

ANNUAL COMPLIANCE REPORT

Makakilo Quarry, Hawaii

2010

APPENDIX E:

CLARIFICATION WAS REQUESTED FROM DPP BY BELT COLLINS IN A
LETTER DATED OCTOBER 8, 2010. QUARRY



BELT COLLINS

October 8, 2010
2004-33-8000 / 10P-124

Mr. David K. Tanoue, Director
Department of Planning and Permitting
City and County of Honolulu
650 South King Street, 7th Floor
Honolulu, Hawaii 96813

Dear Mr. Tanoue:

First Annual Report
LUC Docket No SP73-147, Grace Pacific Corporation
Makakilo Quarry
TMK 9-1-016:004; 9-2-002:006; 9-2-083:074 & 082

Thank you for your letter of August 24, 2010 regarding the above filing.

We are writing on behalf of Grace Pacific to seek clarification on item 3 in your letter.

We would begin by noting that your reference to a Renaturalization Plan (RP) requirement in Condition 3 of the above docket is in error. Condition #3 establishes a deadline for the operation of Makakilo Quarry and its appurtenant activities and references the implementation of the Final Beneficial Re-Use Plans (FBRUP). It is, in fact, Condition #2 that addresses the RP. We believe that this error is indicative of a general misinterpretation by your staff of the intent of the Decision and Order for Docket SP73-147 which has, in turn, led to the recommendation in item 3 of your letter.

To that end, we believe that the recommendation in item 3 of your letter that the RP be expanded to include "...all areas disturbed by the quarry operations and former golf course construction as was represented by Grace Pacific" is **not** supported by the Findings of Fact, Conclusions of Law, and Decision and Order pursuant to Docket SP73-147, nor by the records contained in this docket, including but not limited to the DPP Directors Report dated August 13, 2008 and the Land Use Commission staff report dated September 25, 2008.

We offer the following in support of the above conclusions.

Finding of Fact #22: "...The applicant intends to establish berming and landscaping along the perimeter of the lower half of the quarry pit in the first phase (2009 to 2012). It is anticipated that mining activities will continue in the existing pit floor. During the second phase (2013 to 2017), the Applicant plans to undertake berming and landscaping

of the upper half of the quarry, with excavation continuing in the mid-section of the quarry...[t]hese schedules for excavation are dependent upon actual market demand and the actual phasing may differ.” [emphasis added]

Finding of Fact #40. “The Applicant’s Closure Grading Plan dated June 5, 2008 calls for...renaturalization of grades of the former golf course driving range located in the upper valley of Pu`u Makakilo to replicated conditions that existed prior to the mass grading for the golf course.”

Finding of Fact #41: “The Applicant is also required to provide a beneficial re-use plan for lands disturbed by its quarry operations.” [emphasis added]

Taken together, these Findings of Fact establish that (1) phased landscaping is related to the quarry operations; (2) renaturalization is explicitly tied to the Applicant’s Closure Grading Plan dated June 5, 2008; (3) golf course renaturalization is limited to the former golf course driving range; and (4) the beneficial re-use plan is focused on lands disturbed by quarry operations.

Conclusions of Law #4: “...To mitigate adverse visual impacts of the quarrying activities, the Applicant intends to implement its final closure grades, as identified in the June 5, 2008, [sic] grading plan. These slopes provide a more natural finish grade that will encourage long-term vegetation growth and blend with the surrounding topography of Pu`u Makakilo.” [emphasis added]

This Conclusion of Law limits the mitigation of visual impacts to quarrying activities and establishes the June 5, 2008 final closure plan as the means to implement mitigation measures.

Based on these and other Findings of Fact and Conclusions of Law, the Honolulu Planning Commission ordered, and the State Land Use Commission affirmed, in part:

Condition 2: “...the Applicant shall submit to the Director of Planning and Permitting for review and approval a renaturalization plan in coordination with the proposed Closure Grading Plan for the quarry site and buffer area mauka of the H-1 Freeway showing landscaping details including plant types, sizing and spacing, irrigation facilities and distribution systems.”

Apparently, this condition can be read two ways: either, it calls for a renaturalization plan for the quarry site and the buffer area mauka of H-1 Freeway, or it calls for a renaturalization plan in coordination with the proposed Closure Grading Plan which includes the quarry site and buffer area mauka of the H-1 Freeway. Based upon the above cited Findings of Fact and Conclusion of Law, we believe that the renaturalization plan is tied directly to the Closure Grading Plan, and is therefore, limited to the scope and area presented in the Closure Grading Plan.

Condition 3: “All resource extraction, related aggregate processing and concrete and asphalt production activities, including recycling activities shall cease by December 31, 2032. Final beneficial re-use plans as approved by the Department of Planning and Permitting shall be implemented immediately upon cessation of the said resource extraction and related quarrying activities.” [emphasis added]

Condition 10: “The Applicant shall provide a beneficial re-use plan for lands disturbed by its quarry operations....The beneficial re-use planning and design document shall be an ongoing document...” [emphasis added]

By tying the FBRUP to the “said” resource extraction and related quarrying activities referenced in Condition 3, we interpret the condition to mean “all” activities subject to the December 31, 2032 deadline. This, in effect, links the FBRUP to final not incremental closure. Our conclusion is further supported by the explicit language in Condition 10 pertaining to the periodic updating of the FBRUP.

We believe this distinction is important because it appears to go to the heart of the issue. The recommendation in item 3 of your letter appears to combine the intent of the RP with the FBRUP. However, the Findings of Fact, Conclusions of Law, and Conditions of Approval cited above draw a clear distinction between the two. It is our conclusion that the RP is limited to the areas defined by the Closure Grading Plan, and as such, does not extend “...to include all areas disturbed...by former golf course construction...” as presented in item 3 of your letter.

In addition, as an on-going document that is periodically updated during the remaining life of the quarry operations, it will not be possible to present or represent how the primary quarry areas, especially the quarry floor, will be renaturalized per the RP called for in item 3 of your letter in advance of the FBRUP called for in Condition 10.

We believe that our conclusions are validated by Exhibit 12 of your Directors Report dated August 13, 2008 which presents Grace Pacific’s renaturalization plan. Exhibit 12 clearly identifies those areas proposed for landscaping and those areas pertaining to active

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quarrying. We note that the State Land Use Commission Staff Report, dated September 25, 2008, determined on pages 14 and 15 that despite the renaturalization plan, there would still be a "...sizeable depression at the base of the puu, which may present a visual blight..." and that because of this, DPP recommended a beneficial re-use plan.

In effect, the Decision and Order calls for the renaturalization of those areas identified in the Closure Grading Plan dated June 5, 2008 and an eventual beneficial re-use plan to address areas disturbed by quarrying operations. The two documents are separate and we do not believe that the Planning Commission or the State Land Use Commission granted the Department of Planning and Permitting the authority, pursuant to SP73-147, to combine them after-the-fact or pursuant to an annual reporting requirement.

The recommendation in item 3 of your letter that the renaturalization plan now be expanded to include areas not represented in Exhibit 12 does not appear to be supported by the record. Additionally, it appears to us that expanding the renaturalization plan would supersede the intent of the final beneficial re-use plan, as expressed in Conditions 3 and 10.

We therefore respectfully request your re-review of the renaturalization plan requirement and your reconsideration of the recommendation in item 3 of your August 24, 2010 letter.

Very truly yours,

BELT COLLINS HAWAII LTD.



Lee W. Sichter
Principal Planner

LWS:jdk

cc: Mr. Robert Creps
J. Douglas Ing, Esq.