

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
)
To Consider An Amendment To)
Condition No. 2 Of The Special Permit To)
Extend The Life Of The Permit For An)
Additional Five Years From December 11,)
2005 To December 11, 2010 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

On June 29, 2005, 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 section 205-6, Hawai'i Revised Statutes ("HRS"), and sections 15-15-95 and 15-15-96, Hawai'i Administrative Rules ("HAR"). The Applicant proposes to amend 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, 2005 to December 11, 2010 to allow the continued operation at Site 1.

On September 30, 2005, the County of Hawai'i Planning Commission ("Planning Commission") conducted a hearing on the Amendment, pursuant to a public notice published on September 9, 2005. After due deliberation, the Planning Commission recommended approval of the Amendment to the Land Use Commission ("LUC"), subject to certain amendments to the existing six conditions of approval for this special permit, which include: 1) amending Condition No. 2 such that the termination date of the special permit would be no later than December 11, 2010, and 2) amending Condition No. 3 to remove the reference to Quarry Site 2 ("Village Quarry").¹

On October 21, 2005, the LUC received a copy of the decision and record of the Planning Commission's proceedings on the Amendment.

The LUC has jurisdiction over the Amendment. Section 205-6, HRS, and sections 15-15-95 and 15-15-96, HAR, authorize the LUC to approve special permits and amendments thereto for areas greater than 15 acres where application for LUC approval is made within 60 days after the decision is rendered on the request to the Planning Commission.

On December 1, 2005, the LUC met in Kahului, Maui, to consider the Amendment. Steven S. C. Lim, Esq. of Carlsmith Ball, LLP and Kevin Balog

¹ Planning Commission recommended removing the reference to Site 2 as quarry operations at Site 2 ceased on December 11, 2000 and on March 16, 2001 the LUC acknowledged receipt of the quarry restoration report that confirmed re-naturalization of Site 2 was completed.

appeared on behalf of the Applicant. Norman Hayashi appeared on behalf of the County. John W. K. Chang, Esq., Abe Mitsuda and Laura Thielen appeared on behalf of the State of Hawai`i Office of Planning ("OP").

Staff noted that the caption for this docket as published by the Planning Commission does not reflect the Applicant of record in the LUC's files who is identified as Waikoloa Development Company. Such discrepancy creates an ambiguity as to the Applicant and its status to file the Amendment.

Applicant argued that the name of the Applicant is almost irrelevant in the Planning Commission's proceedings because the approval of the special permit pursuant to Hawaii County Code section 25-2-10 runs with the land and does not reside in any particular occupant of the land.

The County stated that the Planning Commission accepted the Amendment from Edwin DeLuz Trucking & Gravel, LLC based on the authorization from Waikoloa Development Company to Carlsmith Ball, LLP, attached to the Amendment. Waikoloa Development Company was the landowner of Site 1 at the time the Amendment was filed with the County.

OP did not take a position on the issue of the docket caption.

Commissioners sought clarification on: 1) the relationship between the current fee owner of Site 1 and the Applicant, and 2) if the Applicant's status as a licensee of Waikoloa Development Company is procedurally sufficient.

Applicant argued that the Planning Commission processed the Amendment with the Applicant as Edwin DeLuz Trucking & Gravel LLC and was subsequently approved as procedurally correct. Applicant also noted that the Applicant is the fourth such applicant for the special permit, and that previous changes to the name of the special permit's applicant were not brought before the LUC to approve the successor applicant. Applicant also stated no complaints have been received regarding the Applicant's quarry operations at Site 1.²

Following discussion and deliberation by the Commissioners, a motion was made to approve the Amendment in the name of Waikoloa Development Company, subject to: 1) the six conditions of approval recommended by the Planning Commission, and 2) an additional condition that within 30 days of the Commission's approval of the Amendment, the Applicant issue public notice of the action taken by the Commission approving the Amendment in the name of Waikoloa Development Company, inviting public comment on the Amendment. Any public comments received by the Applicant shall be forwarded to the LUC for the LUC's consideration. There being a vote tally of seven for the motion and one absent, the motion carried.

² It was noted that prior applicants were also the fee owners of the land, whereas in this case, the Applicant was a licensee of the fee owner at the time the Amendment was filed.

ORDER

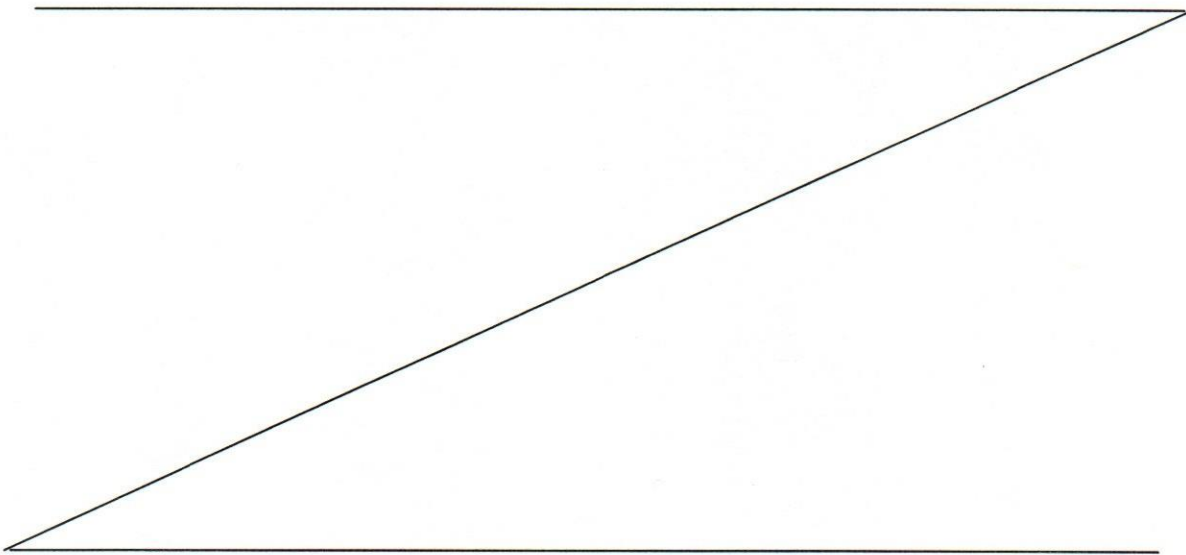
Having duly considered the complete record of the Amendment and the oral arguments presented by the parties in the proceeding, and a motion having been made at a meeting conducted on December 1, 2005, in Kahului, Maui, and the motion having received the affirmative votes required by section 15-15-13, HAR, and there being good cause for the motion, the LUC hereby GRANTS the Amendment in the name of Waikoloa Development Company, 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 Hinai Quarry) shall be terminated by December 11, 2010, 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. Upon termination of operations or abandonment of any portion of Site 1 (Pu`u Hinai 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.
4. All other applicable laws, requirements, rules and regulations, including those of the Department of Health, shall be complied with.

5. 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.

6. 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.

7. 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.




ADOPTION OF ORDER

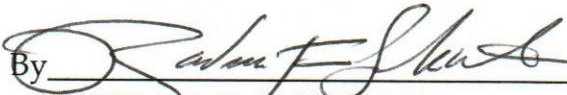
The undersigned Commissioners, being familiar with the record and proceedings, hereby adopt and approve the foregoing ORDER this 9th day of January, 2006. This ORDER and its ADOPTION shall take effect upon the date this ORDER is certified and filed by this Commission.

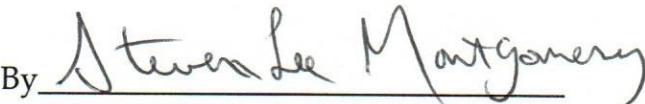
Done at Honolulu, Hawai'i, this 9th day of January, 2006 per motion on December 1, 2005.

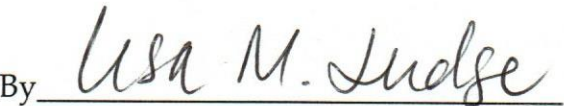
APPROVED AS TO FORM


Deputy Attorney General


LAND USE COMMISSION
STATE OF HAWAII


By 
RANDALL F. SAKUMOTO
Chairperson and Commissioner

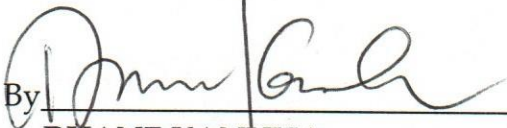
By 
STEVEN LEE MONTGOMERY
Vice-Chairperson and Commissioner

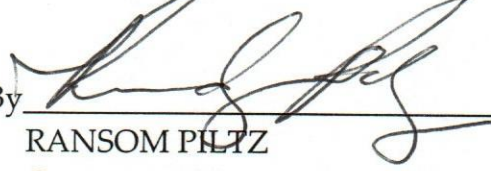
By 
LISA M. JUDGE
Vice-Chairperson and Commissioner

By _____ (absent)
THOMAS CONTRADES
Commissioner

By 
MICHAEL D. FORMBY
Commissioner

By 
KYONG-SU IM
Commissioner

By 
DUANE KANUHA
Commissioner

By 
RANSOM PILTZ
Commissioner

Filed and effective on
JAN - 9 2006

Certified by:


ANTHONY J. H. CHING

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the Order Granting Amendment To
Condition No. 2 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:

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Hilo, HI 96720

Dated: Honolulu, Hawai'i, JAN - 9 2006.



ANTHONY M.H. CHING
Executive Officer