



Planning Commission

Bernard K. Akana
Mayor

25 Aupuni Street, Rm. 109 • Hilo, Hawaii 96720 • (808) 961-8288

CERTIFIED MAIL

January 31, 1990

Robert W. Carlsmith, Esq.
P.O. Box 1720
Kailua-Kona, HI 96745-1720

Dear Mr. Carlsmith:

Amendment to Special Permit No. 357 (77-260)

Applicant: Richard Smart Trust dba Parker Ranch

TMK: 4-7-07:Portion of 11, Kapa'aula, Hamakua (Site No. 1)

5-6-01:Portion of 51, Puakea, North Kohala (Site No. 2)

6-7-01:Portion of 3, Waikoloa, South Kohala (Site No. 3)

6-7-01:Portion of 25, Waikoloa, South Kohala (Site No. 4)

6-7-01:Portion of 25, Waikoloa, South Kohala (Site No. 5)

The Planning Commission at its duly held public hearing on January 18, 1990, voted to partially approve your request to amend Special Permit No. 357 (77-260) which allowed for the continued operation of five existing quarry sites situated within the State Land Use Agricultural District in the Hamakua, North Kohala, and South Kohala Districts of Hawaii. The request for indefinite time and the conditional deletion of Site No. 4 was denied, and the request to expand Site No. 2 and delete Site No. 3 was approved.

The decision of the Planning Commission is based on the following:

1. The request for an indefinite life to the Special Permit instead of the 10-year time period is contrary to the original reasons for granting the permit in 1977. It is recognized that quarrying is an activity generated from a non-renewable resource, which will terminate upon the resource being exhausted or due to the lack of demand. Such an activity should be re-evaluated against the conditions and trends at that

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point in time. Decreased demand of the resource material or urban expansion in the vicinity of any of the sites could warrant its termination. In this regard, another 10-year time period from the date of amendment approval is being recommended. In addition, the monitoring of such activity may be accomplished through the submittal of an annual monitoring report detailing the approximate amount of material quarried, listing of public complaints or problems, disposition of complaints and so on. A new condition is being recommended to allow for annual reporting and possible follow-up mitigation.

2. The expansion of Site No. 2 to a 14.9-acre site will not be contrary to the objectives sought to be accomplished by the State Land Use Law and Regulations. The intent of the Land Use Law and Regulations is 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. The area is rated Very Poor or "E" by the Land Study Bureau for agricultural productivity and would be an extension of the existing approved quarry site. Commercial excavation or removal of natural building material or minerals is a permitted use within the County's Agricultural zone district. It is determined that approval of the subject request to allow the expansion of a quarry operation would be compatible with the existing land use designations and would not be circumventing the County's planning effort for this particular area, nor would it be detrimental to the agricultural resources of the county or state. The State Department of Agriculture raised no objections to the request.

The proposed expansion will not adversely affect the surrounding properties. The expansion will be occurring in an easterly (mauka) direction away from the Puakea Ranch Subdivision and also away from the Kawamoto residence referred to in Condition No. 2.b.3 of the subject permit.

The proposed expansion will not unreasonably burden public agencies to provide additional facilities and services. The Department of Transportation-Highways Division has commented that access would be allowed from "permitted access openings" on the Akoni Pule Highway. Other cooperating agencies had no objections to the request.

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Based on the foregoing, it is determined that the proposed expansion of Site No. 2 is an unusual and reasonable use of the land within the State Land Use Agricultural District and that approval of the subject request would promote the effectiveness and objectives of Chapter 205, HRS, as amended.

3. While the deletion of Site No. 3 should not affect the original permit, Condition No. 6 of Special Permit No. 357 (77-260) must still be complied with. Please be advised that with the deletion of Site No. 3 from the permit, the Planning Commission required that appropriate documentation that Condition No. 6 has been complied with shall be submitted to the Planning Director for approval within ninety days from approval of the amendment request (January 18, 1990).

4. The deletion of Site No. 4 from the Special Permit upon approval of another Special Permit application for expansion of a 30-acre site to a 90-acre area by the Land Use Commission would not be consistent with the State Land Use Law Rules and Regulations. The applicant wishes to keep his options under Special Permit No. 357 (77-260) should the new Special Permit request be denied. Site No. 4 is 30 acres in size and, therefore, could not be retained under the original permit, which is being reviewed by only the Planning Commission. It is recommended that Site No. 4 be deleted in its entirety from this permit as it is the subject of a different Special Permit application which undergoes a separate decision-making process. If the Special Permit expansion request is denied, Site No. 4 would not be permitted to operate.

Special Permit No. 357 (77-260) is amended as follows:
[Bracketed material [] to be deleted; underscored material to be added.]

1. That the petitioner or his authorized representative(s) shall file with the County Planning Department a map and metes and bounds description of the five (5) quarry sites within six (6) months of the effective date of the Special Permit. Further, that a metes and bounds description of the expanded Site No. 2 shall be filed with the Planning Department within six months from the date of approval of this amendment.
2. That the following requirements shall be applied to the specified sites:

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- a. Site No. 1 (TMK: 4-7-07: Portion of 11 - identified as Exhibit BB on file with the County of Hawaii Planning Department).
 - 1) Maximum of ten (10) acres.
 - 2) Operation limited to dynamiting, portable crusher, loading and stockpiling.
 - 3) Stockpiled material shall be outside of the government right-of-way (Mamalahoa Highway).
 - 4) Any debris left on Mamalahoa Highway as a result of the quarry operation shall be cleared by the quarry operator.
- b. Site No. 2 (TMK: 5-6-01: Portion of 52-Exhibit CC)
 - 1) Maximum of [six (6)] 14.9 acres.
 - 2) Operation limited to scraping, loading and limited stockpiling.
 - 3) Operation shall be confined to the side of the existing cinder cone away from the Kawamoto dwelling.
 - 4) A grading permit for the expansion area shall be secured within one year from the date of approval of the amendment request.
- [c. Site No. 3 (TMK: 6-7-01: Portion of 3-Exhibit DD)
 - 1) Maximum of sixty (60) acres.
 - 2) Operation limited to scraping, loading, limited stockpiling and installation of scales.
 - 3) Any debris left on Saddle Road as a result of the quarrying operation shall be cleared by the quarry operator.

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- d. Site No. 4 (TMK: 6-7-01: Portion of 25-Exhibit DD)
 - 1) Maximum of thirty (30) acres.
 - 2) Operation shall be limited to dynamiting, portable crusher, loading and limited stockpiling.
- e.] c. Site No. 5 (TMK: 6-7-01: Portion of 25-Exhibit DD)
 - 1) Maximum of five (5) acres.
 - 2) Operation limited to scraping, loading and limited stockpiling.
- 3. That the rules and regulations of the State Department of Health shall be complied with.
- 4. That the operations, including the loading and hauling, be limited to between the hours of 7:00 a.m. and 5:00 p.m. on Mondays through Saturdays only.
- 5. That the quarrying operations and its allied uses be terminated within ten (10) years from [after] the [effective] date of approval of the Special Permit amendment or their prior abandonment, whichever occurs first.
- 6. That upon termination of the operations at each site, the lands shall be graded to blend with the surrounding areas and revegetated. Further, the sites shall be left in a nonhazardous condition. Appropriate documentation which demonstrates compliance with this condition shall be submitted to the Planning Director for review and approval within ninety(90) days from the termination date [, subject to the approval of the County of Hawaii Planning Director].
- 7. That all other applicable laws, requirements, rules and regulations be complied with.
- 8. An annual monitoring report shall be submitted to the Planning Director prior to the anniversary date of the approval of the amendment request. The report shall

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include, but not be limited to, the amount of material quarried, a detailed listing of public complaints or problems, and their disposition. Should a conflict arise, which cannot be mitigated or mediated, the quarry operations shall cease upon appropriate findings by the Planning Commission that the introduced use will have an adverse impact on surrounding properties.

9. Should any of the foregoing conditions not be met or substantially complied with in a timely fashion, [The Special Permit may be deemed null and void] the Director may initiate procedures to revoke the 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.

Please feel free to contact the Planning Department if there are any questions on this matter.

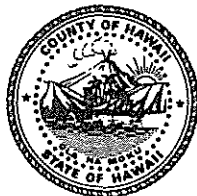
Sincerely,



Fred Y. Fujimoto
Chairman, Planning Commission

xc: Department of Public Works
Department of Water Supply
County Real Property Tax Division
Planning Office - Kona
State Land Use Commission

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
P 101 317 925

DEC 09 1999

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

Dear Mr. Lim:

Special Permit Application (SPP 99-013)

Applicant: Edwin DeLuz Trucking & Gravel, LLC

Request: Establishment of an Aggregate Quarry and Crushing
Operation With Accessory Uses

Tax Map Key: 4-7-007:Portion of 11

The Planning Commission at its duly held public hearing on November 16, 1999, voted to approve the above-referenced application. Special Permit No. 1040 is hereby issued for the establishment of an aggregate quarry and crushing operation with accessory uses on approximately 14.50 acres of land situated within the State Land Use Agricultural District. The property is located on the south (mauka) side of the Old Mamalahoa Highway, approximately 3½ miles east or on the Honokaa side of the Old Mamalahoa Highway-Hawaii Belt Highway junction at Kapo'aula, Hamakua, Hawaii.

Approval of this request is based on the following:

The proposed 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

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potential in agricultural use. The project site is located within an area whose soils are classified as "D" or "Poor" by the Land Study Bureau's Overall Master Productivity Rating and classified "Other Important Lands and Unclassified" by the Department of Agriculture's ALISH Map. Portions of the subject property have been previously quarried by the Lirou Quarry (10 acres) and the existing Kapo'aula Quarry (3 acres); with surrounding areas being used by Parker Ranch for pasture activities. Significant agricultural lands will not be removed from active use.

Lands within agricultural districts might not always be best suited for agricultural activities and yet classified as such. Also, there are certain types of uses which may not be agricultural in nature, yet reasonable in such districts. As such, the legislature has provided for the Special Permit process to allow for certain unusual and reasonable uses within the Agricultural district. The subject property is situated within the County's Agricultural (A-40a) zoned district. The proposed quarry operation would be situated on a 14.50-acre portion of a 659.28-acre parcel. The proposed 14.50 acres of land that will be taken out of the agricultural inventory for this area will not significantly affect the agricultural resources or potential of the area nor displace any active agricultural activity, as quarry activity has been ongoing in the vicinity. The applicant runs the Kapo'aula Quarry on approximately 3 acres of land, which is immediately adjacent to the proposed quarry area. The establishment of a quarry on the subject property would be an unusual and reasonable use of the land that would not be contrary to the objectives of the State Land Use Law Rules and Regulations given the subject conditions.

The request is not contrary to the General Plan. The subject request is not contrary to the General Plan LUPAG Map, which designates the area as Extensive Agricultural. The project would complement the following goals and policies of the General Plan:

Land Use

- * Designate and allocate land uses in appropriate proportions and in keeping with the social, cultural and physical environments of the County.
- * The County shall encourage the development and maintenance of communities meeting the needs of its residents in balance with the physical and social environment.

Land Use - Industrial Element:

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

Economic:

- * Economic development and improvement 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 or expanded, or improved economic opportunities that are compatible with the County's natural and social environment.
- * The County of Hawaii shall strive for diversification of its economy by strengthening industries and attracting new endeavors.

Natural Resources and Shoreline Elements:

- * 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 desired use will not adversely affect the surrounding properties. The surrounding properties include quarrying operations and pasture lands. The nearest dwellings within the area are located approximately 3 miles. Due to its distance from dwellings or residences, the appropriateness of the area is identified for such uses. From a visual and public safety standpoint, a condition will be included to require the applicant to restore the area to a state which would blend with the surrounding topography of the area upon ceasing operations. All required measures to minimize traffic, dust and noise will be adhered to by the applicant.

The land upon which the proposed use is sought is unsuitable for the uses permitted within the district. As previously mentioned, the lands are rated "D" or "Poor" for agricultural productivity and Other Important Lands and Unclassified by the ALISH Map. The soils in this area are not suitable for many types of agricultural uses. An adjacent 3-acre area, Kapo'aula Quarry, is presently being quarried by the applicant; as was the Lirou Quarry, which ceased operations on 10 acres to the northwest of the proposed site. The subject property has been quarried and the request is to continue quarry activities in an expanded area. Surrounding properties are in pasture use.

The use will not substantially alter or change the essential character of the land and the present use. The proposed quarry will change the character of the land, however, there are and have been other quarries in the existing vicinity. The subject property is able to provide the needed raw material vital to the construction industry. As quarrying involves an activity generated from a non-renewable resource, its use terminates when the resources are exhausted. Prior to the start of operations, 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 ensure that upon expiration of quarrying activities, the restoration, visual and public safety concerns will be mitigated to the best extent possible. Also, as the area has not been previously cleared nor altered, the applicant will be required to secure archaeological clearance from the DLNR-SHPD.

Unusual conditions, trends and needs have arisen since the district boundaries and regulations were established. There are many areas in the County where lands within the Agricultural District are not in active agricultural productivity. Because quarrying is resource-based, sites are locationally restricted. Other previous and existing quarrying activities have occurred on portions of the subject property and in the near vicinity of the project site which makes this an appropriate site. Through the special permit process, appropriate review of criteria is conducted for considering the granting of this request. As such, no existing or proposed areas for agricultural activities will be curtailed or diminished as a result of establishing this activity on the property.

The desired use will not unreasonably burden public agencies to provide roads and streets, sewers, water drainage and police and fire protection. Access to the proposed quarry will be from the existing Old Mamalahoa Highway, approximately three miles from the Hawaii Belt Highway intersection. The Old Mamalahoa Highway has an approximately 50-foot wide right-of-way which is paved. The existing road should be able to handle the traffic. According to the applicant, portable restrooms will be brought to the property. Tanker trucks will also be used for dust mitigation along the access road. The applicant also proposes to conform to Department of Health regulations. Finally, agencies reviewing the request had no objections to the quarry.

The project site is not a habitat for endangered species of flora or fauna nor is the site listed on the Hawaii or National Registers of Historic Places.

Based on the above considerations, the proposed quarry operation within the project site 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 to establish an aggregate quarry and crushing operation with accessory uses on 14.50 acres of land is subject to the following conditions. However, 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 permit.

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

2. Prior to commencing any land clearing operations, archaeological clearance shall be secured from the Department of Land and Natural Resources - State Historic Preservation Division (DLNR-HPD) and submitted to the Planning Director.
3. A metes and bounds description, in map and written form, of the 14.509 acre area for the quarry shall be filed with the Planning Director within one year from the effective date of this Special Permit.
4. Prior to the commencement of quarry activity, a Site Restoration and Revegetation Plan, which assures the site will be left in a nonhazardous condition, shall be submitted to the Planning Director. The Plan shall include photographs of the area and a topography map of the project site and its related surroundings. This Plan shall be reviewed by the Hawaii Meat Company, Limited, the Natural Resources Conservation Service and the Department of Public Works; with their comments submitted to the Planning Director for review and approval.
5. Prior to the commencement of quarry activity, a written notification shall be submitted to inform the Planning Director of the start date.
6. The life of this Special Permit shall be co-terminus with the License Agreement with the Hawaii Meat Company, Limited or until abandonment, with notification to the Planning Director upon termination of activity.
7. Within ninety (90) days after termination of the quarry operation or abandonment of the project site, appropriate documentation which demonstrates compliance with the Site Restoration and Revegetation Plan shall be submitted to the Planning Department.
8. Should any remains of historic sites, such as rock walls, terraces, platforms, marine shell concentrations or human burials, be encountered, work in the immediate area shall cease and the DLNR-HPD shall be immediately notified. Subsequent work shall proceed upon an archaeological clearance from the DLNR-HPD when it finds that sufficient mitigative measures have been taken.
9. Comply with all applicable laws, rules, regulations and requirements of affected agencies.
10. An extension of time for the performance of conditions within the permit may be granted by the Planning Director upon the following circumstances:

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- A. The 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).

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 contact Phyllis Fujimoto or Alice Kawaha of the Planning Department at 961-8288.

Sincerely,



Leonard S. Tanaka, Chairman
Planning Commission

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cc: Department of Public Works
Department of Water Supply
County Real Property Tax Division
State Land Use Commission
Department of Land & Natural Resources
Kazu Hayashida, Director/DOT-Highways, Honolulu
Mr. Edwin DeLuz