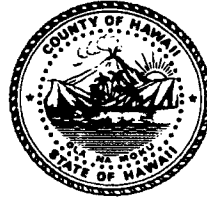


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Mayor



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## County of Hawai'i

### LEeward PLANNING COMMISSION

Aupuni Center • 101 Pauahi Street, Suite 3 • Hilo, Hawai'i 96720  
Phone (808) 961-8288 • Fax (808) 961-8742

JUL 10 2018

Katherine A. Garson, Esq.  
Carlsmith Ball LLP  
121 Waiānuenu Avenue  
Hilo, HI 96720

Dear Ms. Garson:

**SUBJECT: Special Permit No. 724 (Docket No. SPP 04-000013/ LUC SP 90-374)**  
**Applicant: PR Mauna Kea, LLC**  
**Request: Amendment to Condition No. 7 (Life of Special Permit)**  
**Tax Map Key: 6-7-001:034 (formerly 6-7-001:025)**

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The Leeward Planning Commission, at its duly held public hearing on June 21, 2018, considered your request for an amendment to Special Permit No. 724 to allow a time extension to run coterminous with the current lease between the applicant and WHC, Ltd., dba West Hawai'i Concrete, which expires on September 3, 2037. The project site is located approximately 3.7 miles north east of the Māmalahoa Highway/Waiki'i Road intersection, Waikoloa, South Kohala, Hawai'i.

The Commission voted to approve the request and to send a favorable recommendation to the State Land Use Commission for final disposition.

Approval of the amendment is subject to the following conditions:

1. The applicant, successors, or assigns shall comply with all conditions of approval.
2. The quarry operation shall be limited to dynamiting, portable crushing, loading, and limited stockpiling.
3. The quarrying activity, including the loading and hauling, shall be limited to between the hours of 5:00 a.m. and 8:00 p.m. on Mondays through Saturdays only.
4. In the unlikely event that surface or subsurface historic resources, including human skeletal remains, structural remains (e.g. rock walls, terraces, platforms, etc.), cultural deposits, marine shell concentrations, sand deposits, or sink holes

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EXHIBIT 37

JUL 10 2018

are identified during the demolition and/or construction work, cease work in the immediate vicinity of the find, protect the find from additional disturbance and contact the State Historic Preservation Division at (808) 933-7651.

5. The life of this Special Permit shall run coterminous with the current quarry lease which terminates on September 30, 2037. Any extension to the life of this Special Permit beyond the current lease shall require the approval of the Planning Commission and the State Land Use Commission.
6. Upon termination of the operations or abandonment of any portion of the affected site, the land shall be graded to blend with the surrounding areas and revegetated. Further, the site shall be left in a nonhazardous condition. Appropriate documentation which demonstrates compliance with this condition shall be submitted to the Planning Director for review and approval within ninety (90) days from the termination or abandonment date.
7. That all other applicable laws, requirements, rules, and regulations be complied with.
8. An annual monitoring report shall be submitted to the Planning Director prior to the anniversary date of the approval of the amendment request. The report shall include, but not be limited to, the amount of material quarried, a detailed listing of public complaints or problems, and their disposition.

Should a conflict arise, which cannot be mitigated or mediated, the quarry operations shall cease upon appropriate findings by the Planning Commission that the introduced use will have an adverse impact on surrounding properties.

9. If the applicant should require an additional extension of time for any condition of this permit, the applicant shall submit their request to the Planning Commission for appropriate action by the Planning Commission and State Land Use Commission.

*[Note: Ramseyer version available upon request.]*

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

Katherine A. Garson, Esq.  
Carlsmith Ball LLP  
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Approval of this amended permit is based on the reasons given in the attached Planning Commission Findings Report.

Should you have any questions, please contact Christian Kay of the Planning Department at (808) 961-8136.

Sincerely,



Keith F. Unger, Chairman  
Leeward Planning Commission

LPRMaunaKeaAmendSPP724/LUC SP90-374|pc  
Enclosure: PC Findings Report

cc: PR Mauna Kea LLC  
Department of Public Works  
Department of Water Supply  
County Real Property Tax Division - Hilo  
State Land Use Commission  
Department of Land & Natural Resources-HPD  
GIS Section  
West Hawaii Division

**COUNTY OF HAWAI‘I**  
**PLANNING COMMISSION FINDINGS**

**PR MAUNA KEA LLC**

**AMENDMENT TO SPECIAL PERMIT NO. 724 (LUC DOCKET NO. 90-374)**

At their June 21, 2018 hearing, the Leeward Planning Commission (LPC), recommended the following changes to the Planning Director’s recommendation:

- Amend new Condition No. 5 to state that, *“The life of this Special Permit shall run coterminous with the current quarry lease which terminates on September 30, 2037. Any extension to the life of this Special Permit beyond the current lease shall require the approval of the Planning Commission and the State Land Use Commission.”*. The Director’s recommended condition language specifically identified the parties to the current lease.

Based on the preceding and following considerations, the LPC voted to approve the amendment to Special Permit No. 724, which was originally approved to allow for the operation of a quarry and related uses on approximately 143.48 acres of land situated within the State Land Use Agricultural District. The applicant is requesting an amendment to Condition No. 7 (Life of the Permit) to allow a time extension to run coterminous with the current lease between the applicant and WHC, Ltd., dba West Hawai‘i Concrete, which expires on September 3, 2037. The affected property is located approximately 3.7 miles northeast of the Māmalahoa Highway/Waiki‘i Road intersection, Waikoloa, South Kohala, Hawai‘i, TMK: 6-7-001:034 (formerly 6-7-001:portion of 025).

The Applicant, PR Mauna Kea LLC. is requesting an extension of time to Condition No. 7 (life of the permit) of Special Permit No. 724 (LUC Docket No. 90-374) which allowed for the operation of a quarry and related uses on approximately 143.48 acres of land situated within the State Land Use Agricultural District. The requested amendment would allow a time extension to run coterminous with the current lease between the applicant and WHC, Ltd., dba West Hawai‘i Concrete (WHC), which expires on September 3, 2037.

Condition No. 7 currently states:

*“The life of this Special Permit shall run co- terminous (sic) with the Parker Ranch lease. Any amendments to the terms of the lease with Parker Ranch shall be submitted to the Planning Director and the State Land Use Commission.”<sup>1</sup>*

The footnote at the end of the condition was added after the April 6, 2000 hearing based on a series of letters between LUC Executive Director, Esther Ueda and the applicant. That footnote states:

*Any extension to the life of the Special Permit beyond the term of the current lease, which expires on September 30, 2017, would require the approval of both the Planning Director and the State Land Use Commission. See attached letter dated May 1, 2000, from the Applicant to Esther Ueda, Executive Officer, State Land Use Commission.*

The applicant is requesting that the footnote be deleted and that Condition No. 7 be amended with the following new language (material requested as an addition is underscored):

*The life of this Special Permit shall run co-terminus with the Parker Ranch lease, which terminates on September 30, 2037. Any amendments to the terms of the*

lease with Parker Ranch which extend the term of the lease beyond September 30, 2037, shall be submitted to the Planning Commission and the State Land Use Commission for approval.

According to the applicant, WHC has been successfully operating a quarry on the property since 1972 and wishes to continue those operations at least until 2037. There are approximately eight (8) million tons of material remaining in the quarry to be mined. WHC mines approximately 300,000 tons per year, so depending on market conditions, it would take approximately 26 years to completely mine the property. WHC currently supplies all their concrete aggregates out of the quarry on the property, therefore ceasing operation would cause disruption to the local construction market. Additionally, according to the applicant, the rock source in the property is unique, as it is the only quarry that WHC utilizes which produces rock aggregate that does not result in Alkalai Silica Reactivity in the finished concrete products. Alkalai Silica Reactivity is a condition which occurs when concrete is exposed over time to wet conditions causing it to expand, and results in premature concrete failure.

The LPC voted to approve the extension to the life of the permit to September 30, 2037 and delete the footnote to Condition No. 7 of the subject Special Permit as the requests meet the criteria to amend a Special Permit as discussed below.

**Approval of this request would not be contrary to the General Plan or the Zoning Code.** The amendment request to extend the life of the permit until September 30, 2037 would not be contrary to the General Plan or the Zoning Code.

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. The General Plan LUPAG Map designation for the project site is largely Extensive Agriculture with a small portion of Important Agricultural Lands. The Extensive Agriculture designation includes lands that are not capable of producing sustained, high agricultural yields without the intensive application of modern farming methods and technologies due to certain physical constraints such as soil composition, slope, machine tillability and climate. Other less intensive agricultural uses such as grazing and pasture may be included in the Extensive Agriculture category. While the quarry operation is not agricultural in nature, the use has been on-going since 1945 and permitted via Special Permit since 1990.

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 island wide. The project site contains raw materials essential for construction projects in the West Hawai'i area. The proposed amendment request would also complement the following goals and policies of the Land Use and Economic elements of the General Plan:

**Land Use - Industrial Element:**

- Industrial activities may be located close to raw material or key resources. The ability of the subject property to provide the needed raw material vital to the construction industry while able to absorb the noxious nature of quarries speaks to the appropriateness of the area for such uses.

**Economic:**

- The County shall strive for diversification of its economy by strengthening industries and attracting new endeavors.

Additionally, the proposed requests are not contrary to the Zoning Code. The property is located within the County's A-40a zoning district and the State Land Use Agricultural district. The Zoning Code and State Law (HRS 205-6) allows quarry operations within the County and State Land Use Agricultural district if a Special Permit is approved for such use. LUC Docket No. 90-374 has been approved for quarry operations and related uses since 1990 and quarrying operations have taken place on the property since 1945.

Lastly, since the approval of the last time extension amendment in 2000, the South Kohala Community Development Plan (SKCDP) was adopted by Ordinance No. 08 159 on December 1, 2008. The SKCDP calls for the protection and preservation of Waimea's scenic views, landscapes and pu'u. There are no pu'u within the project site and the quarry operations do not detract from Waimea's scenic views. Finally, the SKCDP does not identify specific areas appropriate for quarrying operations.

**A favorable recommendation of these requests would not be contrary to the original reasons for the granting of the permit.** The amendment request to extend the life of the permit until September 30, 2017, and to delete the footnote to Condition No. 7 would not be contrary to the original reasons for granting the Special Permit.

Special Permit No. 724 (LUC Docket No. 90-374) was approved by the State Land Use Commission on March 16, 1990 to allow the continued operation and expansion of an existing quarry and related uses on approximately 91.827 acres of land. The permit was amended on February 4, 2000, which included the expansion of the quarry by 51.653 acres to a total of 143.48 acres and an amendment to Condition No. 7 to extend the life of the permit to run coterminous with the applicant's lease with WHC, which ran until September 30, 2017.

The requested quarry operations and related uses were reviewed for consistency of the criteria for approval of a Special Permit. The Planning Commission reviewed the request and the amendment and forwarded a favorable recommendation to the State Land Use Commission, who approved both the Special Permit and the subsequent amendment request.

In reviewing the proposed requests against the criteria for approval of a Special Permit, the requests are not contrary to the original reasons for the granting of the permit and meet the criteria for approval for an amendment to the Special Permit. In summary, the proposed requests are consistent with the following criteria:

**The proposed amendment is an unusual and reasonable use of land situated within the Agricultural District.** In recognizing that lands within 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. Based on the poor soil conditions of the project site for agricultural activities and the commitment of these lands for quarry uses over the past 75 years, the proposed time extension is considered an unusual and reasonable use of agricultural land in this location within the State Land Use Agricultural District.

**The proposed amendment will not be contrary to the objectives sought to be accomplished by the State Land Use Law and its regulations.** The granting of proposed amendment continue to promote the effectiveness and objectives of Chapter 205, Hawai'i Revised Statutes, 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 Hawai'i. In the case of the Agricultural District, the intent is to preserve or keep lands of high agricultural potential in agricultural uses. The State Land Use Commission, in its approval of Special Permit No. 724 in 1990 found that the quarrying activities were consistent with the objectives sought to be accomplished by the State Land Use Law. The continued operation until September 30, 2037 and deletion of the footnote to Condition No. 7 will not be contrary to the original reasons supporting the approval of the Special Permit by the State Land Use Commission. WHC will continue to operate the quarry site in a manner and within the limitations as specified by the conditions of Special Permit No. 724 (SP90-374) as amended.

**The proposed amendment will not adversely affect the surrounding properties.** Surrounding properties are similarly zoned A-40a by the County and Agricultural by the State. There is an existing quarry complex located to the east (mauka) and base yards located to the west (makai) of the property site. The closest residences are approximately 1.25 miles to the east in DHHL's Pu'ukapu Pasture Lots Subdivision and Waimea is located approximately 5 miles to the north of the property. According to the applicant, a quarry has been operated on the property for over 70 years without complaints from areas residents. The area is remote and there is adequate open space buffer to minimize any physical, social or other impacts to nearby residential uses.

Condition No. 3 of the permit required a visual impact analysis of the affected site from Māmalahoa Highway prior to any grading activity, with the installation of appropriate landscaping, if required. On April 27, 2000, WHC, submitted the required analysis to the Planning Department, which included photographs from Māmalahoa Highway, from which the quarrying operation is not visible. As this condition has been satisfied and no quarry expansion is being proposed, the Director recommended removing Condition No. 3 from this amendment request.

The State Department of Health recommended the applicant develop a dust control management plan, which identifies and addresses development generated dust. WHC currently sprays water for dust control around the quarry in compliance with State Clean Air Branch requirements. Moreover, given the project area's distance from residences, non-quarry related businesses, public areas and major thoroughfares, the Planning Director did not recommend adding the requirement of a dust control management plan as a condition of approval of this permit amendment.

Finally, the applicant will ensure that WHC continue to operate the quarry operations in a manner as represented to the Planning Commission and the State Land Use Commission. Based on the preceding, the proposed amendment will not adversely affect the surrounding properties.

**The proposed amendment will not unreasonably burden public agencies to provide roads and streets, sewers, water, drainage, school improvements, and police and fire protection.** Access to the property is via the State Department of Transportation owned and maintained paved two-lane Māmalahoa Highway, which connects to a private 20-foot wide asphalt concrete paved driveway on the property.

Water for the quarry operation is supplied by Parker Ranch through their private lines which they generally use for cattle. This water is used for washing hands, filling radiators, washing equipment and general spraying around the quarry in compliance with the State Clean Air Branch. The operation uses approximately 500 gallons per month. For general dust control in the quarry, WHC utilizes water from a 2,000-gallon water truck. No new water sources are necessary to continue operation of the quarry.

Wastewater demands are addressed through the use of chemical toilets. All essential utilities, consisting of generator power and cell phone usage, and emergency services are available to the subject property.

Based on the preceding, the Planning Director determined that the proposed amendment will not unreasonably burden public agencies to provide services.

**Unusual conditions, trends, and needs have arisen since district boundaries and regulations were established.** In the 1960's and 1970's, the State's agricultural district boundaries and regulations were established and subsequently amended pursuant to HRS Chapter 205. The State Land Use Commission was created in 1961, and interim regulations and temporary district boundaries became effective in 1962. Subsequently, the regulations and Land Use District Boundaries became effective in August of 1964. The properties and surrounding areas are designated for agricultural uses by both State and County land use laws. Through the issuance of a Special Permit, a community may establish various "non-agricultural" services that may not be available or allowed by zoning for its residents, such as quarry operations.

**The land upon which the proposed use is sought is unsuited for the uses permitted within the district.** Soils of the area are of the Pu'u Pa Series. In a representative profile, the surface layer is very dark brown extremely stony very fine sandy loam about six inches thick. The next layer is dark-brown and dark yellowish-brown very stony very fine sandy loam about 34 inches thick. It is underlain by fragmental A'a lava. Soils are classified as "D" or "Poor" soil by the Land Study Bureau's Overall Master Productivity Rating and are unclassified by the Department of Agriculture's ALISH Map. Based on the above information, it has been determined that the land upon which the proposed use is sought is unsuited for the uses permitted within the district.

**The proposed uses will not substantially alter or change the essential character of the land and the present use.** The essential character of the property and surrounding lands is barren. A quarry has been operated at the subject property since 1945, without complaints. As such, the requested amendment will not alter or change the essential character of the land and the present use.



**The proposed amendment requests are 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 property is not situated within the Special Management Area (SMA) and is approximately 13 miles from the nearest shoreline and therefore will not be impacted by coastal hazard and beach erosion. 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 project area. While no professional flora and fauna surveys were of the conducted, the applicant states that there are no rare or endangered species of flora were found on the property. Virtually the entire property has been cleared and mined, leaving an unwelcoming habitat for plants or animals. There is approximately thirty (30) acres that has natural foliage on it. The only animals ever encountered on the property are goats. Further, no known endangered, threatened or candidate plant or animal species are within the property, and there is no known existing or proposed federally designated critical plant or animal habitat within the property.

As required by the original Special Permit, Barrera conducted an archaeological reconnaissance survey of the subject site and determined that that property was a, "barren zone not likely to contain significant archaeological sites." The Planning Department acknowledged compliance with this requirement on July 17, 1992. Condition No. 6 of the 2000 amendment to the Special Permit required an additional archaeological reconnaissance survey for the expanded the quarry area. The survey was conducted by Robert B. Rechtman, Ph.D. in April 2000 with the determination that no archaeological or historical remains of any kind were observed in an on-foot reconnaissance field survey of the property. As this condition has been satisfied, the Planning Director recommended its deletion as part of this amendment and replacing it with our standard condition related to inadvertent finds of archaeological/historical resources.

The applicant is unaware of any known traditional and customary native Hawaiian practices occurring within the property, since the property has been mostly graded and has been used as a quarry since the 1940s.

**Condition Compliance Housekeeping.** The Planning Director recommended deletion of Condition Nos. 2 (metes and bounds survey) and 3 (visual impact analysis) and the replacement of Condition Nos. 6 (archaeological reconnaissance survey) and 11 (administrative time extension) to reflect completed conditions. The justification for the recommended deletion of Condition No. 3 and replacement of Condition No. 6 is discussed above. Condition No. 2 of the subject Special Permit required a metes and bounds description of the quarry site be filed with the Planning Department within one year of the effective date of the permit. That condition carried through to the 2000 amendment to the Special Permit as it expanded the size of the quarry area to 143.48 acres. On June 16, 2017 Subdivision No. 17-001692-Revised was approved, which separated the 143.48-acre quarry area (TMK: 6-7-001:034) from the original larger property. Based on the preceding, the Planning Director recommended deleting Condition No. 2 from this amendment. Finally, Condition No. 11 allowed for and articulated the required criteria for an administrative time extension to all of the timed conditions of the Special Permit, except for Condition No. 8 (termination of operations). All other timed

conditions have either been complied with or are the subject of this amendment request, therefore the possibility for an administrative time extension no longer applies. The Planning Director recommended replacing it with language requiring Planning Commission and State Land Use Commission approval for any other proposed amendments to this Special Permit.

Lastly, this approval is made with the understanding that the applicant, its successors or assigns, remain responsible for complying with all other applicable governmental requirements in connection with the approved use, prior to its commencement or establishment upon the subject property. Additional governmental requirements include the issuance of building permits, the installation of approved wastewater disposal systems, compliance with the Fire Code, installation of improvements required by the American with Disabilities Act (ADA), among many others. All mining activities must follow the regulations of the Mining Safety and Health Administration (MSHA), which typically inspects the quarry three times a year. Compliance with all applicable governmental requirements is a condition of this approval; failure to comply with such requirements will be considered a violation that may result in enforcement action by the Planning Department and/or the affected agencies.