would like to make another motion? Commissioner Thompson.

Mr. Thompson: Why, thank you, Chair. So, I actually like to make a motion to approve it, with some housekeeping which we've been going over, the Number 6 versus... on Page 18, and but stick them to their Exhibit C, the restoration plan and plant some grass, keep the soil intact. I don't think that we can go past, oh sorry, I'll make that motion. I'll talk about it later.

Ms. La Costa: Your motion is to approve with—

Mr. Thompson: Approve it based on our upkeep of verbiage here, the updates.

Ms. La Costa: The information provided.

Mr. Thompson: Yeah, and I think we have three or four of them so we better list those.

Mr. Hopper: Chair, could I try.

Mr. Thompson: Yeah.

Ms. La Costa: Mr. Hopper, please.

Mr. Hopper: Just wanted to try. I think the motion, if there's a motion to approve, you'd want to clarify that you, that all of the existing conditions for the state special permit would remain intact. So, you'd keep all of those. That for the county special permit, you're making the amendments as discussed earlier. I think Director or Ann may have those, but we're deleting Condition, New Condition 7, which is in the report and existing Condition 6 and renumbering the conditions as, as required, may make the changes to Pages 9 and 16, as discussed. I think that was also there and, and that the action of the commission is to actually approve the special permit with those conditions, not just to recommend approval of those, of the state special permit. What was the—

Ms. Pali: Not 16, because he's holding them accountable to the representation on the drainage with topsoil and planting.

Mr. Thompson: Yeah, that's in Exhibit C, that's in the restoration.

Ms. Pali: Well, but, that you were going to strike the record on 16 to remove topsoil and planting. But it sounds like Commissioner Thompson is saying, I'm adding the condition to hold them accountable for their representation so then therefore you would not update Number 16, Page 16.

Mr. Hopper: Okay, and then it just says replanted. So, you may want to also clarify that with the applicant because of that issue, but if...yeah, I think that that states the motion correctly. Ann, do you have that or we can go over that some more, 'cause I know there was a lot of changes.

Ms. La Costa: I don't have a second yet, we probably should ...(inaudible)...

Mr. Hopper: Sorry, I'm ahead of myself, sorry.

Ms. La Costa: That's okay.

Ms. Pali: I'll just second for discussion purposes.

Ms. La Costa: So, rock and roll please.

Mr. Hopper: I think I stated, what I...I just want to make sure because Ann and Michele and the Department will be the ones issuing the letter and sending the record to the commission that they're clear on those issues as well.

Ms. La Costa: Thank you Mr. Hopper. So, my additional comment is if we're going to leave the replanting in on page 16, then we should also then back up and keep as previously noted and then talk about restoring the lands to agricultural productivity irrespective of whether that's grass or papaya or whatever to keep consistent with page 16, to add that back in. so that being the case then what we crossed off starting as previously noted, that will be retained in the record and on the conditions and recommendations.

Mr. Thompson: Thumbs up.

Ms. Pali: Okay, so speaking to the second, again for just conversation purposes. As Director McLean mentioned that we would be voting and deliberating and potentially deciding on just the record as it has presented to us, and that's so to validate that whatever changes we were hoping to clean up, we were just going to strike that and as presented to us that's what you would be potentially considering for approval. And I do want to clarify then did you in your motion add also as a redundancy for the requirement of planting or do you feel like you didn't have to add it as a condition because it's already covered in Page 9 and 16 just if you can clarify that.

Mr. Thompson: Yeah, it's already included in there.

Ms. Pali: I have no further comment and we'll see how this goes.

Ms. La Costa: thank you Commissioner Pali. Commissioners, additional discussion on the motion? Okay, Mr. Hopper would you restate the motion for us one more time, please. Thank you.

Mr. Hopper: Maybe...I don't know if Ann's prepared to do that. I also just want to clarify that those were representations made in the staff report, but there's some discussion as to whether they were accurate and that's actually what was proposed. If you want these as requirements you may want to consider them as conditions that would essentially mitigate the impact of the quarrying use if you believe those are appropriate.

Ms. La Costa: So, are you discussing, are you talking about the analysis that I have been questioning?

Mr. Hopper: The issue of what they're going to do under the restoration. You could reference the lease exhibit, but if there's specific actions you wanted to have them take after 30-year or after the quarrying use is completed, you want to potentially specify those as a condition.

Ms. La Costa: thank you. Commissioner Lindsey.

Mr. Hopper: Oh yeah, Ann's going to restate the motion.

Ms. La Costa: She is, but Commissioner Lindsey. Yeah, go ahead, we're still in discussion until Ms. Cua has our motion.

Ms. Lindsey: I think that kinda brings me back to doing a different motion whenever the time. Whenever that time is, I'd like to do a separate motion.

Ms. La Costa: Thank you. Okay, Ms. Cua, will you please restate the motion? Thank you.

Ms. Cua: Okay, and this, I want to make sure I'm stating the right thing, the motion to approve the project with...it's both the State Special and the County Use, right? That's what I'm addressing, right? Okay, so the motion is to recommend approval of the State Special Permit 92-

Mr. Hopper: Oh, Ann, it's to approve, not to recommend.

Ms. Cua: I'm sorry.

Mr. Hopper: Yeah.

Ms. Cua: Yes, I'm sorry. Our recommendation is...or no, I'm sorry. The motion is to approve Special Permit 92-380 which is State Special Permit Boundary Amendment to increase the boundary of SP 92-380 by 45.4 acres. Secondly, to approve the County Special Use Permit with six conditions, the sixth condition being that the applicant shall implement best management practices and other measures as required by the Department of Public Works to mitigate drainage impacts. The recommendation on Page 18 and 19, that includes a Condition No. 7 would be deleted, and that Condition 8 would be renumbered Condition 6.

Mr. Hopper: And to clarify for the State Special Permit you're approving with the original...with the current conditions still intact, so those would be moved forward.

Ms. Cua: Correct. Correct. Okay, and we now don't have any changes to Page 9 and 16. And I believe we are...what I have heard is that, we are adding a Condition No. 7 which will say—

Mr. Hopper: I would just check with the movant to make sure that that's clarified.

Mr. Thompson: Yes, you got it right, Number 7 too.

Ms. Cua: All right. That would say something like the applicant shall comply...it's called actually a reclamation plan, shall comply with the reclamation plan outlined in Exhibit 15, and further plant the site after the use is complete.

Mr. Hopper: Are those added to both permits, one permit or not the other or I guess that's the movant's decision, but...

Ms. Cua: Yeah—

Mr. Hopper: 'Cause there's two permits. There's a State Special Permit that's going to go to the LUC and then there's the County Special Permit and they have separate conditions. I don't know if you want to add this to both of them, one and not the other or up to you.

Ms. Cua: If I could comment before you comment if that's okay. Currently on the State Special Permit, we currently we did not propose any additional conditions. So, if you intended to do that we would have to add another condition to the State Special Permit, and then we have the conditions on the Special Use Permit which Condition No. 7 that I am proposing based on your recommendation that we would need to add would be to the County Special Permit.

Ms. La Costa: Okay, the movant has concurred with that. Could I please have a roll call vote?

Mr. Hopper: Is it added to both permits?

Ms. La Costa: Yes.

Ms. Cua: Yeah, okay, both. Commissioner Freitas?

Mr. Hopper: ...discussion?

Ms. La Costa: We had discussion.

Mr. Freitas: Aole.

Ms. La Costa: We had discussion, lots.

Mr. Hopper: Okay, as long as we're done.

Ms. Cua: I'm sorry, Commissioner Freitas.

Mr. Freitas: Aole.

Ms. La Costa: Commissioner Thayer, I'm sorry, Commissioner Lindsey, sorry.

Ms. Lindsey: Can we have discussion on the additional, additional thing he added on, Number 7, Mr. Thompson just added before the vote?

Ms. La Costa: Okay. I'm sorry, I thought we had discussed everything so I apologize for asking for the vote beforehand, but please go ahead.

Ms. Lindsey: I'm just wondering because we will always...we will be importing 80 percent of goods for a while and we are going to run out of trash space, so do you want them to put some grass underneath our future landfill. I'm just putting it out there.

Ms. La Costa: I need to ask the applicant or their representative because they have not stated what they are going to do, what their plan is once it is finished, so I don't think that has anything to do with this motion.

Ms. Lindsey: Well, agree...I just think it would...the property owner when they get back the lease they are in the ag business, I think they would do the best thing for their use when they receive...when they get it back so I guess, stabilizing would be good enough instead of replanting grass 'cause grass also requires a lot of water. They need to irrigate it to there. There's a lot of...we're talking about 45 acres right now, maybe you know, and if you add up all the acreage they have that's hundreds and are we wanting to put water out there in the hundreds of acres that doesn't have water...just getting the water there and whose water is it and all of that little logistic stuff, I don't think will let just the grass isn't gonna grow...like all of those things. I think the current landowner has ways of irrigating it better that we shouldn't hold the applicant to.

Ms. La Costa: And we certainly cannot speak for A & B or what they're gonna do or what they're not gonna do, so I appreciate that comment. I don't know that that has anything to do with the motion however. Am I correct?

Mr. Hopper: If, if the new condition requires replanting it sounds like, to me it sounds like a potential motion to amend to take out the replanting requirement. I don't know if that's what commissioner was thinking of, but—

Ms. Lindsey: Yes, that is exactly what I was trying to say.

Mr. Thompson: Yes, I did well, thank you. Can I jump in there?

Ms. La Costa: Go ahead.

Mr. Thompson: She put in soil stabilization.

Ms. La Costa: Rather than replanting.

Mr. Thompson: Instead of replanting and maybe that would be the better way to go.

Ms. Pali: ...(inaudible)...

Mr. Thompson: Problem solved. Thank you, Commissioner Lindsey.

Ms. La Costa: Then on Page 9 has to be amended as well.

Mr. Hopper: Okay, you could do as one motion if you like, you could state that, again, this is up to...no motion's been made, but if you're considering making—

More than one person speaking at one time.

Mr. Hopper: Okay.

Ms. La Costa: Mr. Thompson ...(inaudible)...

Mr. Hopper: Right, I'm saying no amendment has been made, and it sounds like we're discussing a potential amendment. Yes, I understand a motion's been made. We spent a lot of time wording it. So, it seems like a while ago, but yeah. We, if you're gonna look to amend it, I guess you would delete the reference to stabilization. It was to be, the soil would be...I don't know the exact wording you had but I think you talked about the soil being...two feet of soil being restored and the I think the phrase was and replanted. So, you would...the most important thing is to have the condition changed if you want to delete, "and replanted", you could do that and also, as part of the staff report being adopted, you can do the deletions we discussed before on Pages 16 and 9, the same changes we had discussed before. So, deleting from A and B to the bottom on 9, paragraph two for Page 9 and on 18 you would be the same change in the actual, as in actual condition which would be deleting, "and replanted". So, you'd be deleting, "and replanted" there. But you are adding new condition that was not previously on there about the restoration plan being followed and the soil being replenished and maybe we can go over the specific language of that condition again, but you would be adding that on to the permit.

Ms. La Costa: I'd like to give Ms. Cua a couple of minutes to sort.

Ms. Cua: I'm okay. I think I'm good.

Ms. La Costa: Okay, go ahead please.

Ms. Cua: Am restating everything over again or am I just reclarifying.

Mr. Hopper: I think, and again, no motion has been made, but I think for clarification of the record, you could get Commissioner Lindsey's words, wording down for a potential motion to amend if she wants to make it and see if it's consistent although there's a point of order?

Ms. La Costa: Commissioner Pali.

Ms. Pali: No point of order, we're doing well. But we're...so this is what we just did and we're kinda doing it again. Like one person has an opinion and then we just shift assuming all other eight members feel the same way. I really recommend Chair if you believe so, that we should taking some votes so we can start having people concrete where they are because if we just keep shifting the whole bit without knowing where everyone else stands, we're just treading water and going in circles.

Ms. La Costa: I understand, and thank you very much for that Vice-Chair. The amendment, there has not been a motion for an amendment and it was just discussion like to you said. So, perhaps Commissioner Lindsey if you'd like to make an amendment, a motion for an amendment and then we can kick that around and then we can go...

Ms. Pali: Well, that's the problem. Like what if I'm not okay with the amendment. I want to vote on the original motion, so we're taking people's one opinion, but we haven't as a group shown our position, so if you amend it, now I'm against it, now we're going back and forth. So, I just I would prefer that we just vote on the original motion, if it denies then Ms. Lindsey can come back with a whole new motion with her intent of an amendment, but I just need us to put our feet to the ground right now.

Mr. Hopper: For Robert's Rules, a member has the right to make a motion to amend, it has to be seconded and you still all have to take a vote on it one way or the other. So, if it's denied then the motion's not amended. But the notes about taking about the amount of time to craft the motion are certainly noted, but I think, I think we're just trying to help the members get the wording correct for the record so when it's changed we know what it's changed to.

Ms. Pali: Okay, thank you.

Ms. La Costa: Thank you, Mr. Hopper. So, Commissioner Lindsey, are you going to make a motion to amend, the original motion.

Ms. Lindsey: I was under the understanding that I was, we are in discussion, and Mr. Thompson is the one who amended his own motion?

Ms. Cua: Right, 'cause he said stabilize.

Ms. Pali: Right, you did.

Ms. La Costa: To add numbers—

Mr. Thompson: Oh, I did.

Ms. La Costa: Okay, so I'm gonna, I'm gonna call a timeout and thankfully football session's close, so let me have Ms. Cua restate the motion if there are amendments, i.e., stabilization versus planting then we will vote on that. If there are additional amendments such as your conversation Ms. Lindsey, then we will vote on that. How's that? Okay, Ms. Cua, go ahead please, the original motion.

Ms. Cua: Oh, the original motion. I already had scratched that out, 'cause I thought he amended it. I thought he used the stabilization...

Ms. La Costa: Yeah, but we didn't vote...(inaudible-more than one commissioner speaking at once)...

Ms. Cua: Okay, the applicant shall comply with the reclamation plan and further, plant the site after the use is complete. That was the original motion.

Ms. La Costa: So, Commissioner Thompson, do you want to amend the original as your suggestion?

Mr. Thompson: Make it another motion?

Ms. La Costa: You can amend—

Mr. Hopper: Motion to amend, yes.

Ms. La Costa: Motion to amend.

Mr. Thompson: I'd like to make a motion to amend my original motion by changing planting to soil preservation.

Ms. Cua: Stabilization.

Mr. Thompson: Stabilization, thank you.

Ms. La Costa: Okay, there is a motion to change the wording from "planting" to "soil stabilization". Do I have second? Commissioner Hipolito, thank you for the second.

Mr. Hopper: Chair, just would that include the applicable changes to the staff report as well?

Mr. Thompson: Yes.

Ms. La Costa: Is there discussion?

Mr. Thompson: Yeah, see it's not that complicated of a deal. We're not dealing with traffic and a lot of people and iwi kupunas and all kinds of things, it's a quarry and I know when you dig out quarries, you can't put rock back in it 'cause where you're gonna get it? Go down the street and pick up some more soil and put it in there or maybe a better soil, that won't work. So, they're taking the original top soil, putting it back in, that's gonna work, it's a quarry. There's not that many, I think for as much paperwork here, there's not that much to it. And, that's where I lay.

Ms. La Costa: Thank you. Commissioner Hipolito as the second, comments?

Mr. Hipolito: Ditto, Commissioner Thompson. Thank you.

Ms. La Costa: Thank you so much. Okay, any further discussion. If not, we will do a roll call vote please Ms. Cua. This is for the amendment. Thank you.

Ms. Cua: Commissioner Freitas.

Mr. Freitas: Aole.

Ms. Cua: Commissioner Thompson.

Mr. Thompson: Aye.

Ms. Cua: Commissioner Hipolito.

Mr. Hipolito: Aye.

Ms. Cua: Commissioner Lindsey.

Ms. Lindsey: Aye.

Ms. Cua: Commissioner Thayer.

Ms. Thayer: Aye.

Ms. Cua: Commissioner Greig.

Mr. Greig: Aye.

Ms. Cua: Vice-Chair Pali.

Ms. Pali: Abstain.

Ms. Cua: Chair La Costa.

Ms. La Costa: No.

Ms. Cua: That is five ayes, one no.

Mr. Thompson: Two noes.

Ms. Cua: Oh, sorry. Five ayes, two noes and one abstain which makes it a yes, so the motion passes.

It was moved by Mr. Thompson, seconded by Mr. Hipolito, then

**VOTED: To Amend the Motion Changing the Wording from Planting to Soil Stabilization.
(Assenting – D. Thompson, M. Hipolito, A. Lindsey, K. Thayer, W. Greig, K. Pali – Abstained)
(Dissenting – K. Freitas, P D. La Costa)**

Mr. Hopper: Main motion amended.

Ms. La Costa: So, the amendment motion passes, thank you. Now are there any further motions to amend before we do the original so we can move on? Okay, seeing none, I will ask Ms. Cua to once again restate the motion as amended and then we can vote on that.

Ms. Cua: So, you—is it the State...okay, so, the main motion is to approve the State Special Permit with the existing conditions and to approve the County Special Use Permit with a total of seven conditions making recommendation No. 8, Condition No. 6 which reads, the applicant shall implement best management practices and other measures as required by the Department of Public Works to mitigate any drainage impact. And then adding, Condition No. 7 to read, that the applicant comply with the reclamation plan as identified in Exhibit 15 as well as stabilize the soil after the use is completed.

Mr. Hopper: And that's on, that's on both permits, right? The State Special and County Special.

Ms. Cua: Sorry, and that is on both permits. That's it.

Ms. La Costa: Okay, now Ms. Cua would you please do a roll call vote.

Ms. Cua: Yes, before I do that and that goes with saying that...without saying that we are also amending...you're also amending Page 16, removing the words, "and replanted", and adding the

words, “and stabilized”, and then you are...just confirm...and you are removing, you are removing on Page 9, from “as previously noted all the way to completed.” That correct. So that under Page 9, Analysis Number 2, the desired use would not adversely affect surrounding property. The analysis would read, the desired use is not anticipated to adversely affect surrounding property which is currently used as part of the quarry operations and fallow agricultural lands owned by A&B.

Okay, Commissioner Freitas.

Mr. Freitas: Aole.

Ms. Cua: Commissioner Thompson.

Mr. Thompson: Aye.

Ms. Cua: Commissioner Hipolito.

Mr. Hipolito: Aye.

Ms. Cua: Commissioner Lindsey.

Ms. Lindsey: Aye.

Ms. Cua: Commissioner Thayer.

Ms. Thayer: Aye.

Ms. Cua: Commissioner Greig.

Mr. Greig: Aye.

Ms. Cua: Vice-Chair Pali.

Ms. Pali: Abstain.

Ms. Cua: Commissioner La Costa.

Ms. La Costa: No.

Ms. Cua: So, six aye...No, fives ayes, two nays, and one abstain which means motion passes.

Maui Planning Commission
Portion of Minutes – May 24, 2022
Item B.1
Page 61

It was moved by Mr. Thompson, seconded by Ms. Pali, then

**VOTED: To Approve the Amendment to the State Land Use Commission
Special Permit and County Special Use Permit, as Recommended by
the Department with Amendments by the Commission as Discussed.
(Assenting – D. Thompson, M. Hipolito, A. Lindsey,
K. Thayer, W. Greig, K Pali - Abstained)
(Dissenting – K. Freitas, P D. La Costa)**

Respectfully Submitted by,

CAROLYN TAKAYAMA-CORDEN
Secretary to Boards and Commissions II