

BEFORE THE LAND USE COMMISSION
OF THE STATE OF HAWAII

In the Matter of the Petition of)	DOCKET NO. SP92-380
HAWAIIAN CEMENT)	FINDINGS OF FACT,
For A Special Permit To Allow A)	CONCLUSIONS OF LAW, AND
Rock Quarrying/Crushing Operation)	DECISION AND ORDER
And Related Uses On Approximately)	
45.957 Acres of Land Situated)	
Within The State Land Use)	
Agricultural District At Pulehunui,)	
Wailuku, Maui, Tax Map Key No.:)	
3-8-08: portion of 1 and portion of)	
31)	

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FINDINGS OF FACT, CONCLUSIONS OF LAW,
AND DECISION AND ORDER

Hawaiian Cement ("Applicant") initiated this proceeding pursuant to Section 205-6, Hawaii Revised Statutes ("HRS"), and Sections 15-15-95 and 15-15-96, Hawaii Administrative Rules ("HAR"). The Land Use Commission ("LUC"), having considered the entire record on this matter, hereby makes the following findings of fact, conclusions of law, and decision and order:

FINDINGS OF FACT

PROCEDURAL MATTERS

1. On March 7, 1996, a letter requesting incorporation of approximately sixty (60) acres of land into the subject Special Permit to continue quarrying/crushing operations and related uses was filed by the Applicant with the County of Maui Planning Department ("Planning Department").

2. On April 3, 1996, the Planning Department received the requisite forms ("Application") from the Applicant to process the proposed incorporation.

3. On July 9, 1996, the Maui Planning Commission ("Planning Commission") conducted a public hearing on the Application.

4. No oral public testimony was provided at the July 9, 1996 Planning Commission hearing.

5. On July 9, 1996, after due deliberation, the Planning Commission recommended approval of the Application to the LUC, subject to all conditions imposed in LUC Docket No. SP92-380, with the exception of the deletion of Condition No. 12, renumbering of Condition No. 13 as Condition No. 12, and amendment of Condition No. 11.

6. On September 6, 1996, the LUC received and accepted for consideration a copy of the record of the Planning Commission's proceedings on the Application and the Planning Commission's decision and recommendation.

7. On October 10, 1996, the LUC held a meeting in Honolulu, Oahu on the Application. Mr. W.W. Horneman represented the Applicant, and Mr. Clayton Yoshida represented the County of Maui Planning Department.

DESCRIPTION OF THE PROPERTY AND SURROUNDING AREA

8. The area proposed to be incorporated into the permit area under LUC Docket No. SP92-380 consists of approximately sixty (60) acres and is located at Pulehunui,

Wailuku, Maui ("Property"). The Property is further identified as Tax Map Key No.: 3-8-04: portion of 1, and portion of 2.

9. The Property was the subject of LUC Docket No. SP90-376/Hawaiian Cement, which allowed the establishment and operation of a rock quarry. LUC Docket No. SP90-376 was granted by the LUC pursuant to Findings of Fact, Conclusion of Law, and Decision and Order dated October 17, 1990.

10. LUC Docket No. SP90-376 was subject to nine conditions. Among the conditions imposed, a time limitation for the life of the Special Permit was imposed. Condition No. 1 of the Special Permit stated that the Special Permit was valid for a period of five (5) years from the date of the granting of the permit. Additionally, extensions were also possible upon submission of a timely application and favorable review by the Planning Commission and LUC.

11. Pursuant to Condition No. 1, the Special Permit granted under LUC Docket No. SP90-376 had an expiration date of August 17, 1995.

12. The Property is owned in fee by A&B Properties, Inc.

13. Current access to the Property is from a service road from Mokulele Highway. Mokulele Highway is approximately 1½ miles west of the Property.

14. The Property is approximately 3½ miles south of Puunene, and approximately 4½ miles south of Kahului.

15. The Property is currently being utilized for quarry operations. The Property is bounded on the north, east,

and south by agricultural fields, and to the west by lands that are the subject of LUC Docket No. SP92-380/Hawaiian Cement.

16. The lands under LUC Docket No. SP92-380, which allowed the establishment of a rock quarrying/crushing operation, and other related uses, consists of approximately 45.957 acres within the State Land Use Agricultural District, and identified further as Tax Map Key No.: 3-8-08: portion of 1, and portions of 31, and situated at Pulehunui, Wailuku, Maui.

17. The Special Permit under LUC Docket No. SP92-380 was approved pursuant to Findings of Fact, Conclusions of Law, and Decision and Order dated July 13, 1992, and is subject to thirteen (13) conditions. Among the conditions imposed, Condition No. 1 states that the Special Permit is valid for a period of ten (10) years from the date of its granting and subject to further extensions by the LUC upon a timely request for extension. Thus, the Special Permit is valid until July 13, 2002.

18. The approximately 45.957 acre parcel under LUC Docket No. SP92-380 was the also the subject of LUC Docket No. SP87-367/Allied Hauling, Inc. Said Special Permit was granted by the LUC pursuant to a Decision and Order issued on February 18, 1988, and was valid until February 18, 1993.

DESCRIPTION OF PROPOSED USES

19. The Applicant is requesting that the Property be incorporated into the Special Permit area under LUC Docket No. SP92-380. The Applicant represented that it wishes to continue rock quarry operations on the Property, and that incorporation of

the Property into LUC Docket No. SP92-380 will be beneficial for all concerned as far as one Special Permit and a single expiration date.

20. No new uses are being proposed for the Property and the approximately 45.957 acres that are the subject of LUC Docket No. SP92-380.

STATE AND COUNTY PLANS AND PROGRAMS

21. The Property is situated within the State Land Use Agricultural District, as depicted on the State Land Use District Boundary Map M-8 (Puu O Kali).

22. The County of Maui Kihei-Makena Community Plan designates the Property as Agricultural.

23. County of Maui Zoning Maps designate the Property as Agricultural.

24. Although the Property is within the Coastal Zone Management Area, the Property is not located within the Special Management Area as designated by the County of Maui, pursuant to Hawai'i Revised Statutes ("HRS"), Chapter 205A.

SUMMARY OF COUNTY, STATE AND FEDERAL AGENCY COMMENTS

County Agencies

25. The Department of Public Works and Waste Management had no comments to offer on the Application.

26. The Department of Fire Control had no comments to offer on the Application.

27. The Board of Water Supply did not provide comments on the Application.

State Agencies

28. The Department of Health had no comments on the Application.

29. The Department of Land and Natural Resources had no comment on the Application.

30. The State Historic Preservation Division of the Department of Land and Natural Resources commented that the Application would have "no effect" on significant historic sites.

31. The Department of Transportation (DOT) acknowledged receipt of the traffic assessment report and construction plans, and commented that the Applicant had not fully complied with the intersection improvements required at the project access to Mokulele Highway. DOT also recommended that the Applicant work with the Highways Division to provide intersection improvements.

32. The Office of Planning (formerly Office of State Planning) did not provide any comments on the Application.

Federal Agencies

33. The Natural Resources Conservation Services had no comments to offer on the Application.

34. The U.S. Army Corps of Engineers did not provide any comments on the Application.

IMPACTS UPON THE RESOURCES OF THE AREA

35. The Planning Department, in its report to the Planning Commission stated that as the land area and uses of LUC Docket Nos. SP90-376 and SP92-380 have not expanded, increased in size, or changed to another special use, the assessment of the

impacts upon resources of the respective Special Permits originally presented remain valid.

CONFORMANCE WITH SPECIAL PERMIT CRITERIA

36. The Planning Department, in its report to the Planning Commission on the Application, stated that uses in the respective Special Permits previously met the five tests for "unusual and reasonable" use in the State Agricultural District. Because the uses have not changed, the uses continue to meet the five tests.

PLANNING COMMISSION RECOMMENDATION

37. At its meeting on July 9, 1996, the Planning Commission recommended approval of the Application to the LUC, subject to all conditions of LUC Docket No. SP92-380, with the exception of the deletion of Condition No. 12, renumbering of Condition No. 13 as Condition No. 12, and amendment of Condition No. 11. As recommended by the Planning Commission, the conditions would read as follows (items deleted as bracketed, additions are underscored):

- 1) That the Land Use Commission Special Use Permit shall be valid for a period of ten (10) years from the date of its granting, subject to further extensions by the Land Use Commission upon 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 Land Use Commission and may require a public hearing on the time extension.
- 2) That the conditions of this Land Use Commission Special Use Permit shall be enforced by the County of Maui pursuant to Section 205-12, Hawai'i Revised Statutes, and accordingly, upon due notice by the Planning Department and Planning Commission to the permit holder and the Land Use Commission that there is a evidence that a breach has occurred, a hearing on the continuity of such Special Use Permit may be held, provided that

written request for such a hearing is filed by Applicant with the Planning Department and Planning Commission within ten (10) working days of the date of such notice of alleged breach. If no request for hearing is filed by Applicant within said ten (10) working day period, the Planning Department and Planning Commission may revoke said Land Use Commission Special Use Permit.

- 3) That the subject Land Use Commission Special Use Permit shall not be transferred without the prior written approval of the Land Use Commission. The appropriate Planning Commission shall make a recommendation to the Land Use Commission. However, in the event that a contested case hearing preceded issuance of said 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 Applicant, its successors and permitted assigns shall exercise reasonable due care as to third parties with respect to all areas affected by subject Land Use Commission Special Use Permit and shall hold the County of Maui and the State of Hawai'i harmless from and against any loss, liability, claim or demand arising out of this permit.
- 5) That full compliance with all applicable governmental requirements shall be rendered.
- 6) That a restoration plan be submitted, showing that upon termination of operations, depleted and excavated area shall be graded to blend with the surrounding natural contours and that appropriate vegetative cover consisting of trees, shrubs, and ground cover shall be established.
- 7) That a drainage plan be submitted to the Department of Public Works and Department of Transportation for their review and approval.
- 8) That a detailed solid waste management plan be submitted to Public Works for their review and approval.
- 9) That a regular maintenance program for the access road be submitted to Department of Transportation Highways Division and Department of Public Works for review and approval to ensure that loose aggregate, which may have fallen from trucks coming from the quarry site, shall be removed.

- 10) That air pollution control permits, for the rock crushing and asphalt batching plants, be obtained.
- 11) [That a sight distance analysis and traffic assessment shall be conducted to determine if intersection improvements are warranted at the projects' access to Mokulele Highway to the satisfaction of the Director of Public Works. If improvements are warranted, such improvements shall be provided at the applicant's expense to county or state standards as may be applicable at the time of the improvements.] That intersection improvements on Mokulele Highway, as warranted and approved by the Department of Transportation, shall be provided on Mokulele Highway within a period of one (1) year from the date that the construction plans have been approved by the Department of Transportation.
- 12) [Applicant shall cause Allied Hauling, Inc. to submit a request through the Maui Planning Commission to revoke its special use permit issued under Docket No. SP87-367/Allied Hauling, Inc. for quarrying purposes on the Property within two (2) months from filing of the Decision and Order of the Land Use Commission approving this application.
- 13)] An annual progress report shall be submitted to the Planning Director and the State Land Use Commission prior to the anniversary date of the approval of the permit. The report shall include, but not be limited to, the status of the development and to what extent the conditions of approval are being complied with. This condition shall remain in effect until all of the conditions of approval have been complied with and the Planning Director acknowledges that further reports are not required.

38. Any findings of fact that may be a conclusion of law shall be deemed a conclusion of law.

CONCLUSIONS OF LAW

The Special Permit Application to incorporate approximately sixty (60) acres of land into the Special Permit area under LUC Docket No. SP92-380 in order to continue rock quarrying activities constitutes an "unusual and reasonable" use as provided in Section 205-6, HRS, and as established in Section

15-15-95(b), Hawai'i Administrative Rules, and the proposed use is not contrary to the objectives sought to be accomplished by the State Land Use Law to preserve, protect, and encourage development of lands in the State for those uses to which they are best suited in the interest of the public health and welfare.

ORDER

IT IS HEREBY ORDERED that the Special Permit Application that is the subject of LUC Docket No. SP92-380, requesting the incorporation of approximately sixty (60) acres of land situated within the State Land Use Agricultural District, and that is the subject of LUC Docket No. SP90-376, into the Special Permit area under LUC Docket No. SP92-380 and identified as Tax Map Key No.: 3-8-04: portion of 1, and portion of 2, situated at Pulehunui, Wailuku, Maui, and approximately identified on "Exhibit A" attached hereto and incorporated by reference herein, is hereby approved and the entire approximately 105.957 acres that is the subject of LUC Docket No. SP92-380, is subject to the following conditions:

1. That the Land Use Commission Special Permit shall be valid until July 13, 2002, subject to further extensions by the Land Use Commission upon 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 Land Use Commission and may require a public hearing on the time extension.

2. That the conditions of this Land Use Commission Special Permit shall be enforced by the County of Maui pursuant

to Section 205-12, Hawai'i Revised Statutes, and accordingly, upon due notice by the Planning Department and Planning Commission to the permit holder and the Land Use Commission that there is a prima facie evidence that a breach has occurred, a hearing on the continuity of such Special Permit may be held, provided that written request for such a hearing is filed by Applicant with the Planning Department and Planning Commission within ten (10) working days of the date of such notice of alleged breach. If no request for hearing is filed by Applicant within said ten (10) working day period, the Planning Department and Planning Commission may revoke said Land Use Commission Special Permit.

3. That the subject Land Use Commission Special Permit shall not be transferred without the prior written approval of the Land Use Commission. The appropriate Planning Commission shall make a recommendation to the Land Use Commission. However, in the event that a contested case hearing preceded issuance of said Land Use Commission Special 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 Applicant, its successors and permitted assigns shall exercise reasonable due care as to third parties with respect to all areas affected by subject Land Use Commission Special Permit and shall hold the County of Maui and the State of

Hawai'i harmless from and against any loss, liability, claim or demand arising out of this permit.

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

6. That a revised restoration plan, which includes the approximately sixty (60) acres to be incorporated into the Special Permit be submitted, showing that upon termination of operations, depleted and excavated area shall be graded to blend with the surrounding natural contours and that appropriate vegetative cover consisting of trees, shrubs, and ground cover shall be established.

7. That a revised drainage plan, which includes the approximately sixty (60) acres to be incorporated into the Special Permit be submitted to the County of Maui Department of Public Works and Waste Management and Department of Transportation for their review and approval.

8. That a revised detailed solid waste management plan, which includes the approximately sixty (60) acres to be incorporated into the Special Permit be submitted to the County of Maui Department of Public Works and Waste Management for their review and approval.

9. That a regular maintenance program for the access road be submitted to the Department of Transportation Highways Division and County of Maui Department of Public Works and Waste Management for review and approval to ensure that loose aggregate, which may have fallen from trucks coming from the quarry site, shall be removed.

10. That air pollution control permits, for the rock crushing and asphalt batching plants, be obtained.

11. That intersection improvements on Mokulele Highway, as warranted and approved by the Department of Transportation, shall be provided on Mokulele Highway within a period of one (1) year from the date that the construction plans have been approved by the Department of Transportation.

12. An annual progress report shall be submitted to the Planning Director and the State Land Use Commission prior to the anniversary date of the approval of the permit. The report shall include, but not be limited to, the status of the development and to what extent the conditions of approval are being complied with. This condition shall remain in effect until all of the conditions of approval have been complied with and the Planning Director acknowledges that further reports are not required.

Done at Honolulu, Hawai'i, this 25th day of November 1996,
per motions on October 10, 1996 and November 1, 1996.

LAND USE COMMISSION
STATE OF HAWAI'I

By *Trudy K. Senda*
TRUDY K. SENDA
Chairperson and Commissioner

By (absent)
RUPERT K. CHUN
Vice Chairperson and Commissioner

By *Lawrence N.C. Inc.*
LAWRENCE N.C. INC.
Commissioner

By *M. Casey Jarman*
M. CASEY JARMAN
Commissioner

By *Herbert S.K. Kaopua*
HERBERT S.K. KAOPUA, SR.
Commissioner

By *Lloyd F. Kawakami*
LLOYD F. KAWAKAMI
Commissioner

By *Merle A. K. Kelai*
MERLE A. K. KELAI
Commissioner

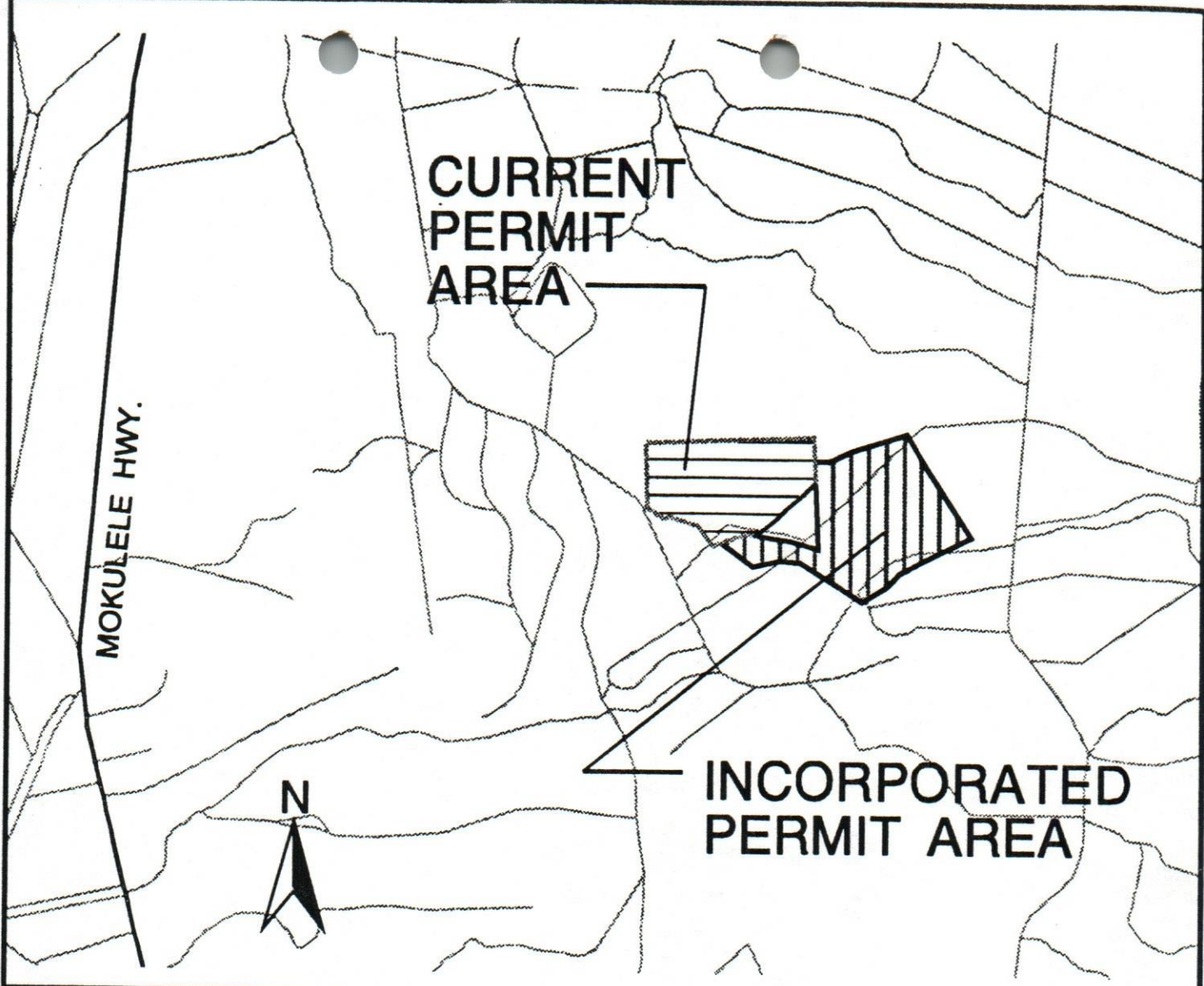
Filed and effective on
November 25, 1996

Certified by:

Esther Lee
Executive Officer

By (absent)
EUSEBIO LAPENIA, JR.
Commissioner

By (absent)
JOANN N. MATTSON
Commissioner



Docket No. SP92-380 /
HAWAIIAN CEMENT

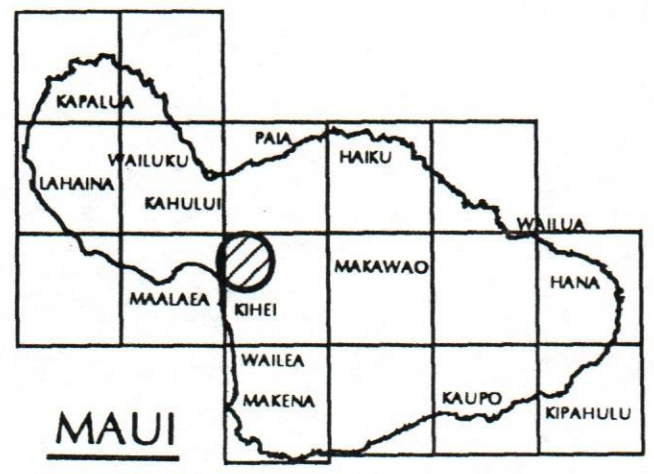
LOCATION MAP

Tax Map Key: 3-8-04: por. 1,
por. 2; 3-8-08: por. 1,
& por. 31

Pulehunui, Wailuku, Maui

Scale: 1" = 2,000 ft.

EXHIBIT "A"



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Agricultural District At Pulehunui,)
Wailuku, Maui, Tax Map Key No.:)
3-8-08: portion of 1 and portion of)
31)

CERTIFICATE OF SERVICE

I hereby certify that a copy of the Findings of Fact, Conclusions of Law, and Decision and Order was served upon the following by either hand delivery or depositing the same in the U. S. Postal Service by certified mail:


DEL. RICK EGGED, Director
Office of Planning
P. O. Box 2359
Honolulu, Hawaii 96804-2359

CERT. DAVID W. BLANE, Director of Planning
Planning Department, County of Maui
250 South High Street
Wailuku, Hawaii 96793

CERT. JEFFREY SCHMIDT, ESQ.
Corporation Counsel
Office of the Corporation Counsel
County of Maui
200 South High Street
Wailuku, Hawaii 96793

CERT. W.W. HORNEMAN, Vice-President
Hawaiian Cement
P. O. Box 488
Kahului, Hawaii 96732

DATED: Honolulu, Hawaii, this 25th day of November 1996.


ESTHER UEDA
Executive Officer