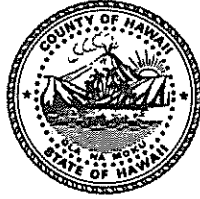


Stephen K. Yamashiro
Mayor



County of Hawaii

PLANNING COMMISSION

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

CERTIFIED MAIL
Z 095 323 800

FEB 13 1997

Mr. Glenn Kuwaye
Allied Aggregates, Ltd.
16630 Kipimana Street
Shipman Industrial Park
Keaau, HI 96749

Dear Mr. Kuwaye:

Special Permit Application (SPP 96-19)
Applicant: Allied Aggregates, Ltd.
Request: Establish a Quarry for Soil Mining
Tax Map Key: 6-7-1:Portion of 25

The Planning Commission at its duly held public hearing on February 6, 1997, voted to approve the above-referenced application. Special Permit No. 956 is hereby issued to establish a quarry for soil mining on approximately 14.9 acres of land situated within the State Land Use Agricultural District. The property is located approximately 2.5 miles northeast of the Mamalahoa Highway-Saddle Road Junction in the vicinity of the West Hawaii Concrete quarries at 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" or "Very Poor" by the Land Study Bureau's Overall Master Productivity Rating and unclassified by the Department of Agriculture's ALISH Map.

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In recognizing that lands within agricultural districts might not be best suited for agricultural activities and yet classified as such, and in recognition that certain types of uses might not be strictly agricultural in nature, yet reasonable in such districts, the legislature has provided for the Special Permit process to allow certain unusual and reasonable uses within the Agricultural district.

The subject property is situated within the County's Agriculture 40-acre (A-40a) zone district. The proposed Quarry operation would be situated on a 14.9-acre portion of a 22,478.839 acre parcel of land, portions of which are already used for quarrying operations. The proposed 14.9 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 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. Therefore, the proposed use would not be contrary to the objectives of the State Land Use Law for the Agricultural district.

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. The proposed use is consistent with the following goals, policies and standards of the General Plan:

Land Use - Industrial Element

- * Industrial activities may be located close to raw materials or key resources.

Land Use - Natural Resources

- * 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.

Economic Element

- * Economic development and improvements shall be in balance with the physical and social environments of the island of Hawaii.
- * The County shall provide an economic environment which allows new, expanded, or improved economic opportunities that are compatible with the County's natural and social environment.

The request would also support the Natural Resources element of the General Plan which states a goal to "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" and "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." 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.

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 500 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. 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 this approval requires the applicant to restore 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 provided by Parker Ranch for dust control. The Department of Water Supply has no objections to the request. The traffic to be generated by the proposed quarry would maintain its present volume, three employees are expected to be hired for the new quarry operation. In addition, the existing quarry would be discontinued and the proposed quarry has not generated concerns for additional services as reflected in the affected agencies responses. All requirements of the Department of Health, Department of Public Works and Fire Department 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 petitioner 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 petitioner is seeking to discontinue the existing hard rock quarry and to include the proposed quarry operation on 14.9 acres of land. Therefore, no existing or proposed areas for agricultural activities will be curtailed or diminished as a result of the establishment of this activity on this property. As such, other undeveloped areas are still available for agricultural development and the removal of 14.9 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.

Based on the above considerations, the proposed Quarry Use 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 applicants, successors or assigns shall indemnify and hold the County of Hawaii harmless from and against any loss, liability, claim or demand for the property damage, personal injury and death arising out of any act or omission of the applicants, its successors or assigns, officers, employees, contractors and agents under this permit or relating to or connected with the granting of this permit.
3. The quarry operations and related activities shall commence within two (2) years from the effective date of this permit. A written notification of commencement of quarry activity shall be submitted to the Planning Department. Prior to commencing construction of any structure(s), Final Plan Approval for the structure(s) related to the quarry operation shall be secured from the Planning Department in accordance with Chapter 25-2-70 (Zoning Code). Plans shall identify any proposed structures and parking associated with the proposed quarry operation in accordance with Chapter 25 (Zoning Code). Photographs of the area and a topography map of the project site and its related surrounding areas shall also be submitted with plans for Plan Approval.
4. The quarrying activity shall be limited to the hours of 6:00 a.m. to 6:00 p.m., Monday through Saturday, provided active noise generating activity (i.e. blasting, crushing) shall commence no earlier than 7:30 a.m.
5. The life of this permit shall be until December 31, 2007, or its abandonment, whichever occurs first.

6. The applicant shall submit an Erosion Control and Site Restoration Plan for review and approval by the Planning Director, in consultation with the Department of Public Works, one year prior to the termination of the quarrying operations.
7. 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 rehabilitated as approved in the Erosion Control and 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 Department and the Department of Public Works for review and approval within 90 days from the date of termination and/or abandonment.
8. An adequate supply of water shall be made available for dust control and for fire suppression and pre-suppression.
9. Should any unidentified sites or remains such as artifacts, shell, bone or charcoal deposits, human burials, rock or coral alignments, pavings or walls be encountered, work in the immediate area shall cease and the Department of Land and Natural Resources-Historic Preservation Division (DLNR-HPD) shall be immediately notified. Subsequent work shall proceed upon an archaeological clearance from the DLNR-HPD when sufficient mitigative measures have been taken.
10. The applicant shall comply with all other laws, rules, regulations and requirements, including those of the Department of Health, Department of Labor and the Department of Public Works.
11. An annual monitoring report shall be submitted to the Planning Director prior to the anniversary date of the approval of the permit. The report shall include the progress in complying with the conditions of approval and, if any, a detailed listing of public complaints or problems and their disposition. This condition shall remain in effect until all of the conditions of approval have been complied with and the Planning Director acknowledges that further reports are not required.
12. An initial extension of time for the performance of conditions within the permit, with the exception of Condition No. 5, may be granted by the Planning Director upon the following circumstances:
 - A. Non-performance is the result of conditions that could not have been foreseen or are beyond the control of the applicant, successors, or assigns and that are not the result of their fault or negligence.
 - B. Granting of the time extension would not be contrary to the General Plan or Zoning Code.

Mr. Glenn Kuwaye
Allied Aggregates, Ltd.
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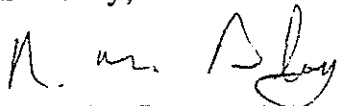
- C. Granting of the time extension would not be contrary to the original reasons for the granting of the permit.
- D. The time extension granted shall be for a period not to exceed the period originally granted for performance (i.e., a condition to be performed within one year may be extended for up to one additional year).

Should any of the conditions not be met or substantially complied with in a timely fashion, the Planning Director may initiate procedures to revoke the special permit.

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,

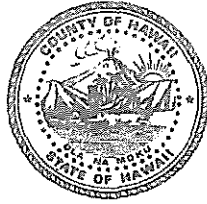


Kevin M. Balog, Chairman
Planning Commission

AK:syw

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cc: 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
Roy Takemoto, Esq.



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

March 5, 2008

Steven S. C. Lim, Esq.
Carlsmith Ball, LLP
121 Waianuenue Avenue
Hilo, HI 96720

Dear Mr. Lim:

Special Permit (SPP 956)
Applicant: Edwin DeLuz Trucking and Gravel, LLC
Request: Time Extension to Condition No. 5 (Life of Permit)
Tax Map Key: 6-7-1:portion of 25

The Planning Commission at its duly held public hearing on February 22, 2008, voted to approve the above-referenced request to amend Condition No. 5 (life of permit) of Special Permit No. 956, which allowed the establishment of a quarry for soil mining on 14.9 acres within the State Land Use Agricultural District. The permit was previously issued to Allied Aggregates Ltd. for property located approximately 2.5 miles northeast of the Hawaii Belt Road (Highway 190)-Saddle Road junction in the vicinity of the West Hawaii Concrete quarries at Waikoloa, South Kohala, Hawaii.

Approval of this request is based on the following:

The applicant has submitted a 10-year time extension request to amend Condition No. 5 of Special Permit No. 956, which states:

“The life of the permit shall be until December 31, 2007, or its abandonment, whichever occurs first.”

The soil mining operation is situated on approximately 14.9 acres of a 22,478.839-acre parcel, of which other portions are used for quarrying operations. One of the reasons for the request is that between September 2003 and September 2006, several large development projects that intended to use soils mined under Special Permit No. 956

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halted work causing a surplus in soil material and soil mining operations slowed at the project site. Since September 2006, requests for soil materials have resumed.

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. 5 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 a quarry for soil mining for a 10-year time period, in compliance with the Zoning Code.

Based on the above, the 10-year time extension request to Condition No. 5 of Special Permit No. 956 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 applicants, successors or assigns shall indemnify and hold the County of Hawaii harmless from and against any loss, liability, claim or demand for the property damage, personal injury and death arising out of any act or omission of the applicants, its successors or assigns, officers, employees, contractors and agents under this permit or relating to or connected with the granting of this permit.

3. ~~[The quarry operations and related activities shall commence within two (2) years from the effective date of this permit. A written notification of commencement of quarry activity shall be submitted to the Planning Department. Prior to commencing construction of any structure(s), Final Plan Approval for the structure(s) related to the quarry operation shall be secured from the Planning Department in accordance with Chapter 25 2 70 (Zoning Code). Plans shall identify any proposed structures and parking associated with the proposed quarry operation in accordance with Chapter 25 (Zoning Code). Photographs of the area and a topography map of the project site and its related surrounding areas shall also be submitted with plans for Plan Approval.]~~ The applicant shall comply with the conditions of Final Plan Approval dated October 28, 2002.
4. The quarrying activity shall be limited to the hours of 6:00 A.M. to 6:00 P.M., Monday through Saturday; provided active noise generating activity (i.e. blasting, crushing) shall commence no earlier than 7:30 A.M.
5. The life of this permit shall be until December 31, ~~[2007]~~2017, or its abandonment, whichever occurs first.
6. The petitioner shall submit an Erosion Control and Site Restoration Plan for review and approval by the Planning Director, in consultation with the Department of Public Works, one year prior to the termination of the quarrying operations.
7. 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 rehabilitated as approved in the Erosion Control and 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 Department and the Department of Public Works for review and approval within 90 days from the date of termination and/or abandonment.
8. An adequate supply of water shall be made available for dust control and for fire suppression and pre-suppression.
9. Should any unidentified sites or remains such as artifacts, shell, bone or charcoal deposits, human burials, rock or coral alignments, pavings or walls be encountered, work in the immediate area shall cease and the Department of Land and Natural Resources-Historic Preservation Division (DLNR-HPD) shall be immediately notified. Subsequent work shall proceed upon an archaeological

clearance from the DLNR-HPD when sufficient mitigative measures have been taken.

10. The petitioner shall comply with all other laws, rules, regulations and requirements, including those of the Department of Health, Department of Labor and the Department of Public Works.
11. An annual monitoring report shall be submitted to the Planning Director prior to the anniversary date of the approval of the permit. The report shall include the progress in complying with the conditions of approval and, if any, a detailed listing of public complaints or problems and their disposition. This condition shall remain in effect until all of the conditions of approval have been complied with and the Planning Director acknowledges that further reports are not required.
12. ~~[An initial extension of time for the performance of conditions within the permit, with the exception of Condition No. 5, may be granted by the Planning Director upon the following circumstances:~~
 - ~~A. Non performance is the result of conditions that could not have been foreseen or are beyond the control of the applicant, successors, or assigns and that are not the result of their fault or negligence.~~
 - ~~B. Granting of the time extension would not be contrary to the General Plan or Zoning Code.~~
 - ~~C. Granting of the time extension would not be contrary to the original reasons for the granting of the permit.~~
 - ~~D. The time extension granted shall be for a period not to exceed the period originally granted for performance (i.e., a condition to be performed within one year may be extended for up to one additional year). If the applicant should require an additional extension of time, the Planning Director shall submit the applicant's request to the Planning Commission for appropriate action.~~

Should any of the conditions not be met or substantially complied with in a timely fashion, the Planning Director may initiate procedures to revoke the special permit.

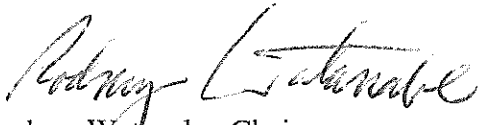
This approval does not, however, sanction the specific plans submitted with the request as they may be subject to change given specific code and regulatory requirements of the affected agencies.

Steven S. C. Lim, Esq.

Page 5

Should you have any questions, please contact Norman Hayashi of the Planning Department at 961-8288, x205.

Sincerely,

A handwritten signature in cursive script, appearing to read "Rodney Watanabe".

Rodney Watanabe, Chairman
Planning Commission

Ledwindeluzspp956

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