



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. 5 EXTENDING  
) TIME TO COMPLY  
)  
To Allow a Time Extension Until June 30, )  
2012 To Comply With Condition No. 5 For )  
Special Permit At Waikoloa, South Kohala, )  
Hawai'i, TMK No. 6-8-002: por. 16. )  
)

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ORDER GRANTING AMENDMENT TO CONDITION NO. 5 EXTENDING TIME TO  
COMPLY

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, HAWAII.

8/1/12  
Date

BY

Executive Officer



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OF THE STATE OF HAWAII

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LAND USE COMMISSION  
STATE OF HAWAII

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EDWIN DeLUZ TRUCKING & GRAVEL, LLC	)	ORDER GRANTING AMENDMENT TO CONDITION NO. 5 EXTENDING TIME TO COMPLY
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To Allow a Time Extension Until June 30, 2012 To Comply With Condition No. 5 For Special Permit At Waikoloa, South Kohala, Hawai'i, TMK No. 6-8-002: por. 16.	)	
	)	
	)	

ORDER GRANTING AMENDMENT TO CONDITION NO. 5 EXTENDING  
TIME TO COMPLY

On February 8, 2012, the Hawai'i County Planning Department ("Planning Department") sent a notice of violation to Steven S.C. Lim, Esq., legal representative for Edwin DeLuz Trucking & Gravel, LLC, identifying a failure to comply with Condition No. 5 of Special Permit No. 164 (Land Use Commission SP70-85) for submitting a required soils report. The Planning Department ordered the permittee to take the following corrective action(s) by February 28, 2012:

- 1) The applicant is to immediately cease all quarry operations relating to Special Permit No. 164; and,
- 2) The applicant is required to submit a time extension amendment request to comply with Condition No. 5 (requirement to submit soils report) of Special

Permit No. 164 to the Planning Department. Operations of the quarry may resume if the applicant is granted an approval for a time extension to comply with Condition No. 5 from the State Land Use Commission.

On February 28, 2012, Steven S.C. Lim on behalf of Edwin DeLuz Trucking & Gravel, LLC (“Applicant”), filed an application to amend Condition No. 5 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 proposes to amend Condition No. 5 to extend the time to comply with the requirement to submit a soils report for the special permit for the approximately 63.648-acre Quarry Site 1 (known as the “Pu`u Hina`i Site” or “Site 1”) until June 30, 2012.

On May 17, 2012, the County of Hawai`i Leeward Planning Commission (“Planning Commission”) conducted a hearing on the Amendment, pursuant to a public notice published on April 27, 2012. After due deliberation, the Planning Commission recommended approval of the Amendment to the Land Use Commission (“LUC”) Special Permit, subject to the following amendments to Condition No. 5 to read as follows:

“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~~ 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 people who may work or have reason to be in close proximity to the pu`u.”

On June 25, 2012, the LUC received a copy of the decision and complete record of the Planning Commission’s proceedings on the Amendment.

The LUC has jurisdiction over the Amendment. 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 where application for LUC approval is made within 60 days after the decision is rendered on the request to the Planning Commission.

On July 20, 2012, the LUC met in Kahului, Maui, Hawai`i, to consider the Amendment. No representative appeared on behalf of the Applicant. Bobbie Jean Leithead-Todd appeared on behalf of the County. Bryan Yee, Esq., and Rodney Funakoshi appeared on behalf of the State of Hawai`i Office of Planning (“OP”).

Following discussion and deliberation by the Commissioners, a motion was made to approve the Amendment to Condition No. 5 as recommended by the Planning Commission. There being a vote of 7 ayes, 0 nays, and 2 excused, the motion carried.

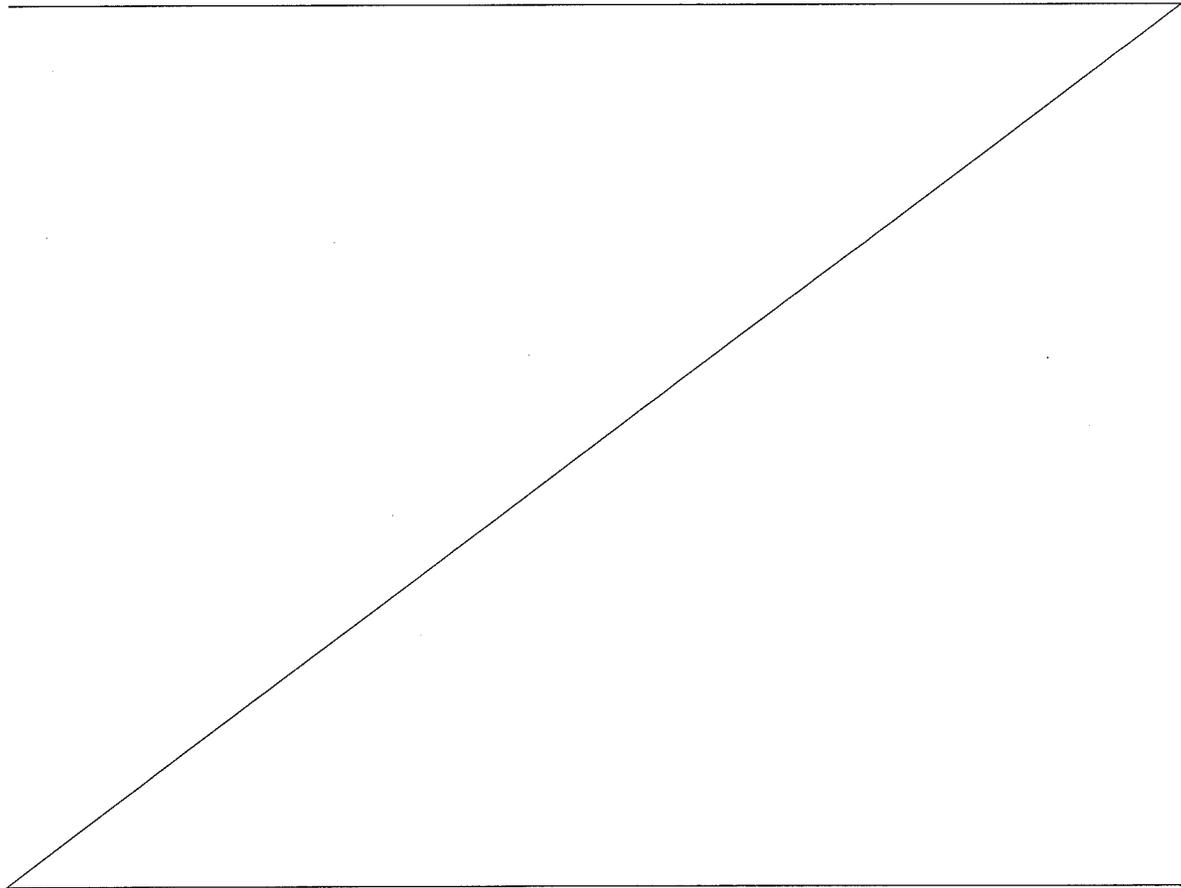
#### ORDER

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 at a meeting conducted on July 20, 2012, in Kahului, Maui, 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 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 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.



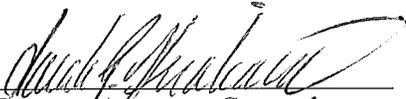
ADOPTION OF ORDER

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

DATED: Honolulu, Hawai'i, 8/1/12 per motion in Kahului, Maui, Hawai'i, on July 20, 2012.

APPROVED AS TO FORM:

By   
for KYLE CHOCK  
Chairperson and Commissioner

  
Deputy Attorney General

Filed and effective on:

8/1/12

Certified by:

  
DANIEL E. ORODENKER  
Executive Officer



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EDWIN DeLUZ TRUCKING & GRAVEL, ) CERTIFICATE OF SERVICE  
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CERTIFICATE OF SERVICE

I hereby certify that a copy of the Order Granting Amendment To Condition No. 5 Extending Time to Comply 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:

CERT. BOBBIE JEAN LEITHEAD-TODD, Director  
Planning Department  
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CERT. STEVEN S.C. LIM, Esq.  
MASON M. YAMAKI  
Carlsmith Ball, LLP  
121 Waianuenue Ave.  
Hilo, HI 96720

Dated: Honolulu, Hawai'i, 8/1/12.

A handwritten signature in black ink, appearing to read 'D. Orodenger', written over a horizontal line.

DANIEL E. ORODENKER  
Executive Officer