

BEFORE THE LAND USE COMMISSION
OF THE STATE OF HAWAII

In the Matter of the Petition of)	DOCKET NO. SP90-376
HAWAIIAN CEMENT)	HAWAIIAN CEMENT
For a Special Permit to Establish)	
a Rock Mining Operation on)	
Approximately 367.25 Acres of)	
Land Situated Within the State)	
Land Use Agricultural District)	
at Pulehunui, Wailuku, Maui,)	
Tax Map Key Number: 3-8-04:)	
Portions of 01 and 02)	
_____)	

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LAND USE COMMISSION
STATE OF HAWAII

FINDINGS OF FACT, CONCLUSIONS OF LAW
AND DECISION AND ORDER

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Hawaiian Cement (hereinafter "Applicant") initiated this proceeding pursuant to Section 205-6, Hawaii Revised Statutes, as amended, and subchapter 12 of chapter 15, 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. Applicant filed the Special Permit application with the County of Maui Planning Department (the "Planning Department") on March 5, 1990.

2. The Maui Planning Commission (hereinafter the "Planning Commission") conducted public hearings on

June 12, 1990, and June 26, 1990. The Planning Commission did not receive any public testimony.

3. On June 26, 1990, the Planning Commission voted to recommend approval of the Special Permit subject to seven conditions. A copy of the record of the proceedings before the Planning Commission was received by the Commission on July 20, 1990.

Description of the Property and Permit Background

4. The subject property is identified as Maui Tax Map Key Number 3-8-04: portion of parcel 1 and portion of parcel 2 and consists of approximately 367.25 acres (hereinafter the "Property").

5. The Property is bound entirely by sugarcane cultivation, with the exception of the western boundary which abuts an existing quarry operation operated by M. Funes Concrete, a wholly owned subsidiary of the Applicant.

6. The Commission conditionally approved the existing rock quarry operation under Special Permit No. 87-367 to Allied Hauling, Inc. by Order filed on February 18, 1988.

7. The Property is currently in sugarcane cultivation, with the exception of vacant lands within Kolaloa Gulch which bisects the Property.

8. The Applicant has a lease agreement for the Property from the Property owner, Alexander and Baldwin, Inc., which has authorized the Applicant to submit the Special Use Permit request.

9. According to the Land Study Bureau Detailed Land Classification System 75 percent (approximately 275 acres) of the Property are rated "A" and "B" lands, and 25 percent (approximately 92 acres) of the Property is rated as "E" lands.

10. According to the Agricultural Lands of Importance to the State of Hawaii classification system (ALISH), approximately 45 percent of the Property is classified as "Prime," 33 percent is classified as "Other Important," and 22 percent of the Property is not classified.

11. The United States Department of Agriculture Soil Conservation Service indicates that soils on the Property are clay loam of the Waikoa series (WGB & WhB) and Pulehu series (PsA & PtA) which are very stony and extremely stony silty clay loam.

12. According to an archaeological reconnaissance survey prepared by the Applicant, no cultural material was located on the Property.

Description of Proposed Use

13. Applicant proposes to use the Property for rock mining in 30-acre increments. The Applicant proposes that excavated rock will be transported by truck or conveyor belt to the existing rock quarrying and processing facility located directly to the west.

14. Applicant indicates that after mining is completed for each increment, the exposed areas will be backfilled using

topsoil that was removed and stockpiled to permit cane cultivation.

15. Applicant indicates that each increment will be mined for a period of three to five years.

16. The Property is not served by the County of Maui, Department of Water Supply.

17. To control dust that is associated with mining operations, the Applicant intends to use water trucks to dampen problem areas. Water for this dust control will be drawn from a well at the existing quarry site.

State and County Plans

18. The Property is designated within the State Land Use Agricultural District as reflected on the Commission's Official Map M-8, Puu O Kali.

19. The County of Maui Kihei-Makena Community Plan Designates the Property as Agriculture. This Plan also limits the use of special permits in such lands to:

1. limited public and quasi-public uses
2. public facilities
3. uses clearly accessory and subordinate to a permitted agricultural use
4. extractive industries, such as quarrying, where the operation would not adversely affect the environment or surrounding agricultural uses

20. The County zoning designates the Property as Agriculture.

21. The Property is not located within the County's Special Management Area.

22. Approximately one-half of the Property is located mauka of the Department of Health's Underground Injection Control line which follows Upper Kihei Road.

Summary of Agency Comments

23. The State Department of Agriculture, in its letter dated June 6, 1990, offered the following comments:

"The applicant is seeking to quarry rock from the subject site in 30-acre increments. Upon completion of each increment, the applicant intends to backfill the quarried area to permit replanting with sugarcane cultivation by the Hawaiian Commercial and Sugar Company (HC&S).

"References to the Soil Conservation Service Soil Survey are correct. A little less than half of the property is classified "Prime" according to the Agricultural Lands of Importance to the State of Hawaii (ALISH) system. About 33 percent is classified "Other Important" and the remainder is not classified.

"More than 75 percent of the project site is comprised of "A"- and "B"-rated lands according to the Land Study Bureau's Detailed Land Classification for the island of Maui. This indicates that most of the property has good to excellent productivity potential for most agricultural uses. The remaining area has an "E" or generally poor productivity potential.

"The Environmental Assessment does not discuss the economic impact on HC&S of removing 30 acres of sugarcane per increment. Will cane haul roads and irrigation networks be rerouted to allow unobstructed access to adjacent sugarcane fields?

"According to the Preliminary Drainage and Soil Erosion Control Study, the quarry operator will backfill and grade each increment" . . . to its original ground condition (more or less) and eventually be planted with sugarcane. What was HC&S's response to the backfill and replant proposal?"

24. The Department of Agriculture also noted the large amount of prime agricultural land impacted, and asked whether or not other sites of lesser agronomic suitability have been considered.

25. The Applicant's lessor, Alexander & Baldwin Properties, addressed the State Department of Agriculture's concern for sugar operations in a letter dated June 20, 1990, which stated that:

"While the removal of any cane acreage has some effect on the Plantation, limiting the open or quarry area to a maximum of 30 acres at any given time reduces the impact to a minimal level. HC&S Co. has 35,628 acres under cultivation at this time. It is now increasing this total by the addition of 400± acres formerly leased to Wailuku Agribusiness in the Waiale and Puunene areas. This additional land will replace cane land lost in other areas, including the proposed quarry area.

"The long term net loss of cane land due to Hawaiian Cement's activities will be zero, due to the reclamation plan that is an essential part of our agreement. It is our intent to return all of the quarried acres to cane cultivation and have no intention of making any part of the quarry floor available for sanitary landfill or any other purposes."

26. The State Department of Land and Natural Resources, in its letter date stamped June 6, 1990, offered the following comments:

"The proposed project area has been in agriculture for several years and the Environmental Assessment states that this may be the reason why no historic sites are present. It also refers to an archaeological survey report . . . that documents the absence of historic sites. We concur with the study's finding. Thus, the proposed project will have "no effect" on significant historic sites."

27. The County Department of Public Works, memorandum dated June 5, 1990, had the following comments:

"That a final detailed drainage and erosion control plan including, but not limited to, hydrologic and hydraulic calculations, scheme for controlling erosion and disposal of runoff water, and an analysis of the soil loss analysis using the HESL erosion formula to be submitted for our review and approval. The plan shall provide verification that the grading and all runoff water generated by the project will not have an adverse effect on the adjacent and downstream properties, including Kolaloa Gulch.

"That the applicant provide information on the vehicular and truck access to Mokulele Highway, to include but not be limited to, location of access roadway onto Mokulele Highway, requirement for turning and acceleration and deceleration lanes, heavy truck traffic impacts on existing pavement structure and anticipated hauling trips to be generated by the project. Roadway improvements may be required.

"That no clearing and grubbing material shall be disposed of at the County sanitary landfill. The developer is requested to contact the Solid Waste Division to discuss the possibility of the future use of this site as a sanitary landfill."

"That the site be subdivided per the County's Subdivision Ordinance."

28. The County of Maui Department of Water Supply had no objections to the proposed development.

Conformance with Special Permit tests

29. The County Planning Department provided the following in evaluating the proposed project:

- "1. The use shall not be contrary [to the objectives] to be accomplished by chapters 205 and 205A, HRS, and the rules of the commission.

The objectives sought to be accomplished by chapters 205 and 205A, HRS, encourage the protection of prime agricultural lands. The applicant does propose to return the land to sugarcane cultivation once the rock mining is complete. However, further clarification should be provided as to the impact of the proposed quarry use on sugar operations, as noted in the Department of Agriculture's comments."

- "2. The desired use would not adversely affect surrounding property.

Because there are no residences in the area, the quarrying use should not have an adverse impact on surrounding property. There will be no adverse impacts on agriculture if the applicant reroutes cane haul roads and irrigation systems per Department of Agriculture comments. Also, the proposed use should not preclude further planning options for the old Pu'unene airport site or affect existing uses of this site.

- "3. The use would not unreasonably burden public agencies to provide roads and streets, sewers, water, drainage and schools improvements, and police and fire protection.

The use would not unreasonably burden public agencies to provide additional services or improvements:

- a) Water. The Department of Water Supply had no objections to the proposed uses.
- b) Schools. There will be no burden on the school system.
- c) Police. It is not expected that police service would be impacted by the proposed use.
- d) Fire Protection. The Applicant would be required to provide adequate fire protection, however, no structures are proposed.
- e) Sewer. There will be no sewer impacts.

- f) Roads and Streets. The Department of Public Works has requested more information on the project's impacts on Mokulele Highway, and has indicated that roadway improvements may be required.
- g) Parking. Not applicable.
- h) Drainage and Erosion Control. Both the Department of Agriculture and the Department of Public Works have requested additional information regarding drainage and erosion control.

"4. Unusual conditions, trends and needs have arisen since the district boundaries and rules were established.

Resource extraction, including rock quarrying is listed in the Kihei-Makena Community Plan as an example of special uses that may be appropriate within the State Agricultural District.

The proposed use is reasonable because it is adjacent to an existing rock quarry, and would use existing machinery already in place. The applicant proposes to return the land to sugarcane production, once the rock is extracted and therefore support long-term agricultural use of the site. However, because of the amount of prime agricultural land involved in this request, the applicant should provide additional justification as to the need for such a large area at this time.

"5. The land upon which the proposed use is sought is unsuited for the uses permitted within the district.

The land upon which the proposed use is sought is well suited for sugarcane cultivation, however, the applicant is proposing incremental development and will return the quarried areas to cultivation after incremental completion.

PLANNING COMMISSION RECOMMENDATION

30. At its meeting of June 26, 1990, the Planning Commission recommended approval of the Permit to the LUC subject to the following conditions:

- "1. That the Special Use Permit shall be valid for a period of five (5) years from the date of the granting of the permit. However, further extensions may be granted upon a timely application and a favorable review and approval by the Planning Commission.
- "2. That the area shall be limited to sixty (60) acres for the initial period of the permit. However, at the end of the five year period, the area may be increased upon Planning Commission and agency review of a detailed plan of incremental development addressing the issues of drainage, erosion control, impacts on agriculture, and the feasibility of returning the quarried area to sugarcane cultivation.
- "3. That full compliance with the Department of Public Works requirements dated June 5, 1990 (Exhibit 6) shall be rendered, unless written verification is received deleting any of the requirements.
- "4. That the applicant shall work with the Department of Agriculture to address its concerns (Exhibit 8).
- "5. That the conditions of this permit shall be self enforcing and, accordingly, upon due notice by the Planning Department and Planning Commission to the permit holder that there is prima facie evidence that a breach has occurred the permit shall be automatically suspended pending a hearing on the continuity of such Land Use Commission Special Use Permit, provided that a written request for such hearing is filed with the department within the (10) day period, the Planning Commission may revoke said Special Use Permit.
- "6. That the subject Special Use Permit shall not be transferred without the prior written approval of the Planning Commission.
- "7. That full compliance by the permittee, with all other State and County laws, permits, requirements or restrictions shall be a condition of this permit. Failure to comply may be grounds for revocation of this permit."

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 a 60-acre portion of the Property which is the subject area of Special Permit Docket Number 90-376 filed by Hawaiian Cement to operate a rock quarry on approximately 367.25 acres of land, Tax Map Key Number: 3-8-04: portion of parcel 01 and portion of Parcel 02 at Puunene, Pulehunui, Maui is hereby approved, subject to the following conditions:

1. That the Special Use Permit shall be valid for a period of five (5) years from the date of the granting of the permit. However, extensions may be granted upon a timely application and a favorable review and approval by the Planning Commission and the State Land Use Commission.

2. That the area shall be limited to sixty (60) acres for the initial period of the permit. However, at the end of the five year period, the area may be increased upon State Land Use Commission, Planning Commission, and other appropriate reviews by governmental agencies of a detailed plan of

incremental development addressing the issues of drainage, erosion control, impacts on agriculture, and the feasibility of returning the quarried area to sugarcane cultivation.

3. That full compliance with the Department of Public Works requirements dated June 5, 1990, shall be rendered, unless written verification is received deleting any of the requirements.

4. That the Applicant shall work with the Department of Agriculture to address its concerns.

5. That the conditions of this permit shall be self enforcing and, accordingly, upon due notice by the Planning Department and Planning Commission to the permit holder that there is prima facie evidence that a breach has occurred, the permit shall be automatically suspended pending a hearing on the continuance of such Land Use Commission Special Use Permit, provided that a written request for such hearing must be filed with the Planning Department within ten days of the notice. If no written request for hearing has been filed or upon hearing and a finding of a breach of the conditions to the permit, the Planning Commission may revoke said Special Use Permit.

6. That the subject Special Use Permit shall not be transferred without the prior written approval of the Land Use Commission and the Planning Commission.

7. That the Applicant shall commence quarrying operations no later than 180 days of approval by the Land Use Commission.

8. That the Applicant shall submit a map to the Land Use Commission outlining a 60 acre portion of the area that is the subject of this Special Permit prior to the commencement of quarrying operations.

9. That full compliance by the permittee of all other State and County laws, permits, requirements or restrictions shall be a condition of this permit. Failure to comply may be grounds for revocation of this permit.

Done at Honolulu, Hawaii, this 17th day of October 1990,
per motions on August 29, 1990 and October 12, 1990.

LAND USE COMMISSION
STATE OF HAWAII

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

By *Karen S. Ahn*
KAREN S. AHN
Commissioner

By *Allen K. Hoe*
ALLEN K. HOE
Commissioner

By (absent)
ALLEN Y. KAJIOKA
Commissioner

By *Eusebio Lapenia, Jr.*
EUSEBIO LAPENIA, JR.
Commissioner

By *Joann N. Mattson*
JOANN N. MATTSON
Commissioner

By *James M. Shinno*
JAMES M. SHINNO
Commissioner

By *Elton Wada*
ELTON WADA
Commissioner

By *Delmond J. H. Won*
DELMOND J. H. WON
Commissioner

Filed and effective on
October 17, 1990

Certified by:

Retha L. ...
Executive Officer

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Portions of 01 and 02)

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:

CERT. CHRISTOPHER L. HART, Planning Director
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Vice President
Hawaiian Cement
P. O. Box 488
Kahului, Hawaii 96732

DATED: Honolulu, Hawaii, this 17th day of October 1990.


ESTHER UEDA
Executive Officer