

# CARLSMITH BALL LLP

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February 26, 2013

Mr. Daniel E. Orodener  
Executive Officer  
Land Use Commission  
Department of Business, Economic Development & Tourism  
State of Hawaii  
P.O. Box 2359  
Honolulu, Hawaii 96804

2013 FEB 28 A 9:07  
LAND USE COMMISSION  
STATE OF HAWAII

Re: Amended Annual Monitoring Report  
Special Permit Docket No. 70-85 (Special Permit No. 164)  
Applicant: Edwin DeLuz Trucking & Gravel, LLC  
Waikoloa, District of South Kohala, Hawaii (approx. 63.648± acres)  
TMK: (3) 6-8-002: portion of 50 [formerly TMK: (3) 6-8-002: portion of 16]

Dear Mr. Orodener:

This is in response to your letter of February 5, 2013 regarding the annual monitoring report dated January 28, 2013 that I submitted. Pursuant to your instructions, please consider this letter my client's amended annual monitoring report related to the above-referenced property and its compliance with the conditions of Special Permit No. 164 and the conditions of approval of Docket No. SP 70-85.

Please note that in submitting the initial report, I was unaware that the Land Use Commission (LUC) had entered the Decision and Order dated August 1, 2012. Upon receiving your letter, I contacted staff in my firm's Hilo office to inquire whether they had received the Decision and Order and I was advised that they had not. I thereafter contacted Fred Talon of your office and he was kind enough to email me a copy of the Decision and Order.

The following addresses the nine conditions of the August 1, 2012 Decision and Order and the Applicant's responses to those conditions:

**Condition 1: The Applicant, its successors or assigns shall be responsible for complying with all stated conditions of approval.**

Response: The Applicant will comply with all stated conditions of approval.

**Condition 2:** **Quarrying operations at Site 1 (Pu'u Hina'i Quarry) shall be terminated by December 11, 2015, or prior to final subdivision approval of the increment of adjacent RA zoned lands which abut the quarry boundaries, or prior to abandonment, whichever occurs first.**

Response: The Applicant will terminate its quarrying operations in accordance with this condition or will, if necessary, seek an amendment of this condition if it desires to further extend its quarrying operations.

**Condition 3:** **Mining of Pu'u Hina'i shall immediately cease, to protect and preserve the pu'u, in compliance with the South Kohala Community Development Plan.**

Response: The Applicant is not performing any mining of Pu'u Hina'i and no mining has occurred on the pu'u since 2007.

**Condition 4:** **Upon termination of operations or abandonment of any portion of Site 1 (Pu'u Hina'i Quarry), the land shall be graded to blend with the surrounding areas and re-vegetated. Further, the site shall be left in a non-hazardous condition. Appropriate documentation which demonstrates compliance with this condition shall be submitted to the Hawaii County Planning Director for review and approval within ninety (90) days from the termination or abandonment date.**

Response: There has been no termination or abandonment of operation of the quarry site and the Applicant will comply with this condition of approval upon termination or abandonment of any portion of the quarry site.

**Condition 5:** **The applicant shall submit a soils report of the mined area of Pu'u Hina'i by an engineer qualified in the field of soil mechanics and licensed within the State of Hawai'i within one (1) year from the effective date of this amendment. The soils report, which shall provide recommendations for the stabilization of Pu'u Hina'i, shall be submitted to the Planning Director for review and approval, in consultation with the Department of Public Works. The applicant shall comply with the recommendation(s) of the approved soils report to stabilize the pu'u and bring it into a non-hazardous condition. Additionally, the applicant shall comply with any other measures determined by the Planning Director to provide reasonable assurance of the stability of Pu'u Hina'i and the safety of the people who may work or have reason to be in close proximity to the pu'u.**

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Response: The Applicant has hired Construction Engineering Labs to prepare the soils report and it is anticipated that the report will be completed and submitted to the Planning Director within the stated deadline.

**Condition 6:** **All other applicable laws, requirements, rules and regulations, including those of the Department of Health, shall be complied with.**

Response: The Applicant's activities and operations at the quarry site will comply with all applicable laws, requirements, rules and regulations, including those of the Department of Health.

**Condition 7:** **An annual monitoring report shall be submitted to the Hawaii County Planning Director and the State Land Use Commission prior to the anniversary date of the approval of this amendment. The report shall include, but not be limited to, the amount of material quarried or removed, a detailed listing of public complaints or problems, and their disposition. Should conflict arise, which cannot be mitigated or mediated, the quarry operations shall cease upon appropriate findings by the County of Hawaii Planning Commission that the quarry use will have an adverse impact on surrounding properties.**

Response: The Applicant will submit annual monitoring reports in accordance with this condition. The Applicant is not aware of any public complaints or problems associated with its activities and operations at the quarry site and the Applicant has quarried zero cubic yards of material since its last report. The quarry site is being maintained to supply material for Phase II of the Queen Kaahumanu Road Widening Project which has been delayed and for any similar future project. The Applicant's present activities on the quarry site has been limited to general maintenance, repair and replacement of its equipment and care and maintenance of the area.

**Condition 8:** **Should any of the conditions not be met or substantially complied with in a timely fashion, the Hawaii County Planning Director shall initiate procedures to revoke the permit.**

Response: The Applicant will comply with the foregoing condition.

**Condition 9:** **Within thirty (30) days of the effective date of the Commission's approval of the Amendment, the Applicant shall issue public notice of the action taken by the Commission approving the Amendment in the name of Waikoloa Development Company to invite public comment on the Amendment. The Applicant shall inform the Commission of**

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**responses (or lack thereof) to the public notice and forward all public comments to the LUC.**

Response:

Public notice of the action taken by the LUC approving the amendment will be published in The West Hawaii Today newspaper on March 1, 2013. A copy of the publication proof of the notice is enclosed. The Applicant will send a copy of the Affidavit of Publication to the LUC upon receipt of the same. The Applicant will inform the LUC of responses (or lack thereof) that it receives to the notice and it will forward all public comments to the LUC.

Thank you for the opportunity to allow the Applicant to amend its report. Please feel free to contact me should you have any questions or require additional information or documentation from the Applicant.

Sincerely,



Edmund W.K. Haitsuka

EWH/ewh  
cc: Ms. Bobbie Jean Leithead-Todd  
Edwin DeLuz Trucking & Gravel, LLC  
Enclosure(s)  
4835-1615-4387.1

**NOTICE OF ACTION TAKEN BY THE  
STATE OF HAWAII LAND USE COMMISSION**

Land Use Commission Docket No. SP70-85 /  
County of Hawaii Special Permit No. 164

The purpose of this Notice of Action Taken is to inform the public that on August 1, 2012, the State of Hawaii Land Use Commission issued its Order Granting Amendment To Condition No. 5 Extending Time To Comply as described below:

Action: Approval of Amendment to Condition No. 5  
(to extend deadline to submit soils report)

Applicant/Licensee: Edwin DeLuz Trucking & Gravel, LLC

Fee Owner: Waikoloa Mauka, LLC (successor-in-interest  
to Waikoloa Development Company)

Location: 1.3 miles southeast (mauka) of the existing  
Waikoloa Village development.

Tax Map Key: (3) 6-8-002:050 (portion)

Those persons who wish to comment upon the time extension amendment should submit their comments in writing, no later than March 15, 2013, to:

Edmund W.K. Haisuka, Esq.  
Carlsmith Ball LLP  
P.O. Box 1720  
Kailua-Kona, Hawaii 96745-1720

(No. 72816-West Hawaii Today: March 1, 2013)