

**DOCKET NO. SP73-147**  
**Grace Pacific Corporation**  
**(Makakilo Quarry)**

**MOTION TO**  
**AMEND**

***STAFF REPORT***

Hearing  
August 21, 2024



**Daniel E. Orodener, Executive Officer**

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**Submitted: August 18, 2024**

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## 1. EXPLANATION OF THE PROCEEDING

The proceeding before the Land Use Commission (“Commission”) is a Motion to Amend conditions of approval of the Commission’s 2008 Decision and Order. The current request covers modifications to (1) extend the Makakilo Quarry resource extraction and process operations by 15 years to 2047; (2) reshape the area approved for resource extraction; (3) expand the operational hours of certain activities in the quarry to 24 hours a day, 7 days a week; and (4) to operate a ready-mix concrete plant in the quarry pit.

Special Permit application proceedings are made initially at the appropriate county planning commission, in this case the City and County of Honolulu Planning Commission. For an application that involves an area greater than 15 acres the record is developed at the county level and a decision with recommendations is transferred to the Land Use Commission for appropriate modifications and final decision making.

The Commission must decide on the request within 45 days after receipt of the complete record<sup>1</sup> of the proceeding held by the County. Five affirmative votes are required to approve such a request.

## LEGAL PRECEDENT AND OBLIGATIONS

Pursuant to HRS §205-6(d) “Special permits for land the area of which is greater than fifteen acres or for lands...shall be subject to approval by the land use commission. The land use commission may impose additional restrictions as may be necessary or appropriate in granting the approval, including adherence to representations made by the applicant.”

Pursuant to HAR §15-15-95(b) “Special permits for areas greater than fifteen acres require approval of both the county planning commission and the commission...”

Pursuant to HAR §15-15-95(f) “The county planning commission may impose such protective conditions as it deems necessary in the issuance of a special permit...,and if appropriate, a time limit for the duration of the special permit, provided, however, that the commission for good cause shown, may specify or change the time period of the special permit...The county planning commission, with the concurrence of the commission, may extend the time limit if it deems that circumstances warrant the granting of the extension.”

Pursuant to HAR §15-15-96(a) “Within forty-five days after the receipt of the county planning commission’s decision and the complete record of the proceeding before the

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<sup>1</sup> The complete record was received on July 29, 2024. The 45-day decision deadline is September 12, 2024.

county planning commission..., the commission shall act to approve, approve with modifications, or deny the petition. The commission may impose additional restrictions as may be necessary or appropriate in granting the approval, including adherence to representations made by the petitioner. Upon determination by the commission, the petition may be remanded to the county planning commission for further proceedings.”

HAR §15-15-70(a) provides that “[a]ny party may make motions before, during, or after the close of a hearing.”

Pursuant to HAR §15-15-94, a petitioner who desires to have a modification or deletion of a condition that was imposed by the Commission, or a modification of the Commission’s order shall file a motion in accordance with HAR §15-15-70, including proper service and affidavits or declarations if the motion requires the consideration of facts not appearing in the record.

Pursuant to HAR §15-15-94(b), if good cause is shown, the Commission may modify or delete any of the conditions imposed or modify the Commission’s order. “Good cause” can mean “a substantial reason amounting in law to a legal excuse,” and that it will also depend on the specific circumstances of an individual case. Determining “good cause” is at the discretion of the Commission.

Pursuant to HRS §91-10(5), the party initiating the proceeding shall have the burden of proof, including the burden of producing evidence as well as the burden of persuasion. The degree or quantum of proof shall be a preponderance of the evidence. Petitioner has the burden to show good cause for the request and a preponderance of evidence.

## **2. BACKGROUND INFORMATION**

The Makakilo Quarry began operations under a special permit approved by the LUC on March 23, 1973. At that time, lands surrounding the quarry consisted primarily of sugarcane fields, pastureland, and open space.

In 1977, the O’ahu General Plan envisioned the creation of a “Second City” in Kapolei to create affordable housing and jobs outside of Honolulu’s Primary Urban Center. Since then, significant urban development has transformed the once undeveloped character of the area surrounding the quarry. The residential communities of Makakilo are now, in some instances, directly adjoining the Petition Area.

When processing activities were occurring in the Lower Quarry, impacts on these communities were substantial. Homes adjacent to the Lower Quarry in the subdivisions of Kapolei Knolls and Malanai Iki were located approximately 200 feet downwind from the processing facilities.

On October 5, 2007, the Petitioner filed for a modification to extend the life of the Special

Permit and expand the area of quarry excavation until the year 2032.

Residents from the surrounding Kapolei and Makakilo communities were vocal about the impacts of the quarry, such as dust, odor, views, and noise. They were also concerned about the end use of the quarry and advocated for plans for re-use and renaturalization of the quarry pit, and defining final closure grades.

A request for intervention was filed on July 31, 2008. To address concerns, the Petitioner agreed to relocate all processing activities at the Lower Quarry and proposed a final grading plan that would create a natural sloping quarry face that would support the regrowth of vegetation and screen views from certain vantage points during quarry operations and upon final closure. The request for intervention was withdrawn after agreements were made between the Petitioner and those representing opposition to the 2007 Special Permit modification request.

On November 6, 2008, the LUC adopted the City and County of Honolulu Planning Commission's approval of the application subject to 16 conditions ("[2008 D&O](#)").

### **3. SUMMARY OF PROCEEDINGS**

On March 27, 1973, the Land Use Commission ("LUC") approved SP73-147 authorizing Pacific Concrete and Rock Company, Ltd. ("PCR") to conduct rock quarrying activities to extract basalt aggregate and produce concrete and other materials at Pu'u Makakilo.

From 1973 to 2007, rock extraction and crushing operations occurred mauka of the H-1 Freeway, while shops, offices, scales, processing, and concrete batching were located makai of the H-1 Freeway.

In 1985, the Grace Pacific Corporation acquired the resource extraction operations at Makakilo Quarry from PCR.

On November 6, 2008, the LUC approved a modification to the Special Permit that included an extension of the operating life of the quarry and expansion of the excavation area subject to 16 conditions (the "2008 D&O").

On July 25, 2023, the Department of Planning and Permitting, City and County of Honolulu ("DPP"), accepted an application for a modification to conditions of SP73-147. DPP and the Applicant negotiated revisions to the recommended Conditions 18, 19, and 20 in the Director's Report. [Planning Commission 2024 Record, [Exhibit 2](#)]

On March 6, 2024, the Planning Commission conducted an in-person and remote public hearing. At the hearing, the Planning Commission received public testimony from individuals in support of and in opposition to the Application. After due deliberation, the Planning Commission approved the Application subject to the recommended conditions in the Director's Report with modifications to Conditions 18, 19, and 20. [Planning Commission 2024 Record, [Exhibit 2](#)]

On May 29, 2024, the Planning Commission approved the request to modify the Special Permit that included: amendments to Conditions 1, 2, 3, 5, 9, and 15, and addition of Conditions 16-20. The modifications include an extension of the life of quarry operations until 2047, revisions to a final Closure Grading Plan, allowance of 24/7 operations, increased in-person reporting requirements to the Planning Commission, and allowance of ready-mix concrete batching.

On July 29, 2024, the Planning Commission transmitted their record of approval and recommendation on the request to modify the conditions of SP73-147.

#### **4. FILINGS BY PLANNING COMMISSION**

- [Exhibit 1](#) Application and Exhibits for an Amendment to SP73-147 Makakilo Quarry  
[Exhibits A to F](#) 2009 Conditional Use Permit pgs 2-; 1973 LUC Special Permit pgs 108-116; Location maps pgs 117-121; 2008 LUC Amendment to Special Permit pgs 122-158  
[Exhibits G to K](#) Graphics showing extent of quarry operations and closure plans  
[Exhibits L to R](#) View Plane Analysis pgs 88-110; Biological Survey pgs 111-127;  
[Exhibits S to Z](#) Updated Cultural Impact Assessment pgs 1-81; Noise Impact Report pgs 82-109; Lighting Assessment Report pgs 110-122; Dust Evaluation pgs 123-204; Vibration Monitoring Summary pgs 205-214; Archaeological Inventory Survey pgs 239-342
- [Exhibit 2](#) DPP Director's Report and Recommendation to the Planning Commission  
[Exhibit 3](#) Planning Commission March 6, 2024 Notice of Public Hearing  
[Exhibit 4](#) Planning Commission Agenda March 6, 2024 Meeting  
[Exhibit 5](#) Written Testimonies to Planning Commission  
[Exhibit 6](#) Request from Grace Pacific LLC ("Grace Pacific") to Consider Revisions to Recommended Conditions Nos. 18, 19, and 20 of the Findings of Fact, Conclusions of Law, and Recommendation ("Director's Report")  
[Exhibit 7](#) Planning Commission Transcript of March 6, 2024 Meeting  
[Exhibit 8](#) Applicant Grace Pacific LLC [Proposed] Findings of Fact, Conclusions of Law, and Decision and Order, received April 11, 2024  
[Exhibit 9](#) Planning Commission Agenda May 29, 2024 Meeting  
[Exhibit 10](#) Planning Commission Transcript of May 29, 2024 Meeting  
[Exhibit 11](#) Planning Commission's July 10, 2024 Transmittal Letter to the Parties with May 29, 2024 Findings of Fact, Conclusions of Law, and Decision and Order  
[Exhibit 12](#) Planning Commission's (PC) July 29, 2024 Transmittal to the State LUC

The Land Use Commission has scheduled a hearing on the matter for August 21, 2024, with a tentatively scheduled hearing on September 4, 2024, to adopt an order.

#### **5. SUMMARY OF OPSD POSITION STATEMENT**

OPSD recommends the LUC:

- a. Approve the Petitioner’s request to:
  - (1) extend Makakilo Quarry resource extraction and processing operations by 15 years to 2047 (Condition 3);
  - (2) reshape the area approved for resource extraction;
  - (3) expand the operation hours of certain activities in the quarry to 24 hours a day, seven days a week (Condition 5); and,
  - (4) operate a ready-mix concrete plant in the quarry pit (Conditions 15 and 16).
- b. Modify the PC’s 2024 D&O, Condition No. 2, to read (shown using Ramseyer format over the existing Condition No. 2 in the 2008 D&O with added language underlined and deleted language in strikethrough font and brackets):

“Within one (1) year of the Land Use Commission’s Decision and Order approving the Special Use Permit, the Applicant shall submit to the Director of Planning and Permitting for review and approval a renaturalization plan in coordination with ~~[the proposed]~~ a revised 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],~~ showing a visual model of quarry activity in five-year stages from five (5) public lines of sight: the H-1 Freeway westbound, the University of Hawai‘i at West O‘ahu, the Salvation Army Kroc Center, the Kanehili subdivision, and Kealani Avenue. The revised grading plan shall provide cross-sections of the pit displaying slopes no greater than 75 percent slope, along with elevations of landforms that blend into the surrounding topography. The specifications described in the 2008 Findings of Fact No. 40, shall be carried forward into the revised grading plan. The revised Site Plan shall be established from the approved revised final grading plan.”

OPSD recommends approval of the Motion to Amend covering Conditions 3, 5, 15, and 16; and, subject to their recommended changes to Condition 2 with respect to the Closure Grading Plan.

OPSD supports the Petitioner’s request to extend the Special Permit termination date from the year 2032 to 2047 (Condition 3). Petitioner estimates around 15 million tons of aggregate still exists in the approved excavation area, which would be exhausted between 2040 and 2042. The requested excavation area expansion would add another 12.8 million tons of aggregate. Petitioner’s submissions of consistent and detailed Annual Compliance Reports, along with a willingness to host agency staff visits, have demonstrated a continual good faith effort to comply with the 2007/SUP-6 conditions of approval. [OPSD Position Statement, p. 4]

OPSD supports the Petitioner’s request to expand the area of excavation, which is required to continue resource extraction until the year 2047. However, OPSD has concerns regarding the impact of the proposed changes and recommends mitigative conditions. OPSD does not concur with the Petitioner’s assessment that the removal of

15.6 acres of mitigative “Berthing, Landscaping, and Grading Area” proposed by the Petitioner would provide a benefit to the surrounding community. Removal of the northeastern portion would significantly reduce the size of a large berm, intended to screen views of the northern and western pit walls from the westbound H-1 Freeway approach to Kapolei. [OPSD Position Statement, p. 4-5]

OPSD supports Petitioner’s request to amend Condition No. 5 to allow sales activities, equipment and vehicle maintenance, the receipt of recycling materials, operation of a hot-mix asphalt plant, and operation of a concrete ready-mix batch plant to 24 hours a day, 7 days a week. Expanded operating hours would negate the need for the Petitioner to transport aggregate off-site for processing, which would improve financial outcomes for the Petitioner, who has reported negative earnings in recent years. Studies provided in the Petition conclude that nighttime operations would not impact surrounding communities. crushing, recycling, excavation, and blasting would still operate from 6 a.m. to 6 p.m. Monday to Saturday. The Planning Commission’s 2024 D&O provides additional conditions that address potential nighttime light, noise, and odor impacts. [OPSD Position Statement, p. 5-6]

OPSD supports the request to locate and operate a ready-mix concrete batching plant in the quarry pit located in the Upper Quarry. Condition No. 15 does not list a concrete batch plant as a permitted use in the quarry pit. The operation of a ready-mix concrete batch plant on-site with 24-hour operations would lead to beneficial impacts in the form of cost savings and reduced traffic. [OPSD Position Statement, p. 6]

As required by Condition No. 2 of the Planning Commission’s 2024 D&O, the 2008 final closure grading plan should be modified if the Petitioner is allowed to excavate beyond the permitted excavation area. OPSD is uncertain whether the proposed changes to the final grading plans are justified or achievable, in particular, whether the long-term soil retention and landscape features covering 50-foot vertical benches can be achieved. Since the proposal includes excavating further up the slopes of Pu’u Makakilo, it would be logical for mitigative berthing and final grading commitments to increase, rather than decrease. [OPSD Position Statement, p. 6-8]

## 6. SUMMARY OF COUNTY RECOMMENDATIONS

The City and County of Honolulu’s Department of Planning and Permitting (“DPP”) provided their recommendations to the Planning Commission on the subject petition to amend conditions of the LUC’s 2008 Decision and Order. [Planning Commission 2024 Record, [Exhibit 2](#)]

DPP conducted an analysis of the request based on the five guidelines contained in Hawai’i Administrative Rules (“HAR”) section 15-15-95(c) and Planning Commission’s rules section 2-45. Based on the analysis DPP found that: (1) the proposal would not impede agricultural goals of the State of Hawai’i; (2) the proposal, with mitigative



measures would not adversely affect surrounding property; (3) the project would not require additional public infrastructure and public agencies didn't have any objections; (4) the quarry is unique and important in the development of infrastructure on the island; and (5) the proposal would little to no adverse impact on agricultural suitability of the site as it has poor potential for agricultural use. [Planning Commission 2024 Record, Exhibit 2, pg 18-26]

Therefore, DPP found that the proposed Project allowing the expansion of operations outlined in the application on agricultural land is "unusual and reasonable" as set forth in Chapter 205-6, HRS, and the five (5) guidelines established by the Planning Commission, pursuant to Section 2-45 of the "Rules of the Planning Commission." [Planning Commission 2024 Record, Exhibit 2, pg 32]

The specific recommendations were to:

- a. Amend Condition 1(a) to correct the acreage for the new site plan map from 541 acres to 536.9 acres. [Planning Commission 2024 Record, Exhibit 2, p. 33]
- b. Amend Condition 2 with more detailed language regarding the required revised final Closure Grading Plan. [Planning Commission 2024 Record, Exhibit 2, p. 33]
- c. Amend Condition 3 to extend quarry activities until December 2047. [Planning Commission 2024 Record, Exhibit 2, p. 33]
- d. Amend Condition 5 to allow operation of ready-mix concrete and hot-mix asphalt plants, receiving recycled materials, equipment maintenance, and sales to 24 hours a day, 7 days a week. [Planning Commission 2024 Record, Exhibit 2, p. 33-34]
- e. Amend Condition 9 to require quarterly reports to the Planning Commission during the first year and annually thereafter. [Planning Commission 2024 Record, Exhibit 2, p. 34]
- f. Amend Condition 15 to include ready-mix concrete batching plant as allowed use within the quarry excavation area. [Planning Commission 2024 Record, Exhibit 2, p. 34]
- g. Amend and add five new conditions 16 to 21. These cover an outdoor lighting plan, seasonal restrictions to protect the Hawaiian Hoary bat; a traffic circulation plan, required archaeological inventory survey and monitoring plan as approved by the State Historic Preservation Division (SHPD), development and establishment of protocol for disturbance of `iwi kupuna, and that the quarry expansion must be in substantial compliance with representations made. [Planning Commission 2024 Record, Exhibit 2, p. 35-36]

## **7. PUBLIC TESTIMONY**

The LUC received four written public testimonies between March 5 and March 27,

2024, prior to the County’s transmission of the record of their decision. One written public testimony was received on August 12, 2024, after the record from the County had been transmitted.

- On March 5, 2024, the Makakilo/Kapolei/Honokai Hale Neighborhood Board No. 34 transmitted a [resolution](#) “...urging the beautification of the Makakilo Quarry...as a requirement for extending the life of the quarry by 15 years...” The request was for the Planning Commission and/or Grace Pacific LLC to voluntarily agree to a condition of approval for the extension that would produce a beautification project of large carvings of Hawaiian monarchs or traditional figures.
- On March 20, 2024, [Deborah Agles, MD](#), submitted written testimony in opposition to the extension and identifying several issues: proximity to residential areas, noise, dust, 24/7 operations, blasting, and toxic hazards.
- On March 21, 2024, [Mark Felman](#) submitted written testimony in opposition, particularly the relocation of asphalt plant to the Quarry and its potential hazards and adverse impacts to Makakilo property owners.
- On March 27, 2024, [Deborah Agles, MD](#), resubmitted her written testimony as hard copy.
- On August 12, 2024, [Dr. Kioni Dudley](#) submitted written testimony asking the Commission to consider the Makakilo/Kapolei/Honokai Hale Neighborhood Board’s Resolution as a condition of approval for the Quarry’s extension.

The Planning Commission’s record contains written testimonies received during their proceedings ([Planning Commission Exhibit 5](#)). These include a copy of the Makakilo/Kapolei/Honokai Hale Neighborhood Board’s Resolution and Dr. Dudley’s written testimony.

## 8. STAFF NOTES

### Actions the Commission may take:

HRS section 205-6, and HAR section 15-15-96(a), provides the alternative actions that may be taken by the LUC in its consideration of the Special Permit application.

1. Grant the Permit as transmitted by the County;
2. Remand the matter back to the County for further proceedings, enumerating specifically any issues that require developing a more complete record to support its findings or additional fact finding on issues not considered or addressed by the County.
3. Deny the SP for any of the reasons contained in HAR section 15-15-95, including that the SP is inconsistent with the policy and purpose of HRS Chapter 205; or,
4. Grant the SP with conditions; these might include any or all conditions set by the County in its proceedings, and any the Commission finds necessary.

## **HRS Chapter 343 Environmental Impact Statements**

With respect to HRS Chapter 343 compliance the Planning Commission stated in their recommendations that:

On January 13, 1973, the Governor accepted the EIS for the establishment of the quarry and processing facility. The current application is not subject to environmental disclosure requirements of the EIS law, Chapter 343, HRS. As the two triggers for requiring the EIS in 1973, i) use of State land for a tunnel underneath the H-1 Freeway to transport aggregate from Parcel 82 to Parcel 4 for processing and the maintenance of power and water lines, and ii) involving Palailai Landfill were no longer part of quarry operations or tied to this SP, further environmental disclosure is not mandated by Chapter 343. The absence of a trigger was recognized by the DPP in 2007 when the Applicant sought extensions of the SP and the CUP at that time. [Planning Commission 2024 Record, Exhibit 2 DPP Recommendations p. 14; Planning Commission 2024 Record, Exhibit 8, Finding of Fact 40, pg.10]

### **Ka Pa’akai Analysis**

A Ka Pa’akai analysis was conducted by Pacific Legacy and is included as Exhibit “S” of the Application. The analysis assesses the identification and protection of any cultural, historical, or natural resources in the Application area, including traditional and customary Native Hawaiian rights pursuant to Ka Pa’akai v. Land Use Commission, 94 Hawai’i 31, 7 P.3d 1068, 29 (2000). [Planning Commission 2024 Record, Exhibit 2 DPP Recommendations p. 29; Planning Commission 2024 Record, Exhibit 8, Findings of Fact 88 and 89, pg.22]

The Ka Pa’akai Analysis concludes that the uplands of Honouliuli were likely an important area for pre-contact activities that included the gathering of traditional plants for medicinal and other uses, catching birds for feather work, and hunting pigs in the uplands. The area became restricted starting in the 19th century and the impacts of cattle grazing and intensive sugarcane cultivation likely denuded the landscape of many traditional resources. Those interviewed for the analysis did not comment on ongoing cultural practices in the proposed Project area. However, several participants emphasized the cultural importance of the area, with emphasis on spiritual activities and the role of Pu’u Makakilo in celestial observations and as a navigational landmark. [Planning Commission 2024 Record, Exhibit 2 DPP Recommendations p. 30; Planning Commission 2024 Record, Exhibit 8, Findings of Fact 80-81, pgs. 22-23]

The analysis identified no potential impact to resources and traditional and customary Native Hawaiian rights but recommends the Applicant maintains positive relationships with communities of Makakilo and the wider region encompassing the Honouliuli Ahupua’a. [Planning Commission 2024 Record, Exhibit 2 DPP Recommendations p.

30]

Recommended actions include development of an established protocol should disturbance of iwi kupuna occur during quarrying activities, which includes immediate notification of the SHPD, an O’ahu Island Burial Sites Specialist, and the development of a burial treatment plan in consultation with the SHPD, the O’ahu Island Burial Council, the OHA, identified cultural and/or lineal descendants, and community stakeholders. Additionally, dissemination of information to community members regarding other required environmental testing (and their results) for the proposed expansion and planned changes to operations. Finally, continue community consultation regarding potential impacts and mitigation plans for historic properties throughout the duration of the project development. [Planning Commission 2024 Record, Exhibit 2 DPP Recommendations p. 30]

The Planning Commission reviewed the CIA and found that the proposed use would not have any adverse impacts on the exercise of native Hawaiian traditional and customary practices in the area. The Planning Commission conditioned the approval based on recommendations by DPP. [Planning Commission 2024 Record, Exhibit 8, Finding of Fact 92, pg.23; Planning Commission 2024 Record, Exhibit 8, Conditions 9, 17, 19, and 20, pgs.36-38]

### **Issues Raised in Public Testimony**

Some issues have been raised in written public testimony regarding the final Closure Grading Plan that the LUC may wish to explore or clarify with the Petitioner, County, and OP. [Planning Commission 2024 Record, Exhibit 5; Planning Commission 2024 Record, Exhibit 8, Finding of Fact 11, pg. 3 and Conditions 18, 19, and 20, pgs.37-38; and LUC submitted written testimonies]

### **Summary**

The documented record from the County includes the Planning Commission’s record memorializing their decision and identifying the conditions they recommended, the Special Permit application and supporting documents, the Planning Director’s Report, and approved hearing transcripts/minutes.

The Commission may approve the Special Permit amendment using the C&C Planning Commission’s Decision and Order (Planning Commission 2024 Record, Exhibit 8) with any appropriate amendments based on the record and questioning of the parties by the Commission.