

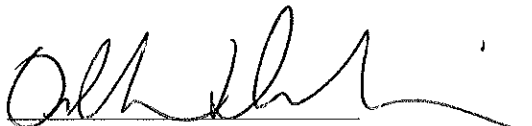
BEFORE THE LAND USE COMMISSION
OF THE STATE OF HAWAII

In The Matter Of The Petition Of) DOCKET NO. SP70-85
)
EDWIN DeLUZ TRUCKING & GRAVEL,) ORDER GRANTING AMENDMENT
LLC) TO CONDITION NO. 2 AND
) ADDITION OF NEW CONDITION
To Consider An Amendment To Condition) NOS. 3 AND 5
No. 2 Of The Special Permit To Extend The)
Life Of The Permit For An Additional Five)
Years From December 11, 2010 To December)
11, 2015 To Allow The Continued Operation)
At Quarry Site 1 Located Within The)
Agricultural District At Waikoloa, South)
Kohala, Hawai'i, TMK No. 6-8-002: por. 16.)
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_____)

ORDER GRANTING AMENDMENT TO CONDITION NO. 2 AND ADDITION OF
NEW CONDITION NOS. 3 AND 5

This is to certify that this is a true and
correct copy of the document on file in the
office of the State Land Use Commission,
Honolulu, Hawai'i.

February 7, 2011 by


Executive Officer

BEFORE THE LAND USE COMMISSION

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ORDER GRANTING AMENDMENT TO CONDITION NO. 2 AND ADDITION OF
NEW CONDITIONS NOS. 3 AND 5

On September 10, 2010, Steven S.C. Lim on behalf of Edwin DeLuz Trucking & Gravel, LLC ("Applicant"), filed an application to amend Condition No. 2 of the existing special permit ("Amendment") with the County of Hawai'i Planning Department ("County"), pursuant to Hawai'i Revised Statutes ("HRS") Section 205-6, and Hawai'i Administrative Rules ("HAR") Sections 15-15-95 and 15-15-96. The Applicant requests amendment of Condition No. 2 to extend the life of the special permit for the approximately 63.648-acre Quarry Site 1 (known as the "Pu'u Hinai Site" or "Site 1") for an additional five years from December 11, 2010 to December 11, 2015 to allow the continued operation at Site 1.

On November 24, 2010, the County of Hawai'i Leeward Planning Commission ("Planning Commission") conducted a hearing on the Amendment, pursuant to a public

notice published on November 10, 2010. After due deliberation, the Planning Commission recommended approval of the Amendment to the Land Use Commission (“LUC”), subject to the following amendments to read as follows:

“2. Quarrying operations at Site 1 (Puu Hina`i) shall be terminated by December 11, ~~[2010]~~2015, or prior to final subdivision approval of the increment of adjacent RA zoned lands which abut the quarry boundaries, or prior abandonment, whichever occurs first.

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.

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 ninety (90) days 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 people who may work or have reason to be in close proximity to the pu`u.”

On December 22, 2010, the LUC received a copy of the decision and complete record of the Planning Commission’s proceedings on the Application.

The LUC has jurisdiction over the Application. HRS, Section 205-6, and HAR, Sections 15-15-95 and 15-15-96, authorize the LUC to approve special permits and amendments thereto for areas greater than 15 acres.

On January 21, 2011, the LUC met in Waikoloa, Hawai`i, to consider the Amendment. Ed Haitzuka, Esq. of Carlsmith Ball, LLP and Kevin Balog appeared on behalf of the Applicant. William Brillhante, Esq., and Bobbie Jean Leithead-Todd appeared on behalf of the County. Bryan Yee, Esq., and Mary Alice Evans appeared on behalf of the State of Hawai`i Office of Planning (“OP”).

Following discussion and deliberation by the Commissioners, a motion was made and seconded to approve the Amendment to Condition No. 2 and add the additional two conditions recommended by the Planning Commission. There being a vote of 7 ayes, 0 nays, and 2 excused, the motion carried.

ORDER

Having duly considered the complete record of the Amendment and the oral arguments presented by the parties in the proceeding, and a motion having been made and seconded at a meeting conducted on January 21, 2011, in Waikoloa, Hawai`i, and the motion having received the affirmative votes required by HAR, Section 15-15-13, and there being good cause for the motion, the LUC hereby GRANTS the Amendment, subject to the following conditions to supersede all previous conditions imposed in this docket:

1. The Applicant, its successors or assigns shall be responsible for complying with all stated conditions of approval.
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 abandonment, whichever occurs first.

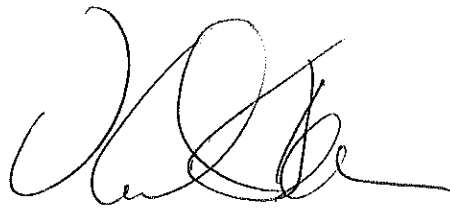
3. Mining of Pu`u Hina`i shall immediately cease, to protect and preserve the pu`u, in compliance with the South Kohala Community Development Plan.
4. Upon termination of operations or abandonment of any portion of Site 1 (Pu`u Hina`i Quarry), the land shall be graded to blend with the surrounding areas 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 Hawai`i County Planning Director for review and approval within ninety (90) days from the termination or abandonment date.
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 ninety (90) days 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 people who may work or have reason to be in close proximity to the pu`u.
6. All other applicable laws, requirements, rules and regulations, including those of the Department of Health, shall be complied with.
7. An annual monitoring report shall be submitted to the Hawai`i 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 Hawai`i Planning Commission that the quarry use will have an adverse impact on surrounding properties.
8. Should any of the conditions not be met or substantially complied with in a timely fashion, the Hawai`i County Planning Director shall initiate procedures to revoke the permit.
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 responses (or lack thereof) to the public notice and forward all public comments to the LUC.

This ORDER shall take effect upon the date it is certified and filed by this Commission.

DATED: Honolulu, Hawai'i, February 7, 2011 per motion in Waikoloa, Hawai'i, on January 21, 2011.

APPROVED AS TO FORM:

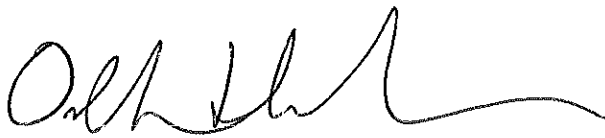
By 
VLADIMIR DEVENS
Chairperson and Commissioner


Deputy Attorney General

Filed and effective on:

February 7, 2011

Certified by:


ORLANDO DAVIDSON
Executive Officer

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the Order Granting Amendment To Condition No. 2 and addition of new Condition Nos. 3 and 5 was served upon the following by either hand delivery or depositing the same in the U. S. Postal Service by regular or certified mail as noted:

BOBBIE JEAN LEITHEAD-TODD, Director
Planning Department
County of Hawai'i
25 Aupuni Street
Hilo, Hawai'i 96720

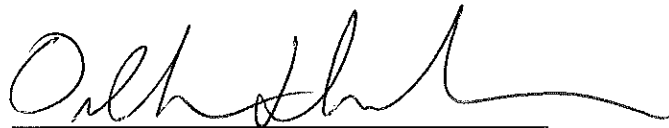
WILLIAM BRILHANTE, Esq.
Deputy Corporation Counsel
County of Hawai'i
101 Aupuni Street, Suite 325
Hilo, Hawai'i 96720

DEL. MARY LOU KOBAYASHI, Acting Director
Office of Planning
P. O. Box 2359
Honolulu, Hawai`i 96804-2359

BRYAN YEE, Esq.
Deputy Attorney General
Hale `Auhau, Third Floor
425 Queen Street
Honolulu, Hawai`i 96813

CERT. STEVEN S.C. LIM, Esq.
ED HAITSUKA, Esq.
Carlsmith Ball, LLP
121 Waianuenue Ave.
Hilo, HI 96720

Dated: Honolulu, Hawai`i, February 7, 2011.



ORLANDO DAVIDSON
Executive Officer