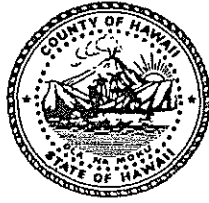


Harry Kim
Mayor



County of Hawaii

PLANNING COMMISSION

25 Aupuni Street, Room 109 • Hilo, Hawaii 96720-4252
(808) 961-8288 • Fax (808) 961-8742

CERTIFIED MAIL

7000 0600 0024 2903 6595

JAN 07 2002

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

Dear Mr. Mooers:

Special Permit Application (SPP 01-023)
Applicant: WHC Ltd. dba West Hawaii Concrete
Request: Quarry Operation
Tax Map Key: 6-7-1:Portion of 3

The Planning Commission at its duly held public hearing on December 6, 2001, voted to approve the above-referenced application. Special Permit No. 1132 is hereby issued for the establishment of a quarry operation and related improvements on approximately 14.95 acres of land in the State Land Use Agricultural District. The property is located at about the 4,900 foot elevation, approximately one mile west (Kona side) of Saddle Road and the Kilohana Girl Scout Camp, Waikoloa, South Kohala, Hawaii.

Approval of this request is based on the following:

The applicant is requesting to establish a black cinder quarry on 14.95 acres. The subject site has a natural black sand that will be used as a "blend sand" for ready mix concrete. This sand will replace "crushed fines" that are currently manufactured at other WHC quarry sites and expensive to make. The applicant currently operates a rock quarry and office facilities within the vicinity on Parker Ranch lands. The proposed site is in a more remote location with ample land area to buffer the quarrying operations.

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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 potential in agricultural use. The project site was previously used for ongoing ranch operations, however, due to the drought conditions of the land, no animals are pasturing here. The pit is 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. The applicant proposes to conduct quarrying operations within a 14.9-acre portion of the subject property. The parcel is over 23,978 acres in size, therefore the removal of 14.9 acres would not significantly impact the potential for future agricultural use of the project site and the surrounding area.

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) zone district. The quarry operation will be situated on a 14.9-acre portion of a larger 23,978 acre parcel and would not significantly affect the agricultural resources or potential of the area nor significantly displace any active agricultural activity. Therefore, based on the above circumstances, approval of the request 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 Land Use Pattern Allocation Guide (LUPAG) Map, which designates the area as Extensive Agricultural. Lands surrounding the project site were previously used for ranching activities. The U.S. Army does have access to lands west of the subject site for transporting troops and equipment as part of their operations at Pohakuloa Training Area. While the project site itself is not proposed for agricultural use, the quarry operations will be limited to 14.9 acres. Further, a condition of approval is included to require some re-vegetation and grading of the project site upon termination. The project would also complement the following goals and policies of the General Plan:

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.

Economic:

The County shall strive for diversification of its economy by strengthening industries and attracting new endeavors.

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, salutation, 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.

The desired use will not adversely affect the surrounding properties. Properties immediately surrounding the subject parcel are similarly zoned A-40a and are large parcels owned by Parker Ranch. Approximately 1.8 miles north of the quarry area is the Girl Scout Camp. Waikii Ranch is located approximately 4.9 miles north of the subject area. The property to the west of the subject site, across of Saddle Road to the north, is TMK: 6-7-01:25, which is Parker Ranch lands with various special permits for quarry activity. This is also the site of the WHC, Ltd. rock quarry and office. The nearest structures would be the Girl Scout Camp over a mile away; and the nearest dwelling is located at Waikii Ranch approximately 4.9 miles away. To minimize any impact of quarry activities to residents in the area, conditions will limit the hours and days of operation. The applicant has stated that they will operate approximately 3-10 days a month. Traffic will be minimized by maximizing activity over several days a month rather than daily. Dust will be mitigated by water being hauled to the site. Noise will be minimized by installing all equipment with standard mufflers. The applicant will be required to adhere to all agency requirements, including the Department of Health on quarry requirements. Also the Department of Works requires that an erosion and sedimentation control plan be prepared and all driveway conditions and site distances along Saddle Road meet with their requirements. Further, the applicant would be required to restore the area upon termination of quarrying activities to a state which would blend with the surrounding topography of the area. Finally, no community comments were received on this application.

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 "E" or "Very Poor" and unclassified by the ALISH Map. The soils in this area are not suitable for many types of agricultural uses due to the drought conditions. As previously stated, a requirement that the land be re-vegetated and contoured to a non-hazardous condition will provide for future opportunities for agricultural use.

The use will not substantially alter or change the essential character of the land and the present use. The quarry operations will change activity on a 14.9-acre portion of the subject property. However, the lands have not been productive and have been vacant of activity. Therefore, although agricultural lands will be removed, it is not anticipated that significant lands would be affected by the quarry operations.

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. Existing quarry operations in this vicinity have been ongoing for years, however, this black sand site is a new find. Through the special permit process, appropriate review of criteria is conducted for considering the granting of this request. The applicant has requested that the permit run co-terminus with the lease, which presently is at 15 years with options to renew and extend. No existing or proposed areas for agricultural activities will be curtailed or diminished as a result of allowing the quarrying activities within this portion of the subject property. Finally, the applicant has submitted a metes and bounds description of the area to be quarried.

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 is from Mamalahoa Highway onto Saddle Road. There is an existing roadway entrance that is located about 11 miles from Mamalahoa Highway. The actual quarry site is approximately 3.4 miles from Saddle Road and is presently graveled and single lane. The applicant proposes to maintain the road to help reduce dust and noise.

Water will be trucked to the project site to provide for dust control. Portable toilets will be provided on-site. All other essential utilities and services are or can be made available to support the quarrying operations through a generator and cell phone.

The project site is not a habitat for endangered species of flora or fauna nor are archaeological resources at risk. As the lands have been cultivated, it is not anticipated that flora or fauna nor archaeological resources are at risk. A floral and faunal reconnaissance was conducted and an archaeological survey was conducted; and no at risk species or sites were discovered. Further, there is no known public access to the

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mountain areas or to the shoreline running through the property. Finally, according to the applicant, there is no evidence of valued cultural, historical or native resources nor are any traditional and customary native Hawaiian rights being practiced in the area.

Based on the above considerations, the establishment of a quarry and related activities 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. Should any of these conditions not be met or complied with in a timely manner, the Director may initiate procedures to revoke the permit.

1. The applicant, successors or assigns shall comply with all of the stated conditions of approval.
2. The life of this Special Permit shall be co-terminus with the License Agreement with Richard Smart Trust, dba Parker Ranch or until abandonment, whichever occurs first, with written notification to the Planning Director upon termination of activity.
3. The quarry operations and related activities shall commence within one (1) year from the effective date of this permit. A written notification of commencement of quarry activity shall be submitted to the Planning Department. 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 applicant shall submit an Erosion and Sedimentation Control Plan for review and approval by the Planning Director, in consultation with the Department of Public Works, in conjunction with Final Plan Approval.
5. The quarrying activity, including the loading and hauling, shall be limited to between the hours of 6 a.m. and 6 p.m. on Mondays through Saturdays only.
6. An adequate supply of water shall be made available for dust control and for fire suppression and re-suppression.
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 and Sedimentation Control 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. The recommendations included in the Flora and Fauna Reconnaissance by Ron Terry, Ph.D. and Patrick Hart, Ph.D dated January 2001, regarding preservation of the kolea and 'akoko trees shall be followed.
9. Should any unidentified sites or remains such as lava tubes, 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 it finds that sufficient mitigative measures have been taken.
10. That all other applicable laws, requirements, rules and regulations, including those of the Department of Health and Department of Public Works, shall be complied with.
11. An extension of time for the performance of conditions within the permit, may be granted by the Planning Director upon the following circumstances:
 - a) the nonperformance 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; and
 - 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).

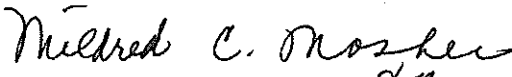
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This approval does not, however, sanction the specific plans submitted with the application as they may be subject to change given specific code and regulatory requirements of the affected agencies.

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

Sincerely,



Geraldine M. Giffin, Chairman
Planning Commission

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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
Brian Minaai, Director/DOT-Highways, Honolulu
Mr. Carl Simons