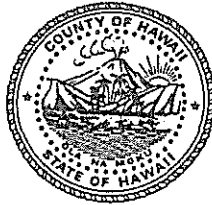


Harry Kim
Mayor



County of Hawaii
PLANNING COMMISSION

101 Pauahi Street, Suite 3 • Hilo, Hawaii 96720-3043
(808) 961-8288 • Fax (808) 961-8742

August 6, 2004

Mr. Sidney Fuke
100 Pauahi Street, Suite 212
Hilo, HI 96720

Dear Mr. Fuke:

Special Permit Application (SPP 04-009)
Applicant: Ishimaru, LLC
Request: Quarry and Related Uses, Including a Crushing, Concrete
Batching Plant
Tax Map Key: 9-5-7:portion 29

This is to replace the previous letter sent to you dated July 29, 2004. That letter should not have included the asphalt concrete plant as one of the approved uses. We apologize for the error in including the asphalt concrete plant. The following is the amended permit:

The Planning Commission at its duly held public hearing on July 2, 2004, voted to approve the above-referenced application. Special Permit No. 1237 is hereby issued to allow the establishment of a quarry and related uses, including a crushing and concrete batching plant on approximately 12 acres of land situated within the State Land Use Agricultural district. The property is located approximately 4,000 feet makai of the Hawaii Belt Highway (State Highway 11), in the vicinity of Naalehu Village, Kahilipali Iki, Ka'u, Hawaii.

Approval of this request is based on the following:

Special Permit No. 210 was approved on June 2, 1972, by the State Land Use Commission and Planning Commission to allow the operation of a quarry and allied uses including a crushing plant, concrete batch plant, and asphalt concrete plant. The permit covered approximately 25 acres of land for a 5-year period. Within the initial 5-year period, rock quarrying and crushing operations were conducted on the site. Between 1972 and 1987, three 5-year time extensions were granted by the State Land Use Commission with the concurrence of the Planning Commission. The extensions occurred on August 16, 1977 (to June 2, 1982), October 19, 1982 (to June 2, 1987), and September 16, 1987 (to June 2, 1992). However, the quarrying and related activities ceased during the late 1980's.

[Signature] 057476

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The applicant proposes to establish a quarry and related uses, including a crushing and concrete batch plant on approximately 12 acres of a 166+ acre parcel. The applicant proposes to re-establish its quarrying and allied operation for a 10-year period. An area less than three acres has been cleared and partially quarried. The applicant wishes to continue in the same area while preserving an additional nine acres for future expansion. The rock crushing area and areas for a concrete mixing plant is initially proposed within the quarried area. These uses may be relocated within the 12-acre site as the situation dictates. The anticipated cost of the project is less than \$50,000. The cost includes improvements to the driveway access as well as the water storage tank.

The existing use is an unusual and reasonable use of land situated within the State Land Use Agricultural District and would promote the effectiveness and objectives of Chapter 205, Hawaii Revised Statutes (HRS), 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. In recognizing that lands within the 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 land on which the existing use is located is classified as "D" or "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 property has a soil classification that consists of well-drained, thin organic soils over pahoehoe bedrock. With the exception of the former quarry site and the orchard, the site is used for cattle grazing. As only a 12-acre portion of a 166-acre property will be used for the business, it is not anticipated that the quarry and related uses will displace any agricultural activity nor diminish the agricultural potential of the area. Thus, this request is not contrary to the objectives of the State Land Use Law for the Agricultural District.

The request is consistent with the objectives and policies as provided by Chapter 205A, HRS, and Special Management Area guidelines contained in Rule No. 9 of the Planning Commission Rules of Practice and Procedure. The project site is located more than three miles from the nearest shoreline and in close proximity to an existing mix of agricultural, residential and vacant lands. There are no identified recreational resources, historic resources, public access to the shoreline or mountain areas, scenic and open space preserves, coastal ecosystems, marine resources or other natural and environmental resources in the area. Because the property has been previously used for quarrying operations and is grazed by cattle, it is not anticipated that endangered or threatened

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candidate species of flora or fauna are located within the property, not has the area been identified as a significant botanical or biological habitat. Presently, there is no evidence of any traditional and customary Native Hawaiian rights being practiced on the site, nor existence of known valued cultural, historical or native resources in the area. Thus, it is not anticipated that the proposed request will have any adverse impact on cultural or historical resources in the area. Further, the property will not be affected by any coastal hazards nor beach erosion, as the site is located approximately three miles from the coastline.

An archaeological field survey report dated August 7, 1972, was prepared by William J. Bonk and submitted with the initial application. The State Department of Land and Natural Resources, in its letter of August 25, 1972, concurred with the archaeologist's findings that there were no archaeological features on the site. No commissioned archaeological inventory survey of the area was performed due to the disturbed nature of the area. In its letter dated April 8, 2004, the State Department of Land and Natural Resources Historic Preservation Division stated that no historic properties will be affected, as previous grubbing/grading has altered the land; thus, no historic properties will be affected. Although there were no professional surveys of the site, the applicant believes that no rare or endangered floral or faunal resources are likely to be found on the site, as the site has been used for cattle grazing. There is also an existing orchard, along with the former quarry site. Patches of lantana, Christmas berry, koa haole, guinea grass and other non-native plants grow on the site. None are listed as endangered on either the National or State registers. The property is not known to be a habitat for any rare or endangered animal life. Given its elevation, it may be possible to find the Hawaiian Hawk and Hawaiian Owl foraging in the area. Nesting however, generally occurs in the upland areas. The applicant states that the proposed use would not have any significant negative impact on floral or fauna resources in the area.

The desired use will not adversely affect surrounding properties. Immediate surrounding lands are predominantly vacant and zoned A-1a. There are no dwellings makai of the site, although there are some scattered single-family residential uses on lands zoned Single-Family Residential 15,000 square feet (RS-15) along the highway, approximately one mile from the site. The property is 166-acres in size and large enough to minimize any impacts. Due to the limited nature of the proposed uses, it is not anticipated that the use will adversely impact surrounding properties. Dust and other airborne particles will be mitigated through standard quarry operating procedures in compliance with the State Department of Health. From a visual and public safety standpoint, a condition of approval will require the applicant to restore the site to blend in with the surrounding topography of the area upon termination of the quarry activities. Hours of operation will be limited to 6:00 a.m. to 5:00 p.m. Monday through Saturday, with blasting and activities involving excessive noise restricted to the hours after 7:30 a.m. Crushing operations will not be permitted when the National Weather Service

issues a small craft warning for any portion of the Ka'u District. These additional requirements should further minimize the possibility of adverse impacts to the surrounding area.

The establishment of a quarry and related uses will not unreasonably burden public agencies to provide roads and streets, sewers, water, drainage, school improvements, and police and fire protection. Access to the site is from a 200-foot wide gravel road leading from the Hawaii Belt Highway. Although the initial portion of this access is not a part of the 166-acre parcel, it is owned by the applicant. There is a private water line from the Hawaii Belt Highway to the area and its orchard. This line, together with a 7,000-gallon storage tank, will be used for dust control measures. The project will not generate any wastewater, and no facility is being proposed for the site. Police services are located in Naalehu, approximately one mile from the site. The fire station and Ka'u Hospital is located in Pahala, approximately seven miles from the site. All other essential utilities and facilities are available to support the proposed uses.

Unusual conditions, trends, and needs have arisen since the district boundaries and regulations were established. The project site and surrounding areas are designated for agricultural uses by both State and County land use laws. However, through the issuance of a Special Permit, various "non-agricultural" services and uses may be established. While there are no commercial and industrial-zoned lands available in the immediate area, approvals for uses other than agricultural have been approved through the Special Permit process. The closest commercial/industrial zoned lands are located in Naalehu, approximately one mile from the site.

The land upon which the existing use is sought is unsuited for the uses permitted within the district. The soil within the subject property is classified as "D" or "Poor" for agricultural productivity and Unclassified by the Agricultural Lands of Importance to the State of Hawai'i (ALISH) Map. While the potential for intensive and/or extensive agricultural uses may exist, the soil conditions within the property and surrounding area would preclude such intensive agricultural activities from being conducted. The Special Permit process, established by legislation, allows for other uses to be established for which the district is classified, provided the objectives of Chapter 205, HRS, are promoted.

The request will conform to, among others, the Land Use and Economic elements of the General Plan and is not contrary to the goals, policies and standards of the General Plan. The Land Use Pattern Allocation Guide (LUPAG) Map component of the General Plan is a representation of the document's goals and policies to guide the coordinated growth and development of the County. It reflects a graphic depiction of the physical relationship among the various land uses. The LUPAG Map establishes the basic urban and non-urban form for areas within the County. A majority of the property is designated

Extensive Agricultural, and a small area of the northeastern portion of the site near the Hawaii Belt Highway is designated Urban Expansion. While quarrying activities are not defined as a use that is compatible with the Extensive Agricultural designation, the proposed use is consistent with the Land Use and Economic element of the General Plan. In addition, cattle grazing will continue on the balance of the property not used as a quarry.

Quarries must be located in locations where there is an abundance of raw materials. For this reason, while industrial in character, quarries cannot be confined to Industrial-designated areas, as evidenced by the granting of Special Permits for quarries islandwide. The requested area contains the raw materials essential to the construction industry and the prosperity of the economy. As the quarry has previously been established on the site by Special Permit No. 210, the continued use of the property as a quarry will not adversely impact existing agricultural resources.

In view of the recent Hawaii State Supreme Court's "PASH" and "*Ka Pa'akai O Ka'Aina*" decisions, the issue relative to native Hawaiian gathering and fishing rights must be addressed in terms of the cultural, historical, and natural resources and the associated traditional and customary practices of the site:

Investigation of valued resources: No formal archaeological reconnaissance survey, oral history of kamaaina accounts of the area, historical survey of documentary records, botanical and/or fauna study was submitted.

The valuable cultural, historical, and natural resources found in the rezoning area: As the site was formerly used as a quarry, an archaeological inventory survey of the site was not conducted. In its letter dated April 8, 2004, the State Department of Land and Natural Resources Historic Preservation Division stated that no historic properties will be affected, as previous grubbing/grading has altered the land; thus, no historic properties will be affected.

Possible adverse effect or impairment of valued resources: Native plants could be destroyed by construction and ground alteration. The subject property does not abut the shoreline, therefore Hawaiian gathering and fishing rights is not an issue.

Based on the above considerations, the approval of the request to re-establish a quarry and related uses, including a crushing and concrete batch plant would support the objectives sought to be accomplished by the Land Use Law and Regulations. An asphalt plant, however, is not part of this approved permit. Approval of this request is subject to the following conditions. Should any of these conditions not be met or substantially complied with in a timely fashion, the Planning Director may initiate procedures to revoke this permit.

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1. The applicant shall be responsible for complying with all of the stated conditions of approval.
2. The quarry operation and related uses 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.
3. Prior to construction, the applicant, successors or assigns shall secure Final Plan Approval for the proposed project from the Planning Director in accordance with Chapter 25-2-70, Chapter 25 (Zoning Code), Hawaii County Code. Plans shall identify all existing and/or proposed structures, fire protection measures, parking stalls, and other improvements associated with the proposed use. Landscaping shall be included in the development plans to mitigate any potential adverse noise or visual impacts to adjacent properties in accordance with the Planning Department's Rule No. 17 (Landscaping Requirements). Dust prevention measures shall be identified and submitted with plans for Plan Approval. Photographs of the project site and its related surrounding areas shall be submitted with plans for Plan Approval.
4. Quarrying activities shall be limited to the hours of 6:00 a.m. to 5:00 p.m. Monday through Saturday, and blasting activities shall commence no earlier than 7:30 a.m.
5. Crushing operations shall not be permitted when the National Weather Service issues a small craft warning for any portion of the Ka'u District.
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 operation.
7. Upon termination of the quarry operations or abandonment of any portion of the affected site, the land shall be graded to blend in 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 fire suppression and pre-suppression.

9. The applicant shall employ the use of commercially available soil stabilizers to mitigate dust problems.
10. If it is determined that adverse effects such as noise, dust or indiscriminate excavation is taking place, the Planning Commission shall have the authority to require the applicant to cease and desist the quarry operation.
11. 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 Department of Land and Natural Resources - State Historic Preservation Division (DLNR-SHPD) shall be immediately notified. Subsequent work shall proceed upon an archaeological clearance from DLNR-SHPD when it finds that sufficient mitigative measures have been taken.
12. An annual progress report shall be submitted to the Planning Director prior to the anniversary date of this permit. The report shall include, but not be limited to, the status of the development and the extent to which the conditions have been satisfied. This condition shall remain in effect until all of the conditions of approval have been satisfied and the Planning Director acknowledges that further reports are not required.
13. Comply with applicable laws, rules and regulations of the affected agencies, including the Department of Health.
14. An initial extension of time for the performance of conditions 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 applicants, 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).

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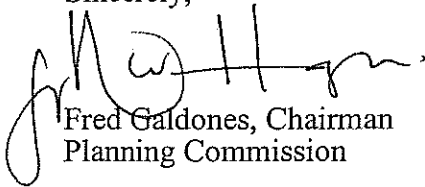
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This approval does not, however, sanction the specific plans submitted with the application as they may be subject to change given specific code and regulatory requirements of the affected agencies.

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

Sincerely,

A handwritten signature in black ink, appearing to read 'Fred Galdones', is written over the typed name.

Fred Galdones, Chairman
Planning Commission

cc: Department of Public Works
Department of Water Supply
County Real Property Tax Division
State Land Use Commission
Department of Land & Natural Resources-HPD
Rodney Haraga, Director/DOT-Highways, Honolulu
Ishimaru, LLC
Wolfgang Morschl

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