

**MAUI PLANNING COMMISSION
PORTION OF THE REGULAR MINUTES
ITEM C.1
NOVEMBER 24, 2020**

Ms. McLean: Thank you, Chair. Next on the agenda is a Communication item from Hawaiian Cement requesting a 15-year time extension for two existing permits at its Pohakea Quarry operations on approximately 79 acres in the State and county Agricultural Districts at TMK: 3-06-004: 007 in Maalaea. And once again, Mr. Paul Fasi is the project planner.

C. COMMUNICATIONS

- 1. HAWAIIAN CEMENT requesting 15-year time extensions for two existing permits at its Pohakea Quarry operations on approximately 79 acres in the State and County Agricultural Districts at TMK: (2) 3-6-004:007, Maalaea, Island of Maui. (SUP1 2006/0001) (CUP 2006/0001) (P. Fasi)**

Mr. Paul Fasi: Good morning. So, this project is regarding two permits, there's a State Land Use Commission Special Use Permit and on this particular permit you'll just be making a recommendation to the State Land Use Commission, so this permit...that portion of the permit still has to go to the Land Use Commission. The County Special Use Permit you'll be taking action on and making a definitive decision today, hopefully.

So, these two permits, they both expired on December 15, 2019. There was a third permit involved which was a Conditional Permit, and the Planning Director had the authority to approve it so she approved the 15-year time extension for the Conditional Permit and so you are basically making a recommendation on the State Land Use Commission Permit and making a definitive, taking definitive action on the County Special Use Permit.

The last time extension was for all three of these permits was back in 2010. That is specifically January 26, 2010. The land use designations on all three levels is Ag. The applicable governmental regulations or Land Use Commission State Special Use Permit, Section 15.15.95 and 205-6, Hawaii Revised Statutes. Per 205-6, the Special Permit states that the County Planning Commission may permit unusual and reasonable uses within the Ag District and Rural Districts other than for which this district is classified. This particular use has already been through the Planning Commission twice, once originally and then the first time extension. Same for the County Special Use Permit, a Special Use Permit may be granted by the Planning Commission if the eight special use permit criteria, there's eight of them have been met, and they have. Just to let you know that within the County's Ag District, mining and resource extraction is an allowable special use in the County Ag District. So, it's basically a pretty straightforward decision-making process we have today. If there are no questions, that pretty much ends my presentation. Thank you.

Mr. Carnicelli: Okay, so is there's not anybody from Hawaii Cement then? I mean, just to answer questions or –

Mr. Fasi: Well, I think Bryan Esmeralda from Munekiyo might be here.

Mr. Carnicelli: Okay.

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1 Mr. Fasi: Bryan are you here?

2
3 Mr. Bryan Esmeralda: Yes, Paul, I'm here. Hi, good morning. I have a short presentation that I
4 can share as well.

5
6 Mr. Carnicelli: Okay, let's do that.

7
8 Ms. McLean: Chair—

9
10 Mr. Hopper: Mr. Chair?

11
12 Ms. McLean: Mr. Hopper wants to make a comment, please.

13
14 Mr. Carnicelli: Yep, this is a contested case so I do need to swear everybody in, correct?

15
16 Mr. Hopper: Well, that as well, and then also this is not just a recommendation to the Land Use
17 Commission. You are approving both of these permits meaning that if you deny the State Special
18 Permit it doesn't go to the Land Use Commission. It's not a recommendation to them like a
19 recommendation to Council. You're approving and then the State Land Use Commission is going
20 to review the record and decide whether to also approve, add conditions or deny or they can send
21 it back to you, but to be clear, and I think the report should be changed in your vote, if you do
22 approve this that you that you change that in the report to make clear that they're not just
23 recommending, that you're actually approving with conditions not just recommending that the LUC
24 approve with conditions. That just in case...to make sure it doesn't get remanded. So again, you
25 are approving both of these permits, and they will need an approval of both in order to move onto
26 the Land Use Commission.

27
28 Mr. Carnicelli: Thank you for that clarification Mr. Hopper. So, Mr. Esmeralda if you would please
29 identify yourself for the record and you promise to be truthful?

30
31 Mr. Bryan Esmeralda: I'm sorry. Good morning. My name is Bryan Esmeralda of Munekiyo
32 Hiraga and yes, Chair do promise to be truthful.

33
34 Mr. Carnicelli: Thank you.

35
36 Mr. Esmeralda: I'm here this morning to present the requests for a State Land Commission
37 Special Permit and County Special Use Permit time extensions for Hawaiian Cement's Pohakea
38 quarry operation in Maalaea. The purpose for these requests is to allow Hawaiian Cement to
39 continue its operations as they are a vital source of aggregate for contractors and a location for
40 recycling of concrete products for the island.

41
42 Before I begin, I just...I'd also like to note that Dave Gomes and Keoni DeRego from Hawaiian
43 Cement are on the call this morning to answer questions following my short presentation, as well
44 as myself and Karlynn Fukuda from Munekiyo Hiraga.

45

1 In terms of the facility itself, Hawaiian Cement operates a rock quarry, base coarse operation and
2 concrete recycling facility in Waikapu. As the Director noted, it's on a 79.2-acre portion of TMK:
3 (2) 3-06-004: 007. The property is owned by Pohakulepo Recycling LLC, and is leased to the
4 applicant, Hawaiian Cement.

5
6 Just to orient the Commission to where this is located the property is outlined in white here. Again,
7 the operation is on a portion of this property, and it's located mauka of Honoapiilani Highway. The
8 access road to the facility is at the intersection with Kuihelani Highway.

9
10 In terms of land use considerations. The property is within the State Land Use Ag District. It's
11 within the Agricultural Reserve Planned Growth Area in the Maui Island Plan. The property is
12 designated Agricultural by the Wailuku-Kahului Community Plan, and it's also zoned in the
13 County's Agricultural District.

14
15 The operation has quite a complicated permitting history, so I'll try my best to be concise.
16 Pohakulepo Recycling, the property owner, received a State Land Use Commission Special
17 Permit from the Maui County Planning...or from the Maui Planning Commission as well as a
18 County Conditional Permit for a 14.8-acre quarry and recycling facility in 1997. In 2004, the
19 property owner, Pohakulepo Recycling entered into the 20-year lease agreement with Hawaiian
20 Cement for Hawaiian Cement to take over the operations of the facility. Two years later, in 2006,
21 Hawaiian Cement amended their lease with the property owner for a 64.4-acre expansion facility.
22 So, this is what brought the total acre for the operation to the current 79.2 acres. At this time, the
23 previously permitted area and the new expansion area were consolidated under a single State
24 Special Permit. At this time, the Conditional Permit was also amended to be consistent with this
25 new State Special Permit. Due to changes in the County's Ag District Zoning Ordinance in 1998,
26 because the viewing area for the facility was over 15 acres this triggered the need to obtain also
27 a County Special Use Permit. So, in 2006, the facility was also granted a County Special Use
28 Permit by the Maui Planning Commission. So, following these actions in 2006, the facility now is
29 operating under a State Special Permit, a County Conditional Permit as well as a County Special
30 Use Permit.

31
32 More recently the State Land Use Commission, Maui County Council and by Planning Maui
33 Commission approved time extensions for the three permits as was mentioned by Mr. Fasi. The
34 State Special Permit was approved on January 7, 2011, and had a expiration date of
35 December 15, 2019. The County Conditional Permit was extended in October of 2010 with a
36 similar expiration date of December 15, 2019, and the County Special Use Permit was extended
37 in March of 2010 with the same December 15, 2019 expiration date. In June of 2019, the applicant
38 filed time extension requests for all three of these permits, and as was mentioned previously on
39 September 2nd of this year, the Department of Planning administratively approved a 15-year time
40 extension for the Conditional Permit. So, the new expiration date for that permit is December 15,
41 2035.

42
43 The applicant is before you today with a number of requests. The first is for a 15-year time
44 extension of the State Special Permit to have the same expiration date of December 15, 2035.
45 The applicant is also requesting removal of Conditions 10 and 16 of the State Special Permit

1 Decision and Order relating to archaeological investigations, and I'll get into that request just a
2 minute. And the third request before you today is for a 15-year time extension approval of the
3 County Special Use Permit. If approved, all three permits would carry the same
4 December 15, 2035 expiration date.

5
6 In terms of justification for the time extension requests since the most recent requests were
7 approved in 2011, the applicant has accessed approximately ten acres of the mineable portions
8 of the property for quarrying and they estimate there's an...there's approximately 26 years left of
9 quarry rock remaining on the property. Also, at this time, I'd just like to note that the request
10 before you are simply for time extensions there's no additional expansion of the quarry area that's
11 being requested. Finally, all three of the permits carry compliance reporting requirements and
12 the applicant is up to date with all required compliance reports to both the Department of Planning
13 as well as the State Land Use Commission.

14
15 In terms of the request to remove Conditions 10 and 16 from the State Special Permit I'd like to
16 note that these conditions were part of the 2006 State Special Permit Decision and Order for the
17 expanded area and these conditions required certain documentation and mitigation measures for
18 a site those believed to be historic within the expansion area. Through further archaeological
19 investigation and coordination with the State Historic Preservation Division, prior to the approval
20 of the 2011-time extensions, full-time monitoring was the agreed upon mitigation measure for that
21 site. So, following that determination, an archaeological inventory survey and archaeological
22 monitoring plan were prepared and accepted by the State Historic Preservation Division.
23 Because of that, at the time of the 2011-time extension requests for these permits, these two
24 conditions were removed from the County permits, however they remained in the State Special
25 Permit Decision and Order, so the applicant is requesting that these two conditions be removed
26 from that Decision and Order consistent with the County Conditional Permit and County Special
27 Use Permit. Again, as mentioned an AIS and AMP were both prepared and accepted by the State
28 Historic Preservation Division in 2008, and the applicant does continue to operate in full
29 compliance of the provisions set forth in the AMP.

30
31 Just to summarize the requests again, the applicant is requesting approval of a 15-year time
32 extension of State Special Permit until December 15, 2035, the removal of Conditions 10 and 16
33 from the State Special Permit Decision and Order related to archaeological investigations and a
34 15-year time extension of the County Special Use Permit also until December 15, 2035. With
35 that, we're here to answer any questions you may have. Also, like to note that we did submit to
36 the Department three letters in support of the requests for review and consideration by the
37 Commission. Thank you.

38
39 Mr. Carnicelli: Thank you. Mr. Esmeralda, would you back up one slide, please?

40
41 Mr. Esmeralda: Yes.

42
43 Mr. Carnicelli: Just before we go forward, just based on what Mr. Hopper said, I guess we'll go
44 ahead and correct that you're not asking for a favorable recommendation to the LUC, but you're

1 asking for an approval from us on both items and then it'll, it'll just go to them, it's like a double
2 approval, right?

3
4 Mr. Esmeralda: Correct. Yeah, if that's the correct method, then yes, that would be our request
5 today.

6
7 Mr. Carnicelli: Okay, great. I just, just to since...you know, when the attorney talks, you gotta
8 listen sometimes. So, thank you. I appreciate that. Does anybody else have anything to add
9 either from the Department or from the applicant before we go to public testimony?

10
11 Ms. McLean: Nothing for me, thank you, Chair.

12
13 Mr. Carnicelli: Okay, Director has anybody signed up to testify on this particular item?

14
15 Ms. McLean: Yes, Chair we have one individual who said they wish to testify, and that is Mr. Bruce
16 U`u.

17
18 Mr. Carnicelli: And Brian, if you could stop your screen share, please? Mr. U`u if you please
19 identify yourself for the record and do you promise to be truthful.

20
21 Ms. Takayama-Corden: He is no longer on the call.

22
23 Mr. Carnicelli: Oh, okay. Is there anybody on the call that would like to testify on this particular
24 item? Please unmute yourself and if you also so choose...well, going once, twice, okay if there
25 are no objections, we're gonna go ahead and close public testimony. Seeing no objections, public
26 testimony is now closed. Commissioners, I guess we'll just go out and do a around again.
27 Commissioner Hipolito, I will start with you.

28
29 Mr. Hipolito: Thank you, Chair. Could I call forward Mr. David Gomes, if...I heard he was on the
30 call.

31
32 Mr. Carnicelli: We can try.

33
34 Mr. Hipolito: Is Mr. David Gomes? Could I call back Mr. Esmeralda to check if Mr. David Gomes
35 is here?

36
37 Mr. Esmeralda: Hi Commissioner, this is Bryan Esmerelda. Yes, I believe he was on the call.
38 Let me just double check, though.

39
40 Mr. Carnicelli: Mel, do you have other questions?

41
42 Mr. Esmeralda: I apologize for the delay. Yeah, I was gonna...sorry, this is Bryan Esmerelda
43 again. I'm on Oahu, and the rest of the project team is in our Maui office so I don't know if there's
44 any other questions that...and we can come back to any questions for Dave.

1 Mr. Hipolito: I wanted to ask about—

2
3 Mr. Carnicelli: Oh, I hear somebody.

4
5 Ms. Karlynn Fukuda: Sorry, Chair this is Karlynn Fukuda from Munekiyo Hiraga, we had some
6 technical difficulties but I do have Mr. Gomes here with us.

7
8 Mr. Carnicelli: Okay.

9
10 Ms. Fukuda: So, I'll turn this over to him.

11
12 Mr. Carnicelli: Please state your name for the record Mr. Gomes and do you promise to be
13 truthful?

14
15 Mr. David Gomes: Hi, good morning. My name is David Gomes and yes, I promise to be truthful.

16
17 Mr. Carnicelli: Thank you.

18
19 Mr. Hipolito: Good morning Mr. Gomes, this is Commissioner Hipolito. I have a couple questions.
20 The first one, could you tell me a little bit about the history of Hawaiian Cement? How long have
21 you all been in operation on Maui, you know, the ownership, so forth?

22
23 Mr. Gomes: Sure, I'll do my best, Mr. Hipolito, Commissioner Hipolito. Hawaiian cement I believe
24 in 1991 or 1992 purchased two local companies, Maui Concrete and Aggregate as well as M.
25 Funes Concrete both merged into what we...now known as Hawaiian Cement locally on Maui.
26 Our ownership is, our direct ownership is Knife River Corporation, who comes under Montana,
27 Dakota Utilities MDU Resources, a publicly traded company out of Bismarck, North Dakota.
28 We've been serving the Maui community for quite some time. I can't recall exactly when Maui
29 Concrete started back in the 60's or 70's or what the name was prior to that, so... But our function
30 is to provide resources that are necessary for our construction industry primarily in both ready-
31 mix concrete and aggregates used in construction, including asphalt aggregates for our roads.
32 That's the purpose of what we do.

33
34 Mr. Hipolito: And the 26 years of estimated quarry rock is that what you're referring to, to provide
35 to the community and the industry?

36
37 Mr. Gomes: Yes.

38
39 Mr. Hipolito: Okay, next question I have, could you tell me about your recycling process that you
40 have there with recycling concrete or used concrete?

41
42 Mr. Gomes: Sure, so the process is that we take in from approved sites, concrete to be reused
43 in some of our products mainly fill products. Majority of the concrete that we bring in is actually
44 coming from our projects. When we, when we go out there and pour fresh concrete, whatever is

1 remaining goes into a recycle bin, and those recycle bins is what comes into us, and that's what
2 we primarily process from the different, various contractors on the Island of Maui.

3
4 Mr. Hipolito: Okay, and the last question I have would be for now, would be is Maui Concrete is
5 the same site that you're now leasing? Was that Maui Concrete's site?

6
7 Mr. Gomes: No, it is not. That site was a little further north towards Wailuku Town. It's where
8 the golf course is.

9
10 Mr. Hipolito: Okay, okay, thank you, Mr. Gomes. Thank you, Chair.

11
12 Mr. Carnicelli: Thank you. Commissioner Edlao.

13
14 Mr. Edlao: Thank you, Chair. With Condition 16, why do you want to eliminate that? What
15 happened to Site T9, did it disappear or still there and if it's still there, why not...why are you not
16 gonna continue or are you gonna continue protecting it? I don't know who's that for, but...

17
18 Mr. Esmeralda: Thank you, Commissioner. This is Bryan Esmeralda again from Munekiyo
19 Hiraga. So, mitigation for that site has been completed with AIS and AMP that was mentioned
20 previously. However, Mike Dega, the project's archaeologist from Scientific Consulting Services,
21 is on the line and he may be able to provide additional information.

22
23 Mr. Michael Dega: Good morning.

24
25 Mr. Edlao: So, did the site disappear and you know, the previous LUC said that supposed to be
26 protected in perpetuity so what happened now?

27
28 Mr. Carnicelli: Hi, Mr. Dega, please identify yourself for the record, and do you promise to be
29 truthful?

30
31 Mr. Michael Dega: I'm Michael Dega for SCS Archaeology and I will tell the truth. Good question,
32 T9 was originally assessed as a ranching feature. Our team went back out in 2008 and did a
33 whole new inventory survey on the acreage, including an examination at T9. We found that it
34 wasn't even an archaeological site it's just a natural boulder area strewn about the landscape.
35 There was no anthropogenic materials or anything whatsoever, so we declassified that. We
36 brought SHPD out with us to show them the site, they concurred. T9 is not a site anymore,
37 therefore, no preservation is needed.

38
39 Mr. Edlao: So why wasn't that included in the submittal and maybe I wouldn't have to ask the
40 question.

41
42 Mr. Dega: That's a question for someone else, I think.

43
44 Mr. Edlao: Well, who, Munekiyo?

45

1 Mr. Dega: Yeah, if they attach the inventory survey report or the SHPD letters then it would be in
2 there were the site was declassified, but maybe Bryan could answer that better.

3
4 Mr. Edlao: I don't see anything, Bryan?

5
6 Mr. Esmeralda: Hi, this is Bryan Esmeralda again from Munekiyo Hiraga. So, the SHPD letters
7 were actually included I believe as part of our application package, but...if I can turn your attention
8 to Exhibit 4 of the staff report, Page 5 of the D&O from the Land Use Commission, I believe there's
9 a...there's some language there with regards to Site T9, and a summary from SHPD's letter from
10 April of 2008 which states that SHPD does not require preservation of Site T9 but recommends
11 the presence of a full-time archaeological monitor. So, you know that, that is being done as
12 mentioned, the archaeological monitoring plan has been accepted and Hawaiian Cement
13 continues to be...to operate in compliance with provisions of that archeological monitoring plan,
14 including having a monitor on site.

15
16 Mr. Edlao: You said on Page 5 there's something in there.

17
18 Mr. Esmeralda: Yes, I'm sorry it's Exhibit 4 of the staff report and it's Page 5 of Exhibit 4.

19
20 Mr. Edlao: Okay, I'll take a look at it. Thank you.

21
22 Mr. Carnicelli: I'll come back to the Jerry if you want to look at that. Commissioner Pali.

23
24 Ms. Pali: I had the same question as he did, and I did find Exhibit 4A. I was looking at Condition
25 Number 6. So, it looks like it was just the one-time compliance report that had to be filed, and
26 that's why you want to remove Condition 6 because we've got proof that it was filed, if you can
27 confirm that, but I have no further questions,

28
29 Mr. Carnicelli: Mr. Esmeralda.

30
31 Mr. Esmeralda: That's correct, and also, you know requesting removal of these conditions based
32 on SHPD's concurrence that it's you know, there's no preservation needed and monitoring would
33 suffice as mitigation for that, so that's the basis behind our request. Thank you.

34
35 Ms. Pali: But how do we know your monitoring it, you monitoring it is ongoing if we don't have the
36 annual reports?

37
38 Mr. Esmeralda: Let me...maybe I can just clarify that Condition 6 of the State Special Permit
39 Decision and Order, it's an annual report so we do submit them annually to the State Land Use
40 Commission as well as the Department of Planning, so we do address that, that condition in our
41 annual reports.

42
43 Mr. Carnicelli: You good Kelli? Commissioner Thompson.

44
45 Mr. Thompson: No questions at this time.

1
2 Mr. Carnicelli: Great, thank you. Commissioner Castro.

3
4 Mr. Castro: Just a question for you, Mr. Gomes. Hello?

5
6 Mr. Fukuda: Yes, Chair.

7
8 Mr. Gomes: Yes, Mr. Castro.

9
10 Mr. Castro: I just have a...one question. All the materials that you folks, you know, the cement,
11 the gravel, is that...does it stay on Maui, does any get shipped out?

12
13 Mr. Gomes: In this particular quarry that we're talking about nothing gets shipped off island. It
14 stays here. Hope that answers your question there.

15
16 Mr. Castro: Yes, it did. Thank you.

17
18 Mr. Gomes: Thank you.

19
20 Mr. Carnicelli: Thank you. Commissioner La Costa.

21
22 Ms. La Costa: My fellow Commissioners they've asked three of my four questions already, so
23 thank you for that guys and women. I just had a curious thought, curiosity question for Mr. Gomes.
24 How many aggregate tons have been taken out of the quarry so far and how many do you
25 anticipate to be taken out in the following 26 years or 35...yeah,26 years, sorry. Mr. Gomes could
26 you hear me?

27
28 Mr. Gomes: Yes, can you hear me Commissioner?

29
30 Ms. La Costa: Yes, I can. Thank you.

31
32 Mr. Gomes: Yes sorry, I just needed to gather my thoughts a little bit. That's somewhat...I
33 understand your question, but because of the competitive nature of the industry that we're in and
34 the tonnage, I'm not actually authorized to release tonnages. I may be able to do something in
35 percentages.

36
37 Ms. La Costa: And I can appreciate the proprietary matter of that. I was looking at the overhead
38 picture and just wondered how much more of the earth was going to be changed in the next 26
39 years. I guess maybe that's a better question.

40
41 Ms. Gomes: Yeah, there's approximately 20 acres and the timeframe in 20 years or 26 years or
42 18 that's really driven by economy. So, that landscape may take a little quicker or a little longer,
43 but there's about 20 acres that we're talking about.

44
45 Ms. La Costa: Thank you very much.

1
2 Mr. Gomes: Thank you.

3
4 Mr. Carnicelli: Thank you. Commissioner Tackett.

5
6 Mr. Tackett: Yeah, my question is what, what are the primary uses of the material that you're
7 taking out? You said, you mentioned roads would that be, what would that be pretty much all of
8 what you use that material for or do you use it for other projects as well?

9
10 Mr. Gomes: Thank you, Commissioner. The material that's used has many different uses out
11 there to include roads, drainage, structural fills. What it's not currently used for is concrete
12 production or asphalt production. It's more of a base course type, everything that goes below
13 ground, if you will.

14
15 Mr. Tackett: Thank you

16
17 Mr. Carnicelli: Commissioner. Freitas.

18
19 Mr. Freitas: Thank you, Chair. My question is for Mr. Gomes. Mr. Gomes, I'm not too sure
20 ...(inaudible)...and, when you quarry rock, you kind of dig down and to the side, what if you hit
21 water or ...(inaudible)...table?

22
23 Mr. Gomes: I'm sorry, Commissioner, the...you came in broken. I think I understand your
24 question is that as we mine the property, what happens if we hit the water table? Is that correct?

25
26 Mr. Freitas: Correct.

27
28 Mr. Gomes: The, the current lease agreement we have with the landowner, there's a certain
29 elevation that we have to maintain above sea level, which is basically the floor of our shop, which
30 is well above the water table. So, I don't think there's any concern for us hitting the water table.

31
32 Mr. Freitas: Okay, maybe my question was incorrect then maybe water table maybe talking about
33 sea level. I'm talking about any water that may have...water source that may have been created
34 through water seeping through the ground from West Maui ...(inaudible)...that area, that's what I
35 meant. Is that the same as a water table?

36
37 Mr. Gomes: I would...with my knowledge and experience, I guess I would consider that to be the
38 same. We have not experienced any of that conditions for the 21 years that I've been here at
39 Hawaiian Cement or the, you know, 20 years that we've been mining up there.

40
41 Mr. Freitas: Okay. But there hasn't been any study on that land or that area to make sure that
42 there's not water source that might get damaged during the work that you do over all these years
43 and possibly another 15 more years moving forward?
44

1 Mr. Gomes: I cannot answer that question. I assume that that the people that did our drainage
2 report and prior to that with the previous landowner, landowner took all those into consideration.
3 I mean, there's, there's a major stream bed that runs through the property that we have to stay
4 away from so that we don't alter that water, things of that nature. And unfortunately, we don't
5 have our engineer on here that would probably be better qualified to answer your question directly.

6
7 Mr. Freitas: How many feet over the 15 years do you anticipate to go down? Lower than you are?

8
9 Mr. Gomes: I'm sorry, lower than what, Commissioner?

10
11 Mr. Freitas: Lower than what you are now? How many more feet are you gonna go down?

12
13 Mr. Gomes: We don't...this particular quarry, we don't mine down. We stay at a natural plain, a
14 level of the ground and we mine from there up.

15
16 Mr. Freitas: Okay. Okay, thank you.

17
18 Mr. Gomes: You're welcome.

19
20 Mr. Carnicelli: Great. Mr. Gomes, I don't know if this question's...I'm assuming it's for you or
21 maybe Mr. Esmeralda, so the entire site is 64.4 acres, and the mine itself, the quarry itself is
22 14.8...are my numbers right?

23
24 Mr. Esmeralda: Commissioner, this is Bryan Esmeralda. So, the total approved quarry acre is
25 79.2 acres.

26
27 Mr. Carnicelli: Okay.

28
29 Mr. Esmeralda: And so far, they've accessed about ten acres of that. And as Mr. Gomes
30 mentioned earlier, there's about 20.5 acres that's left to be viable for quarry operations. So, total,
31 you know, they wouldn't even access the total 79 acres for quarrying operations. I think based
32 on studies it looks like there's only a portion of the land that's actually mineable. So, ten years... 10
33 acres so far and then an estimated 20 acres left.

34
35 Mr. Carnicelli: Okay, so that's actually my question then is on this 20 acres left is, that is, is there,
36 are there grades to this? I mean, I guess 'cause is where I'm going with is if what if we're saying,
37 hey, listen, there's 15 years left to get this 20 which, okay, fine. I mean, I don't know anything
38 about anything, just going all right but what if all sudden, I don't know, we actually start building
39 housing here on Maui, shocking if we actually started doing that, right? And then suddenly there's
40 more need for this material and we rip through it in ten, just ten years as an example, is there like
41 a lower quality then all of a sudden we're going beyond this 20 acres and then you guys have the
42 extension and then you're coming back for, you know, more size because you got the extension
43 you know what I'm saying is I'm just trying to pare it out like, oh, we're coming in for time now not
44 expansion, but once we get the time then we can come back later and get the expansion, you

1 know, are we segmenting this out? That's all. Is just like is there is a grades to this stuff in that
2 20.5 acres? Is it beyond that is there something mineable as well?

3
4 Mr. Esmeralda: Thank you, Chair. I think I'll let Mr. Gomes respond to that question.

5
6 Mr. Gomes: Good morning, Chair. Great question. The lease agreement we have with the
7 landowner, he owns that 79.2-acre parcel that we have out there. And the current permit actually
8 covers the 79.2 acres. So, and I believe the State owns adjacent to us and there's also a private
9 owner, so we wouldn't come back, if we mine, through those 20 acres that's left, we wouldn't come
10 back asking for more property simply because the landowner doesn't own any more property, he
11 only owns that 79.2 acres. And there's approximately 34 percent of that acreage that's south of
12 Pohakea Stream that because we can't alter that stream, we don't actually have access to that
13 reserves that's out there. So that's kind of why it's kind of in that 20 acres. So, if we build houses,
14 the economy goes and we mine through the 20 mineable acres, then the use of that property as
15 a quarry would be done.

16
17 Mr. Carnicelli: Got it. Awesome. Question answered. Thank you very much, Mr. Gomes. Does
18 anybody else have any more questions for the applicant or maybe more information to be able to
19 make a decision? Commissioner Freitas.

20
21 Mr. Freitas: Thank you, Chair. Again, for the applicant. State Land Use states that the land is
22 extremely rocky which makes it ideal for rock quarry. But I read in one of the conditions that when
23 the, I guess the permit expires and there's going to be a recommendation to return the property
24 to a vegetative state, remember, it's agricultural designate, so how do you plan to do that?

25
26 Mr. Gomes: Thank you, Commissioner Freitas. Dave Gomes here again. We are required via
27 our lease with the landowner at the term of our lease that there's a reclamation plan, if you will,
28 that puts that property back in the somewhat of the same condition that that we found it as far as
29 the heights, the elevations, the setbacks that we have to be from the property.

30
31 Mr. Freitas: Yeah, so what are you going to fill it with 'cause you're taking out a lot of rock and to
32 bring it back to the elevation as to when you started...and do you pictures and do you have
33 measurements of that elevation now so that you can refer to it, when you start putting it back
34 together again?

35
36 Mr. Gomes: Yeah, let me clarify what I meant by putting it back to how we found it as picture how
37 we found it, the way, the way that the topography is now, which is basically rocky, got some
38 vegetation, we don't actually put the land back at the same elevation as we found it, we have to
39 follow the elevation that we're at that, that shop level, sea level, and it will stay at that elevation
40 from that point forward after we've mined. As far as putting back any sort of, anything to plant
41 anything there that that's not in our agreement with the landowner. I'm not sure what his future
42 use for the property is.

43
44 Mr. Freitas: So, if I understand you, the level that the property is, when you started, you actually
45 dug into a mountainside instead of down, and therefore, all you have to do is return the property

1 no matter how many yards you go into the mountain, as long as that level further down the road
2 is consistent, that's good enough. So, you're going to dig a big hole in a mountainside.

3
4 Mr. Gomes: I think I understand your question. If you look at the pictures there's an elevation of
5 where the shop and some maintenance facilities are, at that level, is what we will keep level as
6 we mine that mountain. So, when we leave, yes, there'll be obviously the resource that was taken
7 out, the material that was taken out is, is taken out and that will be there ...(Inaudible)... A hole,
8 you know, we're not going down there. I'm trying to answer your question in and better understand
9 what you're saying but, yes, we will maintain that 250 level of the per our lease agreement with
10 the landowner.

11
12 Mr. Freitas: Thank you.

13
14 Mr. Carnicelli: Commissioner La Costa. You're on mute.

15
16 Ms. La Costa: Sorry, thank you. So, I believe that Commissioner Freitas was referring to
17 Mr. Gomes letter of March 9, 2010 where it talks about, and it's the second to the last page of our
18 packet, Number 10, that upon succession of the Pohakeha quarry operations, a closure plan shall
19 be prepared to revegetate the site or other measures to reduce erosion and should be reviewed
20 and approved by the Department, and this is under project specific conditions. The applicant
21 shows continued compliance with the following recommendations of the State Department of
22 Transportation. If I am correct, and that is Commissioner Freitas's question, then I would like to
23 know how that is going to take place, because that doesn't have anything to do with the lease of
24 the landowner. It has to do with the Department of Transportation. Thank you. Mr. Gomes are
25 you able to answer that question for me, please?

26
27 Ms. Fukuda: Commissioner Freitas...oh, sorry, Commissioner La Costa this is Karlynn Fukuda
28 from Munekiyo Hiraga. So, the applicant understands that they need to comply. That' an existing
29 condition with the County Special Use Permit and they would need to comply with that condition,
30 so he understands that that's something that needs to occur and that plan would need to be
31 submitted at the time that the quarry is set to close or cease operations.

32
33 Ms. La Costa: That answers our questions, thank you.

34
35 Ms. Fukuda: Thank you.

36
37 Mr. Carnicelli: Thank you. Is there anybody else who like to...any additional clarification before
38 we try to make a decision? Okay, seeing none, Mr. Fasi if you would come and please give us
39 the Department's recommendation.

40
41 Mr. Hopper: Mr. Chair?

42
43 Mr. Carnicelli: Yes, Mr. Hopper.

44

1 Mr. Hopper: I just wanted to check on something here. It looks like the application or it looks like
2 the condition that's to be amended here in the recommendation it says, that Condition Number
3 11 is being amended.

4
5 Mr. Carnicelli: Right.

6
7 Mr. Hopper: But when I look at the compliance report it looks like Condition 10 is the relevant
8 condition. Could you have that clarified because the compliance report looks like Condition 10 is
9 what we're talking about.

10
11 Mr. Carnicelli: Right, and in the presentation, they said 10 as well, so...

12
13 Mr. Hopper: Okay, as long as we're clear on that.

14
15 Mr. Carnicelli: Mr. Fasi was going to handle that for us.

16
17 Mr. Hopper: Okay.

18
19 Mr. Carnicelli: Thank you, Mr. Hopper. Mr. Fasi.

20
21 Mr. Fasi: I'm sorry Commission, can you step back and what are you asking... (inaudible)... I was
22 just getting some clarification from Mr. Yoshida.

23
24 Mr. Carnicelli: Oh, okay. Is in the staff recommendation State Land Use Commission Special
25 Permit, you know we're looking at amending two of the conditions. It's Condition 10 and Condition
26 16, but in the staff report it actually says Condition 11.

27
28 Mr. Fasi: Okay, that could, that could be a typo.

29
30 Mr. Carnicelli: That's bracketed, Yeah, it's just a typo.

31
32 Mr. Fasi: But the condition is—

33
34 Mr. Carnicelli: Yeah, it's just a typo is all.

35
36 Mr. Fasi: Yeah,... (inaudible)... a condition.

37
38 Mr. Carnicelli: Right, the bracketed part should say, 10 that prior to any excavation work is correct.
39 Is everybody in agreement in that?

40
41 Mr. Esmeralda: That's correct, Chair. Thank you, it should be Condition 10.

42
43 Mr. Carnicelli: Right, so it's just a typo that's all, and then 16, so 10 and 16.

44
45 Mr. Fasi: Correct.

1
2 Mr. Carnicelli: Got it, okay. Go ahead Paul.

3
4 Mr. Fasi: I'd like to make some clarification on this before we go any further.

5
6 Mr. Carnicelli: Sure.

7
8 Mr. Fasi: So, what the Commission is doing is you are making maybe not a recommendation,
9 endorsement, approval, it's a matter of semantics. That decision goes to the Land Use
10 Commission and they have the final authority on this, okay. However, if you recommend...if you
11 make a decision to deny, it does not go to the Land Use Commission it just stops right here.

12
13 Mr. Carnicelli: Right.

14
15 Mr. Fasi: Okay. So, that takes care of the Land Use Commission Permit. The County Special
16 Use Permit you have a definitive authoritative, authority on this particular permit. Okay, that's all
17 I have to say, thank you.

18
19 Mr. Carnicelli: Okay, well then if you would just go ahead and present us with your
20 recommendation then so we can move forward with a motion and decision.

21
22 Mr. Fasi: Okay. The Planning Department recommends that the Maui Planning Commission
23 approve to the State Land Use Commission approval of the 15-year time extension request on
24 the Land Use Commission Special Permit and that the dates of the Condition Number 1 will
25 change from December 15, 2020 to 2035, that is December 15, 2035 and also that Condition
26 Number 10 and 16 shall be taken off the permit conditions, and as far as the County Special Use
27 Permit—

28
29 Mr. Carnicelli: Whoever is not muted, please mute yourself.

30
31 Mr. Fasi: Okay, so that takes care of the State Land Use Commission Special Permit. We're
32 changing the date and we're going to take out Conditions 10 and 16 as they are no longer
33 applicable, okay.

34
35 So, on the County Special Use Permit, the only thing we're doing is we're changing the date.
36 We're going to add 15 years to it. So, December 15, 2035 will be the new date. Everything else
37 stays the same.

38
39 Mr. Carnicelli: Great.

40
41 Mr. Fasi: Thank you.

42
43 Mr. Carnicelli: Thank you, Mr. Fasi. So, at this time, I'll go ahead and entertain a motion.
44 Commissioner Tackett.

45

1 Mr. Tackett: I move to approve as recommended by staff, and I believe that although it might not
2 be apparent, most of us probably walk on the improvements that have come from this place, from
3 the 60's, you know, and so, it's kind of a probably something that is unappreciated, you know, but
4 it is definitely something that the County probably needs. So, with that being said, I move to
5 approve. Thank you.

6
7 Mr. Carnicelli: Okay, just...so I have a motion by Commissioner Tackett, seconded by
8 Commissioner Hipolito, but just for clarification, we're gonna put both of these permits together.
9 So, we're gonna say the State Land Use Commission Special Permit and the County Special Use
10 Permit both, we're approving...the motion is to approve both as recommended by staff, both
11 together.

12
13 Mr. Tackett: Correct.

14
15 Mr. Carnicelli: Okay, so that's the motion from Commissioner Tackett, seconded by
16 Commissioner Hipolito. I believe. Commission...Vice-Chair has already spoken to the motion.
17 Commissioner Hipolito would you also like to speak to the motion?

18
19 Mr. Hipolito: Ditto to what the Commissioner Tackett said. You know there is some, I guess,
20 questions out there still on what's gonna happen when they shut down, but we know there's
21 processes in place when they do shut down, they have to follow. As Commissioner Tackett said,
22 you know, Hawaiian Cement has been around for years. A lot of the improvements that's made
23 Maui County is due to their operations and the product that they taking out is not, is not going
24 beyond the surface, but the base coarse material and I've worked with Hawaiian Cement in the
25 past and they're very reputable people and I support this on this motion. Thank you.

26
27 Mr. Carnicelli: Thank you. Would anybody else like to speak to the motion?

28
29 Mr. Esmeralda: Chair Carnicelli, I apologize for interrupting. This is Bryan Esmeralda from
30 Munekiyo Hiraga. I just wanted to note one minor thing in the Planning Department's
31 recommendations for Condition 1 of the State Special Permit, it lists the expiration date, the
32 previous expiration date as December 15, 2020. It actually expired in 2019, so just wanted to
33 note that minor correction there as well.

34
35 Mr. Carnicelli: Okay, so, so, I guess then is, is then our 15-year extension to 2034 or 2035? I
36 mean in the staff report it says 2035.

37
38 Mr. Esmeralda: Yeah, we were requesting 2035 to be consistent with the Conditional Permit time
39 extension that was already approved, but I just wanted to note that the previous expiration date
40 was actually in 2019.

41
42 Mr. Carnicelli: Got it.

43
44 Mr. Esmeralda: Thank you.

1 Mr. Carnicelli: Thank you for that clarification Mr. Esmeralda. Hang on a second, P. D., I'll get to
2 you. So, just with that note Commissioner Tackett, are you okay with your motion as stated?
3 We'll leave it at 2035, just with the correction that what we're deleting is 2019, not 2020, just
4 another typo is all.

5
6 Mr. Tackett: Correct, forward from today to make the dates match I believe is the intent.

7
8 Mr. Carnicelli: Got it. Okay, so, and then Commissioner Hipolito who has the second, you're also
9 okay with that, correct?

10
11 Mr. Hipolito: Yes.

12
13 Mr. Carnicelli: Hang on second Kawika. I see you. I'll get to you. So, okay, just wanted...just
14 point of clarification, Mr. Esmeralda, thank you, the motion and second. So, then I'm going to go
15 to Commissioner La Costa, and then I'll go to you, Commissioner Freitas.

16
17 Ms. La Costa: My question is, is it actually for the County, and I wanted to know why when the
18 renewal was applied for a June 20, 2019, did it take until September 2, 2020 for the Conditional
19 Use Permit to be granted and then two months later came to us so that they really were operating
20 without a permit for all that time? So that's my question as...(inaudible)...

21
22 Mr. Fasi: As long as the applicant has an application in process then they continue operations,
23 as long as we're processing their permit. And the reason it took so long is because the applicant
24 had to catch up with their compliance reports, so we were kinda waiting for that.

25
26 Ms. La Costa: Thank you.

27
28 Mr. Carnicelli: Commissioner Freitas.

29
30 Mr. Freitas: Thank you, Chair. I was raising my hand to see if we could pull back the motion to
31 further discuss this delay. I mean, this delay in the filing what Commissioner La Costa just shared
32 because it does make a difference. There should be some questions asked as to was their
33 operation going on from the time of the permit became invalid until the application or up to current?

34
35 Mr. Carnicelli: Well, I mean, is were your questions answered by Commissioner La Costa's
36 inquiry?

37
38 Mr. Freitas: Well, she...they gave a reason why they were delayed, but the question is, did they
39 operate at the quarry during the time that they had an expired permit?

40
41 Ms. McLean: Chair if I may, if I may just comment on the Department's side.

42
43 Mr. Carnicelli: Director.

44

1 Ms. McLean: As Mr. Fasi indicated, it's been a longstanding practice of the Department that as
2 long as the time extension is filed in a timely manner, meaning it has to be filed before permit
3 expiration, then we allow a grace period for the activity to continue until the renewal request can
4 be acted on. We actually did draft a bill and submitted it to Council quite a while ago to codify
5 that practice, and instead of making it across the board for all types of permits, they separated it
6 out into different kinds of permits. And so, it's been enacted for some, but not for others, but that's
7 still pending with the Council. So Council is aware that this is the practice and that it should be
8 codified and we are working toward that. The applicant could answer the question as to whether
9 they were operating, but if they were operating, we would not consider it to be a violation.

10
11 Mr. Freitas: Thank you.

12
13 Mr. Carnicelli: Commissioner...sorry, Mr. Fasi. Yes, that condition, that question is kind of a non-
14 issue because the application expired December 15, 2019, and the Department received their
15 applications June 20, 2019. So roughly six months ahead of time. So, it was very timely.

16
17 Mr. Carnicelli: Commissioner La Costa.

18
19 Ms. La Costa: Mr. Fasi, you said that they were working through some compliance issues and
20 that's why it was a protracted time from June 9, 2019 to September 20, 2020.

21
22 Mr. Fasi: That is correct, ma'am.

23
24 Ms. La Costa: Okay, were those items of in which they were not compliant, did that have any
25 effect on their operations during that time?

26
27 Mr. Fasi: It did not. They were compliant throughout. I would not bring this before the Planning
28 Commission unless they had met their compliance requirements.

29
30 Ms. La Costa: 'Cause you mentioned that the reason for it taking so long is that they had to
31 comply or meet some of those compliance issues.

32
33 Mr. Fasi: The compliance reports were not timely, so they had to catch up and go, you know, a
34 year at a time to catch up, so we were waiting for that, and upon review, based on those
35 compliance reports, they were in compliance the whole time. So, we accept that based on what
36 they told us, and then, so therefore, the Department is processing these extension requests, and
37 this also gets reviewed by the Land Use Commission as well. They already gave their
38 concurrence based on those compliance reports.

39
40 Ms. La Costa: Thank you, Mr. Fasi, and Mr. Gomes, I would hope that you would keep timely on
41 your compliance reports from now on. Thank you.

42
43 Mr. Carnicelli: Okay, so back to the motion we have on the floor which is to approve both permits
44 as recommended by staff with the typo corrections. Any other discussion on the motion? Okay,
45 seeing none, Director.

1
2 Ms. McLean: As you said, Chair, the motions is to approve both permits, correcting the two typos,
3 one being the old expiration date and the other being that it's Condition 10, not Condition 11 that's
4 being amended.

5
6 Mr. Carnicelli: All those in favor of the motion, please raise your hand. That is one, two, three,
7 four...unanimous. Okay, so it passes both, and then so I guess, Congratulations, Mr. Gomes,
8 good luck at the State.

9
10 **It was moved by Mr. Tackett, seconded by Mr. Hipolito, then**

11
12 **VOTED: To Approve the 15-Year Time Extensions for the State Land Use**
13 **Commission Special Permit and County Special Use Permit, as**
14 **Recommended by the Department, as Amended.**
15 **(Assenting – C. Tackett, M. Hipolito, S. Castro, J. Edlao, K. Freitas,**
16 **P. D. La Costa, K. Pali, D. Thompson)**

17
18
19 Respectfully Submitted by,

20
21
22 CAROLYN TAKAYAMA-CORDEN
23 Secretary to Boards and Commissions II