

BEFORE THE MAUI PLANNING COMMISSION

COUNTY OF MAUI

STATE OF HAWAII

In the Matter of the Application for:

**HAWAIIAN CEMENT**

To obtain 15-year time extensions for the following permits:

SUP1 2006/0001  
CUP 2006/0001

To continue the operations of the Hawaiian Cement Pohakea Quarry located on approximately 79 acres in the State and County Agricultural Districts, Maalaea, Maui, Hawaii, TMK (2) 3-6-004:007

DOCKET NOs. SUP1 2006/0001  
CUP 2006/0001

**HAWAIIAN CEMENT POHAKEA  
QUARRY**

(PFasi)

MAUI COUNTY PLANNING DEPARTMENT'S REPORT AND RECOMMENDATION

TO THE MAUI PLANNING COMMISSION

November 24, 2020 MEETING

DEPARTMENT OF PLANNING  
COUNTY OF MAUI  
2200 MAIN STREET, SUITE 315  
WAILUKU, MAUI, HI 96793

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DOCKET NOs. SUP1 2006/0001  
CUP 2006/0001

**HAWAIIAN CEMENT POHAKEA  
QUARRY**

(PFasi)

**DESCRIPTION OF THE PROJECT**

This matter arises from an application *for an Amendment to Permit Terms, Conditions & Time Stipulation* submitted to the Planning Department (Department) dated June 20, 2019 for 15-year time extensions for the following existing permits: **Exhibit 1**

- |                              |                           |                       |
|------------------------------|---------------------------|-----------------------|
| 1. State Special Permit      | SUP1 2006/0001 (SP06-400) | <b>Exhibits 4, 4a</b> |
| 2. County Special Use Permit | CUP 2006/0001             | <b>Exhibits 5, 5a</b> |

Also, the Applicant requested an extension for its existing Conditional Permit (CP). Pursuant to §19.40.090 MCC, the Applicant has met the criteria for a CP permit renewal. Therefore, on September 2, 2020, the Planning Director approved the applicant's request for a 15-year time extension. **Exhibit 7.**

Compliance Reports for the SUP1 and CUP are included as Exhibits 4a and 5a.

As quarry and concrete recycling operations are ongoing, the Applicant is requesting that the SUP1 and CUP also be extended for a period of 15 years, to December 15, 2035:

Note: [Bracketed material to be deleted], underscored material to be added.

1. That Condition No. 1 of the **SUP1** recommended approval to the LUC be amended to read:

*That the LUC Special Use Permit shall be valid until [December 15, 2019] December 15, 2035, subject to further extensions by the LUC upon a timely request for extension filed at least 120- days prior to its expiration. The appropriate Planning Commission shall make a recommendation to the LUC and may require a public hearing on the time extension.*

2. That Condition No. 1 of the **CUP** approval be amended to read:

*That the County Special Use Permit shall be valid until [December 15, 2019] December 15, 2035, subject to extension by the Commission upon a timely request for extension filed [at least] within 120-days prior to its expiration. The Commission may require a public hearing on the time extension.*

3. That Condition Nos. 11 and 16 of the **SUP1** be deleted as they are no longer applicable:

*"11. That prior to any excavation work within the 64.4-acre expansion, the following shall be resolved with the DLNR, SHPD:*

- a. *Clarification in the form of an archaeological survey level documentation as to whether Temporary Site T-9 is a previously identified historic site;*
- b. *A preservation plan for the "agreed upon preservation areas"; and*
- c. *A thorough field inspection of the 65+ acres into which the proposed quarry will expand to determine the condition of the previously identified sites as well as documentation of any additional sites. Documentation from the DLNR, SHPD, tthat all concerns have been addressed shall be filed with the DP and the County Department of Public Works and Environmental Management ("DPWEM") prior to issuance of any grading permit, if required, and initiation of excavation work within the expansion area.*

16. *That the protective construction fencing located around site T-9 (a remnant of a historic wall) shall be maintained fir the life of the LUC Special Use Permit. All individuals and/or organizations working on this site shall be briefed on the location of Site T-9 to avoid damaging this site."*



## **BRIEF HISTORY OF THE APPLICATIONS**

The landowner, Pohakulepo Recycling, LLC, received approval by the Maui Planning Commission (MPC) in 1997 for a State Land Use Commission (LUC) Special Use Permit (SUP), authorizing a base course production, composting, and recycling facility on a 14.8-acre portion of the subject property. The concrete recycling and green waste composting facility are also permitted by a County Conditional Permit (CP) issued by the Maui County Council. Subsequent time extension requests for the SUP were granted by the MPC.

In 2006, the Applicant requested that the original 14.8-acre area be consolidated with a 64.4-acre expansion area, making the total area for the operation 79.2 acres, and covered under a single consolidated SUP. In addition, because the quarry and base course operation are not permitted uses in the underlying "Agricultural" zoning district, and because the expansion area was larger than 15 acres, a County Special Use Permit (CUP) was also sought.

Most recently, the LUC, County Council, and MPC approved time extension requests for all three permits for the consolidated 79.2-acre site. The permits now have an expiration date of December 15, 2019. A summary of the permits, recent approvals and expiration dates are provided below:

Summary of Permits, Recent Approvals and Expiration Dates

Permit	Approved By	Approval Date	Expiration Date	Notes
SUP1 2006/0001	LUC	January 7, 2011	December 15, 2019	Consolidated SUP which supersedes original approval (SUP2 96/0013)
CP 1997/0002	County Council	October 22, 2010	December 15, 2019	Ordinance No. 3787
CUP 2006/0001	MPC	March 9, 2010	December 15, 2019	

The SUP1 was approved by the LUC subject to 23 conditions. Condition No. 6 was amended with the most recent time extension and now states:

*On each anniversary date of this Decision and Order, the Applicant shall file annual reports to the LUC and the DP in connection with the status of the subject project and the Applicant's progress in complying with the conditions imposed herein. The annual report shall be submitted in a form prescribed by the Executive Officer of the Commission.*

In compliance with this condition, a compliance report for the SUP1 was submitted to the LUC on April 8, 2019. See **Exhibit 4a**



A bi-annual report for the CUP was submitted to the Department on February 16, 2018. See Exhibit 5a

The CUP was approved by the MPC subject to 13 conditions. Condition No. 5 states:

*That the Applicant shall submit bi-annually to the Department, five (5) copies of a detailed report addressing its compliance with the conditions established by the County Special Use Permit.*

On January 26, 2010 the MPC approved, or recommended approval for, all three permits accordingly. Exhibit 8

### **DESCRIPTION OF THE PROPERTY**

1. The Applicant currently operates a rock quarry and base course operation and concrete recycling facility on an approximately 79.2 acre portion of Tax Map Key (TMK) (2) 3-6-004:007, Maalaea, (Property) owned by Pohakulepo Recycling, LLC. Exhibits 2 & 3

2. **Land Use Designations**

- a. State Land Use District .....AG
- b. Wailuku-Kahului Community Plan.....AG
- c. County Zoning .....AG
- d. Other .....non-SMA

3. **Surrounding Uses**

North.....Vacant AG lands formerly in sugar cane  
East.....Vacant AG lands; Honoapiilani Hwy.  
South .....Vacant AG lands  
West.....West Maui Mountains

4. The existing 79.2 acre Pohakea Quarry site contains a rock quarry, base course, concrete debris recycling and green waste composting facility. The quarry operation includes a crusher/screening plant, maintenance shop, and scale house. Access is from a paved roadway off Honoapiilani Highway at the signalized intersection of Honoapiilani Highway and Kuihelani Highway.

The property is located approximately 1,000 feet west (mauka) of Honoapi'ilani Highway, at its intersection with Kuihelani Highway in Waikapū. To the north of the site is an existing drainageway, to the south is Pohakea Stream, to the west are vacant lands with

the West Maui Mountains beyond, and to the east are the site's access driveway and vacant former agricultural lands with Honoapi'ilani Highway beyond.

## **APPLICABLE REGULATIONS**

### **Land Use Commission State Special Permit (SUP) §15-15-95 and §205-6 HRS**

Standards for reviewing a Land Use Commission Special Permit are found under Title 15 Department of Business, Economic Development, and Tourism; Subtitle 3 State Land Use Commission, Chapter 15 Land Use Commission Rules, Subchapter 12 Special Permits, §15-15-95 of the Hawaii Administrative Rules.

Per §205-6 Special Permit HRS, the county planning commission may permit certain "*unusual and reasonable uses*" within agricultural and rural districts other than those for which the district is classified. "*Special Use Permits for land area greater than fifteen acres shall be subject to approval by the State Land Use Commission.*" The subject land area is approximately 79.2 acres.

Certain "*unusual and reasonable uses*" within agricultural and rural districts other than those for which the district is classified may be permitted. The following guidelines are established in determining what is an "*unusual and reasonable use*".

- (1) *The use shall not be contrary to the objectives sought to be accomplished by chapters 205 and 205A, HRS, and the rules of the Land Use Commission.*
- (2) *The desired use would not adversely affect surrounding property;*
- (3) *The use would not unreasonably burden public agencies to provide roads and streets, sewers, water, drainage and school improvements, and police and fire protection;*
- (4) *Unusual conditions, trends and needs have arisen since the district boundaries and rules were established;*
- (5) *The land upon which the proposed use is sought is unsuited for the uses permitted within the district.*

### **County Special Use Permit (CUP) Title 19, Chapter 19.30A MCC**

Within the County Agricultural District, a special use may be granted per Title 19, Zoning, Chapter 19.30A Agricultural Districts, Section 19.30A.060 Special Uses; Maui County Code, 1980, as amended.

*If a use described in section 19.30A.060 requires a special use permit per HRS Chapter 205 and if the land area is fifteen (15) acres or less, a State Special Use Permit (SUP) shall fulfill the requirements of this section i.e., a CUP is not required - it being fulfilled by an SUP - and the Planning Commission would be the authoritative body on the SUP.*



Since the subject land is greater than 15 acres (79.2 acres), a CUP is required in addition to a SUP. The SUP now returns to the jurisdiction of the LUC, and the MPC makes a recommendation on the SUP to the SLUC.

Per Section 19.510.070 Special Use Permits MCC, a special use permit shall comply with the criteria established for a permit and the policies and objectives of the general plan, community plans, the Revised Charter of the County of Maui and HRS. A special use permit may be granted by the appropriate planning commission provided the following criteria have been met:

1. *The proposed request meets the intent of the general plan, and the objectives and policies of the applicable community plan of the county;*
2. *The proposed request is consistent with the applicable community plan land use map of the county;*
3. *The proposed request meets the intent and purpose of the applicable district;*
4. *The proposed development will not adversely affect or interfere with public or private schools, parks, playgrounds, water systems, sewage and solid waste disposal, drainage, roadway and transportation systems, or other public requirements, conveniences, and improvements;*
5. *The proposed development will not adversely impact the social, cultural, economic, environmental, and ecological character and quality of the area;*
6. *That the public shall be protected from the deleterious effects of the proposed use;*
7. *That the need for public service demands created by the proposed use shall be fulfilled; and*
8. *If the use is located in the state agricultural and rural district, the commission shall review whether the use complies with the guidelines established in section 15-15-95 of the rules of the land use commission of the state.*

### **REVIEWING AGENCIES**

The application was transmitted to seven State and County agencies for comment – no response was received by the Department. Similar to when these permits were renewed in 2010, the Department received either no response or “no comment.”

### **ANALYSIS**

#### **State Land Use**

The proposed project is in conformance with the goals, objectives and policies of the Hawaii State Plan. It will provide additional opportunities for employment and economic growth.

As noted, the subject property is in the State Agricultural District. The LUC approved State Special Permit No. SP06-400 allowing the Pohakea Quarry facility to operate within the State Agricultural District. The permit was valid until December 15, 2009, but the Applicant filed a



timely request for a time extension prior to this date. The Applicant is requesting a 15-year time extension in order to continue the Pohakea Quarry within the State Agricultural District. The project meets the standards for "unusual and reasonable use" as follows:

*The use is not contrary to the objectives sought to be accomplished by chapters 205 and 205A, HRS, and the rules of the Land Use Commission;*

The continued operation of the Pohakea Quarry will ensure that the Maui construction industry is provided with an on-island source of base course material and has been determined to be an "unusual and reasonable" use in the land and area in which it is located.

*The desired use will not adversely affect surrounding property which is vacant agricultural lands;*

The nearest urban area is the Maalaea community approximately 1.4 miles to the south of the site.

*The use will not unreasonably burden public agencies to provide roads and streets, sewers, water, drainage and school improvements, and police and fire protection, provided necessary infrastructure improvements are incorporated into the project;*

The use does not generate a demand for public services or county infrastructure. The location of the operation within the agricultural district and away from urban areas negates its impact on neighboring communities.

Further, the land is extremely rocky which makes it ideal for a rock quarry operation. It is not conducive for agricultural farming activities. The Land Study Bureau overall productivity rating of the property is "E", which is the lowest productivity rating for agriculture.

As previous Maui Planning Commissions have recommended approval to the LUC, the continued use as a rock quarry operation meets the previous-listed five Special Permit criteria. It is noted that the LUC concurs with this recommendation and previously also approved the Special Permit with requested time extensions.

### **County Land Use**

The Maui County General Plan (1990) sets forth broad objectives and policies to help guide the long-range development of the County. As stated in the Maui County Charter, as amended in 2002:

*"The General Plan shall indicate desired population and physical development patterns for each island and region within the county; shall address the unique problems and needs of each island and region; shall explain the opportunities and the social, economic, and environmental*

*consequences related to potential developments; and shall set forth the desired sequence, patterns, and characteristics of future developments. The general plan shall identify objectives to be achieved, and priorities, policies, and implementing actions to be pursued with respect to population density, land use maps, land use regulations, transportation systems, public and community facility locations, water and sewage systems, visitor destinations, urban design, and other matters related to development."*

The General Plan identifies five major themes as follows:

1. Protect Maui County's agricultural lands and rural identity
2. Prepare a directed and managed growth plan
3. Protect Maui County's shoreline and limit visitor industry growth
4. Maintain a viable economy that offers diverse employment opportunities for residents
5. Provide for needed residential housing.

Pohakea Quarry provides base course material which is a necessary and critical component of the various types of construction activity without which, would bring the construction industry and the economy as a whole, to a virtual standstill. This operation is critical to the growth, maintenance, and economy of Maui County.

As noted, the subject property is located within the County's Agricultural District. Within this district "*mining and resource extraction*" is identified as an allowable special use per 19.30A.060 - Special uses. The applicant is requesting time extensions on approved SUP and CUP permits in order to continue the quarry operation. The existing 14.8 acres containing the rock crushing, concrete recycling and green waste composting facility was approved by Conditional Permit CP 97/0002.

As previous Maui Planning Commissions have approved the continued use as a rock quarry operation and that the use meets the previous-listed eight County Special Use Permit criteria. It is also noted that the MPC also concurred with the time extension request in 2010. Per Title 19, Section 19.30A.060 - Special uses, "*mining and resource extraction*" is a permitted use with an approved special use permit.

### **Community Plan**

According to the Wailuku-Kahului Community Plan land use map the property is identified for agricultural use. The Wailuku-Kahului Community Plan states:

#### *Economic Activity -Objectives and Policies*

*"Provide industrial growth opportunities through the expansion of existing industrial centers associated with the airport and harbor and in Wailuku and Kahului."*



The Pohakea Quarry operation is consistent with the Wailuku-Kahului Community Plan objectives. It is located in an area with minimal impact to the environment and the surrounding agricultural lands. Currently, the nearest urban area is approximately 1.4 miles south of the site in Maalaea.

### **Authority**

The Maui Planning Commission has the authority to:

1. Make a recommendation to the State Land Use Commission on the SUP1.
2. Take final action on the CUP.

The Conditional Permit time extension was previously approved by the Planning Director on September 2, 2020 and therefore, no action is required. **Exhibit 7**

### **ALTERNATIVES**

#### **State Special Permit (SUP)**

1. ***Deferral:*** The Commission may defer action to another meeting date in order to obtain additional information that will assist in their deliberation on the request.
2. ***Recommend Approval without Conditions:*** The Commission may take action to recommend approval of the request without imposing any conditions.
3. ***Recommend Approval with Conditions:*** The Commission may take action to recommend approval of the request with conditions.
4. ***Denial:*** The Commission may take action to deny the request.

#### **County Special Use Permit (CUP)**

1. ***Deferral:*** The Commission may defer action to another meeting date in order to obtain additional information that will assist in their deliberation on the request.
2. ***Approve without Conditions:*** The Commission may take action to approve the request without imposing any conditions.
3. ***Approve with Conditions:*** The Commission may take action to approve the request with conditions.
4. ***Denial:*** The Commission may take action to deny the request.

### **CONCLUSIONS OF LAW**

The request complies with the applicable standards for a State Land Use Commission Special Permit as follows:



**State Land Use Commission Special Permit (SUP):**

The project meets the standards for an "unusual and reasonable use" as follows:

- (1) The use is not contrary to the objectives sought to be accomplished by chapters 205 and 205A, HRS, and the rules of the Land Use Commission. The continued operation of the Pohakea Quarry will ensure that the construction industry is provided with an economical source of base course as well as recycle concrete rubble and green waste to reduce the amount of waste material that is sent to the Central Maui landfill.
- (2) The desired use will not adversely affect surrounding property which is vacant agricultural lands. The nearest urban area is the Maalaea community approximately 1.4 miles to the south of the site;
- (3) The use will not unreasonably burden public agencies to provide roads and streets, sewers, water, drainage and school improvements, and police and fire protection, provided necessary infrastructure improvements are incorporated into the project;
- (4) The use is necessary to provide base course material for our construction industry as well serve as a recycling area for concrete and green waste. The quarry operation is a noxious industry (noise and dust). The location of the operation within the agricultural district and currently away from urban uses limits its impacts on surrounding neighbors;
- (5) The land is extremely rocky which makes it ideal for a rock quarry operation and is not well-suited for cultivation. The Land Study Bureau overall productivity rating of the property is "E", which is the lowest productivity rating for agriculture.

**County Special Use Permit (CUP):**

The request complies with the applicable standards for a County Special Use Permit as follows:

1. The proposed request meets the intent of the general plan, and the objectives and policies of the applicable community plan of the county;
2. The proposed request is consistent with the applicable community plan land use map of the county;
3. The proposed request meets the intent and purpose of the applicable district;
4. The proposed development will not adversely affect or interfere with public or private schools, parks, playgrounds, water systems, sewage and solid waste disposal, drainage, roadway and transportation systems, or other public requirements, conveniences, and improvements;
5. The proposed development will not adversely impact the social, cultural, economic, environmental, and ecological character and quality of the area;
6. The public shall be protected from the deleterious effects of the proposed use;

7. The need for public service demands created by the proposed use shall be fulfilled; and
8. The use is located in the state agricultural district, the application complies with the guidelines established in section 15-15-95 of the rules of the land use commission of the state.

### RECOMMENDATION

#### State Land Use Commission Special Permit

Pursuant to the foregoing, the Maui Planning Department recommends that the Maui Planning Commission recommend to the State Land Use Commission approval of the 15-year time extension request for the Land Use Commission Special Use Permit, subject to the following amended conditions – new material underlined and [bracketed] material to be deleted:

1. *That the Land Use Commission Special Use Permit shall be valid until December 15, [2020], 2035 subject to further extensions by the Land Use Commission upon a timely request for extension filed at least 120 days prior to its expiration. The appropriate Planning Commission shall make a recommendation to the Land Use Commission and may require a public hearing on the time extension.*

An Archaeological Inventory Survey (AIS) and Archaeological Monitoring Plan (AMP) were prepared for the quarry expansion area in 2008 and were submitted to the State Historic Preservation Division for review. Both the AIS and AMP have been accepted. However, as no additional expansion of the quarry is being proposed, the Applicant is requesting that the following referenced stipulations of Condition Nos. 11 and 16 of the SUP be removed as they are no longer applicable:

*[“11. That prior to any excavation work within the 64.4-acre expansion, the following shall be resolved with the DLNR, SHPD:*

- d. Clarification in the form of an archaeological survey level documentation as to whether Temporary Site T-9 is a previously identified historic site;*
- e. A preservation plan for the “agreed upon preservation areas”; and*
- f. A thorough field inspection of the 65+ acres into which the proposed quarry will expand to determine the condition of the previously identified sites as well as documentation of any additional sites. Documentation from the DLNR, SHPD, that all concerns have been addressed shall be filed with the DP and the County Department of Public Works and Environmental Management (DPWEM) prior to issuance of any grading permit, if required, and initiation of excavation work within the expansion area.*

16. *That the protective construction fencing located around site T-9 (a remnant of a historic wall) shall be maintained for the life of the LUC Special Use Permit. All individuals and/or organizations working on this site shall be briefed on the location of Site T-9 to avoid damaging this site."*

#### **County Special Use Permit**

Pursuant to the foregoing, the Maui Planning Department recommends that the Maui Planning Commission approve the 15 year time extension request for the County Special Use Permit, subject to the following amended condition – new material underlined and [bracketed] material to be deleted:

1. *That the County Special Use Permit shall be valid until December 15, [2019] 2035, subject to extension by the Commission upon a timely request for extension filed at least 120-days prior to its expiration. The Commission may require a public hearing on the time extension.*

APPROVED:



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MICHELE MCLEAN, AICP  
Planning Director



**APPLICATION FOR  
AMENDMENT TO PERMIT  
TERMS, CONDITIONS, AND  
TIME STIPULATIONS FORM**

**2**

# Application for Amendment to Permit Terms, Conditions & Time Stipulation

Please print legibly or type in the information below.

## PROPERTY ADDRESS / PROJECT INFORMATION

Name of Project: (If project name is not provided, applicants name will be used) Hawaiian Cement Pohakea Quarry

Tax Map Key No: (2)3-6-004:007

Total Lot Area: 79.196 acres

Physical Address / Location of Project: Honoapi'ilani Highway

Additional Location Information: West of Honoapi'ilani Highway and Kuihelani Highway intersection

## DESCRIPTION OF PROPOSED ACTIVITY OR DEVELOPMENT

Written description of the proposed action shall include, but not be limited to: use, length, width, height, depth, building material(s), and statement of objectives of the proposed action. Attach additional sheets, if needed:

Describe the Existing Use: Rock quarry and base course operation permitted by State Land Use Commission Special Permit (SUP1 2006/0001), County Special Use Permit (CUP 2006/0001), and a concrete recycling program permitted by County Conditional Permit (CP 1997/0002).

Describe the Proposed Use: Applicant is requesting a 10-year time extension for all three (3) permits

Include a description of all proposed ground altering activities (e.g., area of disturbance, quantity of fill, depth of excavation, etc.).

Valuation\*: Not Applicable

Building Permit Application No: (if applicable) Not Applicable

\*Total cost or fair market value as estimated by an architect, engineer, or contractor licensed by the Department of Commerce and Consumer Affairs, State of Hawaii; or, by the administrator of Department of Public Works, Development Services Administration.

## CONTACT INFORMATION

### APPLICANT INFORMATION

Applicant's Name(s): Dave Gomes, Hawaiian Cement Email: Dave.Gomes@hawaiiancement.com

Mailing Address: P.O. Box 488, Kahului, Hawai'i 96733

Phone Number(s): bus 871-7004 hm ---- cell ---- fax ----

Signature(s): Refer to Letter of Authorization, Section 4

Date: \_\_\_\_\_

### CONSULTANT INFORMATION

Contact Name(s): Bryan Esmeralda, AICP Email: planning@munekiyohiraga.com  
Munekiyohiraga

Mailing Address: 305 High Street, Suite 104, Wailuku, Hawai'i 96793

Phone Number(s): bus 244-2015 hm --- cell --- fax 244-8729

Signature(s): Kag. Bll Date: 6/20/19

### OWNER INFORMATION

Owner's Name(s): Ronald Jacintho, Sr. Email: ron@rojacmaui.com  
Pohakulepo Recycling, LLC

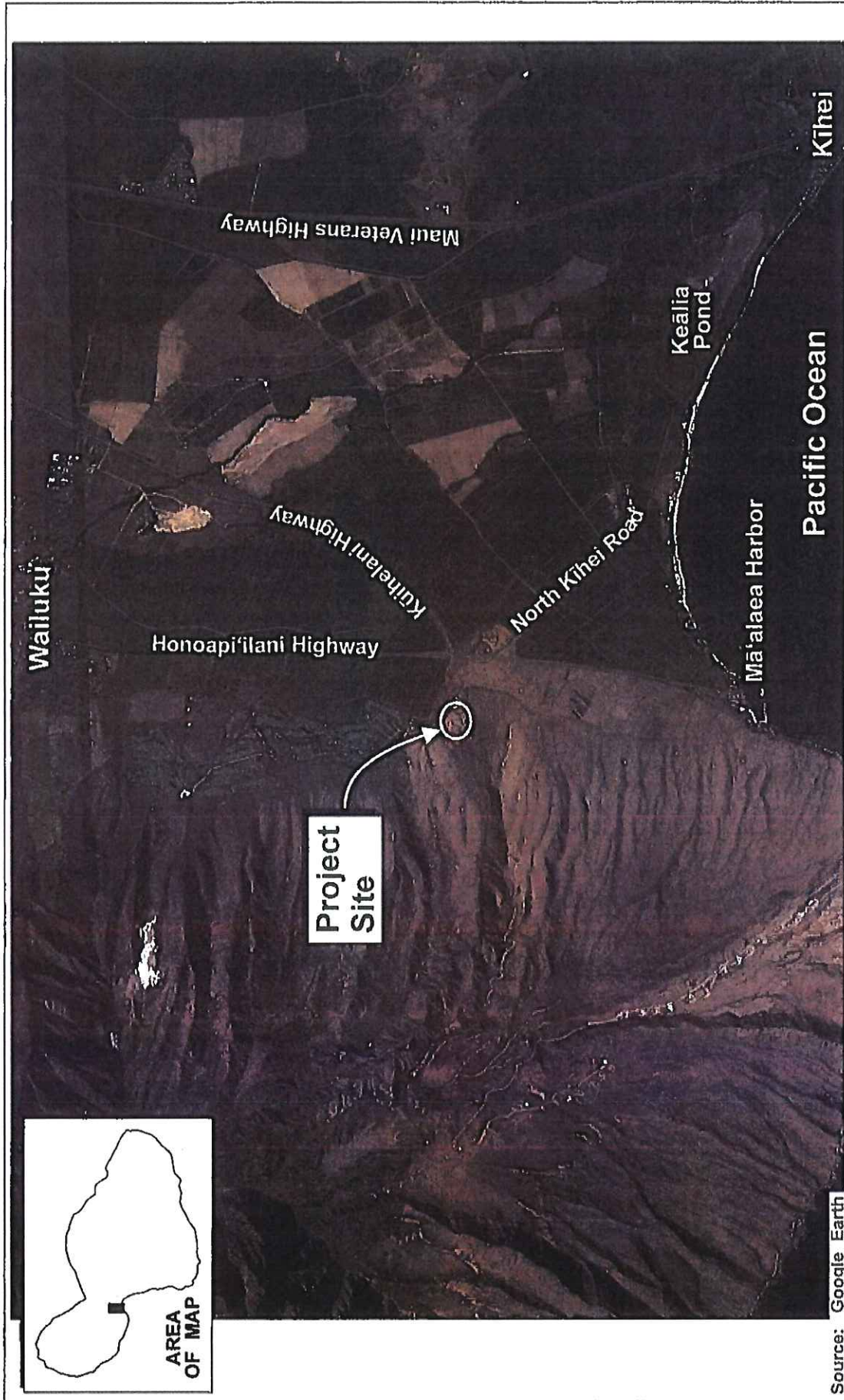
Mailing Address: 255-B Waiko Road, Wailuku, Hawai'i 96793

Phone Number(s): bus 986-1100 hm ----- cell ----- fax -----

Signature(s): Refer to Letter of Authorization, Section 4

Date: \_\_\_\_\_





Source: Google Earth

Figure 1

# Hawaiian Cement Pohakea Quarry Regional Location Map

NOT TO SCALE



Prepared for: Hawaiian Cement

HawnCent/Quarry/Amend to Permit Terms Application/Figures/Regional Location





Source: Google Earth

Figure 2



# Hawaiian Cement Pohakea Quarry Property Location Map

NOT TO SCALE

Prepared for: Hawaiian Cement



Hawaiian Cement/Quarry/Amend to Permit Terms Application/Figures/Property Location

**State Land Use  
Commission Special  
Use Permit Time  
Extension Approval**

**1**

11 JAN 10 P1:48

DEPT OF PLANNING  
COUNTY OF MAUI  
JAN 10 2011



BEFORE THE LAND USE COMMISSION  
OF THE STATE OF HAWAII


LAND USE COMMISSION  
STATE OF HAWAII  
2011 JAN -7 A 6:54

In The Matter Of The Application Of	)	DOCKET NO. SP06-400
	)	
WILLIAM HORNEMAN ON BEHALF OF	)	DECISION AND ORDER
HAWAIIAN CEMENT	)	APPROVING TIME EXTENSION
	)	TO SPECIAL USE PERMIT
To Operate And Expand A Quarry And Base	)	
Course Operation On Approximately 79.2	)	
Acres Of Land Within The State Land Use	)	
Agricultural District At Mā'alaea, Maui,	)	
Hawai'i, Tax Map Key: 3-6-04: 7	)	
_____	)	

DECISION AND ORDER APPROVING TIME EXTENSION TO SPECIAL USE PERMIT

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.

January 7, 2011 by

  
Executive Officer





BEFORE THE LAND USE COMMISSION

OF THE STATE OF HAWAII

In The Matter Of The Application Of	)	DOCKET NO. SP06-400
	)	
WILLIAM HORNEMAN ON BEHALF OF	)	DECISION AND ORDER
HAWAIIAN CEMENT	)	APPROVING TIME EXTENSION
	)	TO SPECIAL USE PERMIT
To Operate And Expand A Quarry And Base	)	
Course Operation On Approximately 79.2	)	
Acres Of Land Within The State Land Use	)	
Agricultural District At Mā'alaea, Maui,	)	
Hawai'i, Tax Map Key: 3-6-04: 7	)	
_____	)	

DECISION AND ORDER APPROVING TIME EXTENSION TO SPECIAL USE PERMIT

On July 16, 2009, Karlynn Fukuda filed a request on behalf of Hawaiian Cement ("Applicant") for a ten-year time extension to the life of the State Land Use Commission ("LUC") Special Use Permit issued in County Docket No. SUP1 2006/0001 (LUC Docket No. SP06-400) with the County of Maui Department of Planning ("DP"), pursuant to section 205-6, Hawai'i Revised Statutes ("HRS"), and sections 15-15-95 and 15-15-96, Hawai'i Administrative Rules ("HAR").

On January 26, 2010, the County of Maui Planning Commission ("Planning Commission") conducted a hearing on the Applicant's request. There was no public testimony. After due deliberation, the Planning Commission voted to

approve the Applicant's request and to delete Condition Numbers 6 and 7 of the Decision And Order Approving Special Use Permit dated December 4, 2006.

The LUC has jurisdiction over this matter. Section 205-6, HRS, and sections 15-15-95 and 15-15-96, HAR, confer jurisdiction upon the LUC to approve special use permits and amendments thereto for areas greater than 15 acres.

On April 13, 2010, the LUC received copies of the Planning Commission's decision and the record on the request. Upon review of the record, the LUC staff believed that it was incomplete because there was an ambiguity as to the nature of the Planning Commission's action with respect to the disposition of certain conditions previously imposed by the LUC on the Special Use Permit. By letter dated April 15, 2010, the LUC staff notified the DP that it would suspend further processing of the request until such time that the record in this matter was clarified by the County of Maui.

On July 13, 2010, the Planning Commission conducted a hearing to address the concerns of the LUC staff. There was no public testimony. After due deliberation, the Planning Commission clarified that all of the remaining 23 conditions previously imposed by the LUC are included as part of its decision to approve the Applicant's request for a ten-year time extension to the life of the Special Use Permit and to delete Condition Numbers 6 and 7.

On October 20, 2010, the LUC received copies of the Planning Commission's agenda and minutes for its July 13, 2010, hearing.

On December 2, 2010, the LUC met in Honolulu, Hawai'i, to consider the Applicant's request. Karlynn Fukuda and Dave Gomes appeared on behalf of the Applicant. Michael Hopper, Esq., and Paul Fasi appeared on behalf of the DP. Bryan C. Yee, Esq., and Abe Mitsuda were also present on behalf of the State Office of Planning ("OP").

At the meeting, the LUC staff provided a summary of the Applicant's request and recommended that if the LUC were inclined to approve the Applicant's request for a ten-year time extension to the life of the Special Use Permit, Condition Number 6 be amended to read as follows:

6. On each anniversary date of this Decision and Order, the Applicant shall file annual reports to the LUC and the DP in connection with the status of the subject project and the Applicant's progress in complying with the conditions imposed herein. The annual report shall be submitted in a form prescribed by the Executive Officer of the Commission.

The LUC staff further recommended that Condition Number 7 be retained.

Following the presentation by the LUC staff, the Applicant stated that it currently has a 20-year lease for the subject property that expires in 2024, with an option to extend the lease for another 20 years. The Applicant then requested that in addition to its request for a ten-year time extension, the LUC consider the deletion of Condition



Numbers 8, 10, and 16 of the Decision And Order Approving Special Use Permit dated December 4, 2006, as the Applicant represented that these conditions have been met.

The DP stated that it had no objection to amending Condition Number 6 and retaining Condition Number 7 as recommended by the LUC staff nor any objection to the Applicant's request to delete Condition Numbers 8, 10, and 16.

The OP stated that it had a concern about deleting the requirement in Condition Number 8b that no increase in storm water runoff be allowed onto the State highway right-of-way as OP believed that this was a continuing obligation. Upon discussion, the Applicant stated that it had no objection to retaining that part of Condition Number 8b. With respect to Condition Number 10, OP requested the Applicant to clarify whether the State Historic Preservation Division ("SHPD") formally agreed that Site T-9 was not marked for preservation as represented by the Applicant. The Applicant clarified that as part of its compliance report, it included a letter from the SHPD dated April 1, 2008, in which the SHPD did not require the preservation of Site T-9 but recommended the presence of a full-time archaeological monitor for the proposed ground altering activities on the parcel. Upon additional questioning by OP, the Applicant referenced an excerpt from the revised archaeological inventory survey prepared for the expansion area and subsequently accepted by the SHPD, in which Site T-9 was determined following a thorough inspection to be a naturally occurring, unmodified boulder field as there was no evidence of human alteration or uses. Based

on the findings of the survey, Site T-9 was no longer considered an archaeological site, did not warrant archaeological data recovery, and no longer warranted implementation of measures to prevent accidental encroachment.

The DP clarified the requirement that no increase in storm water runoff be allowed onto the State highway-right-of way was also a condition of the County Special Use Permit.

Upon further discussion, the LUC advised the Applicant that its request to delete Condition Numbers 8, 10, and 16 would not be considered by the LUC at this time as it was not part of the Planning Commission's decision in this matter pursuant to section 205-6, HRS, and sections 15-15-95 and 15-15-96, HAR.

Following discussion by the Commissioners, a motion was made and seconded to (i) grant a ten-year time extension to the life of the Special Use Permit by amending Condition Number 1 of the Order Amending Decision And Order Approving Special Use Permit dated December 18, 2006, to read as follows:

1. That the LUC Special Use Permit shall be valid until December 15, 2019, subject to further extensions by the LUC upon a timely request for extension filed at least one-hundred twenty (120) days prior to its expiration. The appropriate Planning Commission shall make a recommendation to the LUC and may require a public hearing on the time extension.

(ii) amend Condition Number 6 of the Decision And Order Approving Special Use Permit dated December 4, 2006, to read as follows:

6. On each anniversary date of this Decision and Order, the Applicant shall file annual reports to the LUC and the DP in connection with the status of the subject project and the Applicant's progress in complying with the conditions imposed herein. The annual report shall be submitted in a form prescribed by the Executive Officer of the Commission.

and (iii) retain Condition Number 7 of the Decision And Order Approving Special Use Permit dated December 4, 2006.

Following deliberation by the Commissioners, a vote was taken on the motion. There being a vote tally of 7 ayes and 2 absent, the motion carried.

#### ORDER

The LUC, having duly considered the complete record of the Planning Commission's proceedings on the Applicant's request and the oral arguments presented by the parties in this proceeding, and a motion having been made at a meeting conducted on December 2, 2010, in Honolulu, Hawai'i, and the motion having received the affirmative votes required by section 15-15-13, HAR, and there being good cause for the motion,

HEREBY ORDERS that Condition Number 1 of the Order Amending Decision And Order Approving Special Use Permit dated December 18, 2006, be amended as follows:

1. That the LUC Special Use Permit shall be valid until December 15, 2019, subject to further extensions by the LUC upon a timely request for extension filed at least one-hundred twenty (120) days prior to its expiration. The appropriate Planning Commission shall

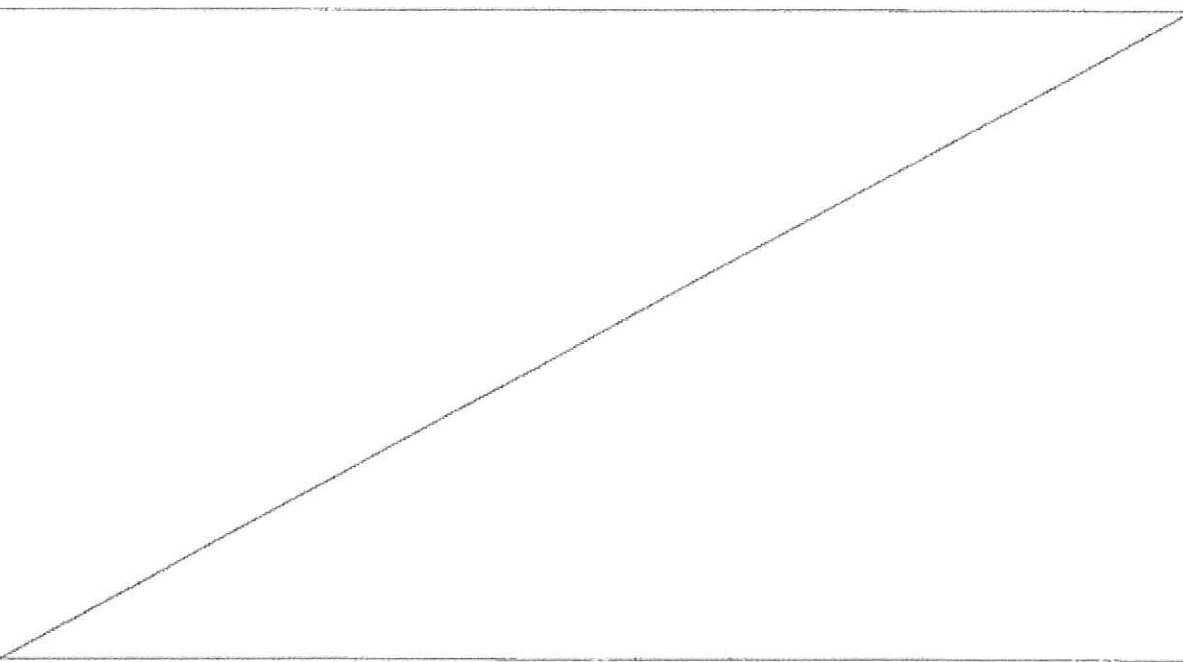


make a recommendation to the LUC and may require a public hearing on the time extension.

IT IS FURTHER ORDERED that Condition Number 6 of the Decision And Order Approving Special Use Permit dated December 4, 2006, be amended as follows:

6. On each anniversary date of this Decision and Order, the Applicant shall file annual reports to the LUC and the DP in connection with the status of the subject project and the Applicant's progress in complying with the conditions imposed herein. The annual report shall be submitted in a form prescribed by the Executive Officer of the Commission.

All other conditions to the Decision And Order Approving Special Use Permit dated December 4, 2006, are hereby reaffirmed and shall continue in effect.<sup>1</sup>




<sup>1</sup> Condition Number 1 was amended pursuant to Order Amending Decision And Order Approving Special Use Permit dated December 18, 2006, and is further amended herein.

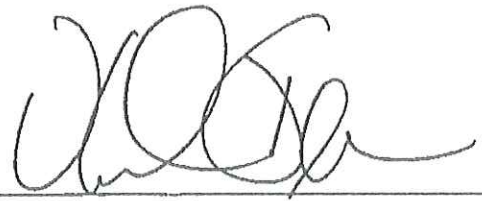
Done at Honolulu, Hawai'i, this 6<sup>TH</sup> day of January, 2011, per motion on December 2, 2010.

LAND USE COMMISSION

APPROVED AS TO FORM

STATE OF HAWAII

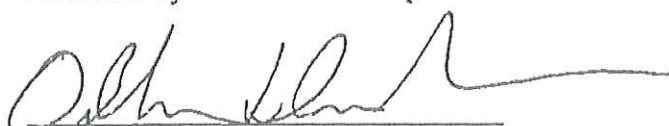
  
Deputy Attorney General

By   
VLADIMIR DEVENS  
Chairperson and Commissioner

Filed and effective on:

January 7, 2011

Certified by:

  
ORLANDO DAVIDSON  
Executive Officer



BEFORE THE LAND USE COMMISSION  
OF THE STATE OF HAWAII

In The Matter Of The Application Of ) DOCKET NO. SP06-400  
)  
WILLIAM HORNEMAN ON BEHALF OF ) CERTIFICATE OF SERVICE  
HAWAIIAN CEMENT )  
)  
To Operate And Expand A Quarry And Base )  
Course Operation On Approximately 79.2 )  
Acres Of Land Within The State Land Use )  
Agricultural District At Mā'alaea, Maui, )  
Hawai'i, Tax Map Key: 3-6-04: 7 )  
\_\_\_\_\_ )

CERTIFICATE OF SERVICE

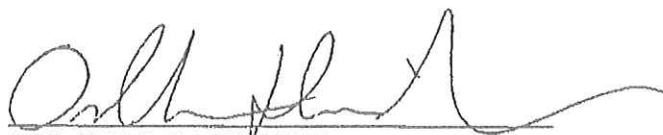
I hereby certify that an ORDER DETERMINING TIME EXTENSION TO SPECIAL USE PERMIT was served upon the following by either hand delivery or depositing the same in the U. S. Postal Service by regular or certified mail as noted:

	HAND DELIVERED	REGULAR MAIL	CERTIFIED MAIL
DIRECTOR Office of Planning 235 S. Beretania Street Rm. 600 Honolulu, Hawai'i 96813	X		
BRYAN YEE, ESQ. Deputy Attorney General Hale 'Auhau, Third Floor 425 Queen Street Honolulu, Hawai'i 96813		X	



	HAND DELIVERED	REGULAR MAIL	CERTIFIED MAIL
Martin Luna, Esq. Carlsmith Ball, LLP One Main Plaza, Suite 400 2200 Main Street Wailuku, Hawaii 96793-1691			X
William Spence, Director of Planning Department of Planning County of Maui 250 South High Street Wailuku, Hawaii 96793		X	
MICHAEL HOPPER, Esq. Corporation Counsel County of Maui 250 South High Street Wailuku, Hawaii 96793			X

Honolulu, Hawai'i, January 7, 2011.



ORLANDO DAVIDSON

Executive Officer

**State Land Use  
Commission Special Use  
Permit Annual  
Compliance Report  
Dated April 8, 2019**

**1-A**



# MUNEKIYO HIRAGA

Planning Project Management Sustainable Solutions

Michael T. Munekiyo  
CHAIRMAN

Karlynn K. Fukuda  
PRESIDENT

Mark Alexander Roy  
VICE PRESIDENT

Tessa Munekiyo Ng  
VICE PRESIDENT

**TO:** Daniel Orodener, Executive Director  
State of Hawai'i  
Land Use Commission  
P.O. Box 2359  
Honolulu, Hawai'i 96804-2359

**DATE:** June 17, 2020

**SUBJECT:** Hawaiian Cement Pohakea Quarry,  
TMK 3-6-004:007(por.), Mā'alaea,  
Maui, Hawai'i; SUP1 2006/0001

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## Enclosed is/are:

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Copies	Date	Description
Original + 1 CD	6/16/20	State Land Use Commission Special Use Permit Compliance Report for Hawaiian Cement Pohakea Quarry
X	For your information For necessary action For your review	For your use As requested For your signature
X	For your files	Returning

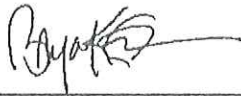
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## REMARKS: Aloha,

The enclosed is provided for your information and files.

Please feel free to contact me at 983-1233, should you have any questions. Mahalo.

Signed: \_\_\_\_\_

  
Bryan Esmeralda, AICP  
Senior Associate

BKE:yp

Copy to:

Dave Gomes, Hawaiian Cement (w/enclosure)

K:\DATA\HawnCemtlQuarry\SLUC SUP Comp Report\SLUC trans.doc

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Oahu 735 Bishop Street, Suite 321 • Honolulu, Hawaii 96813 • Tel 808 983.1233

Maui 305 High Street, Suite 104 • Wailuku, Hawaii 96793 • Tel 808 244.2015 • Fax 808 244.8729

www.munekiyo-hiraga.com

EXHIBIT 40





**MUNEKIYO HIRAGA**

Planning Project Management Sustainable Solutions

Michael T. Munekiyo  
CHAIRMAN

Karlynn K. Fukuda  
PRESIDENT

Mark Alexander Roy  
VICE PRESIDENT

Tessa Munekiyo Ng  
VICE PRESIDENT

June 16, 2020

Daniel Orodener, Executive Director  
State of Hawai'i  
Land Use Commission  
P.O. Box 2359  
Honolulu, Hawai'i 96804-2359

SUBJECT: State Land Use Commission Special Use Permit for Hawaiian  
Cement Pohakea Quarry, TMK 3-6-004:007(por.), Mā'alaea, Maui,  
Hawai'i; SUP1 2006/0001

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Dear Mr. Orodener:

In December 2006, the State Land Use Commission (LUC) approved a Special Use Permit (SUP) for the expansion of an existing rock quarry and base course operation at Pohakea Quarry, subject to 23 conditions. On January 7, 2011, the LUC approved a time extension request for the above-mentioned SUP. The SUP time extension was granted until December 15, 2019.

Condition Number 6 was amended with the 2011 SUP time extension approval and now states:

*On each anniversary date of this Decision and Order, the Applicant shall file annual reports to the LUC and DP in connection with the status of the subject project and the Applicant's progress in complying with the conditions imposed herein. The annual report shall be submitted in a form prescribed by the Executive Officer of the Commission.*

On behalf of the SUP holder, Hawaiian Cement, we are submitting this compliance report to meet Condition Number 6 and address compliance with the conditions set forth in the approved SUP. A copy of the 2011 time extension request approval is provided as **Exhibit "A"**.

Additionally, we note that the Pohakea Quarry is covered by two (2) additional approvals by the County of Maui, a County Special Use Permit (CUP) and a Conditional Permit (CP). Both County permits also include regular reporting requirements (CUP – biannual report and CP – annual report), which have been filed with the County of Maui,

Department of Planning. The CUP and CP conditions are similar in nature to the SUP conditions. A copy of the most recent CUP and CP compliance reports filed with the Department of Planning are attached for reference as Exhibit "B" and Exhibit "B-1".

**Condition No. 1**

*That the LUC Special Use Permit shall be valid until December 15, 2019, subject to further extensions by the LUC upon a timely request for extension filed at least one-hundred twenty (120) days prior to its expiration. The appropriate Planning Commission shall make a recommendation to the LUC and may require a public hearing on the time extension.*

**Response:** The permittee concurs with the condition and will comply with time extension request procedures. We note that as the permit expired in December 2019, an Application to Amend Permit Terms, Conditions, and Time Stipulations requesting a time extension was prepared and filed with the County of Maui, Department of Planning in June 2019 and is currently under review.

**Condition No. 2**

*That the conditions of this State Special Use Permit shall be enforced pursuant to sections 205-12 and 205-13, HRS. Failure to comply with one or more of the conditions herein shall result in a notice of violation issued by the appropriate enforcement agency, notifying the permit holder of the violation and providing the permit holder no more than sixty days to cure the violation. If the permit holder fails to cure the violation within sixty days of said notice, the appropriate enforcement agency shall issue an order which may require one or more of the following: that the violative activity cease; that the violative development be removed; that a civil fine be paid not to exceed \$1,000 per violation; that a civil fine not to exceed \$5,000 shall be issued if violation not cured within six months of the issuance of the order. The order shall become final thirty days after the date of its mailing or hand-delivery unless written request for a hearing is mailed or delivered to the DP within said thirty days. Upon receipt of a request for a hearing, the DP shall specify a time and place for the permit holder to appear and be heard. The hearing shall be conducted by the planning director or the director's designee in accordance with the provisions of chapter 91, HRS, as amended.*



**Response:** The permittee concurs with the condition and submits this report to address compliance with all conditions of the SUP.

**Condition No. 3**

*That the subject LUC Special Use Permit shall not be transferred without the prior written approval of the LUC. The appropriate Planning Commission shall make a recommendation to the LUC. However, in the event that a contested case hearing preceded issuance of said LUC Special Use Permit, a public hearing shall be held by the appropriate Planning Commission upon due published notice, including actual written notice to the last known addresses of parties to said contested case and their counsel.*

**Response:** The permittee concurs with the condition. No permit transfer request is anticipated for the SUP.

**Condition No. 4**

*That the Applicant, its successors, and permitted assigns shall exercise reasonable due care as to third parties with respect to all areas affected by subject LUC Special Use Permit and shall procure at its own cost and expense, and shall maintain during the entire period of this LUC Special Use Permit, a policy or policies of comprehensive liability insurance in the minimum amount of ONE MILLION AND NO/100 DOLLARS (\$1,000,000.00) naming the County of Maui and State of Hawai'i as an additional named insured, insuring and defending the applicant, County of Maui and State of Hawai'i against any and all claims or demands for property damage, personal injury and/or death arising out of this permit, including but not limited to: (1) claims from any accident in connection with the permitted use, or occasioned by any act or nuisance made or suffered in connection with the permitted use in the exercise by the applicant of said rights; and (2) all actions, suits, damages and claims by whomsoever brought or made by reason of the non-observance or non-performance of any of the terms and conditions of this permit. Proof of a policy naming County of Maui as an additional named insured shall be submitted to the DP within ninety (90) calendar days from the date of transmittal of the decision and order.*

**Response:** A current Certificate of Insurance is provided as Exhibit "C".



**Condition No. 5**

*That full compliance with all applicable governmental requirements shall be rendered.*

**Response:** The permittee concurs with the condition.

**Condition No. 6**

*On each anniversary date of this Decision and Order, the Applicant shall file annual reports to the LUC and DP in connection with the status of the subject project and the Applicant's progress in complying with the conditions imposed herein. The annual report shall be submitted in a form prescribed by the Executive Officer of the Commission.*

**Response:** The permittee concurs with the condition and submits this report to address compliance with all conditions of the SUP.

**Condition No. 7**

*That the Applicant shall develop the Property in substantial compliance with the representations made to the LUC in obtaining the Special Use Permit. Failure to so develop the property may result in the revocation of the permit.*

**Response:** The property is currently in use as a rock quarry and base course operation as represented to the LUC while obtaining the SUP.

**Condition No. 8**

*That the Applicant shall comply with the following recommendations of the State Department of Transportation ("DOT"):*

- a. *The Applicant shall develop a maintenance plan to regularly remove dirt, debris, gravel, and other by-products of quarry operations from the quarry access road's intersection with Honoapi'ilani Highway. The Applicant shall also develop a plan for rapid removal of any quarry products spilled on the State highway right-of-way. Both plans shall be reviewed and approved by the DOT;*

- b. *No increase in storm water runoff will be allowed onto the State highway right-of-way. Plans for the construction and maintenance of retention basins shall be submitted to the DOT for review and approval; and*
- c. *Plans for work within the State highway right-of-way shall be reviewed and approved by the Highways Division, Maui District.*

- Response:**
- a. A roadway maintenance plan has been prepared as per this condition. A copy of the maintenance plan is attached as **Exhibit "D"**. The plan has been submitted for review and approved by the State Department of Transportation (SDOT).
  - b. Plans for the construction of a retention basin and its maintenance have been prepared as per this condition. A copy of the grading and maintenance plan is attached as **Exhibit "E"**.
  - c. No work in State highways is proposed as part of the quarry's operations.

**Condition No. 9**

*That in the event any significant cultural deposits or human skeletal remains are encountered, work shall stop in the immediate vicinity and the DLNR, SHPD, shall be contacted.*

**Response:** The permittee concurs with the condition.

**Condition No. 10**

*That prior to initiation of any excavation work within the 64.4-acre expansion, the following shall be resolved with the DLNR, SHPD:*

- a. *Clarification in the form of archaeological inventory survey level documentation as to whether Temporary Site T-9 is a previously identified historic site;*
- b. *A preservation plan for the "agreed upon preservation areas"; and*
- c. *A thorough field inspection of the 65+ acres into which the proposed quarry will expand to determine the condition of the previously identified sites as well as documentation of any*

*additional sites. Documentation from the DLNR, SHPD, that all concerns have been addressed shall be filed with the DP and the County Department of Public Works and Environmental Management ("DPWEM") prior to issuance of any grading permit, if required, and initiation of excavation work within the expansion area.*

**Response:** As mentioned previously, an Application to Amend Permit Terms, Conditions, and Time Stipulations requesting a time extension has been prepared and filed with the County of Maui, Department of Planning and is currently under review. Also as part of this application, the permittee will be requesting that this condition be removed from the SUP approval. An Archaeological Inventory Survey (AIS) and Archaeological Monitoring Plan (AMP) have been prepared for the quarry expansion area and was submitted to the State Historic Preservation Division (SHPD) for review. Both the AIS and AMP were accepted in 2008 by SHPD. A copy of the SHPD's acceptance letter is provided as Exhibit "F". Further, it is noted that no new expansion is being proposed.

**Condition No. 11**

*That the Applicant shall have an onsite monitor to ensure that the load is covered and material is removed from the exterior of the truck bed and wheels to reduce debris falling onto the public roadways.*

**Response:** The permittee concurs with the condition and confirms that monitoring of loads occurs as part of normal operations.

**Condition No. 12**

*That upon cessation of the Pohakea Quarry operations the Applicant including the owner of the land shall prepare a closure plan to revegetate the site or other measures to reduce erosion. The closure plan shall be reviewed and approved by the DP.*

**Response:** The permittee concurs with this condition. In the event the Pohakea Quarry operations ceases, a closure plan approved by the landowner will be submitted to the Department of Planning.



**Condition No. 13**

*That the Applicant shall incorporate applicable Best Management Practices ("BMP") to mitigate noise, dust, runoff, and infiltration related to the Pohakea Quarry.*

**Response:** The permittee concurs with this condition and incorporates BMPs for noise and dust mitigation into normal operations.

**Condition No. 14**

*That the Applicant shall maintain the area between the Pohakea Stream and the southern boundary of the Property for the life of the Pohakea Quarry to provide a visual buffer.*

**Response:** The permittee concurs with this condition.

**Condition No. 15**

*That base course materials from the Pohakea Quarry shall not be exported off island.*

**Response:** The permittee concurs with this condition and confirms that no base course materials from the quarry is shipped off-island.

**Condition No. 16**

*That the protective construction fencing located around Site T-9 (a remnant of an historic wall) shall be maintained for the life of the LUC Special Use Permit. All individuals and/or organizations working on the site shall be briefed on the location of Site T-9 to avoid damaging this site.*

**Response:** As mentioned previously, an AIS and AMP for the quarry expansion area have been submitted to and approved by the SHPD and that no new expansion of the quarry is being proposed. As such, the permittee is requesting as part of the Application to Amend Permit Terms, Conditions, and Time Stipulations currently being reviewed, that this condition be removed from the SUP approval.

**Condition No. 17**

*That the Applicant will maintain a 25-foot buffer along the northern boundary of the Pohakea Stream. That the bed or banks of Pohakea Stream shall not be altered without an approved stream-channel alteration permit prior to construction.*

**Response:** The permittee concurs with this condition. Alteration of Pohakea Stream is not anticipated.

**Condition No. 18**

*That the Applicant shall obtain a National Pollutant Discharge Elimination System permit for the expansion of the Pohakea Quarry.*

**Response:** The permittee concurs with this condition. The National Pollutant Discharge Elimination System Permit extension is in progress with the State Department of Health. See **Exhibit "G"**.

**Condition No. 19**

*That the Applicant shall maintain its existing State Department of Health air quality permits throughout the operation of the Pohakea Quarry and shall obtain any additional air quality permits that may be required for the quarry expansion.*

**Response:** The permittee concurs with this condition and confirms that it maintains its required air quality permits.

**Condition No. 20**

*That the Applicant shall submit a detailed and final drainage report and a BMP Plan to the DPWEM for its review and approval.*

**Response:** The permittee concurs with this condition and abides by its approved drainage report and BMP plan.

**Condition No. 21**

*That the Applicant shall operate the Pohakea Quarry from Monday through Saturday, 7:00 a.m. to 5:00 p.m.*

**Response:** The permittee concurs with this condition and confirms that the quarry's operational hours are from 7:00 a.m. to 5:00 p.m., Monday through Saturday.

**Condition No. 22**

*That the Applicant shall file a request with the DP to terminate SUP2 96/0013 within six months following the issuance of this Decision and Order.*

**Response:** The permittee concurs with this condition and confirms that SUP2 96/0013 has been terminated.

**Condition No. 23**

*That the permitted uses and activities on the existing 14.8-acre site shall be limited to quarrying, base course production recycling of concrete debris, greenwaste composting, screening of compost material, maintenance and storage facilities to support the onsite rock crusher, and office facilities for the operation. Permitted uses and activities on the approximately 64.4-acre expansion area shall be limited to quarrying and base course production only. There shall be no composting of greenwaste and grubbed material or the recycling of concrete rubble on the expansion area.*

**Response:** The permittee concurs with this condition and confirms that the uses occurring at the site are in compliance with the SUP approval.

Should you have any questions, please do not hesitate to contact me at 983-1233.

Very truly yours,



Bryan Esmeralda, AICP  
Senior Associate

BE:la  
Enclosures

cc: Dave Gomes, Hawaiian Cement (w/enclosures)  
Paul Fasi, Department of Planning (w/enclosures)

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TIME EXTENSION REQUEST APPROVAL LETTER  
Dated March 9, 2010

CHARMAINE TAVARES  
Mayor

JEFFREY S. HUNT  
Director

KATHLEEN ROSS AOKI  
Deputy Director



COUNTY OF MAUI  
**DEPARTMENT OF PLANNING**

March 9, 2010

CERTIFIED MAIL - #7007 2560 0001 7799 7809

Mr. David Gomes  
Hawaiian Cement  
P.O. Box 488  
Kahului, Hawaii 96733

Dear Mr. Gomes:

SUBJECT: TIME-EXTENSION REQUEST FOR STATE LAND USE COMMISSION SPECIAL USE PERMIT, COUNTY SPECIAL USE PERMIT, AND COUNTY CONDITIONAL PERMIT IN ORDER TO CONTINUE OPERATION OF THE POHAKEA QUARRY FACILITIES, CONCRETE RECYCLING AND GREENWASTE COMPOSTING IN THE STATE AND COUNTY AGRICULTURAL DISTRICTS, AT MAALAEA, ISLAND OF MAUI, HAWAII; TMK: (2) 3-6-004:007 (SUP1 2006/0001) (CP 97/0002) (CUP 2006/0001)

At its regular meeting on January 26, 2010, the Maui Planning Commission (Commission) conducted a review on the above requests. After due deliberation, the Commission voted to recommend approval of the State Land Use Commission Special Use Permit, subject to the following recommended conditions:

**STATE LAND USE COMMISSION SPECIAL USE PERMIT**

The Commission recommends to the State Land Use Commission approval of the ten-year time-extension request for the State Land Use Commission Special Use Permit, subject to the following conditions:

***Standard Conditions:***

1. That the State Land Use Commission Special Use Permit shall be valid until December 15, 2019, subject to further extensions by the State Land Use Commission upon a timely request for extension filed at least one-hundred twenty (120) days prior to its expiration. The appropriate Planning Commission shall make a recommendation to the State Land Use Commission and may require a public hearing on the time extension.

Mr. David Gomes  
March 9, 2010  
Page 2

2. That the conditions of this State Land Use Commission Special Use Permit shall be enforced pursuant to Sections 205-12 and 205-13, Hawaii Revised Statutes (HRS). Failure to comply with one (1) or more of the conditions herein shall result in a notice of violation issued by the appropriate enforcement agency, notifying the permit holder of the violation, and providing the permit holder no more than sixty (60) days to cure the violation. If the permit holder fails to cure the violation within sixty (60) days of said notice, the appropriate enforcement agency shall issue an order which may require one (1) or more of the following: that the violative activity cease; that the violative development be removed; that a civil fine be paid not to exceed \$1,000.00 per violation; and that a civil fine not to exceed \$5,000.00 shall be issued if violation not cured within six (6) months of the issuance of the order. The order shall become final thirty (30) days after the date of its mailing or hand-delivery unless written request for a hearing is mailed or delivered to the Department of Planning (Department) within said thirty (30) days. Upon receipt of a request for a hearing, the Department shall specify a time and place for the permit holder to appear and be heard. The hearing shall be conducted by the Planning Director (Director) or the Director's designee in accordance with the provisions of Chapter 91, HRS, as amended.
3. That the subject State Land Use Commission Special Use Permit shall not be transferred without the prior written approval of the State Land Use Commission. The appropriate Planning Commission shall make a recommendation to the State Land Use Commission. However, in the event that a contested case hearing preceded issuance of said State Land Use Commission Special Use Permit, a public hearing shall be held by the appropriate Planning Commission upon due published notice, including actual written notice to the last known addresses of parties to said contested case and their counsel.
4. That the Applicant, its successors, and permitted assigns shall exercise reasonable due care as to third parties with respect to all areas affected by subject State Land Use Commission Special Use Permit and shall procure at its own cost and expense, and shall maintain during the entire period of this State Land Use Commission Special Use Permit, a policy or policies of comprehensive liability insurance in the minimum amount of ONE MILLION AND NO/100 DOLLARS (\$1,000,000.00) naming the County of Maui and State of Hawaii as an additional named insured, insuring and defending the Applicant, County of Maui and State of Hawaii against any and all claims or demands for property damage, personal injury, and/or death arising out of this permit, including but not limited to: (1) claims from any accident in connection with the permitted use, or occasioned by any act or nuisance made or suffered in connection with the permitted use in the exercise by the Applicant of said rights; and (2) all actions, suits, damages, and claims by whomsoever brought or made by reason of the non-observance or non-performance of any of the terms and conditions of this permit. Proof of a



Mr. David Gomes  
March 9, 2010  
Page 3

policy naming County of Maui as an additional named insured shall be submitted to the Department within ninety (90) calendar days from the date of transmittal of the Decision and Order.

5. That full compliance with all applicable governmental requirements shall be rendered.

The Commission authorizes the Director to forward the record and its recommendation on the State Land Use Commission Special Use Permit to the State Land Use Commission.

#### **COUNTY SPECIAL USE PERMIT**

The Commission also approved the ten-year time-extension request for the County Special Use Permit subject to the following conditions:

##### **Standard Conditions:**

1. That the County Special Use Permit shall be valid until December 15, 2019, subject to extension by the Commission upon a timely request for extension filed at least one-hundred twenty (120) days prior to its expiration. The Commission may require a public hearing on the time extension.
2. That the County Special Use Permit shall not be transferred without the prior written approval of the Commission.
3. That the Applicant, its successors, and permitted assigns shall exercise reasonable due care as to third parties with respect to all areas affected by subject County Special Use Permit and shall procure at its own cost and expense, and shall maintain during the entire period of this County Special Use Permit, a policy or policies of comprehensive liability insurance in the minimum amount of ONE MILLION AND NO/100 DOLLARS (\$1,000,000.00) naming the County of Maui as an additional named insured, insuring and defending the Applicant and County of Maui against any and all claims or demands for property damage, personal injury, and/or death arising out of this permit, including but not limited to: (1) claims from any accident in connection with the permitted use, or occasioned by any act or nuisance made or suffered in connection with the permitted use in the exercise by the Applicant of said rights; and (2) all actions, suits, damages, and claims by whomsoever brought or made by reason of the non-observance or non-performance of any of the terms and conditions of this permit. Proof of a policy naming County of Maui as an additional named insured shall be submitted to the Department within ninety (90) calendar days from the date of transmittal of the Decision and Order.

Mr. David Gomes  
March 9, 2010  
Page 4.

4. That full compliance with all applicable governmental requirements shall be rendered.
5. That the Applicant shall submit bi-annually to the Department, five (5) copies of a detailed report addressing its compliance with the conditions established by the County Special Use Permit.
6. That the Applicant shall continue to develop the property in substantial compliance with the representations made to the Commission in obtaining the County Special Use Permit. Failure to so develop the property may result in the revocation of the permit.

*Project Specific Conditions:*

7. That the Applicant shall continue compliance with the following recommendations of the State Department of Transportation:
  - A. The Applicant shall continue to regularly remove dirt, debris, gravel, and other byproducts of quarry operations from the quarry access road's intersection with Honoapiilani Highway. The Applicant shall abide by its previous plan for rapid removal of any quarry products spilled on the State highway right-of-way; and
  - B. No increase in storm water runoff will be allowed onto the State highway right-of-way.
8. That in the event any significant cultural deposits or human skeletal remains are encountered, work shall stop in the immediate vicinity and the State Historic Preservation Division shall be contacted.
9. That the Applicant shall have an on-site monitor to ensure that the load is covered and material is removed from the exterior of the truck bed and wheels to reduce debris falling onto the public roadways.
10. That upon cessation of the Pohakea Quarry operations, a closure plan shall be prepared to re-vegetate the site or other measures to reduce erosion and shall be reviewed and approved by the Department.
11. That the Applicant shall incorporate applicable Best Management Practices (BMPs) to mitigate noise and dust related to the Pohakea Quarry expansion.

Mr. David Gomes  
March 9, 2010  
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12. That the Applicant shall maintain the existing natural landscape buffer along the southern boundary of the project site for the life of the quarry to provide a visual buffer.
13. That base course materials from the quarry shall not be exported off-island.

The County Special Use Permit conditions will be enforced, pursuant to the provisions of Chapter 19.530, Section 19.530.030 of the Maui County Code (MCC), as amended, 1980; and the *Rules for Administrative Procedures and Civil Fines for Violations of Titles 12, 14, 16, 19, and 20 of the MCC*.

The Commission adopted the Report and Revised Recommendations prepared by the Department for the January 26, 2010 meeting as the Findings of Fact, Conclusions of Law, and Decision and Order, attached hereto and made a part hereof. Parties to proceedings before the Commission may obtain Judicial Review of Decision and Orders issued by the Commission in the manner set forth in Chapter 91-14, HRS.

#### CONDITIONAL PERMIT

The Commission recommended approval of the ten-year time-extension request for the County Conditional Permit to the Maui County Council, subject to conditions as recorded in Ordinance No. 3232, dated December 15, 2004. (See Exhibit 11 in the Department Report)

The pertinent condition (Condition No. 2) as written in Ordinance 3232, in its amended form would thus read:

*"That the Conditional Permit is hereby granted to Hawaiian Cement and shall be valid until December 15, 2019. An extension of this permit beyond this ten-year period may be granted pursuant to Section 19.40.090 of the Maui County Code."*

Thank you for your cooperation. If additional clarification is required, please contact Staff Planner Paul Fasi at [paul.fasi@mauicounty.gov](mailto:paul.fasi@mauicounty.gov) or at 270-7814.

Sincerely,



JEFFREY S. HUNT, AICP  
Planning Director



Mr. David Gomes  
March 9, 2010  
Page 6

xc: Clayton I. Yoshida, AICP, Planning Program Administrator  
Aaron H. Shinmoto, PE, Planning Program Administrator (2)  
Paul F. Fasi, Staff Planner  
Development Services Administration  
State Land Use Commission  
Karlynn Fukuda, Munekyo & Hiraga, Inc.  
Project File  
General File

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## **2018 County Special Use Permit Bi-Annual Report**



**MUNEKIYO HIRAGA**

Planning, Project Management, Sustainable Solutions.

Michael T. Munekiyo  
PRESIDENT

Karlynn K. Fukuda  
EXECUTIVE VICE PRESIDENT

Mark Alexander Roy  
VICE PRESIDENT

Tessa Munekiyo Ng  
VICE PRESIDENT

February 16, 2018

William Spence, Director  
County of Maui  
Department of Planning  
Attention: Paul Fasi, Planner  
One Main Plaza  
2200 Main Street, Suite 315  
Wailuku, Hawai'i 96793

SUBJECT: County Special Use Permit For the Pohakea Quarry (Hawaiian Cement), TMK (2) 3-6-004:007, Maalaea, Maui, Hawaii (CUP 2006/0001)

---

Dear Mr. Spence:

The Maui Planning Commission (Commission), at a regularly scheduled meeting on January 26, 2010, approved the 10-year time extension request for the County Special Use Permit (CUP). The Commission's approval of the time extension request is subject to 13 conditions. See Exhibit "A".

Condition Number 5 of the 2010 CUP time extension recommended:

*That the Applicant shall submit bi-annually to the Department, five (5) copies of the detailed report addressing its compliance with the conditions established by the County Special Use Permit.*

On behalf of the CUP permit holder, Hawaiian Cement, we are submitting this bi-annual compliance report in order to meet Condition No. 5 of the CUP.

**COUNTY SPECIAL USE PERMIT CONDITIONS**

**Condition No. 1:**

*That the County Special Use Permit shall be valid until December 15, 2019, subject to extension by the Commission upon a timely request for extension filed at least one-hundred twenty (120) days prior to its expiration. The Commission may require a public hearing on the time extension.*



**Response:** The permittee concurs with this condition and will comply with the time extension request procedures.

**Condition No. 2:**

*That the County Special Use Permit shall not be transferred without the prior written approval of the Commission.*

**Response:** The permittee concurs with this condition. No permit transfer request is anticipated for the CUP.

**Condition No. 3:**

*That the Applicant, its successors, and permitted assigns shall exercise reasonable due care as to third parties with respect to all areas affected by subject County Special Use Permit and shall procure at its own cost and expense, and shall maintain during the entire period of this County Special Use Permit, a policy or policies of comprehensive liability insurance in the minimum amount of ONE MILLION AND NO/100 DOLLARS (\$1,000,000.00) naming the County of Maui as an additional named insured, insuring and defending the Applicant and County of Maui against any and all claims or demands for property damage, personal injury, and/or death arising out of this permit, including but not limited to: (1) claims from any accident in connection with the permitted use, or occasioned by any act or nuisance made or suffered in connection with the permitted use in the exercise by the Applicant of said rights; and (2) all actions, suits, damages, and claims by whomsoever brought or made by reason of the non-observance or non-performance of any terms and conditions of this permit. Proof of a policy naming County of Maui as an additional named insured shall be submitted to the Department within ninety (90) calendar days from the date of transmittal of the Decision and Order.*

**Response:** The permittee concurs with the condition. The current certificate of insurance naming the County of Maui as an additional insured is attached as Exhibit "B".

**Condition No. 4:**

*That full compliance with all applicable governmental requirements shall be rendered.*

**Response:** The permittee concurs with the condition.

**Condition No. 5:**

*That the Applicant shall submit bi-annually to the Department, five (5) copies of a detailed report addressing its compliance with the conditions established by the County Special Use Permit.*

**Response:** This bi-annual report is being submitted to satisfy this condition.

**Condition No. 6:**

*That the Applicant shall continue to develop the property in substantial compliance with the representations made to the Commission in obtaining the County Special Use Permit. Failure to so develop the property may result in the revocation of the permit.*

**Response:** The permittee concurs with the condition and continues to utilize the property in substantial compliance with representations made to the Commission.

**Condition No. 7:**

*That the Applicant shall continue compliance with the following recommendations of the State Department of Transportation:*

- A. *The Applicant shall continue to regularly remove dirt, debris, gravel, and other byproducts of quarry operations from the quarry access road's intersection with Honoapiilani Highway. The Applicant shall abide by its previous plan for rapid removal of any quarry products spilled on the State highway right-of-way; and*
- B. *No increase in stormwater runoff will be allowed into the State highway right-of-way.*

**Response:** The permittee concurs with this condition and abides by its plans and procedures regarding quarry operation's to remove by products from the quarry's access road and maintaining its drainage improvements.

**Condition No. 8:**

*That in the event of any significant cultural deposits or human skeletal remains are encountered, work shall stop in the immediate vicinity and the State Historic Preservation Division shall be contacted.*

**Response:** The permittee concurs with this condition and will comply with the procedures.

**Condition No. 9:**

*That the Applicant shall have an on-site monitor to ensure that the load is covered and material is removed from the exterior of the truck bed and wheels to reduce debris falling onto public roadways.*

**Response:** The permittee concurs with this condition and has an on-site monitor.

**Condition No. 10:**

*That upon cessation of the Pohakea Quarry operations, a closure plan shall be prepared to re-vegetate the site or other measures to reduce erosion and shall be reviewed and approved by the Department.*

**Response:** The permittee concurs with this condition. In the event the Pohakea Quarry operations ceases, a closure plan approved by the landowner, will be submitted to the Department of Planning.

**Condition No. 11:**

*That the Applicant shall incorporate applicable Best Management Practices (BMPs) to mitigate noise and dust related to the Pohakea Quarry expansion.*

**Response:** The permittee concurs with this condition and incorporates BMPs for noise and dust mitigation.

**Condition No. 12:**

*That the Applicant shall maintain the existing natural landscape buffer along the southern boundary of the project site for the life of the quarry to provide a visual buffer.*

**Response:** The permittee concurs with this condition.

**Condition No. 13:**

*That base course materials from the quarry shall not be exported off-island.*



William Spence, Director  
February 16, 2018  
Page 5

**Response:** The permittee concurs with this condition. No base course materials from the quarry are shipped off-island.

Should you have any further questions, please do not hesitate to contact me at 244-2015.

Very truly yours,

A handwritten signature in black ink, appearing to read "Cheryl K. Okuma". The signature is fluid and cursive, with the first name "Cheryl" being more prominent.

Cheryl K. Okuma, Senior Associate

CKO:tn  
Enclosures

cc: Dave Gomes, Hawaiian Cement (w/enclosures)

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MICHAEL P. VICTORINO  
Mayor

MICHELE CHOUTEAU MCLEAN, AICP  
Director

JORDAN E. HART  
Deputy Director



DEPARTMENT OF PLANNING  
COUNTY OF MAUI  
ONE MAIN PLAZA  
2200 MAIN STREET, SUITE 315  
WAILUKU, MAUI, HAWAII 96793

September 2, 2020

Mr. Michael Munekiyo, AICP  
Munekiyo Hiraga  
305 High Street, Suite 104  
Wailuku, Hawaii 96793

Dear Mr. Munekiyo:

SUBJECT: HAWAIIAN CEMENT POHAKEA QUARRY 15 YEAR  
TIME EXTENSION REQUEST FOR CONDITIONAL  
PERMIT, MAALAEA, MAUI, HAWAII;  
TMK: (2) 3-6-004:007 (por.) (SUP 1 2006/0001)  
(CUP 2006/0001) (CP 97/0002)

Upon review and analysis of the subject request referenced above, the Department of Planning (Department) has made the following determinations:

1. The permit holder is in compliance with the conditions of approval for CP 97/0002 granted by County Council Ordinance No. 3787 (2010);
2. The permitted use has not been substantially changed and new uses have not been added that may result in significant impacts above what would result from the approved CP;
3. Agencies have not identified new matters of concern that require mitigation;
4. The notice of filing of the application for a time extension of the CP was mailed by the applicant on June 4, 2020, with no protests received during the challenge period;
5. The criteria enumerated in Ordinance No. 3787, have been met, allowing the Planning Director to approve a 15 year time extension of the subject CP for the continued recycling of concrete rubble and the use of the scale house/office on site;

Mr. Michael Munekiyo, AICP  
September 2, 2020  
Page 2

6. The conditions of approval as outlined in Ordinance No. 3787 remain in effect as a result of this time extension of CP 97/0002.

The request for a 15 year time extension for CP 97/0002 is approved and is valid until December 15, 2035. Condition No. 2 of Ordinance No. 3787 is hereby amended to read as follows:

2. *"That the Conditional Permit shall be valid for a period of 15 years until December 15, 2035..."*

All other conditions of the permit remain unchanged with the exceptions noted above.

If additional clarification is required, please contact Staff Planner Paul Fasi at [paul.fasi@mauicounty.gov](mailto:paul.fasi@mauicounty.gov) or 878-8633.

Sincerely, .



MICHELE MCLEAN, AICP  
Planning Director

xc: Clayton I. Yoshida, AICP, Planning Program Administrator (PDF)  
Paul F. Fasi, Staff Planner (PDF)  
Project File

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CPTIMEExtApprovalLetter2.doc



MPC Time Extension Request Approvals  
for CUP & CP and Recommendation of  
Approval for SUP1

January 26, 2010

Exhibit 8

CHARMAINE TAVARES  
Mayor  
JEFFREY S. HUNT  
Director  
KATHLEEN ROSS AOKI  
Deputy Director



COUNTY OF MAUI  
**DEPARTMENT OF PLANNING**

March 9, 2010

CERTIFIED MAIL - #7007 2560 0001 7799 7809

Mr. David Gomes  
Hawaiian Cement  
P.O. Box 488  
Kahului, Hawaii 96733

Dear Mr. Gomes:

**SUBJECT: TIME-EXTENSION REQUEST FOR STATE LAND USE COMMISSION SPECIAL USE PERMIT, COUNTY SPECIAL USE PERMIT, AND COUNTY CONDITIONAL PERMIT IN ORDER TO CONTINUE OPERATION OF THE POHAKEA QUARRY FACILITIES, CONCRETE RECYCLING AND GREENWASTE COMPOSTING IN THE STATE AND COUNTY AGRICULTURAL DISTRICTS, AT MAALAEA, ISLAND OF MAUI, HAWAII; TMK: (2) 3-6-004:007 (SUP1 2006/0001) (CP 97/0002) (CUP 2006/0001)**

At its regular meeting on January 26, 2010, the Maui Planning Commission (Commission) conducted a review on the above requests. After due deliberation, the Commission voted to recommend approval of the State Land Use Commission Special Use Permit, subject to the following recommended conditions:

**STATE LAND USE COMMISSION SPECIAL USE PERMIT**

The Commission recommends to the State Land Use Commission approval of the ten-year time-extension request for the State Land Use Commission Special Use Permit, subject to the following conditions:

***Standard Conditions:***

1. That the State Land Use Commission Special Use Permit shall be valid until December 15, 2019, subject to further extensions by the State Land Use Commission upon a timely request for extension filed at least one-hundred twenty (120) days prior to its expiration. The appropriate Planning Commission shall make a recommendation to the State Land Use Commission and may require a public hearing on the time extension.

2. That the conditions of this State Land Use Commission Special Use Permit shall be enforced pursuant to Sections 205-12 and 205-13, Hawaii Revised Statutes (HRS). Failure to comply with one (1) or more of the conditions herein shall result in a notice of violation issued by the appropriate enforcement agency, notifying the permit holder of the violation, and providing the permit holder no more than sixty (60) days to cure the violation. If the permit holder fails to cure the violation within sixty (60) days of said notice, the appropriate enforcement agency shall issue an order which may require one (1) or more of the following: that the violative activity cease; that the violative development be removed; that a civil fine be paid not to exceed \$1,000.00 per violation; and that a civil fine not to exceed \$5,000.00 shall be issued if violation not cured within six (6) months of the issuance of the order. The order shall become final thirty (30) days after the date of its mailing or hand-delivery unless written request for a hearing is mailed or delivered to the Department of Planning (Department) within said thirty (30) days. Upon receipt of a request for a hearing, the Department shall specify a time and place for the permit holder to appear and be heard. The hearing shall be conducted by the Planning Director (Director) or the Director's designee in accordance with the provisions of Chapter 91, HRS, as amended.
3. That the subject State Land Use Commission Special Use Permit shall not be transferred without the prior written approval of the State Land Use Commission. The appropriate Planning Commission shall make a recommendation to the State Land Use Commission. However, in the event that a contested case hearing preceded issuance of said State Land Use Commission Special Use Permit, a public hearing shall be held by the appropriate Planning Commission upon due published notice, including actual written notice to the last known addresses of parties to said contested case and their counsel.
4. That the Applicant, its successors, and permitted assigns shall exercise reasonable due care as to third parties with respect to all areas affected by subject State Land Use Commission Special Use Permit and shall procure at its own cost and expense, and shall maintain during the entire period of this State Land Use Commission Special Use Permit, a policy or policies of comprehensive liability insurance in the minimum amount of ONE MILLION AND NO/100 DOLLARS (\$1,000,000.00) naming the County of Maui and State of Hawaii as an additional named insured, insuring and defending the Applicant, County of Maui and State of Hawaii against any and all claims or demands for property damage, personal injury, and/or death arising out of this permit, including but not limited to: (1) claims from any accident in connection with the permitted use, or occasioned by any act or nuisance made or suffered in connection with the permitted use in the exercise by the Applicant of said rights; and (2) all actions, suits, damages, and claims by whomsoever brought or made by reason of the non-observance or non-performance of any of the terms and conditions of this permit. Proof of a



policy naming County of Maui as an additional named insured shall be submitted to the Department within ninety (90) calendar days from the date of transmittal of the Decision and Order.

5. That full compliance with all applicable governmental requirements shall be rendered.

The Commission authorizes the Director to forward the record and its recommendation on the State Land Use Commission Special Use Permit to the State Land Use Commission.

#### **COUNTY SPECIAL USE PERMIT**

The Commission also approved the ten-year time-extension request for the County Special Use Permit subject to the following conditions:

##### ***Standard Conditions:***

1. That the County Special Use Permit shall be valid until December 15, 2019, subject to extension by the Commission upon a timely request for extension filed at least one-hundred twenty (120) days prior to its expiration. The Commission may require a public hearing on the time extension.
2. That the County Special Use Permit shall not be transferred without the prior written approval of the Commission.
3. That the Applicant, its successors, and permitted assigns shall exercise reasonable due care as to third parties with respect to all areas affected by subject County Special Use Permit and shall procure at its own cost and expense, and shall maintain during the entire period of this County Special Use Permit, a policy or policies of comprehensive liability insurance in the minimum amount of ONE MILLION AND NO/100 DOLLARS (\$1,000,000.00) naming the County of Maui as an additional named insured, insuring and defending the Applicant and County of Maui against any and all claims or demands for property damage, personal injury, and/or death arising out of this permit, including but not limited to: (1) claims from any accident in connection with the permitted use, or occasioned by any act or nuisance made or suffered in connection with the permitted use in the exercise by the Applicant of said rights; and (2) all actions, suits, damages, and claims by whomsoever brought or made by reason of the non-observance or non-performance of any of the terms and conditions of this permit. Proof of a policy naming County of Maui as an additional named insured shall be submitted to the Department within ninety (90) calendar days from the date of transmittal of the Decision and Order.

4. That full compliance with all applicable governmental requirements shall be rendered.
5. That the Applicant shall submit bi-annually to the Department, five (5) copies of a detailed report addressing its compliance with the conditions established by the County Special Use Permit.
6. That the Applicant shall continue to develop the property in substantial compliance with the representations made to the Commission in obtaining the County Special Use Permit. Failure to so develop the property may result in the revocation of the permit.

***Project Specific Conditions:***

7. That the Applicant shall continue compliance with the following recommendations of the State Department of Transportation:
  - A. The Applicant shall continue to regularly remove dirt, debris, gravel, and other byproducts of quarry operations from the quarry access road's intersection with Honoapiilani Highway. The Applicant shall abide by its previous plan for rapid removal of any quarry products spilled on the State highway right-of-way; and
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Mr. David Gomes  
March 9, 2010  
Page 5

12. That the Applicant shall maintain the existing natural landscape buffer along the southern boundary of the project site for the life of the quarry to provide a visual buffer.
13. That base course materials from the quarry shall not be exported off-island.

The County Special Use Permit conditions will be enforced, pursuant to the provisions of Chapter 19.530, Section 19.530.030 of the Maui County Code (MCC), as amended, 1980; and the *Rules for Administrative Procedures and Civil Fines for Violations of Titles 12, 14, 16, 19, and 20 of the MCC*.

The Commission adopted the Report and Revised Recommendations prepared by the Department for the January 26, 2010 meeting as the Findings of Fact, Conclusions of Law, and Decision and Order, attached hereto and made a part hereof. Parties to proceedings before the Commission may obtain Judicial Review of Decision and Orders issued by the Commission in the manner set forth in Chapter 91-14, HRS.

#### **CONDITIONAL PERMIT**

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*"That the Conditional Permit is hereby granted to Hawaiian Cement and shall be valid until December 15, 2019. An extension of this permit beyond this ten-year period may be granted pursuant to Section 19.40.090 of the Maui County Code."*

Thank you for your cooperation. If additional clarification is required, please contact Staff Planner Paul Fasi at [paul.fasi@mauicounty.gov](mailto:paul.fasi@mauicounty.gov) or at 270-7814.

Sincerely,



JEFFREY S. HUNT, AICP  
Planning Director



Mr. David Gomes

March 9, 2010

Page 6

xc: Clayton I. Yoshida, AICP, Planning Program Administrator  
Aaron H. Shinmoto, PE, Planning Program Administrator (2)  
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