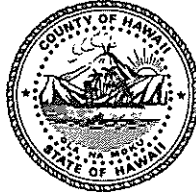


Stephen K. Yamashiro
Mayor



County of Hawaii

PLANNING COMMISSION

25 Aupuni Street, Room 109 • Hilo, Hawaii 96720-4252
(808) 961-8288 Fax (808) 961-9615

CERTIFIED MAIL
Z 416 228 835

August 23, 1995

Mr. Gregory R. Mooers
Mooers Enterprises
P.O. Box 1101
Kamuela, HI 96743

Dear Mr. Mooers:

Special Permit Application No. 95-10
Applicant: WHC Ltd. dba West Hawaii Concrete
Request: Establish a Cinder Quarry
Tax Map Key: 6-7-1:Portion of 25

The Planning Commission at its duly held public hearing on August 9, 1995, voted to approve the above-referenced application. Special Permit No. 909 is hereby issued to establish a cinder quarry operation on approximately 13.774 acres of land situated within the State Land Use Agricultural District. The project site is located mauka of the Mamalahoa Highway and approximately 2,100 feet west of the existing West Hawaii Concrete hard rock quarry, Waikoloa, South Kohala, Hawaii.

Approval of this request is based on the following:

Such use is not contrary to the objectives sought to be accomplished by the land use law and regulations. The granting of this request would promote the effectiveness and objectives of Chapter 205, Hawaii Revised Statutes, as amended. The State Land Use Law and Regulations are intended to preserve, protect and encourage the development of lands in the State for those uses to which they are best suited in the interest of the public health and welfare of the people of the State of Hawaii. In the case of the Agricultural District, the intent is to preserve or keep lands of high agricultural potential in agricultural use. The proposed project will be located within an area whose soils are classified as "E" of "Very Poor" by the Land Study Bureau's Overall Master Productivity Rating and unclassified by the Department of Agriculture's ALISH map.

Lands within agricultural districts might not always be best suited for agricultural activities and yet are classified as such. Also, there are certain types of uses that might not be strictly agricultural in nature yet reasonable in such districts. As such, the legislature has provided for the Special Permit process to allow certain unusual and reasonable uses within the Agricultural district.

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The subject property is situated within the County's Agricultural 40-acre (A-40a) zoned district. The proposed cinder quarry operation would be situated on a 13.774 acre portion of a 22,478.839 acre parcel of land, of which a portion is already being used as a rock quarry. The proposed 13.774 acres of land that will be taken out of the agricultural inventory for this area will not significantly affect the agricultural resource of the area, as the proposed use will be confined to an area which is presently being quarried, and no additional surrounding lands are to be developed. In addition, no active agricultural lands will be taken out of production to provide for the area necessary to establish this use. The Parker Ranch ranching activities will still be ongoing.

Therefore, based on the above circumstances, approval of the subject request would not be contrary to the objectives of the State Land Use Law Rules and Regulations given the subject conditions. The proposed use would not displace agricultural activity nor diminish the agricultural potential of the area since this parcel has not been in agricultural use in years.

The desired use will not adversely affect the surrounding properties. The subject property is currently used for ongoing ranch operations including office, shop, warehouse, paddock and pasture as well as existing quarrying activities. The proposed quarry site is remote and approximately 5 to 6 miles from Waimea Town. The surrounding properties are largely owned by or controlled by Parker Ranch. There are no owners or residents within 300 feet of the perimeter of the boundary of the subject parcel. In addition, because of the proposed quarry's remote location, access to it will be from Mamalahoa Highway and privately maintained roads. Activities will include excavation of cinder and rock, crushing the rock, sorting sand, cinder and aggregate, scraping and loading materials for removal. Occasional blasting may be required if hard shelves are encountered. Noise is not anticipated to be a problem due to the remoteness of the site. Dust and air-borne particles have and will be mitigated through the application of existing quarry operating procedures and compliance with the regulations of the Department of Health. From a visual and public safety standpoint, a condition of approval will require restoration of the area to a state which would blend with surrounding topography of the area. Based upon submittal of appropriate documentation, such as photographs, landscaping plans and contours, the Planning Department would review and, if acceptable, approve the restoration. The property is of sufficient size to allow for adequate setbacks and buffers in minimizing any physical, social or other impacts that this quarry use may have on the area.

The desired use will not unreasonably burden public agencies to provide roads and streets, sewers, water drainage and police and fire protection. Water is hauled to the existing quarry site and stored in a tank. The Department of Water Supply has no objections to the request. The traffic would be increased by 2-5 trips per day. In addition, no new employees are expected to be hired for the new quarry operation. Existing personnel for the hard rock quarry will also operate the cinder quarry. In addition, affected agencies have not expressed any major concerns or objections. All agency requirements shall be complied with prior to establishment of the proposed use.

The land upon which the proposed use is sought is not unsuitable for the uses permitted within the district. The soils within the project area are not suitable for many types of agriculture uses. The nature of the request is to allow for an additional quarry where existing quarry activities now occur.

The use will not substantially alter or change the essential character of the land and the present use. The proposed use will alter the character of the land. However, the applicant will be required to submit photographs of existing conditions and submit restoration plans, including landscaping of the land to be altered. This condition of approval will help ensure that the restoration, visual and public safety concerns will be mitigated to the best extent possible.

Unusual conditions, trends and needs have arisen since the district boundaries and regulations were established. The rapid growth experienced in West Hawaii has created a demand for natural resources by the construction industry. To meet this demand, the applicant is seeking to expand the existing hard rock quarry to include the proposed cinder quarry operation on 13.774 acres of land. Therefore, no existing or proposed areas for agricultural activities will be curtailed or diminished as a result of establishing this activity on this property. As such, other undeveloped areas are still available for agricultural development and the removal of 13.774 acres of land from the agricultural inventory will not have a detrimental impact on the agricultural resources of the area or the County of Hawaii.

The request is not contrary to the General Plan. The subject request is not contrary to the General Plan LUPAG map, which designates the property for Extensive Agriculture uses. Through conditions of approval, the request would also support the following goals, policies and standards of the General Plan:

Natural Resources and Shoreline Element:

- * Ensure that alterations to existing land forms and vegetation, except crops, and construction of structures cause minimum adverse effect to water resources, and scenic and recreational amenities and minimum danger of floods, landslides, erosion, siltation, or failure in the event of earthquake.
- * The County of Hawaii should require users of natural resources to conduct their activities in a manner that avoids or minimizes adverse impacts on the environment.

Land Use - Industrial Element:

- * Industrial activities may be located close to raw material or key resources. The ability of the subject property to provide the needed raw material vital to the construction industry while able to absorb the noxious nature of quarries speaks to the appropriateness of the area for such uses.

Based on the above considerations, the proposed cinder quarry is an unusual and reasonable use of land, which would not be contrary to the objectives sought to be accomplished by the Land Use Law and Regulations.

Approval of this request is subject to the following conditions:

1. The applicant, its successor or assigns shall be responsible for complying with all stated conditions of approval.

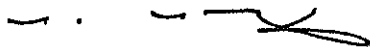
2. The applicant shall indemnify and hold the County of Hawaii harmless from and against any loss, liability, claim or demand for the property damage, personal injury or death arising out of any act or omission of the applicant, its successors or assigns, officers, employees, contractors and agents under this permit or relating to or connected with the approval of this permit.
3. Prior to commencing operations, a map and metes and bounds description of the 13.774 acre area for the cinder quarry shall be filed with the Planning Director and the project. /
4. Prior to commencing operations, a Site Restoration and Revegetation Plan, which assures the site will be left in a nonhazardous condition, shall be submitted. The Plan shall include photographs of the area and a topography map of the project site and its related surroundings areas. This Plan shall be reviewed by the Department of Public Works, the Mauna Kea Soil Conservation Service and submitted to the Planning Director for review and approval.
5. Upon termination of the quarry operations or abandonment of any portion of the affected site, the land shall be graded to blend with the surrounding area and restored as represented in the Site Restoration Plan. The affected site shall be left in a non-hazardous condition. Appropriate documentation which demonstrates compliance with this condition shall be submitted to the Planning Director for review and approval within 90 days from the date of termination and/or abandonment. *within*
6. Final Plan Approval for the quarry operation shall be secured from the Planning Department. To assure adequate time for plan approval review and in accordance with Chapter 25-244 (Zoning Code), plans shall be submitted a minimum of 45 days prior to the date by which plan approval must be secured. Plans shall identify structures and parking associated with the proposed quarry operation. *2 years*
7. Should any unidentified sites or remains such as artifacts, shell, bone, or charcoal deposits, human burials, rock or coral alignments, paving or walks be encountered, work in the immediate area shall cease, and the Planning Department shall be immediately notified. Subsequent work shall proceed upon an archaeological clearance from the Planning Department when it finds that sufficient mitigative measures have been taken. *Done by the Dept*
8. The quarrying activity shall be limited to the hours of 5:00 a.m. to 8:00 p.m., Monday through Saturday.
9. This Special Permit shall be valid for a period of ten (10) years from the effective date of the permit, or its completion or abandonment, whichever occurs first.
10. An adequate supply of water shall be made available for dust control and for fire suppression and pre-suppression.
11. Should any of the conditions not be met or substantially complied with in a timely fashion, the Director shall initiate procedures to revoke the permit.

Mr. Gregory R. Mooers
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This approval does not, however, sanction the specific plans submitted with the application as they may be subject to change given specific code and regulatory requirements of the affected agencies.

Should you have any questions, please feel free to contact Alice Kawaha or Susan Gagorik of the Planning Department at 961-8288.

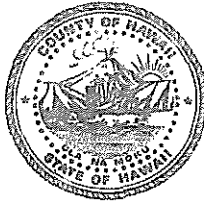
Sincerely,



Wilton K. Wong, Chairman
Planning Commission

AK:syw
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cc: Honorable Stephen K. Yamashiro, Mayor
Planning Director
Department of Public Works
Department of Water Supply
County Real Property Tax Division
West Hawaii Office
State Land Use Commission
Department of Land & Natural Resources
Plan Approval Section
Mr. Carl Simons



County of Hawai'i

PLANNING COMMISSION

Aupuni Center • 101 Pauahi Street, Suite 3 • Hilo, Hawai'i 96720
Phone (808) 961-8288 • Fax (808) 961-8742

April 2, 2008

Mr. Gregory R. Mooers
Mooers Enterprises, LLC
P.O. Box 1101
Kamuela, HI 96743

Dear Mr. Mooers:

Special Permit (SPP 909)
Request: Time Extension (Condition No. 9)
Applicant: WHC dba West Hawaii Concrete
Tax Map Key: 6-7-1:portion 25

The Planning Commission at its duly held public hearing on March 20, 2008, voted to approve the above-referenced request to amend Condition No. 9 (life of the permit) of Special Permit No. 909, which allowed the establishment of a cinder quarry operation on approximately 13.774 acres of land situated within the State Land Use Agricultural District. The project site is located mauka of the Mamalahoa Highway (Highway 190) and approximately 2,100 feet west of the existing West Hawaii Concrete rock quarry, Waikoloa, South Kohala, Hawaii.

Approval of this request is based on the following:

Special Permit No. 909 was approved by the Planning Commission to WHC Ltd. dba West Hawaii Concrete on August 9, 1995 to establish a cinder quarry on 13.774 acres of land. The Special Permit was issued for a 10-year period, until August 9, 2005, or until its completion or abandonment, whichever occurs first (Condition No. 9). The applicant has submitted a request to amend Condition No. 9 of Special Permit No. 909, which states:

“This Special Permit shall be valid for a period of ten (10) years from the effective date of this permit, or its completion or abandonment, whichever occurs first.”

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The applicant is requesting that the condition be amended to read as follows:

“This Special Permit shall be valid until the completion of mining cinder from the quarry or abandonment, whichever occurs first.”

Previously, the applicant requested another Special Permit (SPP 1156) for another quarry site in the area in anticipation that the cinder would run out prior to the end of the ten-year period for Special Permit No. 909. Special Permit No. 1156 was approved on May 17, 2002 with a condition that required the quarry operations to commence within 2 years from the effective date of the permit, or by May 17, 2004 (Condition No. 2). The applicant has simultaneously submitted an amendment request for Condition No. 2 of Special Permit No. 1156 along with this amendment request.

The applicant's reasoning for the request is that the demand for cinder had dramatically decreased due to certain events in the market, including the abandonment of plans for new golf courses. As a result, the applicant is still using the original quarry under Special Permit No. 909 and has yet to begin operations at the new quarry site under Special Permit No. 1156. The time required to exhaust the supply of the cinder in the original quarry was estimated incorrectly. The applicant is requesting that Condition No. 9 of Special Permit No. 909 be amended to allow the quarry operations to continue until the supply of cinder is exhausted and open the new quarry under Special Permit No. 1156 prior to closing the original quarry, so there is no interruption in supplying cinder material.

The Planning Director is recommending that the Planning Commission approve a 10-year time extension rather than allowing it to continue without placing a time condition on the quarry operation. Quarry operations are usually approved with a 10-year time condition to allow the applicant(s) to come back to the Planning Commission and report on the status of the operation. It allows the Planning Commission an opportunity to review the operation, as well as confirm compliance with the conditions. As this permit is connected to the quarry operation under Special Permit No. 1156, the Planning Director is also requesting that a time condition be approved for SPP 1156 as well.

Granting of the time extension request would not be contrary to the original reasons for the granting of the permit. The granting of this amendment request would not be contrary to the original reasons that approved the Special Permit. The use would continue to be an unusual and reasonable use of lands situated within the Agricultural District and will not be contrary to the objectives of Chapter 205, HRS, as amended. The land upon which the existing use is sought is unsuited for the uses permitted within the district. It is classified as “E” or “Very Poor” for agricultural productivity by the Land Study Bureau and unclassified by the Agricultural Lands of Importance to the State of Hawaii (ALISH) Map. The use will not adversely affect surrounding properties. Since

the approval of the Special Permit, the Planning Department has not received any complaints regarding the operation. Lastly, the continued operation will not unreasonably burden public agencies to provide roads and streets, sewers, water, drainage, and police and fire protection.

Approval of this request would not be contrary to the General Plan or the Zoning Code. The amendment to Condition No. 9 would not be contrary to the General Plan or the Zoning Code. The request would continue to be consistent with the Land Use (Industrial and Natural Resources) and the Economic Elements of the General Plan. The granting of this request at this particular location will provide a convenient service to the growing community while maintaining the rural character of the area. Additionally, the applicant has previously received approval of a Special Permit, which allowed the establishment of the quarry operations for a 10-year time period, in compliance with the Zoning Code.

The Planning Director has also revised or deleted several conditions to reflect the applicant's compliance with these conditions in the Special Permit. The applicant has submitted a map and metes and bounds of the 13.774-acre area in compliance with Condition No. 3, therefore the condition will be deleted. The applicant has submitted a Site Restoration and Revegetation Plan, which has been approved by the Planning Director in compliance with Condition No. 4, therefore the condition will be deleted. Lastly, the applicant has secured Final Plan Approval in compliance with Condition No. 6, therefore the condition will be revised to require the applicant to comply with the conditions of the Final Plan Approval.

Based on the above, the amendment request to Condition No. 9 of Special Permit No. 909 is approved. Approval of this amendment request is subject to the following conditions (new material is underscored and deleted material is bracketed and struck through):

1. The applicant, its successor or assigns shall be responsible for complying with all stated conditions of approval.
2. The applicant shall indemnify and hold the County of Hawaii harmless from and against any loss, liability, claim or demand for the property damage, personal injury or death arising out of any act or omission of the applicant, its successors or assigns, officers, employees, contractors and agents under this permit or relating to or connected with the approval of this permit.
3. [~~Prior to commencing operations, a map and metes and bounds description of the 13.774-acre area for the cinder quarry shall be filed with the Planning Director and the project.~~]

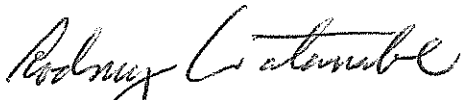
- ~~4.~~ ~~Prior to commencing operations, a Site Restoration and Revegetation Plan, which assures the site will be left in a nonhazardous condition shall be submitted. The Plan shall include photographs of the area and a topography map of the project site and its related surroundings areas. This Plan shall be reviewed by the Department of Public Works, the Mauna Kea Soil Conservation Service and submitted to the Planning Director for review and approval.~~
- 5.] Upon termination of the quarry operations or abandonment of any portion of the affected site, the land shall be graded to blend with the surrounding area and restored as represented in the approved Site Restoration Plan. The affected site shall be left in a non-hazardous condition. Appropriate documentation which demonstrates compliance with this condition shall be submitted to the Planning Director for review and approval within 90 days from the date of termination and/or abandonment.
- [6]4. [~~Final Plan Approval for the quarry operation shall be secured from the Planning Department. To assure adequate time for plan approval review and in accordance with Chapter 25-244 (Zoning Code), plans shall be submitted a minimum of forty-five days prior to the date by which plan approval must be secured. Plans shall identify structures and parking associated with the proposed quarry operation]~~The applicant shall comply with the conditions of Final Plan Approval, approved on September 25, 1995.
- [7]5. Should any unidentified sites or remains such as artifacts, shell, bone, or charcoal deposits, human burials, rock or coral alignments, paving, or walks be encountered, work in the immediate area shall cease and the Planning Department shall be immediately notified. Subsequent work shall proceed upon an archaeological clearance from the Planning Department when it finds that sufficient mitigative measures have been taken.
- [8]6. The quarrying activity shall be limited to the hours of 5:00 A.M to 8:00 P.M. Monday through Saturday.
- [9]7. This Special Permit shall be valid for a period of ten (10) years from the effective date of [~~the permit]~~this amendment, or its completion or abandonment, whichever occurs first.
- [10]8. An adequate supply of water shall be made available for dust control and for fire suppression and pre-suppression.
- [11]9. Should any of the conditions not be met or substantially complied with in a timely fashion, the Director shall initiate procedures to revoke the permit.

Mr. Gregory R. Mooers
Page 5

This approval does not, however, sanction the specific plans submitted with the request as they may be subject to change given specific code and regulatory requirements of the affected agencies.

Should you have any questions, please contact Norman Hayashi of the Planning Department at 961-8288.

Sincerely,



Rodney Watanabe, Chairman
Planning Commission

Lwesthawaiiiconcretespp909PC

cc: Mr. Mark Izuno, West Hawaii Concrete
Department of Public Works
Department of Water Supply
County Real Property Tax Division-Kona
Planning Department - Kona
State Land Use Commission
Department of Land & Natural Resources/HPD
DOT-Highways, Honolulu