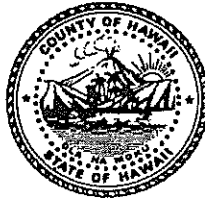


Harry Kim
Mayor



County of Hawaii

PLANNING COMMISSION

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FEB 28 2001

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

Dear Mr. Lim:

Special Permit Application (SPP 00-051)

Applicant: Edwin De Luz Trucking & Gravel LLC

Request: To Establish a Quarry Operation Involving the Mining of Top Soil and Cinder

Tax Map Key: 6-7-1:Portion of 25

The Planning Commission at its duly held public hearing on February 2, 2001, voted to approve the above-referenced application. Special Permit No. 1098 is hereby issued for the establishment of a quarry operation involving the mining of top soil and cinder on approximately 14.99 acres of land within the State Land Use Agricultural District. The property is located approximately 1.5 miles east of Mamalahoa Highway and 2.5 miles northeast of the Mamalahoa Highway-Saddle Road Junction, and in the vicinity of the existing Allied Aggregates quarry site, 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 situated within an area whose soils are classified as "D" or "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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Approval of this request for a Special Permit will not introduce a use that will be detrimental to the County's inventory of agricultural lands that maintain a high potential for agricultural use.

In recognizing that lands within the Agricultural District may not be highly suited for agricultural activities and yet classified as such; and in recognition that certain types of uses may 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 project site is situated within the County's Agriculture-40 acre (A-40a) zone district. The proposed quarry operations will be situated on approximately 14.99 acres of land within a portion of a much larger 22,479-acre parcel; portions of which are already utilized for quarrying operations. Quarrying activities within this parcel has been ongoing since 1945. Since 1977, the State Land Use Commission and the County of Hawaii Planning Commission have issued a total of three (3) Special Permits to allow for various quarrying at locations throughout the subject property and involving a total of approximately 120 acres. The proposed 14.99 acres of land that will be taken out of the agricultural inventory for this area to accommodate the proposed quarrying activities will not significantly affect the agricultural resource of the area, more specifically, the existing ranching operations of Parker Ranch. The applicant has stated that *"The landowner, Parker Ranch Inc., recommends the proposed site as an area that would be compatible with the ranching operations and result in minimal impact on the surrounding uses due to its relative isolated location."*

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. The proposed quarrying operations will not displace existing agricultural activities nor will it diminish the agricultural potential of the affected area.

Approval of the request would not be contrary to the General Plan. The subject property is designated for Extensive Agricultural uses by the General Plan's Land Use Pattern Allocation Guide (LUPAG) Map. While quarrying activities are not defined as a use that is compatible with the Extensive Agricultural designation of the affected area, the Planning Commission must also consider how the proposed use will also achieve the desired goals, policies and standards as set forth within the General Plan. It is determined that the proposed use is consistent with the following goals, policies and standards of the General Plan:

Land Use Element

- Designate and allocate land uses in appropriate proportions and mix and in keeping with the social, cultural, and physical environments of the County.
- Industrial activities may be located close to raw materials or key 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.

In order to provide for raw construction materials that is so vital to our construction industry, quarries must be established in locations where there is an abundance of these raw materials. For this reason, quarries, while industrial in character, cannot be confined to Industrial-designated areas. As evidenced by the issuance of Special Permits for other quarries within the affected area, this particular section of South Kohala contains the raw materials essential to our construction industry and to the continued prosperity of our economy. As discussed within this approval report, the establishment of the proposed quarry in this particular location will not adversely impact the other resource so vital to our economy; our agricultural resources. Its location will strike a balance of land use by providing for the resource needs of our community while minimizing significant adverse impacts upon agricultural activities and surrounding communities.

The desired use will not adversely affect surrounding properties. The project site is situated adjacent to an existing quarry operation and in the general vicinity of other existing quarry operations that have been operating since 1945. The project site is in a relatively remote section of South Kohala approximately 5 to 6 miles from Waimea Town. The remainder of the subject property, consisting of 22,479 acres, is owned by Parker Ranch who have indicated to the applicant that this location will minimize any potential disruption to their ranching operations. Dust and air-borne particles have and

will be mitigated through the application of standard 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 will require the applicant to restore the project site to a state that will blend with the surrounding topography of the area upon termination of quarry activities. 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 activity may have upon the surrounding area. As a condition of this approval, the hours of operation of the quarry will be limited to the hours between 6:00 a.m. to 6:00 p.m., Monday through Saturday. In addition, activities which involve excessive noise, such as blasting, will be restricted to the hours after 7:30 a.m. These additional requirements should further minimize the possibility of adverse impacts to the surrounding area.

The desired use will not unreasonably burden public agencies to provide roads and streets, sewers, water, drainage, and police and fire protection. Water will be provided by Parker Ranch for dust control. Since the proposed quarry operations will not depend upon the County's water system for its water needs, the Department of Water Supply will not impose any requirements upon the applicant. Traffic to be generated by the proposed quarry operations is anticipated at 20 truck trips per day along the existing gravel/cinder access road that provides access to the project site from the Mamalahoa Highway. The applicant has indicated that this access road is adequate to accommodate the additional traffic to be generated by the proposed quarry operations. The Department of Public Works and the State Department of Transportation did not express any objections or concerns regarding the request. This approval will require the applicant to comply with all applicable requirements of the Department of Health, Department of Public Works and Fire Department, prior to establishment of the proposed use.

The land upon which the proposed use is sought is not suitable for the uses permitted within the district. The soils within the project site are not highly suitable for many types of agricultural uses. Soils within the project site and surrounding area are suitable for pasture uses as evidenced by its former use as part of Parker Ranch's ranching operations. We have determined that to commit 14.99 acres of land to quarry operations will not adversely affect the potential of surrounding lands to be maintained in pasture use. This position is supported by the applicant who states that Parker Ranch, who maintains pasture on lands surrounding the project site, finds that the proposed quarry activity will be compatible with its ranching operations and result in minimal impact on surrounding uses.

The use will not substantially alter or change the essential character of the land and the present use. The proposed use will alter the physical 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. The area surrounding the project site has been involved in various quarrying activities since 1945. Immediately adjacent to the project site is an active quarry operations (Allied Aggregates). Therefore, approval of the request will be consistent with the existing "industrial" character of the surrounding area.

Unusual conditions, trends and needs have arisen since the district boundaries and regulations were established. The rapid growth of West Hawaii has created a demand for natural resources by the construction industry. In order to sustain this growth, new sources of raw construction materials must be identified and extracted. Quarry operations, due to its noisy, dusty and hazardous conditions, are typical of uses permitted on Industrial-zoned lands. Quarries, unlike many other forms of industrial activities, must operate where raw materials are situated and cannot be confined to a desired land use pattern. As long as there is a need for the raw construction material that supports our construction industry and the needs of our residents, there will be the need to continually identify and utilize these natural resources. With the relatively vast amounts of Agricultural-designated lands within the County of Hawaii, it can be anticipated that many of these new resource sites will be situated on Agricultural-designated lands. It is the purpose and function of the Special Permit and the responsibility of the Planning Commission to ensure that such quarry operations are a reasonable use of our Agricultural lands that conform to the intent and purpose of the State Land Use Law.

Based on the above considerations, the proposed quarry operation is an unusual and reasonable use of land that will not be contrary to the objectives sought to be accomplished by the Land Use Law and Regulations. We should note that Special Permits previously issued by the Planning Commission have contained conditions that limit the life of the permit to a specific time period or with the terms of the lease agreement issued by the landowner to the applicant. Upon re-evaluating the necessity of such a condition, we feel that such limitations are not necessary when there is no compelling reason to limit the term of the Special Permit. In this particular case, there is no concern regarding the impact to surrounding properties or communities, no adverse impact to traffic or public services, and no adverse impact to the environment. We find no compelling reason to limit the life of this permit with the exception of the exhaustion of the raw materials being extracted. However, that determination will be left to the applicant and landowner since demand for the material will ultimately determine how long the resource will sustain the quarry.

Approval of this request is subject to the following conditions. 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.

1. The applicant, its successors or assigns shall be responsible for complying with all stated conditions of approval.
2. The applicant, its 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 applicant, 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 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.
6. 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.
7. An adequate supply of water shall be made available for dust control and for fire suppression and pre-suppression.

Steven S. C. Lim, Esq.

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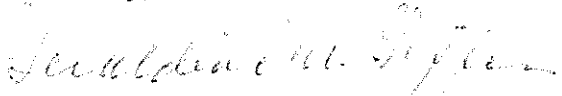
8. Should any unidentified sites or remains such as artifacts, shell, bone or charcoal deposits, human burials, rock or coral alignments, pavings or walls be encountered, work in the immediate area shall cease and the Department of Land and Natural Resources-Historic Preservation Division (DLNR-HPD) shall be immediately notified. Subsequent work shall proceed upon an archaeological clearance from the DLNR-HPD when sufficient mitigative measures have been taken.
9. 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.
10. An initial extension of time for the performance of conditions within the permit 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).

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.

Steven S. C. Lim, Esq.
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Should you have any questions, please contact Daryn Arai of the Planning Department West Hawaii Office at 327-3510 or Alice Kawaha of the Planning Department Hilo Office at 961-8288.

Sincerely,



Geraldine M. Giffin, Chairman
Planning Commission

Ldeluzspp00-051PC

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
Brian Minaai, Director/DOT-Highways, Honolulu
Parker Ranch, Inc.