

BEFORE THE LAND USE COMMISSION
OF THE STATE OF HAWAII

In the Matter of the Petition of)
MOLOKAI CONCRETE AND AGGREGATES,)
INC.)

DOCKET NO. SP87-365
MOLOKAI CONCRETE AND
AGGREGATES, INC.

For a Special Permit to Establish)
a Quarry and Related Uses on)
Approximately 75.896 Acres of Land)
Within the Agricultural District)
at Kamalo, Molokai, Maui, Tax Map)
Key Numbers: 5-5-02: Parcels 18,)
31, 32 and 34)

LAND USE COMMISSION
STATE OF HAWAII
OCT 9 8 50 AM '87

FINDINGS OF FACT, CONCLUSIONS OF LAW
AND DECISION AND ORDER

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FINDINGS OF FACT, CONCLUSIONS OF LAW
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Molokai Concrete and Aggregates, Inc. (hereinafter the "Petitioner") initiated this proceeding pursuant to Section 205-6, Hawaii Revised Statutes, as amended, and Subchapter 12 of the Hawaii Land Use Commission Rules. The Land Use Commission (hereinafter the "Commission") 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. Petitioner filed the Special Permit ("Permit") application with Maui Planning Department (the "Planning Department") on April 1, 1987. The Molokai Advisory Committee ("Committee") conducted the public hearing on June 4, 1987. On the same date, the Committee voted to accept the Planning

Department staff recommendation to approve the Permit subject to ten conditions as amended by the Committee.

2. Myron Akutagawa, DeGray Vanderbuilt, Kimo Vincent, and John Sabas testified at the public hearing. Written testimonies were received from Patricia Bostwick and Florence Schultz which included, among other things, concerns regarding the impact of the project on the existing drainage system.

3. The Maui Planning Commission voted to accept the Committee's recommendations on July 7, 1987.

4. A copy of the complete record of the proceeding before the Maui Planning Commission was received by the Commission on July 30, 1987.

5. At the Commission's meeting of August 27, 1987, Commissioner Everett Cuskaden moved to approve the Maui Planning Commission's recommendation for conditional approval of the Permit, with modifications to Condition Nos. 1, 4 and 6, and an additional Condition Number 11.

6. Commissioners Cuskaden, Himeno, Tamaye and Tacbian voted in favor of the motion. Commissioners Choy, Whittemore and Suzuki voted against the motion.

Having failed to receive the required five votes to carry the motion, the Permit request is denied.

Description of Property

7. The subject property, consisting of approximately 75.896 acres, and identified as Molokai Tax Map Key Number: 5-5-02: parcels 18, 31, 32 and 34, is located mauka of the

Kamehameha V Highway northeast of the Kamahuehue Fishpond, at Kamalo, Island of Molokai (the "Property").

8. The Property is owned by Bishop Estate and is leased to Petitioner by agreement executed on July 15, 1986, for a term of 19 years and 11 months. The lease requires Petitioner to place and complete construction of rock crushers, screening and washing facilities and a water reservoir on the Property on or before June 30, 1988.

9. Pasture lands lie to the northwest of the Property. The Southeast Molokai Archaeological District lies to the east.

10. Access to the Property is available from Kamehameha V Highway.

11. Portion of the Property lie in Zone A4, area of the 100-year flood; Zone B, areas of the 500-year flood; and Zone C, areas of minimal flooding.

12. Kamalo Stream, an intermittent stream, runs through the Property.

13. According to the Land Study Bureau Detailed Land Classification, the Property has an overall productivity rating of "E" indicating a poor productivity potential for most agricultural uses.

Over half of the Property is classified "Other Important" agricultural land by the Department of Agriculture's Agriculture Lands of Importance to the State of Hawaii ("ALISH") system.

Proposed Use of the Property

14. Petitioner is proposing to extract materials primarily from the Kamalo streambed area, and operate a sand and aggregate screening, washing, and crushing plant on the Property. Petitioner will also construct a reservoir on the Property in a site to be determined by the U.S. Soil Conservation Service. The reservoir will have a minimum storage capacity of at least one-half million gallons. The reservoir water, which will be used for washing materials, will be obtained from State Well #31 mauka of the Property.

15. Petitioner states that, materials extracted from the streambed will be replenished when the next flooding of Kamalo stream occurs. The proposed extraction area will not impact the Special Management Area.

16. Petitioner states that the proposed project is needed at this location because there is no other site available where water and stream aggregates can be produced into specification materials for the construction industry.

17. Upon termination of the quarry operations, Petitioner will repair the Property so that the quarry pit has a relatively smooth and flat surface and the bottom and side slopes around the entire perimeter will be safe under all appropriate standards.

18. A county water line runs past the Property. Wastewater disposal is by cesspool. Telephone and electrical services are available to the Property.

State and County Plans and Programs

19. The Property is located in the State Land Use Agricultural District.

20. The Molokai Community Plan designates the Property as Agriculture.

21. A portion of the Property lies within the Special Management Area.

State and County Agency Comments

22. The Department of Land and Natural Resources ("DLNR") pointed out that water from the stream at the project site flows intermittently. There are productive aquatic resources in a small estuary makai of the project site and at the nearby reefs. They do not concur with the operation of a rock crushing and washing plant in a stream bed because of the silting that would take place of stream and shoreline waters during rain. They do not object if the washing and crushing is done away from the stream and kept from reaching the shoreline.

The DLNR also pointed out that the project area is located immediately at the west boundary of the Southeast Molokai Archaeological District, an area included in their inventory of historic places. They believe that there is a high probability that the project area may contain historic sites. They recommend that before a permit is granted, the applicant should have a professional archaeological survey of the Property and the report be submitted to the Maui Planning

Department and the Historic Preservation Office for their review.

23. The Department of Agriculture had no objections to the proposed use.

24. The Department of Health recommended approval of the project.

25. The Department of Public Works pointed out that the project is subject to flood inundation and Petitioner should submit a detailed drainage and erosion control plan for their review and approval. The plan should provide verification that the grading and runoff water generated by the project will not have an adverse effect on the adjacent and downstream properties.

26. The Department of Water Supply pointed out that they have no objections to the proposed project.

27. The U.S. Department of the Army pointed out that a Department of the Army permit will not be required for the proposed project based on their understanding of the location of the proposed activities.

Conformance with Special Permit Tests

28. Petitioner's proposed use of the Property for extraction, sand and aggregate screening, washing and crushing plant will be contrary to the objectives sought to be accomplished by the Land Use Law, Chapter 205 and 205A, HRS, and the rules of the Commission because there is no evidence

which justifies the need for the project with supporting facts or documentation in light of an existing quarry and concrete plant located approximately four to five mile west of Kaunakakai.

Also, although Petitioner indicates that the materials and water needed for the activity can only be found on the Property, there is no evidence to substantiate that other sites with the same characteristics do not exist on the Island of Molokai.

29. There is no evidence to demonstrate that properties surrounding the proposed project and especially lands downstream of the proposed extraction and washing will not be adversely impacted by the proposed project. Concerns were raised by an adjacent property owner that the impact of extraction may cause the weakening of dikes that prevent inundation of flood waters on lands to the east of the Property.

30. There is no evidence to demonstrate that the proposed project would not unreasonably burden public agencies to provide additional maintenance or improvements to roads and streets in the area. The Petitioner's use of seven to eight-foot wide dump trucks to haul the materials over Kamehameha V Road with pavement widths ranging between 16 to 17 feet may create the requirement for additional maintenance and repairs to the roads. In addition, the increased use of the roads by dump trucks may create a hazard for current users for which the State may be liable.

31. There is no evidence as to what unusual conditions, trends and needs have arisen since the district boundaries and rules were established.

CONCLUSIONS OF LAW

The proposed use is not an "unusual and reasonable" use as defined in Chapter 205-6, Hawaii Revised Statutes and the proposed use is 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

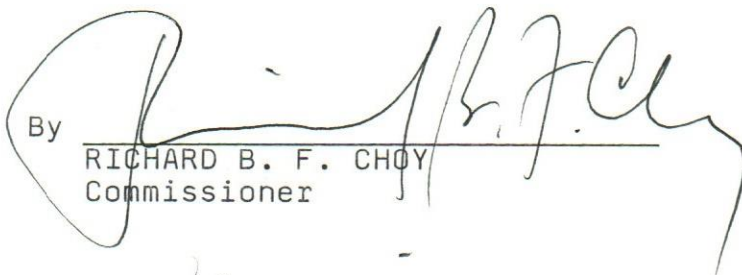
IT IS HEREBY ORDERED that Special Permit Docket Number 87-365 filed by Molokai Concrete and Aggregates, Inc. to establish a quarry and related uses on approximately 75.896 acres of land, identified as Maui Tax Map Key Numbers: 5-5-02: parcels 18, 31, 32 and 34, at Kamalo, Molokai, within the State Land Use Agricultural District, is denied.


DOCKET NO. SP87-365/MOLOKAI CONCRETE AND AGGREGATES, INC.

Done at Honolulu, Hawaii, this 9th day of October 1987,
per motions on August 27, 1987 and September 29, 1987.

LAND USE COMMISSION
STATE OF HAWAII

By 
FREDERICK P. WHITTEMORE
Vice Chairman and Commissioner

By 
RICHARD B. F. CHOY
Commissioner

By 
TORU SUZUKI
Commissioner

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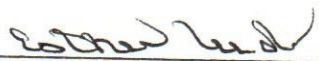
CERTIFICATE OF SERVICE

I hereby certify that a copy of the Land Use Commission 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:

CHRISTOPHER L. HART, Planning Director
Planning Department
County of Maui
200 South High Street
Wailuku, Hawaii 96793

LEROY E. AUSTIN, President
Molokai Concrete & Aggregates, Inc.
P. O. Box 727
Kaunakakai, Hawaii 96748

DATED: Honolulu, Hawaii, this 9th day of October 1987.



ESTHER UEDA
Executive Officer

DOCKET NO. SP87-365 - MOLOKAI CONCRETE AND AGGREGATES, INC.

A copy of the Land Use Commission's Decision and Order was served upon the following by regular mail on October 9, 1987.

Real Property Tax Division
County of Maui
200 South High Street
Wailuku, Maui 96793