



STATE OF HAWAII  
DEPARTMENT OF BUSINESS  
AND ECONOMIC DEVELOPMENT

LAND USE COMMISSION

Room 104, Old Federal Bldg., 335 Merchant Street  
Honolulu, Hawaii 96813 Telephone: 548-4611

JOHN WAIHEE  
Governor

TEOFILO PHIL TACBIAN  
Chairman

FREDERICK P. WHITTEMORE  
Vice Chairman

COMMISSION MEMBERS:

Richard B.F. Choy  
Lawrence F. Chun  
Everett L. Cuskaden  
Sharon R. Himeno  
Toru Suzuki  
Robert S. Tamaye  
Renton L.K. Nip

ESTHER UEDA  
Executive Officer

February 18, 1988

MEMORANDUM

TO: All Parties  
FROM: *Esther Ueda*  
Esther Ueda, Executive Officer  
Land Use Commission  
SUBJECT: Findings of Fact, Conclusions of Law and Decision and  
Order for LUC Docket No. SP87-367/Allied Hauling, Inc.

Please replace the cover sheet, page 1 and the Certificate of Service for the above referenced findings with the attached. The Special Permit acreage was incorrectly reflected on these pages.

We apologize for any inconvenience this may have caused you. If you have any questions, please do not hesitate to call us at 548-3039.

BEFORE THE LAND USE COMMISSION  
OF THE STATE OF HAWAII

In the Matter of the Petition of )  
ALLIED HAULING, INC. )  
DOCKET NO. SP87-367 )  
ALLIED HAULING, INC. )  
For a Special Permit to Maintain )  
a Rock Quarrying Operation and )  
Related Uses On Approximately )  
45.957 acres of Land Within the )  
Agricultural District at Pulehunui )  
and Waikapu, Wailuku, Maui, Tax )  
Map Key Number: 3-8-08:31 )  

---

LAND USE COMMISSION  
STATE OF HAWAII  
FEB 18 3 42 PM '88

FINDINGS OF FACT, CONCLUSIONS OF LAW  
AND DECISION AND ORDER

BEFORE THE LAND USE COMMISSION  
OF THE STATE OF HAWAII

In the Matter of the Petition of ) DOCKET NO. SP87-367  
ALLIED HAULING, INC. ) ALLIED HAULING, INC.  
For a Special Permit to Maintain )  
a Rock Quarrying Operation and )  
Related Uses On Approximately )  
45.957 acres of Land Within the )  
Agricultural District at Pulehunui )  
and Waikapu, Wailuku, Maui, Tax )  
Map Key Number: 3-8-08:31 )  
\_\_\_\_\_ )

FINDINGS OF FACT, CONCLUSIONS OF LAW  
AND DECISION AND ORDER

Allied Hauling, Inc. (hereinafter "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 application with the County of Maui Planning Department (the "Planning Department") on September 8, 1987. The Maui Planning Commission conducted the public hearing on November 10, 1987. Four written testimonies were received in support of the request.

2. On November 24, 1987, the Maui Planning Commission voted to recommend approval of the Special Permit subject to ten conditions. A copy of the record of the proceeding before the Maui Planning Commission was received by the Commission on December 2, 1987.

Description of the Property and Permit Background

3. The subject property is identified as Maui Tax Map Key Number 3-8-08: parcel 31 and consists of approximately 45.957 acres ("Property"). The Property, which is located approximately three miles south of Puunene and one mile east of Mokulele Highway, is currently operated as a rock quarry including a rock crushing and concrete batching plant, under a special use permit granted by this Commission in docket number SP82-354/Allied Hauling, Inc. which expired on June 4, 1987.

4. The Property is owned by the State of Hawaii. Alexander and Baldwin, Inc. is the lessee of the Property and surrounding areas for sugarcane cultivation under General Lease No. S-4197.

5. On December 28, 1979, the Board of Land and Natural Resources ("BLNR") approved Petitioner's land license application No. S-291 to conduct quarrying operations on the Property. This license expires on October 16, 1993 and was subject to the concurrence of Alexander & Baldwin, Inc.

6. On May 24, 1985, the BLNR approved a consent document between Petitioner and M. Funes Concrete, Inc., the Operator, to allow Operator to conduct quarrying operations on

a 40.341 acre portion of the Property with the balance of 5.616 acres to be retained by Petitioner. The term of the operating agreement ("Agreement") between M. Funes Concrete, Inc. and Petitioner was from July 1, 1985 to April 16, 1993.

7. Access to the Property is from Mokulele Highway along Kamaaina Road, onto a cane haul road, and through an access easement on the adjoining lot.

8. The Property is surrounded by sugarcane fields except for an irrigation reservoir and the Maui Factors pig farm to the west.

9. The Property is not classified by the Agricultural Lands of Importance to the State of Hawaii classification system.

10. According to the Land Study Bureau Detailed Land Classification, the Property has an overall master productivity of "E" which is the lowest rating.

#### Description of Proposed Use

11. Petitioner proposes to continue the existing rock quarry crushing and concrete batching plant operation on the Property and is requesting that the Special Permit be granted for five(5) years to conform with the land license agreement granted by the BLNR.

12. Petitioner states that the project is needed to provide an alternate source of concrete and crushed rock products to local contractors at competitive prices.

13. Petitioner stated that a rock crusher, scale and scale house are presently on the Property. An office, maintenance shop and concrete batch plant, which are currently situated off the Property, may be moved onto the Property in the future.

14. Electricity and water are available to the Property.

15. A site inspection conducted on November 3, 1987 by the Maui Planning Department reflected that M. Funes Concrete is presently conducting rock crushing operations on the Property.

#### State and County Plans

16. The State Land Use Classification of the Property is Agricultural as reflected on the Commission's Official Map M-8 Puu O Kali.

17. The County zoning and the Kihei-Makena Community Plan designation of the Property is Agriculture.

18. The Property is not located within the County Special Management Area.

#### Summary of Agency Concerns

19. The County of Maui Department of Public works indicated that the access road be improved to a minimum pavement width of 20 feet with graded shoulders. It also indicated that the Property be subdivided per County's Subdivision Ordinance. However, by letter dated December 24,

1987, the Department of Public Works amended its recommendation by deleting the requirement for Petitioner to subdivide the Property.

20. No objections or concerns were raised by any other state or county agency.

Conformance With Special Permit Tests

21. The proposed use is not contrary to the objectives sought to be accomplished by the Land Use Law since the Property has an overall master productivity rating of E, poor productivity potential for most agricultural uses.

In addition, the Property was a former rock quarry site and has been used as a rock crushing plant site for the past 5 years.

Furthermore, a policy in the Kihei-Makena Community Plan states that special permits in the State Agricultural District may be allowed only to accommodate extractive industries, such as quarrying, where the operation would not adversely affect the environment or surrounding agricultural uses.

22. The proposed use will not adversely affect surrounding property since prior use of the Property as a rock and cinder quarry has not adversely affected surrounding properties nor precluded other viable agricultural activities in the area.

23. The proposed use will not unreasonably burden public agencies to provide roads and streets, sewers, water,

drainage and school improvements, and police and fire protection.

24. Petitioner has stated a need for an alternate quarrying and rock crushing site to provide material at competitive prices to local contractors.

25. The land upon which the proposed use is sought is unsuited for the uses permitted within the district since the Property has poor productivity potential for most agricultural uses.

#### Planning Commission Recommendation

26. At its regular meeting of November 24, 1987, the Maui Planning Commission voted to recommend approval of the request subject to the following conditions:

- "1. That said operation shall be limited to quarrying, rock crushing, and concrete batching and shall be valid until October 16, 1993, the time when the applicant's land license agreement with the State of Hawaii terminates. Time extensions may be granted upon timely request and favorable review by the Maui Planning Commission and the State Land Use Commission.
- "2. That appropriate measures shall be taken to mitigate potential adverse impacts relative to soil erosion from wind and rain, ambient noise levels, and traffic disruptions.
- "3. That full compliance with the requirements of the Department of Public Works in their memo dated November 10, 1987 shall be rendered unless written verification be submitted to the Planning Department that the conditions have been modified or deleted.
- "4. That the Special Use Permit shall be valid only for the uses as approved and in accordance with plans submitted therein.



- "5. That the uses or structures allowable by the Special Use Permit shall not be expanded or increased in size or area or changed to another special use, unless so authorized.
- "6. In the event any historic, archaeological, or cultural sites, remains, artifacts, or resources are discovered, work shall stop and the State Historic Site Office, Department of Land and Natural Resources, the Office of Hawaiian Affairs, and the County Planning Department shall be duly notified to advise of appropriate action.
- "7. That upon termination of operations depleted and excavated areas shall be graded to blend with the surrounding natural contours and that appropriate vegetative cover consisting of trees, shrubs, and groundcover shall be established.
- "8. That this permit shall be non transferable (Allied Hauling holding the land license agreement and M. Funes Concrete being the Operator) unless prior approval has been obtained from the Planning Commission, the State Land Use Commission, and the Board of Land and Natural Resources.
- "9. In the event that any of the conditions of this permit are breached the applicant/permittee shall be served a written notice by the Planning Department or appropriate County enforcement agency and shall be required to cease all operations from and after receipt of said notice of the Planning Commission to address the breach of conditions. If no appeal is duly filed by the applicant, the Planning Commission shall revoke the subject Special Use Permit.
- "10. That the project shall conform to the requirements of other Federal, State, and County statutes, ordinances, rules, and regulations or codes."

#### CONCLUSIONS OF LAW

The proposed use is an "unusual and reasonable" use as defined in Chapter 205-6, Hawaii Revised Statutes 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 Special Permit Number 87-367 filed by Allied Hauling, Inc. to maintain a rock quarrying and rock crushing and concrete batching plant operation on the Property consisting approximately of 45.957 acres situate within the State Land Use Agricultural District at Pulehunui and Waikapu, Wailuku, Maui, Tax Map Key Number: 3-8-09: Parcel 31, be approved subject to the following conditions:

1. That said operation shall be limited to quarrying, rock crushing, and concrete batching and shall be valid until October 16, 1993, the time when the applicant's land license agreement with the State of Hawaii terminates. Time extensions may be granted upon timely request and favorable review by the Maui Planning Commission and the State Land Use Commission.
2. That appropriate measures shall be taken to mitigate potential adverse impacts relative to soil erosion from wind and rain, ambient noise levels, and traffic disruptions.
3. That full compliance with the requirements of the Department of Public Works in their memo dated November 10, 1987 shall be rendered unless written verification be submitted to the Planning Department that the conditions have been modified or deleted.

4. That the Special Use Permit shall be valid only for the uses as approved and in accordance with plans submitted therein.

5. That the uses or structures allowable by the Special Use Permit shall not be expanded or increased in size or area or changed to another special use, unless authorized by law, utilizing the proper procedures.

6. In the event any historic, archaeological, or cultural sites, remains, artifacts, or resources are discovered, work shall stop and the State Historic Site Office, Department of Land and Natural Resources, the Office of Hawaiian Affairs, and the County Planning Department shall be duly notified to advise of appropriate action.

7. That upon termination of operations depleted and excavated areas shall be graded to blend with the surrounding natural contours and that appropriate vegetative cover consisting of trees, shrubs, and groundcover shall be established.

8. That this permit shall be non transferable (Allied Hauling holding the land license agreement and M. Funes Concrete, Inc. being the Operator) unless prior approval has been obtained from the Planning Commission, the State Land Use Commission, and the Board of Land and Natural Resources.

9. In the event that any of the conditions of this permit are breached the applicant/permittee shall be served a written notice by the Planning Department or appropriate County

enforcement agency and shall be required to cease all operations from and after receipt of said notice of the Planning Commission to address the breach of conditions. If no appeal is duly filed by the applicant, the Planning Commission shall revoke the subject Special Use Permit.

10. That the project shall conform to the requirements of any other applicable Federal, State, and County statutes, ordinances, rules, and regulations or codes.

11. Petitioner shall incorporate the above Special Permit Conditions Numbers one through ten in its operating agreement with the Operator, M. Funes Concrete, Inc.

DOCKET NO. SP87-367 - ALLIED HAULING, INC.

Done at Honolulu, Hawaii, this 18th day of February 1988,  
per motions on January 5, 1988 and February 16, 1988.

LAND USE COMMISSION  
STATE OF HAWAII

By *T. P. Tacbian*  
TEOFILO PHIL TACBIAN  
Chairman and Commissioner

By *Robert S. Tamaye*  
ROBERT S. TAMAYE  
Commissioner

By *Toru Suzuki*  
TORU/SUZUKI  
Commissioner

By *Everett L. Cuskaden*  
EVERETT L. CUSKADEN  
Commissioner

By *Renton L. K. Nip*  
RENTON L. K. NIP  
Commissioner

By *Sharon R. Himeno*  
SHARON R. HIMENO  
Commissioner

By *Richard B. F. Choy*  
RICHARD B. F. CHOY  
Commissioner

BEFORE THE LAND USE COMMISSION  
OF THE STATE OF HAWAII

In the Matter of the Petition of )  
ALLIED HAULING, INC. ) DOCKET NO. SP87-367  
) ALLIED HAULING, INC.  
)  
For a Special Permit to Maintain )  
a Rock Quarrying Operation and )  
Related Uses On Approximately )  
45.957 acres of Land Within the )  
Agricultural District at Pulehunui )  
and Waikapu, Wailuku, Maui, Tax )  
Map Key Number: 3-8-08:31 )  
\_\_\_\_\_ )

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:

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

MAX GRAHAM, ESQ.  
Lowenthal, August & Graham  
Lihue Plaza Building  
3016 Umi Street, Suite 211-A  
Lihue, Hawaii 96766

PATRICK MURAKAMI  
c/o Allied Hauling, Inc.  
P. O. Box 7  
Kahului, Hawaii 96732

Dated: Honolulu, Hawaii, this 18th day of February, 1988.

  
\_\_\_\_\_  
ESTHER UEDA, Executive Officer

DOCKET NO. SP87-367 - ALLIED HAULING, INC.

A copy of the Land Use Commission's Decision and Order was served upon the following by regular mail on February 18, 1988.

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

Marvin Funes  
M. Funes Concrete, Inc.  
P. O. Box 307  
Kahului, Maui 96732